

Transcript of the Sheku Bayoh Inquiry

Friday, 16 February 2024

(10.00 am)

LORD BRACADALE: Before we start this morning I wish briefly to address legal representatives. I can understand that from time to time during the evidence members of legal teams will wish to communicate with each other, however, even whispered conversations can be distracting for the witness. Could I ask you therefore so far as possible to communicate electronically and keep spoken conversations to a minimum. I would find that very helpful. Thank you.

Could we have the witness, please. Good morning, Mr McSporran.

MR JOHN MCSPORRAN (continued)

Questions by MS GRAHAME (continued)

A. Good morning, my Lord.

LORD BRACADALE: Ms Grahame, carry on please.

MS GRAHAME: Thank you.

Good morning, Mr McSporran.

A. Good morning, ma'am.

Q. I think yesterday I was taking you through the log and I intend to do the same thing today. We were up to decision number 12, and at the close of business yesterday we had moved on to talking about some of the statements that you had on 6 May 2015.

Transcript of the Sheku Bayoh Inquiry

- 1 A. Yes.
- 2 Q. I had gone through the statements of two key eyewitness,
3 Ashley Wyse and Kevin Nelson.
- 4 A. Yes.
- 5 Q. And I would like to go back to completing that passage
6 of questioning, if that is all right.
- 7 A. Of course.
- 8 Q. We are at 6 May, you have made it clear in your
9 evidence, as have others, that officers are really in
10 a unique position in that they have the legal right to
11 use force --
- 12 A. Yes.
- 13 Q. -- in the UK. And that includes even deadly force?
- 14 A. Yes.
- 15 Q. But they have to justify that use of force?
- 16 A. They need to justify it, it has to be deemed to be
17 proportionate and necessary.
- 18 Q. And reasonable?
- 19 A. Yes.
- 20 Q. And they have to use the absolute minimum force and they
21 have to preclude other less forceful options?
- 22 A. Yes.
- 23 Q. And that is either based on their experience or perhaps
24 having tried it and failed to achieve the goal?
- 25 A. On the circumstances at the time.

Transcript of the Sheku Bayoh Inquiry

1 Q. On 6 May officers had been given the opportunity to make
2 statements but they had elected to not give statements
3 pending legal advice?

4 A. They had been asked for statements, on a number of
5 occasions. We direct those requests through the SPOC,
6 as we discussed yesterday.

7 Q. You have not received any statements at that stage, so
8 you have no basic facts, initial accounts, statements of
9 any description?

10 A. Not from the nine principal officers.

11 Q. And not on 6 May?

12 A. No.

13 Q. Nor had you received any use of spray forms or use of
14 force forms?

15 A. No.

16 Q. But what has been done is PIRC investigators have taken
17 these two statements from Ashley Wyse and Kevin Nelson?

18 A. Yes.

19 Q. When I went through them yesterday, I took out sections,
20 a snapshot of elements of those statements, I didn't
21 read them all out to you. But taking that again, from
22 Ashley Wyse, she had said six officers were surrounding
23 the man, holding him on the ground, it looked like one
24 officer was using a baton to hold the man down, it was
25 on his upper chest, towards his throat. Officers were

Transcript of the Sheku Bayoh Inquiry

1 lying on top of him for at least five minutes, maybe
2 ten minutes. I have extracted from her statement those
3 elements.

4 A. Yes.

5 Q. You explained that you would have been advised about
6 that on the 6th and had an opportunity look at the
7 statement?

8 A. Yes.

9 Q. Kevin Nelson's statement was the man was walking along
10 the road acting as if the police were not talking to
11 him, ignoring everything being said. He didn't appear
12 to be holding anything in either of his hands.

13 A. Yes.

14 Q. I think you mentioned yesterday the statement you had of
15 DC Connell --

16 A. Yes.

17 Q. -- about a knife being found at some remove from the
18 location where the incident occurred?

19 A. Yes, from memory I think it was 30 to 40 yards away.

20 Q. So Kevin Nelson's evidence in that regard seemed to be
21 tying in and consistent with the statement you had from
22 DC Connell?

23 A. Yes.

24 Q. Kevin Nelson went on to say, and again this is
25 a snapshot, the man lunged at a female officer.

Transcript of the Sheku Bayoh Inquiry

1 Mr Nelson left his window for approximately 10 to 20
2 seconds as he walked out his front door into his front
3 garden to his gate?

4 A. Yes.

5 Q. He got to the front garden to have a closer look. The
6 man was face down on the pavement with five or six male
7 officers attempting to restrain him, one appeared to be
8 kneeling on the ground with weight of his upper body by
9 use of his arms to the back of the male's shoulder or
10 back of neck area. The other police officers appeared
11 to be laying across the man, the black male's body. So
12 that's a snapshot again of Kevin Nelson's statement
13 which had been taken on 5 May?

14 A. Yes.

15 Q. We've heard evidence, and obviously you were a police
16 officer in the past and you will have undergone officer
17 safety training?

18 A. Yes.

19 Q. And you will have been trained in the techniques but
20 also received an officer safety training manual at some
21 point?

22 A. Yes.

23 Q. Going through those. We have heard evidence about the
24 training, so I would like to put some suggestions,
25 propositions to you, but if you disagree you can let me

Transcript of the Sheku Bayoh Inquiry

1 know. It may assist if we have the 2013 manual on the
2 screen. This is the manual that was in force, if you
3 like, at the date in May 2015. If we could have page 29
4 of the OST Manual from 2013 on the screen. It is
5 page 29. I think it is page 23 of the manual, but it is
6 29 on the pdf. Here we are.

7 What I will do is I will read through some of these
8 items which are mentioned in the manual, and just ask
9 you to confirm that you recognise that information.

10 A. Yes.

11 Q. So this is part of the module 1:

12 "Medical conditions and considerations."

13 It says:

14 "Two specific medical conditions, namely, positional
15 asphyxia (restraint-related asphyxia) ..."

16 That is what I am really interested in at the
17 moment. So the officers are taught in this part of
18 their training about a safe system and appropriate
19 restraint techniques and they are advised about the
20 risks of restraint. Part of the training they are given
21 relates to something called positional asphyxia.

22 A. Yes.

23 Q. We see on the left-hand column, if we can move down
24 positional asphyxia is also known as restraint-related
25 asphyxia and that:

Transcript of the Sheku Bayoh Inquiry

1 "... can occur when a subject is placed in
2 a position which interferes with the ability to breathe.
3 Death can occur rapidly, and it may be the case that
4 a police officer can be found liable."

5 Do you see that?

6 A. Yes.

7 Q. You would have been aware of that as a PIRC investigator
8 from your experience in the past?

9 A. Yes.

10 Q. The risk factors that contribute to the condition
11 positional asphyxia can include:

12 "Subject's body position results in partial or
13 complete airway constriction.

14 "... Inability to escape~..."

15 "The subject is prone."

16 And that means face down?

17 A. Yes.

18 Q. And at the bottom it talks about:

19 "Respiratory muscle fatigue related to prior violent
20 muscular activity such as fighting with police
21 officers."

22 A. Yes.

23 Q. My understanding is that could be struggling with police
24 officers?

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. And then moving to the top of the right-hand column
2 there is also guidance here about signs and symptoms:
3 "Officers should recognise the following symptoms
4 and be prepared to administer emergency first aid~..."
5 And there it also talks about body position,
6 restricted to prone, face down. Just further down at
7 the bottom of that page:
8 "When a subject has been involved in a physical and
9 violent struggle, the exertion involved causes the
10 muscles to use oxygen at an increased rate. The process
11 can cause oxygen debt in the muscles and the
12 physiological response to that is accelerated breathing.
13 "When a subject is restrained, ventilation (the
14 process of getting air into and out of the lungs) can
15 become more difficult due to the internal organs
16 exerting pressure on the diaphragm. This is
17 particularly evident when a subject is placed in the
18 prone position or pressed against a surface."
19 There is mention of when hands are restrained to the
20 rear and then:
21 "The process of restraining often requires the upper
22 body to be held down, sometimes by an officer's own body
23 weight. This chain of events may trigger positional
24 asphyxia, so officers are encouraged to remove
25 the subject from the prone position as soon as possible

Transcript of the Sheku Bayoh Inquiry

1 following restraint. The subject can then breathe
2 without restriction and the officer can still carry out
3 search procedures before executing the safe get up
4 technique."

5 If I can summarise my understanding of the
6 information that is given to officers about positional
7 asphyxia and the risks associated with positional
8 asphyxia. Officers are taught they have to be very
9 aware of these risks because it can cause death?

10 A. Yes.

11 Q. And being in the prone position, being face down,
12 creates a risk, a potential risk of positional asphyxia
13 and death?

14 A. Yes, and obviously the longer it occurs the greater the
15 risk.

16 Q. Exactly. So if they are held down for a longer period,
17 that can cause risks but it does say in the manual death
18 can occur suddenly?

19 A. Yes.

20 Q. There is no -- as I understand it there is no guidance
21 given to officers that you can safely hold someone in
22 this position for a certain length of time. Because
23 there is not a known safe length of time that someone
24 can be held down?

25 A. Yes, and it is very much dependent on the individual

Transcript of the Sheku Bayoh Inquiry

1 themselves because there are a number of factors, one of
2 which is obviously age, stress, obesity et cetera.

3 Q. And alcohol or drug intoxication?

4 A. Yes.

5 Q. These can be major risk factors as well?

6 A. Yes, alcohol intoxication can be quite obvious, drug
7 intoxication may not be obvious initially.

8 Q. Thank you. Then as I understand the training that is
9 given to officers, officers that -- obviously sometimes
10 a restraint has to be carried out, and officers who do
11 perform a restraint, they should not be putting their
12 body weight or pressure on the chest of the subject or
13 the back of the subject?

14 A. That is the general guidance but sometimes I would say
15 it is unavoidable due to the nature of what is
16 occurring. It is preferable that if it does occur it
17 occurs for the shortest possible period. But, you know,
18 you do need to bring the person under control. So
19 sometimes I would say it is unavoidable. Certainly
20 within my time in PIRC we have looked at these sets of
21 the circumstances, and sometimes it is unavoidable.
22 That is why you have to minimise the time that it
23 actually occurs to lessen the risk.

24 Q. And officers performing a restraint should avoid
25 restricting the neck area?

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. And officers performing a restraint should minimise
3 the amount of time that the person is restrained on the
4 ground and he should be put into a sitting position or
5 a standing position as soon as possible?

6 A. Yes, particularly if they're in the prone position.
7 Initially, probably you move them on to their side, and
8 then you move them into sitting up and then eventually
9 getting them up off the ground.

10 Q. So, although restraint may on occasions be unavoidable,
11 there are protections in place to avoid the risk of harm
12 caused by positional asphyxia?

13 A. Yes, and certainly guidance in that regard.

14 Q. Thank you. On 6 May we know that at that stage you do
15 not have a confirmed cause of death?

16 A. No.

17 Q. You have only ruled out blunt-force trauma to the head?

18 A. Yes.

19 Q. So you have not ruled out positional asphyxia,
20 restraint-related asphyxia?

21 A. No.

22 Q. And you have not ruled out restraint as such?

23 A. As a contributory cause, no.

24 Q. As a contributory cause. Can I ask you, when we look at
25 the evidence that you have available from Ashley Wyse

Transcript of the Sheku Bayoh Inquiry

1 and Kevin Nelson --

2 A. Yes.

3 Q. -- which appears to at its highest point amount to
4 evidence from Ashley Wyse that -- or a statement from
5 Ashley Wyse that an officer was using a baton to hold
6 the man down on his upper chest towards his throat, he
7 was there for five minutes, maybe ten minutes.

8 Kevin Nelson talks about five or six officers attempting
9 to restrain the man, one appeared to be kneeling on the
10 ground with the weight of his upper body using his arms
11 to the back of the male's shoulder, back, or the back of
12 his neck area. And the other officers, so that would be
13 four or five officers, appearing to be laying across the
14 male's body. So you have that on the one side.

15 A. Yes.

16 Q. You have a knowledge about safe restraint methods on the
17 other.

18 A. Yes.

19 Q. Where at that point would you say the investigation was
20 going by PIRC?

21 A. What I would say is we would need to wait for the
22 results of the final post mortem to determine whether
23 asphyxiation was a contributory cause, and that is going
24 to come several weeks later. So you are alive to it,
25 because you've got the statements obviously, but you

Transcript of the Sheku Bayoh Inquiry

1 await the results of the final post mortem because that
2 will inevitably provide that additional information
3 which may indicate whether asphyxia was a contributory
4 cause.

5 Q. What impact does these statements from Ashley Wyse and
6 Kevin Nelson -- what impact do they have on the status
7 of the officers at that stage?

8 A. I don't think it changes the status of the officers, the
9 officers are still considered to be witnesses. We were
10 building the picture of the length of time of the
11 restraint and we were building that through obtaining
12 witness statements, from Airwave radio traffic, from
13 STORM logs et cetera, how long did this restraint occur.
14 And we did break it down minute-by-minute,
15 second-by-second, which you will have noticed within the
16 PIRC reports. So while Ashley Wyse has said five to
17 ten minutes, what we are trying to do is build that
18 picture through other evidence, and therefore -- I think
19 the time was about just over four minutes, so it wasn't
20 as lengthy as ten minutes.

21 So that is why you are gathering all that additional
22 information to clarify the picture, because each witness
23 sees things differently. And you are trying to find
24 supporting evidence to either support what they are
25 saying or exclude what they are saying or -- not so much

Transcript of the Sheku Bayoh Inquiry

1 exclude it but just build the picture in totality
2 through gathering as much other evidence as possible.

3 Q. When you did have evidence available to suggest that it
4 was four minutes rather than five to ten minutes that --

5 A. I don't know precisely but there will be a date that we
6 obtained the Airwave recordings, that is the police
7 radio chatter, and the STORM logs. Because the officers
8 obviously declared they were on scene and they also
9 radioed in that the man, Mr Bayoh, no longer appeared to
10 be breathing, so that gave us a more definitive
11 timescale. I don't know when we received that but we
12 did receive it.

13 Q. All right. We can maybe come on to that aspect later
14 when we look through the log. But I am interested in
15 the status of the officers on the 6th when you have two
16 statements -- would you agree that those statements by
17 Mr Nelson and Ashley Wyse indicate a level of force
18 being used that may constitute an excessive use of
19 force?

20 A. I don't think we could say that at that time. There was
21 a struggle, we know there was a struggle. There was
22 a struggle on the ground. We knew there was a struggle
23 on the ground. But I think, as we said earlier, did
24 that contribute towards the death? We were unable to
25 say so, and the initial results of the post mortem were

Transcript of the Sheku Bayoh Inquiry

1 unascertained. So was restraint a contributory factor?
2 We did not know, and because we did not know that meant
3 that we did not change the status of the officers. They
4 were still considered to be witnesses.

5 Q. So you would have waited for the final post mortem
6 report --

7 A. Yes.

8 Q. -- before taking any view?

9 A. Yes, and all the other evidence that we gather.

10 Q. Did you consider at that point, because you had those
11 two statements, changing the status of the officers?

12 A. No.

13 Q. You didn't consider that?

14 A. No. For the reasons I have already given.

15 Q. Did you consider it and decide not to change the status
16 for the reasons you gave or did you just simply not
17 consider it?

18 A. What I would do is collect evidence and the evidence
19 would then point to whether the status of the officers
20 should be changed.

21 Q. So you have two statements --

22 A. Yes.

23 Q. -- and was there consideration given at that point to
24 change the status? Ultimately you have obviously
25 explained you decided not to, but was consideration

Transcript of the Sheku Bayoh Inquiry

1 given on 6 May, in light of those two statements from
2 Ms Wyse and Mr Nelson, to consider whether the status of
3 the officers should be changed?

4 A. No. For the reasons I have already given, plus the fact
5 that the post mortem result was unascertained, so we did
6 not know whether the restraint contributed to the death
7 or otherwise. Therefore, you know, I think as we
8 discussed yesterday, you need evidence to place this
9 person into the suspect category, and therefore you
10 collect that evidence and you collect as much available
11 evidence.

12 Now, it doesn't need to be beyond reasonable doubt,
13 you know, the criminal threshold, but you certainly need
14 some evidence. Two people had saw the restraint, it was
15 obviously a restraint on the ground, there was
16 a struggle, but as we say we wanted to know how long did
17 that occur, could that have contributed to the death and
18 that would come through pathology and other mechanisms.

19 Q. So at that time you didn't consider there were
20 reasonable grounds to suspect that the officers had
21 engaged in any criminal activity?

22 A. That is correct.

23 Q. So the status was not changed?

24 A. That is correct.

25 Q. If the status of officers had been changed at that

Transcript of the Sheku Bayoh Inquiry

1 point, I appreciate you say that wasn't the position,
2 but if their status had changed at that point, am
3 I right in thinking immediately they would be given
4 legal protections as suspects?

5 A. Yes, and I think we discussed that yesterday.

6 Q. So would it then have been possible for you to interview
7 them under caution as suspects?

8 A. Yes.

9 Q. And as suspects having interview under caution they
10 would have been entitled to have a solicitor present at
11 that time?

12 A. Yes.

13 Q. And be given the caution that they didn't need to say
14 anything --

15 A. Yes.

16 Q. -- if they didn't wish to do so. That wasn't done?

17 A. No. And I think as I explained yesterday, we did not
18 have a complete picture of what occurred because what
19 was lacking was the officers' accounts of what occurred
20 and we were piecing it together from various witnesses
21 and other evidence, many of the witnesses had only seen
22 partial events, so the only people who could tell us
23 exactly what occurred was the officers themselves and
24 that is why I consider them still to be witnesses,
25 because I didn't have in my mind sufficient evidence to

Transcript of the Sheku Bayoh Inquiry

- 1 place them into the suspect category.
- 2 Q. So looking forward you obtained those statements on
3 4 June?
- 4 A. Yes.
- 5 Q. You were able to review those statements at that time,
6 maybe that day or the following day?
- 7 A. Yes.
- 8 Q. So early June. Once you got those statements from the
9 officers, so this is the first time you have seen their
10 versions of what happened?
- 11 A. Yes.
- 12 Q. So you have gathered in more information. At that point
13 was there an assessment or a discussion about their
14 status?
- 15 A. From my memory, and you can maybe assist me here, we
16 didn't get the final post mortem report until after
17 4 June.
- 18 Q. That is correct. So you didn't discuss their status at
19 that stage; you waited for the final report?
- 20 A. Yes. And having obtained the exact details or the
21 officers' accounts of those details I still didn't
22 consider that their status changed.
- 23 Q. So you considered it but didn't change their status at
24 that point?
- 25 A. No.

Transcript of the Sheku Bayoh Inquiry

1 Q. So you still took the view that there were not
2 reasonable grounds suspect criminal activity?
3 A. Correct.
4 Q. So the final report in post mortem came in on 18 June,
5 and we've heard evidence about this, we have looked at
6 the final report with Dr Shearer --
7 A. Yes.
8 Q. -- who was the pathologist, and it said:
9 "Sudden death in a man intoxicated by MDMA/ecstasy
10 and alpha-PVP~..."
11 A. Yes.
12 Q. "... whilst being restrained."
13 A. Yes.
14 Q. So by this stage, 18 June, all the investigations,
15 toxicology and suchlike, have been completed?
16 A. Yes.
17 Q. And the final report is available.
18 A. Yes.
19 Q. So at that time specifically mentioned in the cause of
20 death is restraint?
21 A. Yes, but what it doesn't say is that restraint
22 contributed to the death, what it says is sudden death
23 in a man intoxicated by ecstasy and alpha-PVP whilst
24 being restrained, so it didn't say restraint contributed
25 to the death.

Transcript of the Sheku Bayoh Inquiry

1 Q. So if -- you would have expected something to be said
2 within the cause of death about the restraint other than
3 "whilst being restrained"?

4 A. Yes.

5 Q. So the reference to "whilst being restrained" was not
6 sufficient for your purposes at that time; is that what
7 you are saying?

8 A. No, because it doesn't say whether restraint contributed
9 or not, it just says "whilst being restrained".

10 Q. Did you look into that with Dr Shearer?

11 A. Certainly. The surprising element of it was the
12 alpha-PVP. Most people have heard of ecstasy, in 2015
13 when we saw alpha-PVP that was practically unheard of in
14 the United Kingdom. We were wondering what is this drug
15 so we had to do quite a lot of research into that, and
16 what our research flagged up is there had been
17 a considerable number of deaths in America, in Florida,
18 specifically, Broward County, I think there had been
19 a few hundred deaths where alpha-PVP was a factor. So
20 that appeared as a potential significant cause or
21 contributory cause, but we still didn't have the fact
22 that restraint contributed.

23 Q. So you took the view that alpha-PVP -- the reference to
24 alpha-PVP was a significant contributory cause?

25 A. Potentially. And therefore we needed to do our research

Transcript of the Sheku Bayoh Inquiry

1 but also I think we needed expert evidence from medical
2 professionals.

3 Q. Why do you say "potentially" when it's written in the
4 final post mortem report?

5 A. Because I don't know ... and it's from memory, so it
6 says sudden death in a man intoxicated by ecstasy and
7 alpha-PVP, so was it a combination of both or is one the
8 primary one et cetera? We needed to learn more about
9 alpha-PVP, we hadn't heard about it, we did our research
10 in the UK, there had been no deaths up until that point
11 where alpha-PVP was recorded as being a contributory
12 cause. There had been one overdose, from memory, which
13 occurred at some music festival down in England, but it
14 was practically unheard of and therefore we needed to do
15 quite a lot of research and having done that research we
16 also needed to get expert opinion from medical experts.

17 Q. I can understand that your own experience at that time
18 may have been limited in relation to alpha-PVP but what
19 you have in the final post mortem report from Dr Shearer
20 and the cause of death is that there is a reference both
21 to MDMA/ecstasy, and there is a reference to another
22 drug called alpha-PVP?

23 A. Yes.

24 Q. And they had caused intoxication?

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. But the cause of death was sudden death in a man
2 intoxicated whilst being restrained?
- 3 A. Yes.
- 4 Q. You are describing the contribution of alpha-PVP, why
5 was there no equal consideration being given to the
6 contribution of the restraint?
- 7 A. Because I think in that final post mortem report it does
8 not say that restraint contributed, it is -- what it
9 simply says is he died from drug intoxication whilst
10 being restrained. It doesn't say how much the restraint
11 may or may not have contributed to the death.
- 12 Q. What it says is:
- 13 "Sudden death in a man intoxicated by MDMA ... and
14 alpha-PVP whilst being restrained."
- 15 A. Yes.
- 16 Q. So restraint is mentioned as part of the cause of death?
- 17 A. Yes.
- 18 Q. I am wondering why the focus became on the alpha-PVP
19 rather than exploring in more detail the contribution of
20 restraint?
- 21 A. We did consider that with medical experts later, and
22 that is why we sought those opinions from medical
23 experts.
- 24 Q. Did anyone get in touch with Dr Shearer or Dr Bouhaidar?
- 25 A. I know William Little had regular dialogue with

Transcript of the Sheku Bayoh Inquiry

1 Dr Shearer, particularly because at Crown's direction we
2 sought expert medical advice, and we had to get samples
3 from Dr Shearer, so there was dialogue between
4 Billy Little and Dr Shearer. Because we were taking
5 slides and things like that and providing them to
6 medical experts for that enhanced medical opinion.

7 Q. I am interested in whether there was a discussion with
8 Dr Shearer about the contribution of restraint to the
9 death. Do you know if there was -- did you have
10 a conversation with Dr Shearer --

11 A. No.

12 Q. -- about the contribution of restraint?

13 A. No.

14 Q. As far as you are aware, did Mr Little have
15 a conversation with Dr Shearer about the contribution of
16 restraint the death?

17 A. I don't think so, but what I have in my mind is that
18 Dr Shearer knew that Crown had directed us to approach
19 further medical experts to obtain some of that
20 additional opinion, and certainly there was engagement
21 with Dr Shearer by Billy Little because we needed to
22 obtain slides, and also to inform her that we were going
23 to share copies of the post mortem report with these
24 additional medical experts.

25 Q. I asked Mr Little about material contribution. You

Transcript of the Sheku Bayoh Inquiry

1 obviously know about that, you have talked about the
2 contribution that alpha-PVP may have had on the cause of
3 death. It will be a matter for others, but he didn't
4 seem to appreciate the concept of material contribution.
5 I am wondering why that avenue wasn't explored with
6 Dr Shearer or Dr Bouhaidar.

7 A. I think because -- mainly I think you should probably
8 direct that towards them because --

9 Q. Towards who?

10 A. Dr Shearer primarily. Because what I am thinking is we
11 knew Mr Bayoh had ecstasy, MDMA in his system,
12 metabolised ecstasy which is MDMA, alpha-PVP, and
13 I think some steroids. You would know the levels within
14 the blood, you know the proportion, the number of
15 micrograms or millilitres to whatever. But you don't
16 know whether those levels or how much of those levels
17 may have caused or contributed to death. We know -- and
18 we have seen it within the UK, that ecstasy alone has
19 caused death when people have taken ecstasy and had
20 an adverse reaction. Now, how much and what level does
21 it cause, and I think that is potentially different in
22 every person because every person will react
23 differently. Ecstasy is a recreational drug. People
24 take it. I think it is well documented, it's used
25 regularly in the UK. But there have been ecstasy

Transcript of the Sheku Bayoh Inquiry

1 deaths. But we don't know what level or what
2 contributory level and that was why we were going to
3 additional medical experts.

4 Q. So the situation we have is final report with cause of
5 death saying:

6 "Sudden death in a man intoxicated by ... ecstasy
7 and alpha-PVP whilst being restrained."

8 It appears from what you are saying that the focus
9 then for the PIRC investigation became exploring what
10 alpha-PVP was and what the implications of that were?

11 A. Yes.

12 Q. You wanted to find out more about these deaths in
13 Florida and how that contributed?

14 A. Yes. I later -- I think it was 2016 I went over to
15 America to research it, I went to the national drugs
16 conference and found -- they were doing inputs in
17 relation to alpha-PVP deaths, so we were doing that
18 further research. Now, all of that takes a period of
19 time, and of course we were going to medical experts in
20 the UK for additional expert opinion in relation to --
21 one of them was restraint, I think two of the experts
22 were specifically tasked with looking at the
23 contribution of restraint to Mr Bayoh's death, others
24 were looking at the broad range of medical issues within
25 that.

Transcript of the Sheku Bayoh Inquiry

1 Q. So just to recap then, on -- so we are now at the
2 18 June.

3 A. Yes.

4 Q. You have the final post mortem report?

5 A. Yes.

6 Q. You have two statements from eyewitness, Ashley Wyse and
7 Kevin Nelson?

8 A. Yes.

9 Q. Which give an indication of a restraint which may not
10 mirror the type of training that is given to officers?

11 A. We also have the officers' accounts by that stage.

12 Q. You have the officers' accounts --

13 A. Yes.

14 Q. -- which give you much more detail about what they say
15 they were doing and others were doing?

16 A. Yes, who did what. Because you had I think two officers
17 at the feet applying leg restraints, so that is not
18 direct pressure on any area. So, you know, you are
19 building that total picture. I think we have also got
20 to remember that our job is to collect and present all
21 the evidence to Crown, and let Crown decide a lot of
22 these matters.

23 Q. So I am wondering why at that point PIRC take the
24 statements that they have from eyewitness, the officers'
25 accounts, the final post mortem which mentions

Transcript of the Sheku Bayoh Inquiry

1 specifically restraint, and send that to the Crown and
2 say: this is the evidence, if you want us to do any more
3 investigation with experts please let us know?

4 A. Yes, and we did do that, we went to Crown and Crown
5 said: right, obtain a range of experts. So what we
6 did -- there's various ways of doing that, you either go
7 to the College of Policing, the National Crime Agency,
8 who maintain the list of experts in various fields, and
9 you obtain a list of experts, and we then send that to
10 Crown, and say: right, here's a range of experts in the
11 various disciplines that you want further examined, and
12 Crown then says -- well, let's say we obtain the names
13 of six experts, Crown might say: well, go to one, two
14 and four. It's for Crown to decide who we should
15 approach.

16 Q. Can I ask you what your experience of instructing
17 experts is as a senior PIRC investigator?

18 A. I have previously sought expert opinion, not necessarily
19 within PIRC but certainly in relation to murder
20 investigations, I had undertaken, biologists, soil
21 sample experts~... You know, particularly in the early
22 days when you are holding forensic strategy meetings you
23 have a range of forensic experts there to assist your
24 determination, each murder scene is different and
25 therefore you might require different forensic analysis,

Transcript of the Sheku Bayoh Inquiry

- 1 depending on the nature of the scene.
- 2 Q. What experience you did have as a senior investigating
3 officer of instructing medical experts?
- 4 A. I can't recall now.
- 5 Q. Do you remember having been in a position of having to
6 instruct experts on the instructions of Crown as a PIRC
7 investigator?
- 8 A. Yes, certainly we had -- not within PIRC but within the
9 police I do recall seeking expert medical opinion beyond
10 the pathologist, just in relation to -- I can't remember
11 the specific murder enquiry but I had sought that.
12 I hadn't done it within PIRC.
- 13 Q. So you hadn't done it within PIRC, but you did have --
14 was that one murder enquiry that you had had
15 experience --
- 16 A. That is the one I remember. Whether there was other
17 ones, I can't recall now.
- 18 Q. I am wondering why PIRC are being expected to take this
19 instruction of medical experts forward rather than the
20 Crown?
- 21 A. Because we are investigating on behalf of Crown and,
22 therefore, Crown said: we want expert medical opinion,
23 there is a process established which says you go to the
24 College of Policing, you go to the National Crime
25 Agency, they maintain the list of experts. You obtain

Transcript of the Sheku Bayoh Inquiry

1 the experts, you provide their CVs to Crown, and Crown
2 then say: right, okay we are instructing ...

3 Also because we have the available evidence within
4 PIRC, we prepare what is called expert witness packages,
5 so we put statements in, redacted statements,
6 post mortem report, additional evidence. We give that
7 to Crown for their approval, so it's Crown are
8 approving: yes, that's fine, send that to this expert.

9 Q. Right. So in terms of identifying an appropriate
10 expert, is that done by Crown?

11 A. We obtain a range of experts. So we are not selecting
12 the experts, we are obtaining a range of experts,
13 supplying their CVs to Crown and Crown then decide which
14 ones we should then approach on their behalf, and
15 prepare that expert witness package as I have said.

16 Q. So in terms of identifying whether the expert has the
17 correct qualifications, the right experience, those
18 decisions -- whether there's conflicts, those decisions
19 are made by Crown?

20 A. Yes. I think to expand on that slightly, so we know we
21 wanted two experts on restraint so we might obtain the
22 names of four to six experts in restraint, provide their
23 CVs to Crown and Crown would then say: right, approach A
24 and B.

25 Q. So was there any occasion where PIRC were selecting the

Transcript of the Sheku Bayoh Inquiry

1 appropriate expert or was it largely the -- exclusively
2 the Crown?

3 A. It was always Crown who instruct us. As I say, we
4 obtain a range of experts in particular fields, provide
5 their details to Crown, Crown then select.

6 Q. So it would be an option for Crown to say: none of these
7 experts are suitable, go away and find someone else?

8 A. Yes, and from memory in the investigation into the death
9 of Mr Bayoh Crown said: we don't want you to go to this
10 one, we want you to go to that one.

11 Q. They then send you the instruction to follow through
12 with providing the paperwork to the expert?

13 A. Yes.

14 Q. What support do you have in relation to drafting
15 a letter of instruction to the expert?

16 A. We would draft the letter of instruction, we would show
17 that to Crown, so Crown are aware, because each expert
18 might be providing opinion in a particular field, so
19 each letter of instruction would be adapted to take
20 cognisance of that, what we wanted from that expert
21 within that particular field. And we would show that
22 that to Crown, Crown would approve that, and that would
23 form part of the expert witness package, so that the
24 expert would know exactly what is being asked of them.

25 Q. What support did PIRC have to prepare the expert witness

Transcript of the Sheku Bayoh Inquiry

- 1 package?
- 2 A. We prepared it ourselves. Myself and Billy Little
3 largely did that. Certainly we redacted statements to
4 take out names, so that the experts would largely not be
5 aware of the names. So you would change like the name
6 to officer A, officer B, officer C, and I did those
7 redactions. I think you have probably seen the redacted
8 statements. So I personally undertook those redactions.
9 Partly because sometimes you can read behind the
10 redaction due to the nature of how it occurs, so we were
11 quite cautious in doing the redactions, printing them
12 and then photocopying them so you can't go behind the
13 redaction.
- 14 Q. So the expert witness package, we have heard some
15 evidence from Mr Little about this and he explained that
16 a situation arose in relation to Ashley Wyse's
17 statement?
- 18 A. Yes.
- 19 Q. She is one of the witnesses we have been discussing,
20 that a part of her statement had been omitted when the
21 typed version of her statement was sent --
- 22 A. There was a paragraph missing.
- 23 Q. A paragraph missing. Regarding, I think, use of
24 a baton. Is that right?
- 25 A. I can't remember. But I knew -- I know there was

Transcript of the Sheku Bayoh Inquiry

1 a paragraph missing.

2 Q. It contained a significant description of the events?

3 A. Yes.

4 Q. And that was missing from the expert -- the version that
5 was put in the expert witness package?

6 A. Yes.

7 Q. And Mr Little explained that that was discovered by
8 Crown, I believe?

9 A. Yes.

10 Q. And then the situation was rectified, it was then sent
11 to experts?

12 A. Yes, that caused me and PIRC considerable consternation
13 and led me to getting all the other witness statements
14 taken so far up to that point to be checked to ensure
15 accuracy.

16 Q. Do you have a -- up until your retirement did you have
17 a situation in place where that could be avoided in the
18 future?

19 A. Certainly we tightened up on the proof-reading of
20 statements. So statements are obviously written unless
21 they are provided to us in a typed format, Microsoft
22 Word or whatever format, so the admin people would then
23 type that up, but there was obligation on the
24 investigators or the deputy senior investigators to
25 check the typed version against the manuscript version

Transcript of the Sheku Bayoh Inquiry

- 1 to make sure that there are no omissions.
- 2 Q. So the same investigator who takes the statement will
- 3 check the typed version?
- 4 A. Yes.
- 5 Q. Is there anything to guard against a situation where
- 6 something is missed by that person?
- 7 A. No, because that is a huge ask. I think you have got to
- 8 understand that we are getting -- well, the year before
- 9 I retired 900 referrals, we were getting thousands of
- 10 statements. If you want a proof-read section to do all
- 11 that independently, that is a significant funding issue
- 12 and we simply didn't have the money.
- 13 Q. Was -- when the corrections were made in relation to
- 14 Ashley Wyse's statement, the typed version --
- 15 A. Yes.
- 16 Q. -- was that corrected version then resent to all the
- 17 experts?
- 18 A. I think so. I can't really remember but I know it
- 19 didn't change their opinion. So ...
- 20 Q. Had they already prepared opinions by that time?
- 21 A. Yes, some of them had. I think that is why we went back
- 22 to them and said: well, does this change your opinion?
- 23 I can't remember the precise details now but I have got
- 24 a feeling that is what we did.
- 25 Q. Did a copy of that statement go to Dr Shearer?

Transcript of the Sheku Bayoh Inquiry

- 1 A. No, because we don't submit the statements to the
2 pathologists.
- 3 Q. Thank you.
- 4 A. Certainly Crown, who deal with the pathologists, could
5 have if they had wanted to go back to Dr Shearer.
- 6 Q. So you have prepared the expert package, you have sent
7 that off to the experts, some have prepared opinions,
8 all of them get the new Ashley Wyse statement, or the
9 corrected version?
- 10 A. Yes.
- 11 Q. And are given the opportunity look at that and comment
12 further?
- 13 A. Yes.
- 14 Q. Was there consideration when those opinions came back as
15 to the status of the officers?
- 16 A. I don't think it changed the status of the officers,
17 because none of the expert opinion -- I am working from
18 memory now -- said that restraint played a significant
19 role in the death. You have the expert witness opinion
20 so I am working from memory.
- 21 Q. We have heard evidence from a number of the experts.
- 22 A. Yes.
- 23 Q. When you say "significant", what do you mean?
24 A significant contribution to the death.
- 25 A. Yes, well, there was two of the experts who we were

Transcript of the Sheku Bayoh Inquiry

1 specifically asking in relation to restraint, and in
2 their opinion -- I can't remember which witness it was,
3 considered the restraint to be proportionate, you will
4 have the exact details. So~...

5 Q. I am interested in the words you used a moment ago.

6 That it didn't play a significant -- it wasn't

7 a significant contribution to the death. Was it your

8 understanding that it would have been necessary for

9 restraint play a significant -- be a significant

10 contribution to death?

11 A. To change the status of the officers, I would think so.

12 We know that restraint occurred, but how much

13 contribution did that cause to the death, I don't think

14 we had that, and that was why we didn't change the

15 status of the officers. I think also we were reporting

16 all these matters to Crown, so if Crown considered this,

17 Crown could have changed the status of the officers and

18 instructed us to treat them as suspects.

19 I think we have also got to remember, and I have

20 mentioned it in my Rule 8 statement, that having

21 submitted all the evidence to Crown including the PIRC

22 reports the then Lord Advocate, James Woolf, having

23 considered all these matters, considered there was

24 insufficient evidence to charge the officers.

25 Q. Can I ask you if you understand material contribution in

Transcript of the Sheku Bayoh Inquiry

1 terms of the cause of death. You are comfortable with
2 that concept?

3 A. Yes.

4 Q. Are you comfortable with the idea that a material
5 contribution is something that is not de minimis or
6 not --

7 A. Yes.

8 Q. -- at that level. Did you understand that to play
9 a material contribution in the cause of death it does
10 not have to be a significant contribution in the sense
11 of large or more than 50%?

12 A. Probably my description of significant, what I meant was
13 material. How much did that contribute? And that is
14 a difficult thing in a lot of instances. So how much
15 did restraint contribute to the death? I don't think we
16 ever got round to that. We know he was restrained, that
17 is unequivocal. But how much did it contribute to the
18 death? And I don't think we ever got that from any of
19 the experts selected. I know you instructed additional
20 experts, but we didn't have it. Certainly having
21 presented that evidence to Crown, I don't think it
22 changed.

23 Q. Am I right in understanding you didn't think you had
24 evidence that would support there being a material
25 contribution -- insofar as we are talking about

Transcript of the Sheku Bayoh Inquiry

- 1 restraint, there was no material contribution to the
2 death?
- 3 A. We know restraint occurred. How much that contributed,
4 we didn't have that. And again, you know, our default
5 position is we report all these circumstances to Crown.
6 It is for Crown to decide. I didn't think it changed
7 the status of the officers, but equally Crown could
8 decide otherwise. And because we act under direction
9 from Crown it is for them to largely decide, they are
10 for want of a better expression the safety net. So we
11 were reporting all the circumstances to Crown, if Crown
12 had considered that the status of the officers should be
13 changed they would have notified us, which didn't occur.
14 And then having reported all the circumstances, as
15 I said, the Lord Advocate at the time decided no
16 prosecution.
- 17 Q. So you didn't -- in PIRC you didn't take the view that
18 you had passed the threshold of a material -- restraint
19 playing a material contribution in the death?
- 20 A. No.
- 21 Q. And didn't change the status and sent it to Crown for
22 them to consider?
- 23 A. Yes.
- 24 Q. If you had taken the view that restraint had a material
25 contribution to the death, if you had been satisfied

Transcript of the Sheku Bayoh Inquiry

1 that restraint played a material contribution in the
2 death, would that have changed the way you approached
3 things at that stage?

4 A. I think we would have sought guidance from Crown. We
5 would approach Crown first, notify them of all the
6 circumstances, all the evidence we had collected, and
7 sought guidance. Because we are then about to change
8 the status of six principal officers, and therefore we
9 would certainly go to Crown for their decision. Before
10 we did so.

11 Q. So was there a reluctance to change the status of six
12 police officers or a hesitation to do that unless
13 perhaps you were on sure ground on material
14 contribution?

15 A. There is no reluctance. You go where the evidence is.
16 I have certainly changed the status of officers
17 previously who have been involved in restraint, from
18 initially it being a serious incident involving the
19 police, involving serious injury and having collected
20 evidence, I have changed the status of those officers to
21 suspects and ended up charging them. So there is no
22 hesitation, I go where the evidence goes.

23 Q. What was it in those cases where you did change the
24 status of the officers to suspect, what was it -- what
25 was the evidence about restraint you had in those cases

Transcript of the Sheku Bayoh Inquiry

- 1 that caused you to change the status?
- 2 A. Clear unequivocal evidence pointing towards assault.
- 3 Q. Can you explain to people listening what clear
- 4 unequivocal evidence relating to assault looks like?
- 5 A. So initially what we had was an account from the
- 6 officers in relation to a serious injury. Now, having
- 7 done investigation we uncovered CCTV -- this has
- 8 happened on more than one occasion -- we uncovered CCTV
- 9 that clearly disproved the officers' account and clearly
- 10 shows assault. Consequently we changed the officers'
- 11 status immediately to suspects, we notified Crown
- 12 that -- because we need a Crown instruction to then
- 13 investigate the criminal action. But there was clear
- 14 and unequivocal evidence. That is what I mean.
- 15 Q. So clear, unequivocal evidence being CCTV disproving the
- 16 officers' version of what happened?
- 17 A. Yes, and other witness testimony. As you work through
- 18 the investigation you gather additional witness
- 19 testimony, so you put -- you put everything together,
- 20 and that changed status of the officers in more than one
- 21 investigation we have done.
- 22 Q. But in relation to the death of Mr Bayoh, you had the
- 23 evidence of Ashley Wyse -- the statements of Ashley Wyse
- 24 and Kevin Nelson, you had some Snapchat footage from
- 25 Ashley Wyse's phone, you had some CCTV footage. Am

Transcript of the Sheku Bayoh Inquiry

1 I right in understanding your evidence that you didn't
2 consider that to be clear, unequivocal evidence that
3 disproved the officers' versions?

4 A. Additionally we had shared that information with Crown,
5 and no instruction come back to change the status of the
6 officers. I think in such a high profile investigation,
7 as I said Crown are acting as our safety net here. We
8 are investigating on their behalf. And certainly we
9 would need an instruction from Crown to undertake
10 a criminal investigation, and no such instruction was
11 forthcoming.

12 Q. I think we looked yesterday at the -- if during the
13 process of I think it was in the witness interview
14 strategy, if there was -- actually we looked at this
15 with Mr Little, if there is information that comes out
16 during the process of the officers' statements that they
17 are giving, if it reaches a stage where it looks like
18 there may be criminality, then PIRC would withdraw at
19 that stage. Is that right?

20 A. Yes. What we would do is halt the interview, administer
21 the caution so they've got the full protections of law,
22 additionally we would have to go to Crown and say: we've
23 come across this, we now need an instruction. We cannot
24 start a criminal investigation without a Crown
25 instruction. Which is very different from the way the

Transcript of the Sheku Bayoh Inquiry

1 police operate because the police -- crimes get reported
2 to police, the police investigate and then report to
3 Crown. We need that instruction from Crown first.

4 Q. Can I take you back to 6 May when you've considered the
5 Ashley Wyse and Kevin Nelson statements. Was there any
6 point, having considered those statements, that you
7 considered going to the Crown and saying: we've got
8 these statements, we don't yet have cause of death, but
9 this should perhaps be moved to a criminal
10 investigation?

11 A. No. We wanted to collect further evidence as much as
12 possible to clarify exactly what had occurred and
13 certainly we were providing briefing papers to Crown
14 saying this is where we've got to so far, here's what we
15 have found out so far. So we were keeping Crown
16 up-to-date with the progress of the investigation, and
17 there was significant dialogue between ourselves and
18 Crown throughout the course of the investigation.

19 Q. All right. Thank you. Can we move on to -- back to the
20 policy file, please. I think we had just finished
21 decision 12. I would like to move on to 13. Decision
22 13 is again on 7 May, which is the day after you have
23 had your -- I think you said you had gone out to speak
24 to Mr Hardie on 6 May?

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. You had left the office and then this is 7 May, you are
2 back in the office and you are talking about
3 house-to-house strategy?

4 A. Yes.

5 Q. If we look at the reason, I think by this stage Crown
6 had instructed PIRC to take over the entire
7 investigation and the house-to-house is part of that,
8 police have handed over what they have done on
9 house-to-house and PIRC are taking over?

10 A. Yes.

11 Q. I think we heard from Mr Little and yourself that the
12 case handling staff were coming into to assist?

13 A. Yes. And I think by that stage we know -- we knew the
14 route that Mr Bayoh had taken from his home in
15 Arran Crescent towards Hayfield Road because various
16 witnesses had seen him en route. Consequently that is
17 why I recorded exactly what streets or roads or whatever
18 we wanted the house-to-house strategy because that was
19 the route taken and it was anybody within those houses
20 that had seen Mr Bayoh en route to Hayfield Road.

21 Q. Can I just be clear on one point in the reason, you are
22 saying:

23 "Identify any witnesses who may have seen deceased
24 from when he left his house to the point of engagement
25 with police."

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. But there was a recognition you would want witnesses at
3 Hayfield Road also?

4 A. Yes.

5 Q. Then let's move on to 14 please. There is then a review
6 of Police Scotland's house-to-house strategy, I think
7 you mentioned that yesterday, that you would review what
8 the police had done. Was that to make sure you were
9 happy with --

10 A. Yes, because up until that point there had obviously
11 been what we termed a parallel investigation: we had
12 parts of it, Police Scotland had parts of it. So we are
13 taking over the totality.

14 Q. Can we look at decision 15, please. This is headed
15 up -- dated again 7 May, headed, "Media strategy", that
16 is something you have mentioned already?

17 A. Yes.

18 Q. "PIRC will produce a media strategy to inform the public
19 and media outlets of their role in undertaking
20 an independent investigation on the instructions of
21 [Crown Office]."

22 And it:

23 "... will also encompass appeals for information,
24 and utilise social networks.

25 "PIRC media staff to lead and advise on media ..."

Transcript of the Sheku Bayoh Inquiry

1 Then the reason is given:

2 "Public information and reassurance, allow media
3 aspects to maximise potential witnesses to the
4 incident."

5 Again, here there is no media strategy actually
6 attached to the log. What were your expectations in
7 terms of who was going to draft media strategy?

8 A. That would be done by our media team and they would
9 manage that aspect of it. So I am saying: we need
10 a media strategy, you are the experts, draft a media
11 strategy and then manage that.

12 Q. Would this decision be actioned by tasking members of
13 staff in the media, in PIRC media strategy -- or
14 department I should say?

15 A. Yes, you would sit down with them because this was
16 an exceptionally high profile matter, attracting a lot
17 of media attention, so we knew we were going to get
18 queries, questions, et cetera. So you would sit down
19 because they would already be seeing commentary in the
20 media, so you are sitting down and you are
21 explaining: look we need -- you need to manage this, you
22 are the experts, you have the communications, the
23 contacts within the media. So you are very much saying,
24 as I have said: you are the experts, you manage this on
25 behalf this investigation.

Transcript of the Sheku Bayoh Inquiry

1 Q. We have heard some evidence about -- from the family in
2 particular about the -- could I describe it as the
3 media storm, there was a lot media interest?

4 A. Certainly.

5 Q. It was very high profile and there were over time
6 apparent conflicts between different organisations and
7 people involved in this matter?

8 A. Yes.

9 Q. So on the one hand there was the significant media
10 interest and obviously in terms of Article 2 there is
11 a conscious awareness that public scrutiny is
12 an important aspect --

13 A. Yes.

14 Q. -- of providing an Article 2 compliant investigation?

15 A. Yes.

16 Q. And on the other hand there is a grieving family --

17 A. Yes.

18 Q. -- who are obviously very interested in what is
19 happening in the investigation?

20 A. Yes.

21 Q. And because of the difficulties with FLO that may be
22 part of the source of their information as things are
23 going on?

24 A. Yes, I think we have got to remember that the FLOs are
25 the ones that primarily are -- should lead in providing

Transcript of the Sheku Bayoh Inquiry

1 information to the family. What they are not doing is
2 providing detailed information about the investigation.
3 That never happens. So you do not give them chapter and
4 verse on what we have done so far, you provide them with
5 what might be considered relevant information to keep
6 them informed, but you don't provide all the details
7 within an enquiry to the family. And that never occurs.

8 But equally, particularly within PIRC, when we are
9 doing a death investigation, you appoint your FLOs, we
10 notify Crown of who the FLOs are so they know what
11 information we can impart. I think we have also got to
12 remember if you look at the legislation, and from memory
13 I think it is section 44.6 of the 2006 Act, it says that
14 we shouldn't be imparting information without the
15 permission of Crown. Although Crown know that our FLOs
16 will impart a certain amount of information but it is
17 quite restricted how much we pass without their express
18 permission and that is within law. So you are leaving
19 it to the FLOs to do that.

20 Normally at the end of a death investigation we've
21 submitted our report to Crown, Crown will have
22 considered that, and at that point our FLOs will then
23 hand over support to the family to VIA -- Victim
24 Information and Advice -- within Crown.

25 Q. So you were aware the family were upset and there is

Transcript of the Sheku Bayoh Inquiry

1 an issue with the FLO. They would be interested in
2 media coverage --

3 A. Yes.

4 Q. -- of the situation. We've heard evidence that the
5 family instructed Mr Anwar, who has a high media profile
6 himself.

7 A. Yes.

8 Q. The SPF, the Federation, we have heard that they would
9 be defending their members, police officers, if the
10 public were calling for suspension of those officers.
11 And then we have also heard that the officers themselves
12 had instructed lawyers and at that time I think it
13 was -- initially at least it was Mr Watson?

14 A. Yes.

15 Q. So there is a significant media interest, and there are
16 a number of different interested bodies or individuals?

17 A. Yes.

18 Q. Would the media strategy for PIRC take account of all of
19 that and the potential perhaps of the interests of
20 different people involved, and what happens if there is
21 a conflict or a situation that arises where issues start
22 to develop and the impact that that could have on your
23 investigation?

24 A. There's various aspects to your question there.

25 Firstly, during the course of a death investigation or

Transcript of the Sheku Bayoh Inquiry

1 a criminal investigation you keep the information that
2 you provide to the media as limited as possible. We
3 know there's significant attention, they want commentary
4 but you are not playing out the specifics of your
5 investigation in the media. We are not there to referee
6 between the opposing factions, if you could call it
7 that.

8 It is a significant challenge and you get it whether
9 you are running murder enquiries, other major enquiries,
10 death enquiries, particularly high profile ones, there
11 is always demand from the media for information,
12 commentary et cetera. One other aspect that I think
13 a lot of people ignore is the contamination of witness
14 memories, particularly if we have not got to them yet or
15 we are having to go back to them, they are reading stuff
16 in the media, competing accounts or whatever, and that
17 can potentially contaminate their memory of events.
18 Having read things and then thought: well, is this what
19 I actually saw, or are they getting what you could call
20 false memory? There is a term false memory syndrome.
21 That is why you would rather these things are not played
22 out in the media because it can contaminate witnesses'
23 memory. I am not saying it does, but it can occur.

24 Q. So from the PIRC perspective, in terms of your
25 investigation, securing best evidence, keeping it as

Transcript of the Sheku Bayoh Inquiry

1 uncontaminated as possible, is it the case that the less
2 is said in the media the better?

3 A. Yes.

4 Q. From that perspective?

5 A. Yes.

6 Q. Does the media strategy encompass looking at what
7 happens when things go wrong?

8 A. You don't start out from the point of view that we think
9 things are going to go wrong.

10 Q. No.

11 A. So I don't think that is initially planned for. I think
12 in this instance there was significant opposing
13 factions, if I can use that term, playing out their
14 accounts within the media. We are limited in what we
15 can say and we certainly aren't going to pass comment on
16 what the factions are saying because we are quite
17 restricted. As in the case with all significant
18 investigations, you are quite restricted in what you
19 say, you certainly wouldn't come out and say: no, that's
20 wrong. You would rather not comment.

21 If you are going to put something out, it is usually
22 factual and I think as we discussed yesterday in your
23 conversation with Mr Little was if we are going to put
24 something out in the media we are running it by Crown
25 first to make sure that Crown are comfortable with what

Transcript of the Sheku Bayoh Inquiry

1 we are going to say.

2 Q. We understand from statements available to the Chair,
3 and also from I think Mr Little's evidence, that in this
4 particular case PIRC actually did put something out into
5 the media at one point to respond to what they viewed as
6 inaccurate reports about PIRC's failure to secure
7 statements.

8 A. Yes.

9 Q. If you watched the evidence of Mr Little, you will have
10 seen me going through some questions in regard to
11 comments made by the Police Federation and their lawyer
12 Mr Watson?

13 A. Yes.

14 Q. Why was it in this case that PIRC decided to put
15 something out?

16 A. Because I think that was -- firstly, organisationally if
17 you are getting criticised usually you do not respond
18 unless the criticism is obviously erroneous.
19 Consequently you would be correcting something that is
20 obviously erroneous. Normally you don't respond but in
21 a high profile matter where we are subject to severe
22 criticism and that criticism potentially is inaccurate
23 or wildly inaccurate, you may have to correct that. The
24 normal course is you run anything by Crown.

25 Q. Was that done here?

Transcript of the Sheku Bayoh Inquiry

1 A. I can't remember.

2 MS GRAHAME: I wonder if that might be an appropriate moment
3 to stop?

4 LORD BRACADALE: Very well. We will take a 20-minute break
5 at this point.

6 (11.17 am)

7 (A short break)

8 (11.40 am)

9 LORD BRACADALE: Ms Grahame.

10 MS GRAHAME: Thank you very much. We were looking at the
11 log, and I wonder if we can go on to the next section,
12 decision number 16.

13 A. Excuse me, ma'am. Before we move on could I address
14 a further issue surrounding media with you.

15 Q. Yes, of course.

16 A. All media relations must be approved by the Commissioner
17 and she approves them, largely she decides what goes in
18 the media and what doesn't. So you may want to explore
19 that topic further with Ms Frame when she gives her
20 evidence.

21 Q. Thank you. We do hope to hear from Ms Frame at some
22 stage. So 16 related to notification to the
23 Sierra Leone High Commission of the death of Mr Bayoh?

24 A. Yes.

25 Q. And at this section in your log you have inserted

Transcript of the Sheku Bayoh Inquiry

1 a letter that was sent to the High Commission --

2 A. Yes.

3 Q. -- on 8 May and that matter was sent out. Then at
4 decision number -- I don't want to go into that in any
5 detail. Decision number 17 says:

6 "Obtain medical history of deceased."

7 It describes obtaining GP medical records:

8 "Obtain information from the family of the deceased
9 on any medical conditions from childhood, time in
10 Sierra Leone or England that may not be recorded in the
11 GP records."

12 A. Yes.

13 Q. And we have heard from Mr Little that the GP records,
14 they weren't available at the post mortem but they were
15 subsequently obtained or -- I think Pat Campbell was
16 asked to obtain them?

17 A. Yes, normally you try and obtain hospital records and GP
18 records to provide to the pathologist before the
19 post mortem begins, just in case there were any
20 underlying medical conditions. It is primarily for that
21 reason. But at that time we didn't have them.

22 Q. So the entry in the log is dated 9 May, although they
23 weren't available for the post mortem they were
24 subsequently obtained and they were to be provided to
25 the pathologist at some point?

Transcript of the Sheku Bayoh Inquiry

- 1 A. Yes.
- 2 Q. Then decision 18. It refers to -- this is again dated
3 9 May. It mentions a letter of notification to the
4 Deputy Chief Constable of the PIRC investigation, and
5 the requirement to submit statements, documents and
6 other material. We heard from Mr Little about this, and
7 he said a letter goes out very quickly at high level
8 explaining what you are looking for, so they can make
9 progress straightaway?
- 10 A. Yes, it's a legal requirement that we provide that
11 notification. I think it is sections -- in relation to
12 Crown it's section 44.1 of the 2006 Act and in relation
13 to police-referred it is 44.2.
- 14 Q. You have included a copy of the letter to this part of
15 the log, and we can see that in fact it is to the
16 Deputy Chief Constable. It is 5 May 2015 that this was
17 sent, and it is copied to DCI Keith Hardie, who was the
18 single point of contact?
- 19 A. Yes.
- 20 Q. And the letter is a detailed letter of three pages in
21 length. It describes the involvement of PIRC. It
22 mentions 4 May, that Mr Little was lead investigator and
23 a meeting was held, and there was going to be
24 an independent investigation. If we can look on to the
25 second page of the letter, there is the formal

Transcript of the Sheku Bayoh Inquiry

- 1 notification in terms of Regulation 5 about the
2 investigation by PIRC, and then there is a list of
3 different items which specifies things that PIRC were
4 looking for to further their investigation?
- 5 A. Yes.
- 6 Q. And that includes -- I will just pick out one or two
7 as examples. Number 3:
- 8 "Original signed statements ... from every police
9 officer and member of police staff, including ACR staff,
10 and statements from [SPA] staff, who were involved in
11 the incident, and any police officers or members of
12 staff who undertook any subsequent actions in respect of
13 this investigation. This should include any ...
14 officer~... who seized productions."
- 15 A. Yes.
- 16 Q. And 5 is:
- 17 "Operational statements from the officers involved
18 in the arrest of Mr Bayoh."
- 19 A. Yes.
- 20 Q. And there are also requests at 9 and 10 for things like
21 telephone call recordings, Airwave radio traffic
22 recordings, CCTV at 11 and other records in relation to
23 the databases?
- 24 A. Yes.
- 25 Q. Going on to the next page, we also see there is

Transcript of the Sheku Bayoh Inquiry

1 a request for images from mobile phones and copies of
2 Police Scotland strategies -- this is number 16 --
3 including forensic strategy, house-to-house and CCTV
4 strategies?

5 A. Yes.

6 Q. And records in relation to PAVA or CS sprays?

7 A. Yes.

8 Q. At 21 a request:

9 "As Police Scotland have expertise in the monitoring
10 of social networks and have directed staff to monitor
11 such networks for relevant material ... I will be
12 obliged if you can ask your staff to continue to
13 undertake this function, supplying such material to PIRC
14 investigators."

15 I think you explained that.

16 A. I think as we have heard we have don't have a cyber
17 capability, so we would task that to Police Scotland.

18 Q. All right. Thank you. Then move on to decision number
19 19. This is dated 9 May and it indicates:

20 "Lead investigator~..."

21 And that was you by this stage?

22 A. Yes.

23 Q. "... and the PIRC senior investigator to meet with
24 family, family lawyer and PIRC FLOs and explain the role
25 and address or answer any questions or concerns."

Transcript of the Sheku Bayoh Inquiry

1 Was that a meeting that had taken place prior to
2 this entry being made?

3 A. I think that meeting occurred on the 6th and, as I said
4 yesterday, the 6th I was engaged in meetings practically
5 all day so I may be retrospectively creating these
6 entries. Because certainly we met with Mr Anwar and the
7 family at his offices at Carlton Place, or his then
8 offices in Carlton Place, late morning I think,
9 potentially around lunchtime, and then in the afternoon
10 I travelled through to Kirkcaldy to meet with
11 DCI Hardie.

12 Q. Thank you, that is helpful. Can we look at decision 20.
13 This relates to, "Community impact and tensions", and:

14 "Community impact is being examined by
15 Police Scotland who will have responsibility for dealing
16 with any issues arising.

17 "PIRC will direct any information which may have
18 a bearing on community impact or tensions to
19 [Police Scotland]."

20 Can I ask you about this from the perspective of
21 Article 2 and independence.

22 A. Yes.

23 Q. Are you comfortable with Police Scotland being
24 responsible for community impact and tensions?

25 A. They've got to be. The police have got to be, because

Transcript of the Sheku Bayoh Inquiry

1 PIRC -- particularly -- when you say community impact
2 and tensions, we have seen it before where you get
3 violence and disorder. I am not saying this was going
4 to occur in this instance, but you've got to rely on the
5 police being aware of these matters, because it is the
6 police that deal with it. PIRC are certainly not
7 positioned to do so, down in England and Wales the IOPC
8 are not in a position to do so. So if you become aware
9 of these matters you flag them up to Police Scotland,
10 just in case something may occur.

11 Q. But this aspect is not part of PIRC's role?

12 A. No.

13 Q. Can we move on to decision number 21, please. This is
14 about cultural and religious issues:

15 "PIRC FLOs will establish the religion and sect of
16 the deceased and any cultural issues, seeking support
17 where necessary from ScotGov lay advisers in order to
18 provide appropriate support, advice and assistance to
19 family of deceased. Although not directed by
20 [Crown Office] at this stage, take cognisance of any
21 issue of race if they emerge."

22 A. Yes.

23 Q. And then it goes on to give the reason:

24 "Provide appropriate support taking cognisance of
25 cultural and religious issues. Address family concerns

Transcript of the Sheku Bayoh Inquiry

1 in a supportive and sympathetic manner."

2 So I would like to ask you about this in some
3 detail. In relation to this entry which is 9 May --
4 made on 9 May, is this focused with PIRC's dealings with
5 the family?

6 A. Primarily.

7 Q. Not an active line of investigation into race?

8 A. No, that is why I am saying take cognisance of any
9 issues of race if they emerge. We know subsequently
10 allegations were made but that was much later, and then
11 eventually we got the Crown direction to investigate
12 issues of race and I think that occurred in late August,
13 from memory.

14 Q. We will come on to that.

15 A. Yes.

16 Q. So I think by this stage on 9 May when the entry is made
17 in the log, there has been meeting with the family, FLOs
18 have been involved to some extent, there has been
19 a breakdown?

20 A. Yes.

21 Q. So was this written against that background? I am
22 wondering what view you had at that time about PIRC's
23 liaison with the family?

24 A. I don't think the relationship had entirely broken down
25 at that stage. We know later on there were issues and

Transcript of the Sheku Bayoh Inquiry

1 I think probably Mr Lewis is best placed to answer that
2 in respect of the FLO perspective but at that stage it
3 was still quite early in the investigation, so I don't
4 think that the relationship had entirely broken down.

5 Q. Can I ask you about the use of the word "sect" here.
6 What does that mean to you?

7 A. We know within various cultures there are -- can be
8 different sects. Mr Bayoh was a Muslim, so you have got
9 Shia, Sunni that is really what I mean by sect. So I am
10 just -- it is a catch-all term so I am putting that in,
11 so what religion was he and what sect was he.

12 Q. Can I ask about this phrase about "taking cognisance of
13 any issue of race if they emerge"?

14 A. Yes.

15 Q. As I understand the position at this time, so this entry
16 is 9 May, there are no terms of reference from Crown
17 instructing an investigation into the implications of
18 race or discrimination?

19 A. That is correct.

20 Q. So at that stage did PIRC have the authority from Crown
21 to investigate or adopt a proactive line of
22 investigation regarding race?

23 A. No, and that is why I am saying take cognisance of them
24 if they emerge. If they emerged I would then go back to
25 Crown.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. Can I ask you about some -- well, in terms of taking
2 cognisance of the issue of race, how would that look --
3 although you have written that there, how would that
4 look in terms of the work of the PIRC investigators?
- 5 A. I think as we gather the evidence, if those issues arose
6 then we would go back to Crown. I think we have also
7 got to remember that there is European Court decisions
8 in relation to this. I think it is Nachova v Bulgaria
9 in 2014 that flagged up you should take cognisance of
10 these issues. Now, whether they actually have a bearing
11 is a different matter but you've got to take cognisance
12 of them.
- 13 Q. In terms of going back to the Crown, if something
14 emerges and PIRC go back to Crown what would that going
15 back to Crown involve?
- 16 A. Well, you would provide them with the evidence or the
17 information, and let them decide what they wish to
18 instruct.
- 19 Q. So it would then be an option for the Crown to issue
20 an instruction?
- 21 A. Yes.
- 22 Q. If they elected to do that?
- 23 A. Yes.
- 24 Q. Or to say we don't want to issue an instruction?
- 25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. Right. So it would be for PIRC to take cognisance of
2 any issues that emerge and then follow that through with
3 the Crown and seek an instruction if that is
4 appropriate?

5 A. Yes, and equally it would apply to other issues, not
6 just race. If we come across stuff that didn't fall
7 within our initial terms of reference you would go back
8 to Crown and say: look, we've discovered this, and seek
9 an additional instruction or an amendment to the terms
10 of reference.

11 Q. Thank you. You have seen me ask Mr Little questions,
12 and you will remember that I asked him about the
13 analysis of language used in statements that were
14 available to PIRC?

15 A. I saw that.

16 Q. I particularly asked him, for example, about the
17 statement that was given by Kayleigh Good, PC Good, on
18 4 June?

19 A. Yes.

20 Q. She used the word "coloured"?

21 A. Yes.

22 Q. And she said on page 7 of her statement:

23 "I was also thinking at that point of the Lee Rigby
24 incident in London mainly due to the fact of the
25 coloured male and the potential terrorist connotations."

Transcript of the Sheku Bayoh Inquiry

1 So on the face of it, she is making a connection
2 there between Mr Bayoh being black and, as she puts it,
3 potential terrorist connotations?

4 A. Yes, I don't think it is appropriate use of language,
5 the term "coloured".

6 Q. I have certainly asked Ms Good about this and she has
7 given her evidence on that. But you obviously recognise
8 it as an inappropriate use of language. That was
9 a statement that was given to PIRC on 4 June.

10 A. Yes.

11 Q. Would you classify this as something that is emerging in
12 relation to race?

13 A. Certainly when we interviewed the officers, all the
14 officers, the nine principal officers, I wanted to know
15 what was their mindset as they were going towards this
16 incident. Because obviously they have been provided
17 with what is happening but I wanted to know what was in
18 their mindset.

19 It's quite unusual at 7 o'clock on a Sunday morning
20 in Kirkcaldy that a person may be running or walking
21 about the streets with a large knife. We know that the
22 threat level of attacks on police officers had been
23 raised to severe shortly before the incident, so
24 I wanted to know what was in their mindset, and some of
25 the officers -- you will have read the statements, well,

Transcript of the Sheku Bayoh Inquiry

1 the one that we are mentioning there, they are saying:
2 well, I considered the Lee Rigby incident. Other
3 officers didn't make such an association. But I did
4 want to know what was in their mindset because that
5 could have influenced how they approached the incident.
6 So we got that detail and you will have seen within the
7 PIRC reports I create an entire section where I outline
8 exactly what was in each officer's mindset as they
9 were -- and considerations as they were approaching this
10 incident.

11 Q. Having considered what was said by the officers, and
12 recognising this use of language was inappropriate --

13 A. Yes.

14 Q. -- did you reflect at that time, "Taking cognisance of
15 any issue of race as they emerge", what steps should be
16 taken in relation to this reference?

17 A. Again, it is a difficult one and it's more to do with
18 legislation because PIRC cannot investigate issues of
19 conduct in relation to federated or superintendent
20 ranks, only ACC and above. Consequently use of that
21 language may be considered a conduct matter but we have
22 no legislative authority to pursue it.

23 Q. So leaving aside conduct or disciplinary or misconduct
24 proceedings that may be within the purview of
25 the police.

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. However, PIRC have said in decision 21, you have written
3 that you are going to take cognisance of any issue of
4 race as they emerge?

5 A. Yes.

6 Q. That is any issue of race, and Mr Little gave evidence
7 that you were being mindful or you were keeping an open
8 mind about race at that stage?

9 A. Yes.

10 Q. It is not part of your terms of reference but here you
11 have a statement from one of the officers who was at
12 Hayfield Road commenting on Mr Bayoh being "coloured"?

13 A. Yes.

14 Q. And making a possible -- a potential terrorist
15 connotation making a -- apparently making a connection
16 there?

17 A. Yes, I would say it was the officer's consideration as
18 to what potentially was this. So we wanted to know what
19 was in their mindset.

20 Q. So you want to know what in their mindset, this is
21 relevant to that aspect. Was this viewed as relevant to
22 the race aspect that you were keeping an open mind
23 about?

24 A. I don't think definitively at the time that we obtained
25 the statement. Obviously we were providing the

Transcript of the Sheku Bayoh Inquiry

- 1 information to Crown to allow him to then take
2 a decision whether to instruct, and they did.
- 3 Q. Did you tell Crown after 4 June about the comments made
4 in statements? I have mentioned Kayleigh Good's
5 statement but as you recall I spoke to Mr Little about
6 a number of other statements also, including PC Short
7 describing him as being "deranged with superhuman
8 strength". And talking about "a wee Pakistani doctor",
9 and talking about a comment by Acting Police Sergeant
10 Maxwell in his statement of the same date of "a black
11 coloured male". Do you remember me asking those
12 questions?
- 13 A. Yes, we would provide that information to Crown because
14 we need a Crown instruction to specifically investigate
15 those matters.
- 16 Q. When did you provide information to the Crown about
17 those comments that were made in the statements?
- 18 A. I can't recall. But I think it -- I think it would form
19 part of Crown's decision to then instruct us to
20 investigate, which did occur.
- 21 Q. At a later stage?
- 22 A. Yes.
- 23 Q. Did anyone in PIRC analyse the statements from the
24 perspective of race at that time, or would that have
25 been considered a more active line of investigation

Transcript of the Sheku Bayoh Inquiry

1 which wasn't part of your terms of reference?

2 A. I think in June it was still -- we were still heavily
3 involved in collecting all available evidence and
4 information. Then you would analyse it as you've got
5 that to provide briefings to Crown, provide the
6 information to Crown. I know it sounds -- well, it's
7 just one month into -- it's already one month into the
8 investigation but we were still heavily involved in
9 tracing witness, obtaining evidence, so once you have
10 got a lot of that then you are undertaking that analysis
11 and passing it to Crown. So I think as we discussed
12 yesterday, at that -- back in 2015 we had limited
13 resources, which delayed some aspects of the
14 investigation, so we were still heavily involved in
15 collecting all the available evidence with the intention
16 of providing it to Crown.

17 Q. So at the point the officers gave statements, 4 June,
18 there was no analysis carried out from that perspective
19 at that point?

20 A. Not at that point. I was mainly focused -- well,
21 principally you are focused on what is the officer's
22 account of what occurred. But also I wanted to know
23 what was in their minds as they were attending this
24 incident, what was their thought processes. Because
25 their thought processes would obviously inform how they

Transcript of the Sheku Bayoh Inquiry

1 reacted. So that was the principal focus, what actually
2 occurred. Because we still up to that point don't have
3 specific information, we are piecing it together, as we
4 discussed yesterday, from various witnesses who had
5 partially saw events, from Airwave, from STORM logs,
6 CCTV, et cetera. But up until that point we didn't have
7 the precise details of what the officers did. We needed
8 those officers' accounts and, as I said, we wanted to
9 know what was their mindset, would that affect how they
10 dealt with the incident.

11 Q. Can I ask you in relation to the instruction from Crown
12 to investigate the death --

13 A. Yes.

14 Q. -- does that incorporate consideration of questions of
15 race, that simple instruction to investigate the death?

16 A. Crown provide us with terms of reference, and we act in
17 accordance with those terms of reference. If we
18 discover matters, we go back to Crown and they may add
19 additional terms of reference or expand the nature of
20 the investigation. But we operate to the terms of
21 reference as given at that time. We know that at
22 various points during the investigation Crown did
23 instruct additional -- additional terms of reference and
24 set additional terms of reference and expand the
25 investigation, and I know you went through a lot of

Transcript of the Sheku Bayoh Inquiry

1 those aspects with Mr Little.

2 Q. Yes. We will come on to that. So in a situation where
3 you are investigating a death for PIRC, if there is some
4 overt expression of racism as part of your
5 investigation, what would PIRC do at that stage? If
6 they have simply been told: investigate the death, you
7 appreciate that there is some perhaps overt or very
8 obvious expression of -- involving racial
9 discrimination, what would the actions be that PIRC
10 would take then?

11 A. You would go back to Crown. You would notify Crown.
12 And I think I gave the example earlier of -- there's one
13 specific instance where there was a serious injury
14 following police contact. The boy -- and it was
15 a youth, he was originally from Pakistan and as we
16 progressed the investigation we interviewed him and he
17 made allegations that inappropriate comments had been
18 made, but also we had obtained other CCTV and other
19 evidence. So we went back to Crown and that switched
20 from a serious injury investigation into a criminal
21 investigation which also encompassed the issue of race.

22 Q. So at the stage of obtaining officers' statements, PIRC
23 didn't go back to Crown at that point in light of the
24 comments made in the statements?

25 A. No.

Transcript of the Sheku Bayoh Inquiry

1 Q. PIRC went back to Crown at a later date, after the terms
2 of reference were expanded by the Crown?

3 A. I think we had provided briefing papers and potentially
4 officers statements to Crown and they expanded that,
5 which I think was, as I said earlier, late August. But
6 you will inform me.

7 Q. We will come on to that. At that point there was no
8 attempt to go back to the officers to explore these
9 issues further or issues of race?

10 A. Not at that point.

11 Q. In terms of the phrase "take cognisance of any issue of
12 race if they emerge", that was -- that was primarily
13 focusing on issues that might have arisen out of the
14 investigation?

15 A. Yes. Collect evidence, examine the evidence, and
16 present it to Crown.

17 Q. Can we move on to the next decision number please. This
18 is dated 9 May:

19 "Notification to Police Scotland to approach the
20 9 officers involved in arrest and request statements
21 from them.

22 "If they decline obtain reason for not providing
23 statements."

24 Tell me what was happening in relation to this
25 entry?

Transcript of the Sheku Bayoh Inquiry

1 A. I think we have already discussed that which was I had
2 approached DCI Hardie on the 6th and said: I want you to
3 individually approach each of the officers, confirm
4 their status and tell them they are witnesses,
5 I consider them to be witnesses, request a statement,
6 and obtain their position. And this is just backing
7 that up.

8 Q. So it is an entry made on the 9th but it is in
9 connection with the decisions you made on the 6th and
10 spoke to DCI Hardie about and then he -- I think we
11 looked at his statement yesterday about speaking to the
12 officers --

13 A. Yes, and obviously because you are engaged in a lot of
14 meetings, and a lot of information is coming in, you are
15 examining all that. So sometimes you are
16 retrospectively creating these entries, just to reflect
17 what had occurred.

18 Q. If we move on to 23, again on 9 May. This is about
19 police post-incident management processes, and you
20 describe that. Again, this is a retrospective entry in
21 the log regarding interest you have in the PIM or PIP
22 process?

23 A. Yes.

24 Q. Was this work that was already effectively ongoing but
25 the decision is being recorded on 9 May?

Transcript of the Sheku Bayoh Inquiry

- 1 A. Yes.
- 2 Q. Then we can see at 24 it's about hospital management.
3 25 is about the scene revisited on 10 May, or to be
4 visited on 10 May.
- 5 A. I think we spoke about that yesterday.
- 6 Q. These are all entries on 9 May but really bringing your
7 log up-to-date?
- 8 A. Yes, I am playing catch up, really.
- 9 Q. Again, 26:
10 "Officers refuse to give statements.
11 "Notification from Police Scotland that the nine
12 officers have refused at this time to give statements
13 following advice from their lawyer."
14 And then it says date 7 May, although the entry is
15 9 May?
- 16 A. Yes, because as we know and we have discussed,
17 DCI Hardie sent me the email on 7 May in respect of six
18 of the officers and he still had to see three, so this
19 is me really just retrospectively recording this.
- 20 Q. Thank you. Then 27, "Prioritisation of actions".
21 Again, an entry on 9 May. And this looks at the PIRC
22 enquiry managers will consider prioritisation of
23 actions. Was there pressure on resources at this point?
- 24 A. Yes, and that is why we are prioritising, you know, what
25 is the key things that we need to achieve as quickly as

Transcript of the Sheku Bayoh Inquiry

1 possible. We can't do everything with the limited
2 resources, so you prioritise.

3 Q. Then the next entry at 28 is dated 13 May. So between 9
4 and 13 May there are no entries in the log. I wondered
5 if I can ask you to look at a letter dated 11 May.

6 A. Yes.

7 Q. It's from the Crown Office, COPFS 02833A. So this is
8 dated 11 May, a letter from the Crown to the
9 Commissioner and it talks about, first line:

10 "A letter has been received by [Crown Office] from
11 the Solicitor acting for the family of the deceased."

12 It mentions matters relating to the death:

13 "I have been able to advise the Solicitors that no
14 Police Casualty Surgeon was in attendance and that no
15 photographs were taken of the body of the deceased at
16 the scene of death by the Authorities."

17 Is it customary to have a police casualty surgeon in
18 attendance?

19 A. Sometimes ... it is very situation-dependent, sometimes
20 paramedics will pronounce life extinct, sometimes it can
21 be a police surgeon. On other occasions it can be a GP
22 or other doctor. It is situation-dependent and it is
23 also dependent on their availability.

24 Q. Then there is -- as we move down the page, it says:

25 "... I would~..."

Transcript of the Sheku Bayoh Inquiry

1 Do you see three lines from the bottom:

2 "... I would highlight the following questions that
3 have been raised by the Solicitor ..."?

4 A. Yes.

5 Q. The main paragraph:

6 "... in order that these can be covered in your
7 investigations and so that there can be ongoing
8 discussions with the Crown regarding appropriate
9 disclosure."

10 So this seems to have arisen out of some sort of
11 discussion with the family's solicitor, and there is
12 a request for a detailed narrative of events immediately
13 preceding the death, the past medical history of the
14 deceased should be fully looked into, and that seems to
15 have been something that was already noted in the log
16 dated 9 May?

17 A. Yes.

18 Q. There's an issue there, for PIRC to look into
19 particularly:

20 "... any known familial or personal blood conditions
21 particularly such conditions as associated with blood
22 haemoglobin abnormalities, haemoglobinopathies such as
23 sickle cell disease and thalassemia and also any past
24 respiratory problems such as asthma."

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. I think we looked at the entries for 9th May and saw you
2 were looking into the past medical history?

3 A. Yes, and a lost lot of that you may obtain once you get
4 the GP medical records.

5 Q. Then:

6 "Any history of mental health problems~..."

7 And questions about tablets. So -- then the
8 questions go on to the following page. So there is
9 quite a detailed list of bullet points involving issues
10 that the family have raised via their solicitor?

11 A. Yes, I think what Mr McGowan is seeking there is
12 confirmation that we are taking these matters into
13 account during the course of our investigation. So we
14 are not ignoring these matters, we are collecting that
15 evidence. And really what he is doing is seeking
16 reassurance that we are taking cognisance of these
17 matters.

18 Q. So there is nothing in the log that says another letter
19 of instruction has been obtained and giving a copy, this
20 is letter isn't in the log. Were you happy this was not
21 a formal letter of instruction in the sense --

22 A. No, because these are not terms of reference, this is
23 him seeking assurance that we are taking cognisance of
24 these matters. So he is not expanding, in my mind, the
25 terms of reference, because we are investigating the

Transcript of the Sheku Bayoh Inquiry

1 death and all the precursor events. He is just seeking
2 reassurance that these matters would be taken cognisance
3 of.

4 Q. Thank you. Then let's move on to 28. This is dated
5 13 May. Sorry, back to the log. Sorry. This is
6 decision number 28, and it's dated 13 May. And this
7 indicates a forensic strategy meeting. Decision 28.
8 (Pause).

9 Here we are, "Forensic strategy meeting". And:

10 "There was a meeting held with relevant forensics
11 specialists to prioritise the examination of items
12 seized for forensic examination."

13 And you have actually, as we move on a page,
14 attached minutes from that forensic strategy meeting
15 which took place on Tuesday, 12 May.

16 A. Yes.

17 Q. So that was the previous day and we have heard that both
18 you and Mr Little were present that the meeting?

19 A. Yes, and obviously again this is retrospective, because
20 I am through in Howden Hall in Edinburgh chairing that
21 meeting so as we -- next day, that is when I record it,
22 because the minutes would also get produced and
23 therefore I am attaching the minutes so you can see
24 exactly what was discussed.

25 Q. Can we look at those minutes, please. And look at

Transcript of the Sheku Bayoh Inquiry

1 section 5 which says, "Forensic examination priorities".

2 Do you see that there on page 2?

3 A. Yes.

4 Q. And then can we look at section 4, which is on the next
5 page. This is about:

6 "PC Nicole Short's body armour to be examined for
7 possible footprint."

8 A. Yes.

9 Q. We have heard witnesses talk of that as her vest, is
10 that -- that is the same as the body armour?

11 A. It's the yellow vest that goes over the body armour.

12 Q. "Any footprint found to be compared with deceased's
13 footwear~..."

14 So Mr Bayoh's footwear.

15 A. Yes.

16 Q. "... which was seized at Victoria Royal Infirmary~... at
17 the time of the recovery of the body."

18 So it appears that both the left and right boot and
19 Nicole Short's vest, as it says there, are being
20 compared to look at a possible footprint?

21 A. Yes.

22 Q. You will remember I spoke to Mr Little about this and
23 I asked about the nature of the conversation that took
24 place with the forensic experts --

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. -- in relation to that. And we are aware that and
2 Mr Little appeared to be aware that sometimes it is very
3 important to identify what tests need to be done and the
4 sequence or the order of those tests can be a quite
5 significant matter?

6 A. Yes.

7 Q. Because we have heard that some tests such as
8 fingerprint testing can involve the use of black powder,
9 which can actually have a detrimental impact on the
10 ability of scientists to carry out subsequent tests?

11 A. Yes.

12 Q. It can fall into the weave of the material?

13 A. It's frequently -- because when you hold forensic
14 strategy meetings, which I have done in the past, you
15 have got the various experts, and you -- you want them
16 to advise you how in their opinion we should prioritise
17 because some of the testing can be destructive, as we
18 have said. And what are we looking for? You know, if
19 you take for example the knife found, primarily we
20 wanted initially DNA and not fingerprints because if you
21 go for fingerprints it can destroy or affect DNA. So
22 once the DNA analysis is done then you move towards
23 fingerprints, and really what you are doing is trying to
24 decide in what order do these things occur and the
25 experts advise you because these are forensic

Transcript of the Sheku Bayoh Inquiry

1 scientists, they have expertise. I am not a forensic
2 scientist, quite obviously, so a lot of times you are
3 being advised by these experts, forensic experts.

4 Q. So PIRC are very much reliant on the forensic experts to
5 advise about order and potential implications?

6 A. Yes, but it is still a decision by -- for the
7 senior investigator as to who does what, when, and in
8 what order.

9 Q. You were the senior investigator at that time?

10 A. Yes.

11 Q. But equally the experts, forensic scientists will need
12 input from you about what you are looking for in the
13 investigation?

14 A. Yes.

15 Q. We have heard evidence from the forensic scientists
16 about the tests which were carried out, and we have
17 heard that fingerprint testing was carried out in
18 relation to the vest. I am wondering to what extent was
19 there a discussion at that meeting with you about the
20 need for fingerprint testing?

21 A. I don't recall discussion at the time in relation to
22 fingerprinting of the vest. I am operating off memory
23 now, but I don't really see the significance of
24 fingerprinting the vest because I think we had been
25 informed by that stage, although we didn't have the

Transcript of the Sheku Bayoh Inquiry

1 detail, that PC Short had been punched and there was
2 a suggestion that she had been stamped on. That is why
3 I am wanting the comparison between the vest -- the mark
4 on the vest and the footwear of Mr Bayoh. This is mark
5 comparison. If you want additional examination, and
6 I know the Inquiry went through that process, where you
7 go external to the SPA forensic scientist, you went to
8 an expert in soil samples.

9 Q. We did.

10 A. But that is you again extending it beyond what the
11 capabilities are within SPA forensics in some instance.

12 Q. If I can stop you there, in fairness to you I want to be
13 clear about what you did know at this stage. So this is
14 12 May.

15 A. Yes.

16 Q. You have not got the officers' statements?

17 A. Correct.

18 Q. Did you have knowledge on 12 May about punching or
19 stamping at that stage?

20 A. Yes. So if we look at punching, initially,
21 Police Scotland had recorded that on the day, that she
22 was assaulted. Kevin Nelson had said that he had seen
23 Mr Bayoh throw two or three punches, he didn't know how
24 many connected. At least one connected. He saw her
25 being propelled forward on to the ground. And there had

Transcript of the Sheku Bayoh Inquiry

1 been the suggestion of a stamp. Now, I can't recall now
2 where that came from, but we were certainly aware of it,
3 otherwise I wouldn't have asked for this.

4 Q. You were aware of that on 12 May?

5 A. Yes, which is why I am asking for this. So obviously
6 I am aware.

7 Q. Thinking back now, can you tell us when you became aware
8 of the alleged stamp?

9 A. No. But obviously --

10 Q. Because you don't have the police officers' statements?

11 A. That is correct. It has obviously come from somewhere,
12 I can't recall now where it has come from. But we
13 obviously were aware of it, and it had come from
14 somewhere, otherwise I wouldn't have asked for this mark
15 examination.

16 Q. You say it had come from somewhere. You may not know
17 the source but do you remember was it a statement or
18 information shared by email, or a conversation that you
19 had with someone?

20 A. I can't remember the source. Sorry, I just can't
21 remember. But I was aware of it, and I don't know where
22 that came from. But I was aware of it.

23 Q. Is there anything in your log or any documentation that
24 would help us work out when you became aware that there
25 had been an alleged stamp?

Transcript of the Sheku Bayoh Inquiry

- 1 A. No, I don't think so. But as I say I was obviously
2 aware, otherwise I wouldn't have asked for this
3 examination at the forensic strategy meeting.
- 4 Q. So asking for a comparison between the boots and the
5 vest, that allows you to recollect that you were aware
6 that there had been an alleged stamp?
- 7 A. Yes, and what we were asking for there is mark
8 comparison. So you would -- they would photograph the
9 mark, and they would take the imprints from Mr Bayoh's
10 boots and they would compare those marks to see whether
11 there was a potential match.
- 12 Q. Is it possible that were you aware of a mark on the vest
13 and that was enough to ask for the comparison, rather
14 than a mark and an alleged stamp?
- 15 A. No, I think it would definitely be the alleged stamp.
16 Police officers' vests have all sorts of marks on them,
17 so you wouldn't necessarily say: well, I want you to
18 examine just any mark, you know. There had to be this
19 suggestion of a stamp for me to specifically request
20 this.
- 21 Q. But fingerprinting, not necessary, fingerprint testing
22 not necessary?
- 23 A. I don't think so.
- 24 Q. And DNA testing, what was your view on that?
- 25 A. I don't think -- I don't think so. I think there was

Transcript of the Sheku Bayoh Inquiry

1 a term used in relation to DNA examination of the knife
2 where it was -- I can't remember, you might recall, but
3 it was almost like there was a collection of DNA and it
4 could have come from various sources. Plus the fact --
5 you must remember that police officers are dealing with
6 people all day every day when they are on duty, so you
7 are going to get all sorts of DNA. Is it going to add
8 any value to the investigation? I don't think so.

9 Q. So the primary interest of PIRC in terms of
10 investigation related to the comparison of the mark with
11 the footwear?

12 A. In respect of PC Short.

13 Q. Was there any discussion about the forensic experts
14 avoiding doing any other testing, avoiding fingerprint
15 testing since it wasn't of interest to PIRC?

16 A. Not that I recall now. My priority I think in relation
17 to this specific issue was the mark comparison. Because
18 that would have -- that would have confirmed what we had
19 been informed of, if you got an exact match. A lot of
20 times you can never get an exact match but it would have
21 confirmed aspects of that because we didn't have the
22 officers' accounts.

23 Q. We have heard evidence from Professor Lorna Dawson, who
24 was the expert in soil.

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. And when she was sent items for comparison, she said --
2 I asked her if her job would have been easier if the
3 vest hadn't been stained with fingerprint powder and she
4 said, "Yes, absolutely". We also heard evidence from
5 Paul Ryder from a company called Cellmark and he was
6 asked about the impact of fingerprint testing on the
7 vest in relation to the work he was doing about
8 a comparison. He said that the testing for fingerprints
9 had caused dark coloured deposits on the fluorescent
10 fabric and staining to the vest as a result. And
11 because of that staining it obscured parts of the dark
12 staining that originally had been present on the vest,
13 so that made his job effectively harder.

14 A. Yes, I think at the time there was no consideration of
15 going to such specialist experts as soil samples,
16 Cellmark.

17 Q. I am interested in the issue of whether there could --
18 PIRC could have avoided fingerprint testing at all here?

19 A. Potentially yes, because I would see no value in it.

20 Q. Thank you.

21 A. Now, why that was done, I can't remember now but I see
22 no value in this.

23 Q. Can I ask you to look at an article that we have looked
24 at before in relation to a very specific point,
25 an article AAC 00379, page 7. It's an article I asked

Transcript of the Sheku Bayoh Inquiry

1 Mr Little about in evidence and it was in The Herald on
2 15 May. So that is three days after the forensic
3 strategy meeting.

4 A. Yes.

5 Q. There's a reference in that. AAC 00379, page 7. There
6 is a reference in this to a quotation from the then
7 solicitor representing the officers who had been at
8 Hayfield Road. This is on a date you don't have
9 statements from them, and there was mention of there
10 having been an officer, "a petite female~... officer"
11 having been punched kicked and stamped. You have
12 explained the evidence you have about the punch, here we
13 are at page 7, thank you. And you will see not the
14 left-hand column of the story but the right-hand there.
15 If we go down below the element in bold, the quotation
16 in bold, there is a reference to Peter Watson of
17 PBW Law. And you will see it says in quotation marks:

18 "While it is deeply regrettable ..."

19 Do you see that bit?

20 A. Yes.

21 Q. "... that Mr Bayoh lost his life, I would ask the media
22 and public to remember that a petite female police
23 officer was chased and then subjected to a violent and
24 unprovoked attack by a very large man who punched,
25 kicked and stamped on her."

Transcript of the Sheku Bayoh Inquiry

1 Do you see that?

2 A. Yes.

3 Q. That seems to be a reference there to a kick and
4 a stamp.

5 A. Yes.

6 Q. And this is prior to getting statements from the
7 officers.

8 A. Yes.

9 Q. I had suggested to Mr Little in evidence that that was
10 perhaps the first time PIRC became aware, but you are
11 convinced that you knew at the time forensic strategy
12 meeting --

13 A. Yes.

14 Q. -- about the kick and the stamp?

15 A. I think so, because this is the 15th whereas the
16 forensic strategy meeting is on the 12th. So that is
17 out of sequence. So the meeting was held before we were
18 aware of this statement from Professor Watson.

19 Q. So obviously Peter Watson was aware of this information,
20 he provided that to The Herald. Does that help you when
21 you are thinking back to how you knew about a kick or
22 a stamp so as to require forensic scientists to examine
23 the boots compared to the vest. Does that help you
24 recollect any contact or discussions you had had with
25 him?

Transcript of the Sheku Bayoh Inquiry

- 1 A. With Professor Watson?
- 2 Q. Yes.
- 3 A. No, I would not discuss such matters with
- 4 Professor Watson because that is sharing information
- 5 with the Police Federation and their lawyer. And as
- 6 I said in response to earlier questions, before we are
- 7 putting such information or sharing it with anybody, we
- 8 need to ask Crown's permission. Where Mr Watson got
- 9 that account, I don't know. But he was the lawyer
- 10 acting for the officers.
- 11 Q. Were you aware of this article in The Herald on
- 12 15th May?
- 13 A. I became aware that that statement had been issued.
- 14 Q. We have heard evidence that there was a Federation press
- 15 release, and then there was this article in The Herald.
- 16 A. Yes.
- 17 Q. Were you aware -- they were not exactly mirror images.
- 18 Were you aware of this article in The Herald and the
- 19 content of this article?
- 20 A. Now I can't recall. I was certainly reading everything,
- 21 including all the media articles, at the time.
- 22 Can I recall this specific one? No, I can't. But I was
- 23 reading everything.
- 24 Q. So is it likely that regardless of the position on the
- 25 12th, you have read this article at some point and

Transcript of the Sheku Bayoh Inquiry

1 noticed the references to punch, kick and stamp?

2 A. Yes. And as we know, this is not entirely accurate.

3 Q. So --

4 A. As we know, this statement is not entirely accurate

5 because it was -- the allegation was a punch and

6 a stamp. Not a kick.

7 Q. We have heard evidence about the matter now.

8 A. Yes.

9 Q. Thank you. I will move on to -- back to the log, if

10 I may. Decision 29, "Phone seizure and examination".

11 There is a reference there -- this is an entry dated

12 13 May:

13 "All mobile phones that may hold evidence relevant

14 to the enquiry are to be seized and forensically

15 examined for the period 2 to 3 May."

16 Were you in possession of Ashley Wyse's Snapchat

17 footage from her mobile at that stage?

18 A. I think so because she had offered up her phone to

19 Police Scotland and agreed to have it examined for that

20 specific information to be extracted. And also, as

21 previously discussed, she then gave permission for PIRC

22 to also extract that information.

23 Q. When did you first see the Snapchat footage from

24 Ashley Wyse's mobile phone?

25 A. I think it was fairly early on. Because obviously the

Transcript of the Sheku Bayoh Inquiry

1 examination of the phone, I can't remember who did it
2 whether it was Cyber Crime within Police Scotland, or
3 she simply forwarded some of those things, I can't
4 remember the specifics. But it was fairly early on
5 after we obtained that phone.

6 Q. There was an issue, as I understand it, in relation to
7 the consent that had been provided by Ashley Wyse, and
8 I think you have been very careful in your answer that
9 she had given consent to extract the Snapchat footage of
10 the incident in Hayfield Road. Did you have concerns
11 about whether PIRC could investigate beyond that in her
12 mobile phone?

13 A. We are now going into the complexities of what I would
14 suggest is access to communications data, where you
15 simply can't go on fishing expeditions and open up
16 everything. It has to be focused and it has to be
17 targeted, for want of a better thing. So it would be
18 entirely inappropriate for us to start reading her
19 personal text messages, who she had been phoning, all
20 that sort of stuff. That is why it becomes focused and
21 targeted and we are asking specifically: you videoed
22 that interaction, we want that. We are certainly not
23 going to go trawling about in the rest of your data.
24 That would be entirely inappropriate.

25 Q. We have an email in the Inquiry between you and

Transcript of the Sheku Bayoh Inquiry

1 Mr Little, where you instruct Mr Little to examine all
2 the material to determine whether it has a bearing and
3 if it has, produce it as evidence, in relation to the
4 mobile phone.

5 A. Yes. But again that is -- you are focused on the time
6 of the incident. So you are not trawling -- you set
7 parameters. You may have that discussion, you might not
8 record what those parameters are, but we know that
9 Ashley Wyse -- and she had given a statement --
10 said: look, I videoed this on my phone. Great, we want
11 that material. But as I said we are not going to go
12 trawling around.

13 Now, when it came to, for example, other phone
14 examinations, you may extend those parameters dependent
15 on the nature of what you are examining. So for example
16 the precursor events, we know Mr Bayoh was at Mr Dick's
17 house, he left there, went to Hayfield Road. So for
18 another phone you might set that as your time parameter
19 and not trawl through other data.

20 Q. So when you were focusing on Ashley Wyse's phone, was
21 this in relation to quite a specific time period that
22 you were interested in --

23 A. Yes.

24 Q. -- and not just simply saying to Mr Little: check the
25 entire contents of the phone?

Transcript of the Sheku Bayoh Inquiry

1 A. Absolutely not because you have got the issue of
2 collateral intrusion, which is a specific provision
3 under the Act. So you simply can't go trawling around
4 in a person's personal data, you have to be specific to
5 what material you are looking for, what time parameters
6 you are setting, and extracting within those parameters
7 data that may be relevant to the investigation.

8 Q. Were you satisfied that Mr Little had a clear impression
9 of the precise data you were interested in?

10 A. I would think so.

11 Q. When you referred to the Act, what Act are you referring
12 to?

13 A. At that time it was the RIPA 2000, Regulation of
14 Investigative Powers 2000, I think it is section 2 of
15 RIPA, where if you want to ask communications data you
16 need authority, either from within the police, so you
17 can obtain that communications data without the person's
18 agreement. In some instances an authorising officer --
19 and I was an authorising officer and I worked
20 extensively within the field of interception of
21 communications and communications data, but in relation
22 to a person, if you are extracting data you want that
23 person's agreement. The other way you can achieve that
24 is by seizing that phone as a production, at which point
25 it becomes a Crown production so in effect ownership

Transcript of the Sheku Bayoh Inquiry

1 transfers to Crown, then you can examine it. But again,
2 you set parameters. You simply don't go trawling
3 through everything.

4 Q. So, as I understand it, you had been -- Ashley Wyse had
5 provided her mobile voluntarily?

6 A. Yes.

7 Q. She consented to examination of her phone in relation to
8 the events of Hayfield Road, and Snapchat footage that
9 she --

10 A. Yes.

11 Q. Her consent did not go beyond that, however. And
12 without her consent you would have needed some further
13 authority --

14 A. Yes.

15 Q. -- to explore more widely?

16 A. I think we have also got to remember that if you take
17 a person's mobile phone, if you seize it as a production
18 they are losing huge amounts of data on that and it
19 causes massive inconvenience. You know, we can think
20 these days everybody's got, you know, complex mobile
21 phones. If you take that away from a person you are
22 removing their access to a lot of information, a lot of
23 data, all sorts of things, banking apps, whatever. It
24 can have quite a detrimental effect on a person, just
25 seizing their mobile phone and that is why sometimes it

Transcript of the Sheku Bayoh Inquiry

1 is better to obtain their consent to extract the
2 relevant data.

3 Q. Can you explain -- obviously in your experience
4 regarding Ashley Wyse's phone, on what authority was the
5 contents of her phone downloaded?

6 A. She had given permission.

7 Q. Permission, as I understand it, about the events at
8 Hayfield Road --

9 A. Yes.

10 Q. -- and the Snapchat footage being downloaded?

11 A. Yes.

12 Q. What about the contents of the phone being downloaded?

13 A. Part of the challenge, as I understand it, is that Cyber
14 Crime, when they are doing a download, simply can't
15 extract specific data. They do a complete download. We
16 then filter that, ignoring the stuff that is not
17 relevant, and get the data that we are looking for. But
18 I think it is to do with the technicalities of how you
19 download a phone, that Cyber Crime simply hit the
20 download button and download everything, then extract
21 the relevant data. It is more the technicalities.

22 Q. So Police Scotland's cyber experts, if I can call them
23 that --

24 A. Yes.

25 Q. -- would download the entire contents of the phone, they

Transcript of the Sheku Bayoh Inquiry

1 would -- would they sift out the relevant content
2 regarding Hayfield Road on 3 May or would PIRC be doing
3 that?

4 A. They would provide it to us and we would do the sifting.
5 Cyber Crime is frequently overwhelmed so they consider
6 it is part of the investigative process for the
7 investigation to do that, they simply do the download
8 and hand you the data, the information.

9 Q. What authority would PIRC then have to go through
10 everything from the download, the contents of Ms Wyse's
11 phone to extract the bit they want to look at for the
12 investigation?

13 A. As I say, it is due to the technicalities of it. So you
14 might get all this additional data but you wouldn't
15 examine it, because you are looking for specifically
16 what happened on 3 May, at the time. So you are looking
17 surrounding there, you wouldn't go trawling through the
18 rest of her data.

19 Q. How would PIRC know what was relevant to the 3 May and
20 events in the morning without going through all the data
21 that is provided by the cyber experts?

22 A. Because the download produces it in chronological order,
23 in date and time order. So you know when the incident
24 occurred, therefore you are looking specifically for
25 around that time period.

Transcript of the Sheku Bayoh Inquiry

1 Q. I appreciate PIRC don't have the technical ability to
2 deal with this but does that mean that in getting the
3 entire content of Ashley Wyse's phone that there was
4 a question mark about the legal authority on which that
5 would be held by PIRC?

6 A. No, because she has given authority to examine her
7 phone. Whether we had said specifically, and I can't
8 recall now, to allow us to extract the WhatsApps or
9 whatever, I don't think she maybe understood that we
10 would -- that Cyber Crime would hit download everything,
11 and then we would specifically look for what we
12 described there. Because if she didn't consent to that,
13 you could have seized the phone as a Crown production.
14 If you seize the phone as a Crown production then
15 ownership technically transfers to Crown, at which point
16 you could do that without the authority. Equally, if
17 you want to do it without the knowledge of the person
18 that is when you are moving into the RIPA Comms data
19 arena.

20 Q. Looking at decision number 29, there is no mention there
21 of Ashley Wyse's phone or any issues regarding
22 Ashley Wyse's phone or any discussion between you and
23 Mr Little about the extent to which that has been
24 examined. Would that decision not be recorded in the
25 log?

Transcript of the Sheku Bayoh Inquiry

1 A. Maybe I should have, but I didn't. I just took it as
2 read that we were specifically examining the events, the
3 incident scene and the precursor events leading up to
4 it. And Ms Wyse's phone was not the only phone seized
5 in respect of this matter.

6 Q. Let's move on to decision 30.

7 A. In fact, could we move just quickly back up?

8 Q. Of course, yes. To decision 29?

9 A. Yes. Just scroll down to the bottom:

10 "Time parameters set so as to limit collateral
11 intrusion/minimise impact on witnesses."

12 Q. Yes. So this relates to phone seizure and examination
13 and all mobile phones, so time parameters set. But
14 nothing there specifically about Ashley Wyse?

15 A. I don't within that set what those time parameters are
16 because each witness may be different, and you are
17 setting different time parameters. So this is more
18 a general instruction, but I am certainly saying: we are
19 going to set time parameters so as to limit collateral
20 intrusion and that minimises the impact on the witnesses
21 so we are not trawling through data that is not
22 relevant.

23 Q. Decision number 30. There is a note there:

24 "Require nine officers' personal details from
25 Police Scotland. In light of refusal by officers to

Transcript of the Sheku Bayoh Inquiry

1 give statements at this stage, the personal details to
2 be obtained."

3 Why would you be seeking personal details of police
4 officers?

5 A. As police officers, when they submit statements to us,
6 they will submit their full name, their date of birth,
7 their age, their occupation, et cetera. So we didn't
8 necessarily have that in respect of the nine officers.
9 We knew the names of the nine officers but we didn't
10 have the additional information. So each officer has
11 a SCOPE record. I think you have heard evidence about
12 that. That is where that information would be recorded,
13 which is why we are asking for that.

14 Q. If we can look at the reason. It says:

15 "Treat officers the same as any other witnesses.
16 They will have statements taken from them at
17 an appropriate stage should their status remain as that
18 of witnesses."

19 Was there any question mark about the status of
20 officers at this time? This is an entry from 13 May.

21 A. No, I was quite clear at that time they were still
22 witnesses.

23 Q. Decision number 31:

24 "Seize officers' notebooks."

25 This is again dated 13 May. Why was this not done

Transcript of the Sheku Bayoh Inquiry

1 prior to this entry appearing in the log?

2 A. I think we were still working through things. So one of
3 the things I consider in the reason there was: did the
4 officers make any entries in their notebook in respect
5 of this incident? So go and seize their notebooks,
6 examine them to see whether they created any entries.
7 Because we thought that they hadn't provided statements,
8 had refused to provide statements, hadn't completed the
9 CS/PAVA log or the use of force form. So what I was
10 thinking there was: was there anything in their
11 notebooks in respect of this incident that would assist
12 to inform the investigation.

13 Q. Decision 32. This entry is:

14 "Progress interviews of relatives of the deceased to
15 obtain background and medical information which may
16 assist to establish a cause of death."

17 I am interested in this because yesterday you talked
18 about not wanting to influence the pathological -- the
19 pathologist's opinion. So could you explain why you
20 were seeking this background and medical information?

21 A. Yes, because I think we sought the GP medical records
22 and the GP medical records started at a particular date
23 and, therefore, we didn't have any information before
24 that. Now, the best people to inform us may have been
25 the family because, as we know, Mr Bayoh was born in

Transcript of the Sheku Bayoh Inquiry

1 Sierra Leone and lived there for a number of years
2 before moving to this country. Therefore, had anything
3 happened? Would his relatives be aware of any
4 additional medical information that was not recorded in
5 his GP medical notes, in order to provide that
6 information to the pathologists.

7 Q. Thank you. So by 13 May you still didn't have the final
8 post mortem report at that stage?

9 A. That is right. I think it was mid-June before we
10 received it. But you are wanting to provide -- because
11 we didn't have the GP medical notes for the post mortem
12 examination but we were obtaining them. When we
13 identify that they only start from a particular date and
14 don't cover the earlier part of Mr Bayoh's life, who is
15 best placed to provide us with some of that information?
16 The family quite obviously.

17 Q. Then decision number 33. There is a decision to:

18 "... obtain precise details of all [Police Scotland]
19 communications with the family of the deceased."

20 And I think part of the reason is the family say
21 Police Scotland provided various different accounts to
22 them regarding the death. If we go down to the reason,
23 please. This is an entry from 15 May. Is there
24 a reason why this wasn't progressed sooner? Because we
25 have heard concerns were expressed by the family about

Transcript of the Sheku Bayoh Inquiry

1 the police providing different versions on 3 May.

2 A. I can't remember why I didn't record it sooner. At the
3 meeting with the family and Mr Anwar on 6th, they
4 expressed extreme displeasure and dissatisfaction with
5 the way they had been communicated with. They
6 considered that -- there were various accounts given,
7 some of which were inaccurate. So they were extremely
8 displeased. Why I didn't record it in the log earlier,
9 I can't say but, as it sprung to my mind, I have put it
10 in so it is formally recorded. But I was certainly
11 aware of that extreme dissatisfaction.

12 Q. Then decision 34, you have returned to a narrative
13 entry:

14 "It is clear that COPFS are providing information to
15 Mr Anwar, the family solicitor, regarding the
16 investigation, the post mortem and other findings."

17 Was this of concern to PIRC that the Crown office
18 were communicating direct with Mr Anwar?

19 A. I would say so. I would say it is highly unusual.
20 Normally in any death investigation that I have been
21 involved in the information is provided by the FLOs to
22 the family or their representative. Part of my concern
23 here is I am unsighted on what Crown are telling
24 Mr Anwar. We may be providing different information.
25 As I have mentioned earlier this morning, you are not

Transcript of the Sheku Bayoh Inquiry

1 providing comprehensive information to any family. You
2 are not giving a chapter and verse on the progress of
3 the investigation and, therefore, what that can lead to
4 is a breakdown in trust where they are getting one --
5 they are getting some information from Crown and they
6 are getting some information from us. Does that
7 information differ? Does that lead to a breakdown in
8 trust in PIRC FLOs? So that was my specific concern.

9 Q. I understand that you mentioned here, Director of
10 Investigations, we understand that was Mr Mitchell, then
11 spoke to the Crown about the issue?

12 A. Yes. So we were aware what Crown -- what information
13 Crown were providing. Because, you know, it can lead to
14 a breakdown in trust if they think: well, Crown have
15 told us X, Y, Z and you are only telling us X. Why are
16 you only telling us X? Because all of a sudden we know
17 different. So you can see where that can lead to that
18 breakdown.

19 Q. I would like to move on to decision 37, so if we can
20 move through 35 and 36. You have also included another
21 letter to the High Commission, so we are moving on to
22 37. Again, this is a narrative. The entry is made on
23 27 May:

24 "Text message received by FLO, Alistair Lewis, on
25 27 May from Ade Johnson, brother-in-law of deceased.

Transcript of the Sheku Bayoh Inquiry

1 See attached."

2 You include a copy of the email at the back of this
3 page. You say:

4 "PIRC will not respond via text or email but will
5 provide relevant updates via FLOs to Mr Anwar and
6 family."

7 Can you explain why, if the family wished to
8 communicate with PIRC via text or email, why would there
9 be concerns about responding to them using that method?

10 A. Because we are providing definitive information which
11 is -- may be contained in a text or an email. The
12 normal method -- in fact, the preferred method in all
13 investigations is for the FLOs to deal direct and
14 provide that information direct to the family, either
15 through face-to-face meetings or through telephone
16 calls. From memory, and we might come on to it,
17 Mr Johnson was asking for quite a lot of information
18 and, as I have already discussed, in the normal course
19 you provide limited information. You know, he is
20 demanding answers. Now, my job is to provide the
21 evidence to Crown. As I have said earlier, section 44.6
22 of the 2006 Act, Crown has to give me that permission to
23 release the specific information and I did not have that
24 permission. That is consequently why we are saying:
25 look, you know, here's an email or whatever requesting

Transcript of the Sheku Bayoh Inquiry

1 voluminous information. We have no authority to release
2 that information. We are quite happy for the FLOs to
3 meet with the family face-to-face to provide information
4 to them, but we are not going to give them chapter and
5 verse on the detail of an investigation. Because that
6 simply doesn't occur in any other investigation.

7 Q. Was there any approach made by PIRC to the Crown to seek
8 their authority to provide answers to the questions that
9 were asked or to give permission to communicate with the
10 family direct through text or email?

11 A. No, because it is very much an operational decision for
12 us as the investigative body.

13 Q. If the FLO, Mr Lewis, had requested you or Mr Little to
14 contact Crown to see if that could be an arrangement
15 that was made, would you have been able to do that?

16 A. Yes. And we have previously done it, where we will
17 approach Crown and said: we have been asked for this
18 specific information. Usually we then provide a draft
19 for Crown consideration. Now, it is very much Crown
20 consider that they say: no, you are not sharing that.
21 Or they can amend it, they can change it or whatever,
22 and then say: right, provide this information. But it
23 is very much a Crown decision.

24 Q. Let's move on to the next page. Decision --

25 LORD BRACADALE: Ms Grahame, it is just after 1 o'clock, so

Transcript of the Sheku Bayoh Inquiry

1 text or email. Consequently we stuck to normal
2 procedures.

3 Q. In many ways, as you've described and as Mr Little
4 described, the investigation was not normal in a number
5 of different ways, it was not the standard and I am
6 wondering why in this particular case it wasn't
7 an option for PIRC to move out of the sort of normal
8 standard method of communication, and communicate with
9 the family in the way that they had expressed -- or had
10 wished.

11 A. I don't know exactly how to answer that. I think we
12 stuck to the normal way of operation because that is
13 the way we have always done it and we continue to do so.

14 Q. Have you ever in PIRC communicated with a grieving
15 family in relation to -- via text or email?

16 A. Not normally to provide information. Maybe to arrange
17 meetings, or whatever. But not to impart information.
18 Usually that is face-to-face meeting with the FLO, or it
19 may be a telephone conversation.

20 Q. If you are comfortable using text or email to arrange
21 meetings and communicate with the family on that basis
22 for that purpose, would it have been a step too far for
23 PIRC to communicate information in that way?

24 A. As I say, I think we stuck to normal procedures. The
25 reason -- primarily what you would do to arrange

Transcript of the Sheku Bayoh Inquiry

1 a meeting is phone the family, if you couldn't get them
2 you might send them an email which they might pick up
3 later saying: can you phone me back. The FLOs would do
4 that, and then they would speak and arrange a meeting.

5 Q. So that is really the extent to which PIRC used text or
6 emails?

7 A. Primarily, yes.

8 Q. We were about to turn on to decision 38. I wonder if we
9 can have the log back on the screen. Decision 38. The
10 number at the top is 609890. Thank you. This is
11 an entry from 28 May. So it's a number of weeks after
12 the events. The decision recorded here is:

13 "All PS Airwave radio communications regarding the
14 incident to be recovered, examined and transcribed.

15 "All recordings of 999 and 101 calls to be similarly
16 recovered, examined and transcribed."

17 We saw in the letter that we looked at earlier to
18 today from 5 May that there was a request to the
19 Deputy Chief Constable for Airwave messages?

20 A. Yes.

21 Q. You have spoken about the desire for PIRC to recover
22 those. This entry, 28 May, is quite a substantial
23 period. Were you still waiting for Airwave radio
24 communications at that time or did you already have
25 them?

Transcript of the Sheku Bayoh Inquiry

1 A. I think most of this is a retrospective entry. There
2 are different Airwave channels, usually what we have to
3 do is the area control room supply this, you give them
4 parameters as to what you require, so you usually start
5 well before the incident and finish well after the
6 incident. Call recordings for 999 and 101 calls need to
7 be recovered and examined again and what we were doing
8 is then overlaying all that information along with
9 witness testimony that we had up to that period and CCTV
10 evidence, to create a timeline, a sequence of events.

11 Q. So in relation to the Airwave messages communicated
12 between officers who were at the scene when the incident
13 occurred, would you have already had those Airwave
14 messages at an earlier -- a much earlier stage?

15 A. I think what you would need to do is actually examine
16 that specific production which would tell you when we
17 obtained it. So I can't give you an exact answer but
18 the production might show when we obtained it.

19 Q. We have -- it's a timeline, a spreadsheet of the Airwave
20 messages --

21 A. Yes.

22 Q. -- during that period which was prepared on behalf of
23 the Inquiry. You will remember earlier today I asked
24 about the -- your knowledge at the time of the forensic
25 strategy meeting on 12 May?

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. And we talked about whether you knew about a stamp or
3 a kick at that stage. In fairness to you, one of
4 the entries in the Airwave messages timeline that we
5 have prepared was a call a message from Acting
6 Police Sergeant Scott Maxwell, and this was at 7.24 and
7 28 seconds, so it's just short of four minutes after the
8 police have arrived, and he says:

9 "Although there is no visible injuries to PC Short,
10 she has been stomped to the body a few times et cetera,
11 and struck to the head. Can see if the ambulance can
12 attend ASAP."

13 A. Yes.

14 Q. So that was an actual Airwave message at Hayfield Road
15 on 3 May.

16 A. Yes.

17 Q. And that is why I was wondering whether that was
18 something you had in your possession prior -- even prior
19 to the forensic strategy meeting?

20 A. I think you do need to look at when we obtained that
21 production, which was the Airwave messages. There
22 should be a date for that being provided to us, so that
23 would let you know whether I was aware of PS Maxwell's
24 Airwave communication prior to the forensic strategy
25 meeting. That information will be available somewhere.

Transcript of the Sheku Bayoh Inquiry

1 Q. Thank you. I was just wondering if it was possible that
2 that was maybe the source of the information you had at
3 the forensic strategy meeting?

4 A. I can't recall. But, as I say, the date we obtained
5 that material, if we had obtained it before the forensic
6 strategy meeting it may well have come from that, but if
7 it was obtained afterwards then it wouldn't obviously
8 have come from that.

9 Q. All right. Thank you. We can look into that.
10 Thank you. Can we move on, please, to decision 39.
11 Now, this is 28 May, so again towards the end of May and
12 you are writing:

13 "Obtain training records of all officers involved in
14 incident and examine for current qualifications in use
15 of force, CS and PAVA and officer safety techniques."

16 You specifically mention further down:

17 "Obtain [Police Scotland] policy on the use of
18 force, restraint, CS and PAVA."

19 You mentioned a moment ago that these were
20 retrospectively prepared, these entries. Was this
21 something that you had already been moving towards
22 recovering or was this something that was done towards
23 the end of May?

24 A. It is usually standard for investigations where officers
25 use officer safety techniques, deploy CS, PAVA, et

Transcript of the Sheku Bayoh Inquiry

1 cetera for us to obtain their training records to
2 understand when were they trained, what were they
3 trained in, how -- how up-to-date was their
4 qualification in officer safety. So that is standard in
5 most investigations where force is used.

6 When we do that really depends because I think
7 I have mentioned earlier, in the initial stages of the
8 enquiry it is information overload, so you might be
9 asking for this material later as you start to gain
10 a better understanding of what occurred. So this could
11 be a retrospective entry, it could be just an up-to-date
12 entry. There would be an action raised to do so, that
13 action would tell you when that was raised.

14 Q. So it's possible that this was a kind of contemporaneous
15 entry into PIRC's investigation now looking at obtaining
16 training records?

17 A. Yes, I think the action raised to obtain that material
18 would tell you when we asked for it, and also the
19 productions would tell you when we obtained it.

20 Q. Is this sort of information, the training records and
21 the Police Scotland policy, would that not be something
22 you would be looking for quite early on after the event?

23 A. The challenge in respect of policy is Police Scotland
24 policies change all the time, so for each investigation
25 we don't rely on the previously supplied one in case

Transcript of the Sheku Bayoh Inquiry

1 they have changed and been updated. Officer safety
2 training gets updated on a regular basis and it does
3 change. In one instance, I can't remember policy it
4 was, it changed 18 times over the course of the last
5 11 years, which is why we always, in each investigation,
6 request the current policy as it stands or as it stood
7 on the date of incident.

8 Q. If PIRC had access -- viewing access only perhaps -- to
9 police systems, would that assist in speeding up the
10 process of gaining access to things like the police
11 policy on use of force, restraint, use of PAVA?

12 A. Gaining access to the information, it would considerably
13 speed it up, but I think we've also got to remember that
14 we are producing these as productions, therefore we are
15 requiring somebody in Police Scotland to speak to that
16 and sign the production label or documentary backing
17 sheet.

18 Q. In terms of that, however -- I appreciate that you would
19 want to show a chain of evidence --

20 A. Yes.

21 Q. -- and for any subsequent court proceedings you would
22 want to have that in place, but in terms of PIRC
23 progressing an investigation with reasonable promptness,
24 would it assist PIRC to have viewing access to the
25 policies and information earlier?

Transcript of the Sheku Bayoh Inquiry

1 A. It would but I think we have also got to comply with the
2 legal requirements in which we need to serve a notice on
3 Police Scotland telling them what we require from them.
4 Now, having served the notice we could then go in and
5 look, but you can't go in and look without serving the
6 notice.

7 Q. Is this the notice that we saw was served on 5 May and
8 sent to the Deputy Chief Constable?

9 A. Yes.

10 Q. So if you had access after 5 May, and after the notice
11 has been formally served, would that speed up PIRC's
12 investigation?

13 A. It would speed up aspects of it, but having then
14 considered the policy we would then determine do we need
15 to evidence that, is it relevant to the matter subject
16 to investigation, and if it was then we are going back
17 and asking for a hard copy and somebody to speak to it.

18 Q. In terms of the date of this entry, 28 May, can I ask
19 how resources were in relation to the investigation at
20 this time?

21 A. We still had the same resources, which was approximately
22 20 staff. Most of them were deployed on the Bayoh
23 investigation. There was a huge volume of information
24 starting to come in, so everyone was deployed, they were
25 multi-tasking, as I spoke to you yesterday, they had

Transcript of the Sheku Bayoh Inquiry

1 a series of actions to complete, it wasn't just one
2 action: go and do this, this day. Sometimes there were
3 multiple actions, so they were completing multiple tasks
4 on any one day.

5 Q. Do you have any recollection about the number of
6 resources or staff that you had working on the
7 investigation by this time?

8 A. We certainly had 20 deployable investigators, or 22
9 potentially. How many were deployed on any one day
10 because people may have time off, they may be on annual
11 leave, I think the briefing documents because we kept
12 daily briefing documents, that would tell you
13 potentially who was at that briefing so you may wish to
14 examine them to see whether it was recorded how many
15 resources and what the tasks and actions allocated on
16 any one day were.

17 Q. So the briefing document would provide a summary of who
18 was in attendance and who may have been part of the
19 investigation and actively involved in this at that
20 stage?

21 A. They may do so.

22 Q. Can we move down to the reason, and it says there the
23 reason for obtaining training records et cetera is:

24 "Determine training of officers in use of force and
25 first aid. Compare events against training and policy

Transcript of the Sheku Bayoh Inquiry

1 to ensure alignment."

2 So there was intended to be a comparison?

3 A. Yes.

4 Q. I spoke to you earlier about the training manual, and
5 the information you had.

6 A. Yes.

7 Q. Then:

8 "If necessary obtain expert opinion on the amount of
9 force, use of CS and PAVA and restraint used to
10 determine whether it was proportionate and necessary."

11 A. Yes.

12 Q. I think bearing in mind the evidence you have given
13 earlier today, was this a focus on whether there was
14 justification by each of the officers for that use of
15 force?

16 A. Yes. Well, it needs to be necessary, proportionate, in
17 alignment with training. Also PIRC are not experts on
18 officer safety training, we are not trained as officer
19 safety training experts which was why we would seek
20 expert opinion from the people who are.

21 Q. Thank you. So this would then result in actions to
22 pursue the decision that has been made in relation to
23 this?

24 A. Yes, and also later on we moved to medical experts, some
25 of whom also were experts in the use of force.

Transcript of the Sheku Bayoh Inquiry

1 Q. Does this entry -- 28 May, so this is prior to getting
2 the police officers' statements, is this a recognition
3 by you that you do need to consider whether the use of
4 force by the officers was proportionate and necessary,
5 you have mentioned. You've not mentioned reasonable
6 there but we have heard evidence about that. Was that
7 a recognition by you that that would be required?

8 A. Yes, because I think by the time the officers eventually
9 agreed to provide statements we would want to know from
10 their description of what they did and what they saw,
11 et cetera, and then compare and contrast that against
12 their training.

13 Q. Thank you. Moving on to 40, please. This is dated
14 29 May, and you have noted here:

15 "Instruction from [Crown Office] to factor into
16 investigation concerns raised by family and their
17 solicitor. See attached letter."

18 And:

19 "These will form part of the investigation and
20 actions raised accordingly."

21 So this is a formal instruction from the Crown --

22 A. Yes.

23 Q. -- regarding the family's concerns?

24 A. Yes, so this is expanding the terms of reference.

25 Q. If we turn to the next page, do we see a letter dated

Transcript of the Sheku Bayoh Inquiry

1 18 May, so dated 11 days prior to the entry in the log.
2 But it is a letter from the Crown to the PIRC commenting
3 on a meeting that PIRC -- the Lord Advocate met with --
4 sorry, the Lord Advocate met with the family of
5 Sheku Bayoh on 14 May. So there was a meeting on 14 May
6 with the family and the Lord Advocate.

7 A. Yes.

8 Q. Now, I understand there was also a meeting with PIRC and
9 the Crown Office, the Lord Advocate that day. That was
10 a separate meeting. Were you at either of those
11 meetings?

12 A. No, so I think that was Ms Frame, so probably direct
13 your enquiries there.

14 Q. Thank you. Then during the meeting there were concerns
15 highlighted by the family in regard to the circumstances
16 of death and towards the end of that paragraph it says:

17 "I have summarised these in the attached document
18 and I would be grateful if you would factor these into
19 the ongoing investigation and revert to me with the
20 information requested~..."

21 That is from Mr Brown in Crown Office?

22 A. Yes.

23 Q. Then the factors are then in two separate pages slotted
24 into your log.

25 A. Yes. A lot of these things we were already factoring

Transcript of the Sheku Bayoh Inquiry

1 into the investigation. So for example CS spray, which
2 is the first bullet point that is mentioned there. Use
3 of batons, that was already subject to the
4 investigation. So some of that -- a lot of that we were
5 already doing.

6 Q. Then on the next page there's mention -- in the second
7 bullet point towards the end there is mention of
8 sickle cell disease. That is the first reference
9 I think of sickle cell disease in relation to the log.
10 Was that something that you had already embarked on,
11 starting to recover records, and seeking information
12 from the family about Mr Bayoh's history of health?

13 A. Yes, that is why we did it because I don't think it was
14 present within the GP records, you would need to examine
15 them, therefore that is why we went to Mr Bayoh's family
16 so see whether they had any information they could
17 provide to assist.

18 Q. In terms of the information that is provided here, this
19 comes from the Crown with a formal letter based on
20 a meeting that the Lord Advocate had with the family?

21 A. Yes.

22 Q. There's nothing in either of these pages that
23 specifically relates to concerns regarding race?

24 A. Not that I am seeing.

25 Q. Then paragraph -- decision 41. This is dated

Transcript of the Sheku Bayoh Inquiry

1 2 June 2015 it says:

2 "Crown instruction (attached).

3 "Examine compliance with Police Scotland standard
4 operating procedures by officers involved in incident."

5 Was this something that you were already doing at
6 this time? Because there had obviously been the
7 previous reference to looking at police policies.

8 A. Yes, what I tend to think here is Crown are unaware that
9 we did this as a matter of common practice in most
10 investigations. They were just seeking assurance that
11 we would look at that.

12 Q. So this is 2 June and then I think the letter from
13 Crown Office is attached behind that page, 1 June. It
14 is a request, again from Mr Brown to PIRC regarding
15 a recent meeting with the Lord Advocate:

16 "... the solicitor acting for the family of Mr Bayoh
17 requested sight of relevant standard operating
18 procedures for the Police Service in relation to
19 incidents of this type."

20 It asks in the second paragraph:

21 "... if you would confirm that the PIRC
22 investigation will examine compliance with standard
23 operating procedures~..."

24 So they were seeking confirmation from the PIRC --

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. -- that this was being done? I think you have said
2 there was -- as far as you were concerned, PIRC were
3 already doing this?
- 4 A. Yes, it is standard in most investigations where use of
5 force or CS/PAVA et cetera is used.
- 6 Q. Although this entry is in the log for 2 June, was that
7 something that had been actioned by PIRC prior to
8 2 June?
- 9 A. Yes. As I say, it is standard in most investigations.
10 We don't necessarily need to record it in a policy file,
11 usually it might just be simply including it in our
12 letter of notification to Police Scotland.
- 13 Q. Have you noted it in the policy file here because you
14 have received a specific letter from the Crown?
- 15 A. Probably. That is why I am showing it.
- 16 Q. Then moving on it decision 42. This is dated 2 June.
- 17 A. Yes.
- 18 Q. And it says:
19 "9 police officers involved in the incident have
20 agreed to give statements and be interviewed by PIRC as
21 witnesses~..."
- 22 We have heard evidence that this was the date at
23 which there was communications between PIRC and
24 Mr Watson, who represented the officers?
- 25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. And there was an agreement that the officers would make
2 themselves available for giving statements to PIRC?

3 A. Yes, my understanding is that it was John Mitchell that
4 held that conversation with Mr Watson, so he might be
5 better placed to inform you of what was discussed.

6 Q. It says here in your log:

7 "PIRC investigators will fully research all aspects
8 of investigations to date to ensure they are effectively
9 equipped to conduct interviews."

10 A. Yes.

11 Q. We have heard evidence that the statements were given on
12 4 June. So you find out on 2 June that the officers are
13 going to make themselves available. There's this entry
14 in the log saying, "PIRC investigators will fully
15 research all aspects". How was that to be managed?
16 Because there was nine officers involved.

17 A. To a certain extent my recall is we sat down and we
18 briefed the staff as to exactly what we were looking
19 for. Because each of the officers' actions would be
20 different. There was -- Garry Sinclair was drawing up
21 the interview strategy, which I think you have examined.
22 So we are trying to equip them with as much information
23 as possible because when you are doing lengthy
24 interviews, sometimes you go down a particular route,
25 officers raise particular matters, and therefore you

Transcript of the Sheku Bayoh Inquiry

1 want to be as fully informed as possible because you
2 might ask additional questions dependent on what their
3 response to whatever may be.

4 Q. So in terms of your expectations of your investigators
5 who were going to be conducting individual interviews or
6 taking statements from the officers, did you expect them
7 to familiarise themselves with eyewitness statements?

8 A. Either familiarise themselves with it or be briefed,
9 because let's remember we were holding daily briefings
10 for them, to update them on the progress of the
11 investigation, information and evidence gathered
12 et cetera, and that was a daily process from I think
13 4 May onwards. So they would be, I would consider,
14 relatively up-to-date with where we were in the
15 investigation and the evidence or information we had
16 acquired up to that point.

17 Q. Who would have been involved in briefing officers who
18 were taking statements about -- the witness statements
19 from say Ashley Wyse and Kevin Nelson?

20 A. It would either be Billy Little or myself. I don't know
21 whether it would be recorded in the minutes of the daily
22 meetings, which would show when that information was
23 provided.

24 Q. In terms of a record of what was said about statements
25 during a briefing, are you aware of having noted that

Transcript of the Sheku Bayoh Inquiry

- 1 down or prepared a paper in advance of that briefing?
- 2 A. Certainly they were key witnesses and as we discussed
3 yesterday, their statements were taken on the 5th, and
4 we were certainly alerted to what they said on the 6th.
5 I can't recall now whether that would then be
6 transmitted to everybody within PIRC investigations in
7 respect of the daily briefing. The briefing sheets, the
8 daily briefing sheets may show that.
- 9 Q. Would you have also expected officers who were
10 conducting the -- obtaining the statements from the
11 officers to have had sight of the relevant standard
12 operating procedures from Police Scotland?
- 13 A. I think generally PIRC staff are aware of standard
14 operating procedures in respect of use of force,
15 CS/PAVA, et cetera. As I say, the policies change on
16 a regular basis so keeping up-to-date with that, but the
17 general principles surrounding all of that sort of stuff
18 change very slowly, so generally because we are
19 expecting this material all the time, we are -- PIRC
20 investigators are familiar with the general principles
21 applicable~...
- 22 Q. Would -- sorry, I interrupted.
- 23 A. No, on you go.
- 24 Q. Would you have expected your investigators to be
25 familiar with the Snapchat footage or any CCTV that was

Transcript of the Sheku Bayoh Inquiry

1 available?

2 A. Yes, we would have shown that to all the staff.

3 Q. So was there any sort of meeting that day, or even on
4 3rd of June, with all the staff who were going to be
5 involved in speaking to the attending officers
6 discussing strategy, approaches, talking about issues
7 that should be explored or probed?

8 A. I can't recall but I am absolutely certain that that
9 occurred. The reason for that is as we moved to the
10 interviews on the 4th, so we put arrangements in place,
11 we get the officers away from Kirkcaldy, get them to the
12 Scottish Police College, we used the upper floor of
13 the castle, where there were rooms that we could --
14 sufficient room to have one officer in each room. Two
15 investigators were allocated to the interview of each of
16 the officers, regular breaks because each officer's
17 account would be slightly different, what you might get
18 is one officer mentioning a particular set of
19 circumstances, a specific issue and another officer
20 doesn't and that is why you have regular breaks where
21 you discuss these matters. I was there in
22 a co-ordination role. You may then say: well, can you
23 now go back and ask him about this, or ask her about
24 that and the officer might say: oh yes, that is right
25 I do remember that now. But you would want to get their

Transcript of the Sheku Bayoh Inquiry

1 initial sort of accounts and then go back and examine
2 that in detail, and have those regular breaks and
3 discussion with the investigators.

4 Q. Were you satisfied that your investigators would have
5 enough time given that arrangements were made for the
6 officers to come in on 4th June to give their
7 statements? So you find out some time on 2 June, you
8 have waited over a month --

9 A. Yes.

10 Q. -- for the statements, you have gathered in a lot of
11 material?

12 A. Yes.

13 Q. Were you satisfied that your investigators would be
14 fully equipped for the -- to go through that process on
15 4 June with the officers?

16 A. Yes.

17 Q. Yes. Did you have any concerns about the amount of time
18 that was available to them to prepare?

19 A. No.

20 Q. Did you feel you were -- your staff were in a position
21 by 4 June despite the fact they had not been asked to
22 prepare for this process prior to at least the 2nd?

23 A. I think as I mentioned just a few minutes ago, the staff
24 working in the investigation were briefed on a daily
25 basis on the progress of the investigation, the

Transcript of the Sheku Bayoh Inquiry

1 material, the evidence gathered, so they would be
2 up-to-date or up to speed. But equally that is why
3 myself and Billy Little were at the Scottish Police
4 College to coordinate that, just in case.

5 These were some of the lengthiest witness statements
6 I have ever seen taken, both in the police and in the
7 PIRC, some of them lasted nine hours. We were having
8 regular breaks from a welfare perspective, we even had
9 our evening meal at the Scottish Police College and
10 continued this well into the evening. So some of these
11 were the lengthiest interviews I have ever seen, and you
12 will have seen from the officers' statements some of
13 them run to 30, 40 pages.

14 Q. Did you feel -- you have talked about having breaks and
15 looking at what officers were saying. Did you feel you
16 were really in a position on that day to do any
17 comparison or discussion about contrasting and comparing
18 those statements?

19 A. We did. I think that is what I just mentioned, which
20 was they would come out -- my staff would come out and
21 brief me on where they had got to. My role was to
22 examine: well, you've told me that officer A has said
23 this in relation to this specific aspect, somebody else
24 has told me officer B has a different recollection,
25 therefore, we need to -- I am asking you to go and

Transcript of the Sheku Bayoh Inquiry

1 say: right, now you've said that, this officer has said
2 this, does that change your recollection? We have
3 already gathered what they are saying and then we are
4 going back and saying: well, look, we've got a slightly
5 different version of events.

6 Now, in any investigation it is natural you are
7 going to get different versions of events, no two people
8 see the same set of circumstances exactly the same.
9 That occurs in any investigation. But if you are
10 identifying anomalies, you have to ask about them, just
11 to satisfy yourself. But just because one person
12 remembers something slightly different, it doesn't mean
13 that it is an anomaly, you are just trying to clarify.

14 Q. From the purpose of transparency, when your
15 investigators went back in with information about what
16 other witnesses had said, other officers, was there
17 an attempt to identify that this was information that
18 had been supplied and did the interviewee, if you like,
19 wish to comment on anything?

20 A. I don't think what we would do is in and say: right,
21 officer A has said this. What we would say is: we've
22 been made aware, what's your recollection? Does that
23 change your recollection? That is how we would do it.

24 Q. For those moments "we have been made aware" --

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. -- would that be identified in the statement?
- 2 A. I think it would do. I think you would need to bring up
3 the officers statements, I really can't recall now the
4 exact detail --
- 5 Q. I don't want to do that process. But you would expect
6 your investigators to highlight that in the statement
7 that they are taking?
- 8 A. Yes. To a certain extent there will be natural
9 discrepancies, that is always the case. I can think of
10 another key enquiry, I will not go into the specifics,
11 but one officer remembers it different from the other
12 officer and it was a key part so you are going back and
13 you are asking: can you explain this anomaly? But there
14 should be natural discrepancies. As I say, everybody
15 sees something different. If it is a significant issue,
16 that is what you are wanting to address, not just
17 because it is a minor matter.
- 18 Q. So on 4 June it wasn't simply asking for their own
19 personal recollection of events but there may have been
20 further questioning where investigators have been made
21 aware of perhaps something that contradicted what was
22 being said or an anomaly, or something that didn't quite
23 fit with what was being said?
- 24 A. Yes.
- 25 Q. And you would expect the investigators to draw that

Transcript of the Sheku Bayoh Inquiry

1 section of the statement out and say --

2 A. Yes.

3 Q. And highlight it?

4 A. Frequently in any investigation the answer from the
5 witness may be, "Well, that is my recollection. Okay,
6 you've told me about this but that is not my
7 recollection, this is what my recollection of events
8 are."

9 Q. Thank you. Looking -- sorry, I will move on from that.

10 So at the end of that day on the 4th you have taken
11 statements from the officers?

12 A. Yes.

13 Q. And was there any consideration at that time about going
14 back and asking more probing questions in relation to
15 justification for the use of force? You obviously
16 mentioned that in the log.

17 A. Yes.

18 Q. And the significance of that, you have explained. Were
19 officers encouraged to go back and probe in relation to
20 that matter, ask further questions?

21 A. I think that is why we had those breaks, to discuss
22 things up at Scottish Police College. These were very
23 lengthy interviews, very comprehensive interviews. Now,
24 at a later date we did go back to some officers to ask
25 additional questions to see whether they could clarify

Transcript of the Sheku Bayoh Inquiry

1 certain points, but not immediately because we then
2 needed to take all this material back, we have got nine
3 officers' statements, some running to, as I say,
4 30/40 pages. We needed to go through them in detail,
5 that is going to take us a considerable period of time.
6 But then overlaying what they are telling us against all
7 the other evidence we have gathered up until that point,
8 because now we've got a reasonably comprehensive picture
9 of what has occurred but it is going to take us a few
10 days to go through all that material. And I do know in
11 the one instance myself and Billy Little did go back to
12 interview a particular officer, and I think it occurred
13 in the instance of others -- some other officers not all
14 officers.

15 Q. But in terms of the actions of the investigators on
16 4 June who are carrying out the interviews for the
17 statements, would your expectation have been that they
18 would have probed in relation to individual
19 justifications for individual uses of force?

20 A. Yes, we would have asked: what did you do, why did you
21 do it?

22 Q. So that "why" would have been an integral -- an
23 important part of the statement-taking?

24 A. Yes, and also let's remember we also wanted the officers
25 to tell us what was in their mindset prior to arrival,

Transcript of the Sheku Bayoh Inquiry

- 1 what were their considerations. Then what were your
2 actions, what did you do, why did you feel it was
3 necessary to do that.
- 4 Q. So you would expect questions about why they did
5 something, why it was necessary, and we are seeing the
6 word "necessary" being part of the justification?
- 7 A. Yes.
- 8 Q. Would that have included: why did you think that was --
9 well, in relation to preclusion and proportionate and
10 reasonable, and that type of thing?
- 11 A. Yes. And so Mr Bayoh was struck to the head with
12 a baton, we would have asked the officer: why to the
13 head and why not to the body? I would have sought
14 explanation for that.
- 15 Q. Thank you. We have heard a little about
16 Mr Sinclair's -- Investigator Sinclair's role that day
17 from Mr Little's evidence.
- 18 A. Yes.
- 19 Q. And he said that Mr Sinclair was a trained interview
20 adviser?
- 21 A. Yes.
- 22 Q. And he was asked to prepare a generic witness interview
23 strategy?
- 24 A. Yes.
- 25 Q. Mr Little I think expressed some views that Mr Sinclair

Transcript of the Sheku Bayoh Inquiry

1 felt there was perhaps not a lot of time for him to
2 prepare that generic witness interview strategy.

3 A. Yes.

4 Q. So I have asked you about the investigators and the time
5 they had. What about the time that Mr Sinclair had to
6 create this generic strategy; were you satisfied that he
7 had sufficient time?

8 A. Usually you would take as long as you considered
9 necessary, but we were working with a compressing
10 timeframe where the officers agreed on the 2nd and then
11 they agreed those interviews would occur on the 4th. So
12 we had a lot to do within that two-day period. It is
13 not necessarily ideal. You've just got to do what is
14 achievable.

15 Q. Can we look at the entry on 3 June, which is number 43,
16 decision 43. This entry appears to focus on:

17 "Enhance CCTV and other video/photographic evidence
18 seized during the investigation."

19 A. Yes.

20 Q. There is not any mention from this entry about witness
21 interview strategy, what Mr Sinclair has been asked to
22 do, any decision about that. Or about any issues
23 regarding how to prepare investigators. I am just
24 wondering about why, in that entry from 3 June, so the
25 day prior to the interviews, or the statements, why

Transcript of the Sheku Bayoh Inquiry

- 1 there is no mention of any of that there?
- 2 A. I think largely because those were actions issued to
3 officers and that is managed within the action logs
4 rather than within the policy document. Certainly those
5 conversations were occurring on 3 June, potentially from
6 the 2nd and 3 June because all the staff knew that they
7 were attending to the College, we had allocated the lead
8 investigator and the back-up to conduct the interviews.
9 So they certainly were aware. Garry was preparing the
10 interview strategy, he did run it by me, I knew it
11 was -- it was generic. Certainly in some large-scale
12 enquiries I have been involved in, each one is tailored
13 to the specifics of the person to be interviewed, we
14 didn't have time to do that.
- 15 Q. Had there been preparation of a witness interview
16 strategy prior to 2 June, would you expect Mr Sinclair
17 to have been able to prepare a -- more of a bespoke
18 strategy for each individual officer?
- 19 A. Yes, if he'd had greater time, then the potential is it
20 is a bespoke strategy. But he didn't have that time and
21 we didn't have that time and we are working within the
22 resource limitations that we had, and let's remember
23 Mr Sinclair was also performing a lot of other roles
24 within the investigation.
- 25 Q. I was going to ask you about that because in terms of

Transcript of the Sheku Bayoh Inquiry

1 why he didn't have enough time, if there had been
2 a decision taken at an early stage about creating
3 a witness interview strategy, would he have been able to
4 carve out more time to help work on that piece of ...?

5 A. Because he was undertaking key roles, primarily scene
6 examination, productions and other matters, the more
7 resources you have, the more you could carve out
8 somebody and say: you specifically focus on that. But
9 we didn't have that luxury. Not at that time.

10 Q. We have heard that there was the forensic strategy
11 meeting on 12 May.

12 A. Yes.

13 Q. Once -- and we have also heard evidence from
14 the forensic lab to say they received items like the
15 vest and the boots and the knife on 14 May?

16 A. Yes.

17 Q. After that had been put in place, did that not free up
18 any time for Mr Sinclair?

19 A. I don't think so because, as I mentioned earlier, we
20 were all multi-tasking. There was huge volumes of
21 information coming in, material, evidence, Airwave, all
22 sorts of material. And let's remember, for example,
23 when you get Airwave it is all very well listening to it
24 but to make it then available to everybody in the
25 organisation somebody needs to sit down and transcribe

Transcript of the Sheku Bayoh Inquiry

1 that. That can take a number of days to do so because
2 it's not simply a question of listening and writing
3 everything down. You know, you're hitting the pause
4 button regularly: right, what was said there? Right,
5 I will record that. It is frequently the case that you
6 need to go over it time and time again to actually
7 understand what is being said, particularly where people
8 are say using accents or colloquialisms or whatever,
9 so~...

10 And it is key -- up until the point that we got the
11 officers statements things like Airwave becomes key,
12 examination of CCTV, so you are saying to somebody: sit
13 down, we can see what has happened there or we think we
14 can see what has happened there, now write a transcript
15 of what has been seen. That becomes part of evidence as
16 well. So there is a huge range of tasks going on there.
17 It would have been ideal if I could have carved
18 Garry Sinclair out and set him aside for that. We
19 didn't have that luxury.

20 Q. Can we look for a moment at the witness interview
21 strategy. You will know I spoke to Mr Little about
22 this. PIRC 04182. If you have watched the evidence of
23 Mr Little you will know I have gone through this with
24 him.

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. Do you also recognise this as the witness interview
2 strategy?

3 A. Yes.

4 Q. Which was generic to cover all nine officers?

5 A. Yes.

6 Q. Prepared by Mr Sinclair and he ran it past you?

7 A. Yes.

8 Q. You will know that I asked Mr Little why there was no
9 mention, first of all, of race or any questions to do
10 with race in the strategy. Can I also ask you that
11 question?

12 A. I would suggest our job was to capture all available
13 evidence, so at that point we hadn't had terms of
14 reference to examine race, therefore we would capture
15 what each individual officer said, if such matters did
16 arise, then we would share that information with Crown
17 and seek additional terms of reference.

18 But I don't think we are going in there and
19 saying: was your approach to Mr Bayoh -- not initially
20 we are not going in there and saying: was your approach
21 to Mr Bayoh influenced by his race? Now, some of the
22 officers in their statements, as we mentioned this
23 morning, said that some of them initially considered
24 could this be a terrorist incident, so we would probe:
25 and why was that? And capture all that available

Transcript of the Sheku Bayoh Inquiry

1 information. So we want to know what their thought
2 process was and capture everything like that before then
3 potentially starting to explore issues -- specific
4 issues of race. And that came later in the Crown
5 instruction.

6 Q. Although at that stage your instructions are to
7 investigate the death and the circumstances?

8 A. Yes.

9 Q. And we looked at decision 21 earlier about considering
10 issues of religion and suchlike?

11 A. Yes.

12 Q. And taking cognisance of issues if they emerge. You
13 didn't have a term of reference from the Crown
14 specifically asking you to investigate race --

15 A. No.

16 Q. -- and so did not include any questions in that regard
17 in the witness interview strategy?

18 A. Did not ask any specific questions, but if the officers
19 mention any aspect of it, we would record it within
20 their statements, which I think we did in some
21 instances, some officers did say: well my consideration
22 was -- the example we heard this morning where somebody
23 thought the Lee Rigby incident came to their mind. So
24 we would record that within the statement.

25 Q. So you did record references to Lee Rigby or connections

Transcript of the Sheku Bayoh Inquiry

1 with terrorism or the use of words such as "coloured"?

2 A. Yes.

3 Q. But in terms of probing that further or asking
4 additional questions, did you expect your investigators
5 to do any of that?

6 A. Not at that stage. I think we would want to capture
7 that available information, then you have to consider
8 issues of stereotyping, you know, we have all heard it.
9 But we want to see what they are saying in the first
10 instance and then start to consider such matters.

11 Q. A moment ago you did mention -- you noted in your policy
12 log seeking information about the justification for the
13 use of force --

14 A. Yes.

15 Q. -- was it proportionate, was it necessary.

16 A. Yes.

17 Q. I think the example you gave is you would be asking: why
18 did you do that?

19 A. Yes.

20 Q. I am interested in your expectation of your
21 investigators there. Would you have expected them to be
22 asking those: why did you then do that?

23 A. Yes, and from recollection -- and again, I don't have
24 access to the officers' statements at this time -- did
25 we ask -- you can probably check -- did anything you do,

Transcript of the Sheku Bayoh Inquiry

1 was it affected by Mr Bayoh's race; was it affected by
2 the fact he was a black man? I cannot remember whether
3 those questions were asked but the statements should
4 show whether those questions were asked.

5 Q. Thank you. I am asking now about questions focused
6 towards the officers justification for the use of force.

7 A. Yes.

8 Q. If we look at through this witness interview strategy --
9 I won't go through all the pages with you, but if we
10 look at page 9 and 10. So 9 is headed up, "Initial
11 dealings with deceased". Where there is questions:

12 "Did you get out of the police vehicle?"

13 "What did you do?"

14 "Did anybody else get out~...?"

15 "What did they do?"

16 "Did you approach [him]?"

17 Did you hear anything/see anything, that type of
18 thing?

19 A. Yes.

20 Q. And then the next page, 10, "Arrest and restraint".
21 Questions focused very much on did they use their baton,
22 handcuffs or leg restraints, what did they do with
23 those, did they see other officers using them. There's
24 no questions there about: if you used your baton, why
25 did you use your baton? If you used your spray, why?

Transcript of the Sheku Bayoh Inquiry

1 What was your justification for it? Why did you
2 consider it necessary? Why did you consider it
3 reasonable, proportionate? Had you considered
4 preclusion, other less forceful levels of use of force?

5 A. Those questions were asked. They are just not set out
6 in the interview strategy, because I think if you go
7 through the officers statements you will notice that
8 they answer a lot of those points that you raised.

9 Q. Would your expectation have been that the investigators
10 would continue to ask those questions even though they
11 are not written down there?

12 A. Yes, and I think we have got to remember that each
13 officer acted differently, so six officers restrained
14 him. Two officers initially, then four officers, and
15 then eventually an additional two controlled his legs
16 and applied Fastraps. We know that PC Nicole Short, she
17 was conveyed to hospital. PS Maxwell attended but did
18 not take part in the restraint, so this is why this is
19 generic. But we would expect --

20 Q. You didn't know any of the who arrived when and what
21 they did at the beginning of these interviews for the
22 statements. I am interested in the approach taken in
23 the strategy for interviewing the witnesses, and why is
24 part of the strategy -- there was no apparent
25 recognition, on paper at least, that justification for

Transcript of the Sheku Bayoh Inquiry

1 any use of force, whoever had used that force or in
2 whatever way they had used force, why is there nothing
3 mentioned specifically about that in the witness
4 interview strategy?

5 A. I think it would be taken as a matter of course that we
6 ask those questions because we ask those questions in
7 any investigation where the use of force is undertaken
8 or CS/PAVA is deployed et cetera.

9 Q. You can perhaps understand my slight confusion at its
10 absence when the strategy itself does ask questions and
11 puts them down in writing like: describe what that
12 officer did. Or describe if -- tell us did you use your
13 baton. So it has been viewed as necessary to put those
14 questions down on paper but nothing about the motivation
15 or the justification for that use of force?

16 A. This is generic to all nine officers. But if an officer
17 said: well, I struck him with my baton, it's like: and
18 why did you feel it necessary to? Explain yourself. So
19 you would expect the investigators to adapt to whatever
20 they were told, as we did in every investigation.

21 Q. When we look at this page, "Arrest and restraint", it
22 says: did you use your baton, for example?

23 A. Yes.

24 Q. "If yes~..."

25 Because it is a generic witness interview strategy,

Transcript of the Sheku Bayoh Inquiry

1 and some may have used their baton, some may not, the
2 question that follows then is:

3 "... when?"

4 There is no question that follows on from there
5 saying "why?" I am just wondering why those questions
6 are absent completely. Were you relying on the
7 discretion of investigators to, from their own
8 experience, develop that line of questioning further?

9 A. Yes.

10 Q. Was there an instruction given to investigators that
11 they could -- an encouragement to investigators that
12 they could continue to explore things beyond the terms
13 of this strategy?

14 A. Yes, we knew that we would need to gain an explanation
15 of firstly what did they do, and then secondly why did
16 you do that.

17 Q. Thank you. We have one minute left. Can I look at
18 decision 44. Again, this is on 3 June. So going back
19 to the log, decision number 44, and this is a reference
20 on 3 June to:

21 "SPA forensics undertake DNA profiling of items
22 seized to show interaction between deceased
23 and officers."

24 What was that in connection with. We have talked
25 about the forensic strategy meeting on 12 May, this is

Transcript of the Sheku Bayoh Inquiry

- 1 an entry from 3 June. You have told us about DNA
2 profiling and you didn't really see much merit in that.
- 3 A. Yes, the knife that had been found, I think we knew that
4 it appeared to come from a matching set in Mr Bayoh's
5 home but could we confirm through DNA examination that
6 he had actually held that knife, and I think the term
7 used, which I forgot this morning was it was a DNA soup
8 there which made individual profiling not capable of
9 being understood.
- 10 Q. So this was specifically in connection with the knife
11 only?
- 12 A. Primarily in relation to the knife.
- 13 Q. There is no mention there that it is specific to the
14 knife?
- 15 A. Yes.
- 16 Q. This was the knife that had been identified by
17 DC Connell, or a knife had been identified by
18 DC Connell and recovered at some remove from the
19 incident?
- 20 A. Yes, and obviously we had a number of members -- excuse
21 me, frog in my throat -- obviously by that stage we had
22 statements from those members of the public that had
23 phoned 999 or 101 to report seeing Mr Bayoh walking down
24 the road with a knife, and they saw him immediately
25 before he turned into Hayfield Road and when he was in

Transcript of the Sheku Bayoh Inquiry

1 Hayfield Road. He had walked along -- you can see from
2 video he had walked along Hayfield Road and returned to
3 the roundabout, and the knife was found closer to the
4 roundabout than where the confrontation with the
5 officers occurred.

6 Q. But this entry talks about DNA profiling of items
7 seized, which you have explained was the knife:

8 "... to show interaction between the deceased
9 and officers."

10 Despite there being a briefing note from 3 May about
11 him brandishing a knife, you have indicated from the
12 statement of DC Connell it was found some distance away?

13 A. Yes.

14 Q. You had the statement of Kevin Nelson that he had
15 nothing seen in his hands?

16 A. Yes.

17 Q. I am just wondering why on 3 June there was this
18 decision noted about DNA profiling of items seized,
19 namely the knife, to show interaction between the
20 deceased and officers.

21 A. Well, was that the knife that Mr Bayoh was carrying?
22 Did the officers see that? Now, the officers said in
23 their eventual statements that they did not see him in
24 possession of a knife.

25 Q. You didn't have those on 3 June though.

Transcript of the Sheku Bayoh Inquiry

1 A. No. But equally we had a strong suspicion that
2 the knife found was the knife that Mr Bayoh had been
3 carrying due to its location.

4 Q. So how would DNA profiling of the items showing
5 interaction between the deceased and officers be even
6 possible based on the circumstances you knew at the
7 time?

8 A. Potentially I have just poorly worded that.

9 MS GRAHAME: All right. Thank you.

10 I am conscious of the time. Would that be
11 an appropriate moment?

12 LORD BRACADALE: We will take a 15-minute break at this
13 point.

14 (3.03 pm)

15 (A short break)

16 (3.20 pm)

17 LORD BRACADALE: Mr McSporrán, could I go back to the
18 evidence you gave about taking the statements from the
19 attending officers.

20 A. Yes, my Lord.

21 LORD BRACADALE: You describe how most of them at the same
22 time were taken to Tulliallan.

23 A. Yes.

24 LORD BRACADALE: And two of your investigators interviewed
25 each of the officers.

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 LORD BRACADALE: As I understood your evidence, and correct
3 me if I am wrong, the interviewing officers would take
4 a statement from the attending officer?

5 A. Yes.

6 LORD BRACADALE: And then have a discussion with you and
7 Mr Little, and you might then tell them that another
8 officer has said something rather different, there is
9 an anomaly, you described it.

10 A. Yes, where there is a large discrepancy, my Lord,
11 I think we needed to address that. Now, you expect, as
12 I said, natural discrepancies because everybody sees
13 things differently, but if there was a large discrepancy
14 that required to be addressed and we were having regular
15 breaks because some of these statements took nine to ten
16 hours so we would break every two hours and then we
17 would, for want of a better expression, compare notes as
18 to where we were, what they had said up to that point,
19 if there was a glaring discrepancy, well can we address
20 that.

21 LORD BRACADALE: The interviewing officers would then go
22 back in, and let's take -- call the attending officer
23 officer A, they wouldn't say to officer A: oh, by the
24 way officer B says something different. But they would
25 say that they have got information which is different?

Transcript of the Sheku Bayoh Inquiry

1 A. Yes. What we would probably do is be flagging it up to
2 PIRC staff as that occurred, but you might leave the
3 questioning about those discrepancies more towards the
4 end of the interview because it's a running narrative,
5 and the officers are still telling you what they did,
6 what they saw, why they did it. So you might leave
7 those questions more towards the end of the interview
8 but you are alerting staff at the time.

9 LORD BRACADALE: Would it be obvious to officer A that the
10 information must have come from one of the other
11 officers?

12 A. I think obviously. Or it might not be immediately
13 obvious because they will know that we are conducting
14 investigations and gathering all sorts of material,
15 including CCTV et cetera, so they might not precisely
16 know where that information has come from, in another
17 instance they may do.

18 LORD BRACADALE: They might have a good idea.

19 A. Yes, certainly.

20 LORD BRACADALE: Now, I am concerned here there might be
21 a risk of contamination of officer A realising there is
22 another version being given by another officer and
23 perhaps tailoring his evidence to fit that.

24 A. Yes, that is why you would leave those questions towards
25 the end of the interview, you would capture that

Transcript of the Sheku Bayoh Inquiry

1 officer's complete recollection of events and then
2 towards the end address those -- any glaring
3 discrepancies.

4 LORD BRACADALE: Going back to your own experience as
5 a police officer --

6 A. Yes.

7 LORD BRACADALE: -- if you were conducting a murder enquiry,
8 for example, and you had a group of civilian witnesses,
9 who were eyewitnesses, would you carry out an exercise
10 like that?

11 A. Yes, you did on a regular basis, what you would do is
12 collect the witness testimonies, normally during
13 a murder enquiry that might occur over a number of days
14 as you identified witnesses, and then if there was
15 glaring discrepancies you would go back and take
16 supplementary statements, and put those questions to the
17 witnesses.

18 LORD BRACADALE: I can understand that you would go back and
19 tease out the witness's statement, what the witness was
20 saying by questions that would be informed by your
21 different accounts that you had received, but what you
22 seemed to be describing earlier on with the police
23 officers was that you would go back and tell them that
24 there was a different account and get them to respond to
25 that.

Transcript of the Sheku Bayoh Inquiry

1 A. You would outline: we have information that this
2 occurred, you have told us a slightly different version
3 of that, but if it was a glaring discrepancy I think you
4 have to put it to them, and get an explanation and that
5 is why you would keep that more towards the end of the
6 interview, get the officer's full recollection of what
7 they think occurred, what they did, but if there is
8 a declaring discrepancy I think there is an obligation
9 to actually question them about that towards the end.

10 LORD BRACADALE: Thank you very much.

11 A. Thank you, my Lord.

12 MS GRAHAME: Mr McSporran, just to follow on from that, was
13 there any instruction given by you or Mr Little during
14 the breaks that information that was being shared was
15 not to be dealt with by the investigator until at the
16 end of the statement having been taken.

17 A. Yes, that is why would you want to capture the officer's
18 recall of events and work that through in a sort of
19 chronological order until you get to the end, then you
20 would put such questions to them. You wouldn't
21 interject into the middle to say: well, that's at odds
22 with what X is saying. You would keep that towards the
23 end, you would capture the officer's complete recall to
24 the best of their ability and if there was a glaring
25 discrepancy, then ask the questions. If there was no

Transcript of the Sheku Bayoh Inquiry

1 glaring discrepancy there might be no necessity to ask
2 such supplementary questions.

3 Q. Did you give that instruction to your investigators?

4 A. Certainly we would ask them to address these anomalies
5 if we identified them.

6 Q. Yes, did you give an instruction to your investigators
7 not to raise it until the end?

8 A. I would think so. Can I specifically recall what
9 occurred on the 4th? No, I can't. But usually you do
10 address anomalies towards the end.

11 Q. Do you remember any examples that day which arose
12 regarding anomalies or issues that you felt needed to be
13 put to individual officers?

14 A. I can't remember with the passage of time.

15 Q. So you mentioned earlier a phrase "we have been made
16 aware"?

17 A. Yes.

18 Q. If we were looking in the individual officers'
19 statements from 4 June, if something has been put to
20 them from another version --

21 A. Yes.

22 Q. -- would we expect to see that towards the end of that
23 statement?

24 A. Yes. Equally I raised the issue of CCTV, so if CCTV
25 showed something quite different from what the officer

Transcript of the Sheku Bayoh Inquiry

1 was telling us, again, we would ask that question
2 towards the end. You would get their full account and
3 then address these issues at the end of the interview.

4 Q. Was there an opportunity for investigators to show CCTV
5 to individual officers to get their perspective on the
6 CCTV?

7 A. I don't think you would show the CCTV because that might
8 influence their recall. You would want to get their
9 recollection and not influence their recollection by
10 showing them CCTV or whatever. There have been
11 instances, not specifically in this enquiry, where we
12 get an account from an officer and CCTV shows something
13 radically different and you've got to go back and ask
14 the officer, and sometimes you say: well, you told us
15 this happened, and we have recorded that, that you have
16 told us this happened. We are now going to show you
17 this. Now, if the officer is a suspect you are not
18 doing that. But if they are a witness you might do
19 that. And we have done it.

20 Q. Were officers shown CCTV on 4 June?

21 A. I don't think so. I can't -- to be honest I can't
22 recall but I don't think so.

23 Q. In terms of enhancing transparency and avoiding
24 contamination, would it have been possible for the PIRC
25 investigators to simply carry out the initial obtaining

Transcript of the Sheku Bayoh Inquiry

1 of the officers' statements, taking that over the course
2 of the day -- some may be taking a number of hours --

3 A. Yes.

4 Q. -- reflected on those statements together or
5 individually, or through yourself or Mr Little, and then
6 gone back to ask supplementary questions probing other
7 issues; is that something that could have been done?

8 A. It certainly could have been done but the fact is we had
9 the officers at the Scottish Police College together, we
10 were given the entire day to do that, and it moved into
11 the evening, so we tried to accomplish that on the day.
12 And I think the fact that we are now 32 days into the
13 investigation, we are -- we absolutely required their
14 accounts to piece together what happened.

15 Q. In terms of the PIRC investigation and the strategy in
16 terms of working out how to deal with the witnesses, was
17 any consideration given to perhaps finishing the
18 statements, reflecting on the content of those,
19 cross-checking them, comparing them, and then going back
20 on a separate day to individuals where that was
21 required?

22 A. We certainly did go back to some officers at a later
23 date to put additional questions to them.

24 Q. Was that on the instructions of the Crown?

25 A. No, that was I think ourselves. I remember specifically

Transcript of the Sheku Bayoh Inquiry

1 myself and Billy Little going to re-interview
2 an officer, who by that stage had said, "I'm refusing to
3 give a further statement".

4 Q. When was that? Was that the following year, or was it
5 before then?

6 A. I can't recall.

7 Q. We can maybe come back to that.

8 A. I can tell you the officer's name if that assists.

9 Q. Yes, that would be helpful.

10 A. It was Craig Walker.

11 Q. Thank you. We will maybe come back to that in a moment.
12 In the meantime, let's look at decision number 45, so
13 let's go back to the log. So we see decision number 45,
14 correspondence is mentioned here. This is dated -- this
15 is also dated I think 3 June but if we look at the
16 bottom of page, can you confirm that it is the 3rd and
17 not the 5th? Right down at the bottom, please. I think
18 the redactions have been enthusiastically applied on
19 this page.

20 A. I think more the intention there we were retaining all
21 correspondence, but there was such a volume that we
22 wanted to split it down into categories, so you had all
23 Crown correspondence, all Police Scotland
24 correspondence, correspondence from Mr Anwar, the
25 Police Federation, because there was a huge volume of

Transcript of the Sheku Bayoh Inquiry

1 correspondence. I think we have disclosed all that to
2 the Inquiry and I think there is over 1,500 items, so we
3 started to break it down by categories and it was more
4 from the practical aspects of filing that
5 correspondence, so you don't want to run from 1 to
6 1,500, you want to say, right -- for example, right,
7 what correspondences went between ourselves and Crown,
8 so you are electronically filing it in a folder called
9 COPFS. So it's more the practical aspects of managing
10 huge volumes of correspondence.

11 Q. Can we look at decision 46. This is about:

12 "Obtain position of Police Scotland regarding their
13 memos about 'subject' officers providing statements
14 which has been cited as the reason for officers not
15 giving statements in this investigation."

16 Can we look at the bottom of the page. My entry
17 shows this was from 7 June.

18 A. Yes.

19 Q. You can see that although the redactions are applied the
20 date there is 7 June. Can we go back to the top. First
21 of all, the statements have been given on 4 June. This
22 is an entry from 7 June.

23 A. Yes.

24 Q. There are no entries up to that date about what to do or
25 what decisions are being made about progressing matters

Transcript of the Sheku Bayoh Inquiry

- 1 now that you have the officers' statements. I am
2 wondering why that is missing from this decision log?
- 3 A. I think we became aware -- it was flagged up to us,
4 I can't remember who flagged it up to us but there had
5 been two memos from -- one from the head of PSD at the
6 time, I can't remember who was the other one. Now,
7 a subject officer is a suspect and therefore at that
8 time the police were doing a lot of criminal
9 investigations into their own officers, it was habit for
10 the police to request from subject officers operational
11 statements, but that memo was saying: look, that person
12 is a suspect, you should not be requiring an operational
13 statement from them. So we became aware of that, and
14 did that create confusion in the mind of the officers?
15 Well, it shouldn't have because there is a distinct
16 difference between a subject officer and a witness.
- 17 Q. I will come back to that. I was asking you in
18 particular about this entry being from 7 June.
- 19 A. Yes.
- 20 Q. And were any decisions being made, having obtained the
21 statements on 4 June from the officers, and you have
22 waited over a month for those, you've got those
23 statements, they are lengthy --
- 24 A. Yes.
- 25 Q. -- were any decisions being made about how to progress

Transcript of the Sheku Bayoh Inquiry

1 the investigation now that you had those statements?
2 Because there is nothing noted in the log and this is
3 dated 7 June. So this is three days later. And there
4 is no retrospective or contemporaneous notes saying what
5 are you doing now in terms of the officers' statements.

6 A. We would be examining the officers statements, as
7 I alluded to earlier, and these were detailed
8 statements, lengthy statements so it would take us
9 a number of days to work our way through that.

10 Additionally, if the officers raised a specific
11 matter we might have raised actions to go and find
12 additional evidence to either support or disprove the
13 officers' accounts or whatever, and you do that with
14 a lot of witness testimony, can you find supporting
15 evidence et cetera.

16 Q. Would there have been no decisions taken during that
17 three-day period in regard to the situation you were now
18 in as PIRC investigators with statements from the
19 officers, no decisions taken about that within that
20 three-day period that would be -- that would merit being
21 noted in the policy log?

22 A. No, I wouldn't think so because taking witness
23 statements is routine in any investigation, so I don't
24 think you would record the fact that you are reading
25 witness statements within a policy file, you would just

Transcript of the Sheku Bayoh Inquiry

1 expect that to be a matter of routine.

2 Q. So actions to be undertaken in relation to analysing the
3 statements or cross-checking the statements, or
4 considering whether further statements should be taken
5 or further queries to be done, none of that would appear
6 in the policy log?

7 A. No, you would expect that in any major investigate, so
8 that that would be taken as read.

9 Q. Then to go to the content of this page, this suggestion
10 that you were to obtain the position -- if we can keep
11 to the top:

12 "Obtain position of Police Scotland regarding their
13 memos about 'subject' officers providing statements
14 which has been cited as the reason for officers not
15 giving statements in this investigation."

16 So is this something involving PIRC in terms of the
17 memos or are those Police Scotland memos?

18 A. Those are Police Scotland memos. I know the Federation
19 was aware of those memos. Now, I think my thought
20 process was we know on day one, on 3 May, that PC
21 Amanda Givan of the Scottish Police Federation had said
22 to the officers, "Don't give statements". So the
23 thought process there was, well, why was she saying that
24 on day one? It had not occurred in any other
25 investigation and it hasn't subsequently, so what caused

Transcript of the Sheku Bayoh Inquiry

- 1 her to say that.
- 2 Q. Was that your understanding of what Amanda Givan had
3 said to the police officers?
- 4 A. Yes, and I think the police officers themselves, in
5 their statements we had asked them what advice did they
6 get from the Police Federation representative because
7 the legal representative didn't come on board until
8 after 3 May, therefore they were acting solely on
9 Federation advice. Not legal advice. We were trying to
10 understand, well, why did PC Givan say that on 3 May and
11 the officers said -- a lot of officers said she told us,
12 "Say nothing, don't give statements". So why did she
13 say that? And we were exploring options and one of
14 them -- exploring potential reasons, and somebody had
15 flagged up to us, and I can't remember where it came
16 from, but there had been two memorandums about "subject
17 officers", and a subject officer is a suspect, and
18 therefore it didn't apply to these officers because
19 these officers were witnesses. So had that caused
20 confusion in the mind of PC Givan? We didn't know, we
21 were looking for explanations.
- 22 Q. But you did have the statements by this date?
- 23 A. Yes.
- 24 Q. Decision number 47. This is dated 12 June, 2015. And
25 it says:

Transcript of the Sheku Bayoh Inquiry

1 "Letter (attached) from [Crown Office] instructing
2 that PIRC investigate."

3 And there are three items here:

4 "1. Allegations by the family of the deceased that
5 they were provided with misleading or erroneous
6 information concerning the death (by [Police Scotland])
7 and a concern as to why they were provided with that
8 info."

9 My understanding is you had known about the concerns
10 about the -- the family concerns prior to this date
11 though?

12 A. That is correct but we didn't have a specific
13 instruction to investigate that matter until this
14 arrived.

15 Q. So did you consider that a specific instruction from
16 Crown was required before you considered the family's
17 concerns?

18 A. Yes, because this is an additional terms of reference.

19 Q. "2. Concerns that the initial [Police Scotland]
20 investigators and attempts to secure evidence were not
21 thorough meaning that crucial evidence was lost to the
22 enquiry."

23 Again, you didn't consider that to be part of your
24 existing -- the scope of your existing investigation?

25 A. We were examining everything that Police Scotland had

Transcript of the Sheku Bayoh Inquiry

1 done, including the securing of evidence.

2 Q. Did you consider that to be an extension of the terms of
3 reference?

4 A. Yes. We had to specifically address this point because
5 Crown did ask us to specifically address this point but
6 we had collected a lot of that material.

7 Q. Then:

8 "3. There was inappropriate conferring between
9 police officers."

10 So you can look to the next page in the log and we
11 see the letter from Crown Office dated 12 June, to the
12 Commissioner. This appears to have been on the back of
13 concerns expressed by the family?

14 A. Yes.

15 Q. So to what extent do you feel you were already
16 investigating these matters in PIRC and to what extent
17 did you consider these matters to be additional
18 extensions to the terms of reference?

19 A. I think we had already captured a lot of that
20 information or evidence but really Crown are saying: we
21 want you to specifically address this in your report to
22 us, so examine these three areas, break that down and
23 specifically address these points. We had captured
24 a lot of it, as you say, the family's concerns about
25 misleading information, we had captured that. But Crown

Transcript of the Sheku Bayoh Inquiry

1 are saying: we want you to specifically address this and
2 therefore we had to examine what was said and when.
3 Now, we already had quite a lot of that, but was it
4 misleading? We then had to say, well, if we considered
5 it was misleading, why was it misleading? What caused
6 it to be misleading? So it slightly expanded what we
7 had already captured, so we would break that down and
8 provide that additional explanation.

9 Q. We may come back to the issue of misleading information
10 at a later stage but I will move on at this stage to
11 number 48:

12 "Per the instruction from [Crown Office] (see last
13 entry).

14 "Actions will be raised to investigate these
15 matters."

16 And so the fact that there's going to be actions is
17 specifically noted in this entry which is from 12 June,
18 and it says:

19 "Obtain all info supplied by [Police Scotland] to
20 family and statements from officers involved in
21 providing that info in order to determine whether the
22 family concerns are supported by the evidence and report
23 to [Crown Office]."

24 Was this information which you had already obtained?

25 A. A lot of it we had already obtained.

Transcript of the Sheku Bayoh Inquiry

1 Q. Had you already spoken to Mitchell and Parker, who were
2 officers who had delivered the death message to the
3 family?

4 A. I think we already had statements from them.

5 Q. I think we have heard from Mr Lewis that he was of the
6 view that this part of the investigation had already
7 been progressed by this stage?

8 A. A lot of it -- I would say a large part of it had
9 already been progressed, but of course Crown are
10 saying: we want you specifically to examine this and
11 report, so that would form -- rather than being
12 encompassed in the body of the report, the general
13 report, we would separate that out into a specific
14 section so as it made it easily understandable.

15 Q. I see. Can we move on to number 49, please. This
16 returns to the final post mortem report, and it is -- as
17 we discussed earlier that was dated 18 June and this
18 entry is 19 June.

19 A. Yes.

20 Q. We have already discussed this. Can we move on to
21 number 50, please. This reads:

22 "Obtain any intelligence from [Police Scotland]
23 regarding threat to officers from terrorist attack (UK
24 threat level) and any specific intelligence in the Fife
25 area that officers would be attacked."

Transcript of the Sheku Bayoh Inquiry

- 1 A. Yes.
- 2 Q. Was this something that you had actioned prior to this
3 entry on 19 June or was this something new?
- 4 A. I think the terrorist attack matters we had already
5 addressed. But some of the officers in their statements
6 to us on 4 June had said that there was -- some of them
7 thought there had actually been a briefing that I think
8 it was female officers in Fife are going to be attacked,
9 so we were trying to bottom out was there such
10 a briefing or was it simply rumour and speculation that
11 was going about in the ether that officers had picked up
12 on. And I remember specifically addressing that matter,
13 and I think it was through the Professional Standards
14 department, saying can you find this out. So the
15 terrorist matters, because officers had obviously raised
16 it within their statements~...
- 17 Q. So was this PIRC turning to focus their investigation
18 towards finding evidence that may have been supportive
19 of the information given by the officers in their
20 statements of the 4 June?
- 21 A. It was to find out -- again, the officers had told us
22 what was in their mindset as they were going towards it,
23 and a couple of them had mentioned within their
24 statements that there was -- a couple of them thought
25 there had been a briefing about attacks on officers in

Transcript of the Sheku Bayoh Inquiry

1 Fife, rather than generic across the UK, in relation to
2 terrorist matters because the terrorist threat level had
3 been raised to severe, that attacks on officers were
4 likely. But this was specific to Fife, and that is what
5 we wanted to bottom out.

6 Q. So there had been mention of the mindset of officers in
7 their statements, reference to Lee Rigby, terrorist
8 attacks?

9 A. Yes.

10 Q. But there was also additional information in other
11 statements regarding possible specific intelligence in
12 the Fife area about attacks on perhaps a female officer?

13 A. Yes.

14 Q. So was this designed to investigate further the
15 information you had in the police officers' statements?

16 A. Yes, because was what was in their mindset erroneous
17 and, you know -- so a couple of them mentioned the Fife
18 matter, so where did that arise from? Was there a basis
19 in fact? That is why we wanted to probe that.

20 Q. Is it fair to say this was not focusing on the
21 statements and the information in the statements from
22 the point of view of assessing whether there were any
23 issues of race arising or anything of that sort?

24 A. No.

25 Q. Can we turn to decision number 51. This is a record --

Transcript of the Sheku Bayoh Inquiry

1 A. Sorry, Ms Grahame. Could I take you back to my
2 reasoning in the last one, just to see whether there is
3 an explanation for that. So as we see:

4 "In their statements, the principal officers make
5 reference to the threat of terrorist attack, citing the
6 Lee Rigby incident, some also make reference to
7 information circulating in Kirkcaldy Police Office that
8 a female police officer would be attacked."

9 And then:

10 "Ascertain the specifics of the information provided
11 to officers to allow examination of their approach to
12 the deceased being potentially affected by such
13 information."

14 So that was my thought process.

15 Q. Thank you. Decision number 51. This is dated 19 June.

16 A. Yes.

17 Q. It seems to be saying:

18 "Undertake research on alpha-PVP."

19 A. Yes.

20 Q. Can I ask why this appears on 19 June? We have heard
21 the final post mortem report was dated 18 June.

22 A. Yes.

23 Q. And then this entry appears here. Was this -- does this
24 demonstrate the focus at that time?

25 A. Yes, because all of a sudden -- nobody had heard of

Transcript of the Sheku Bayoh Inquiry

1 alpha-PVP and it was quite a surprise because we are
2 saying: what is this drug? What is alpha-PVP? Because
3 it was given as a potential cause of death in
4 association with ecstasy et cetera, so it is like: well,
5 what is this, and what knowledge do we have of this? So
6 that is why we raised this and we -- immediately you go
7 into Google, as you do, and put in "alpha-PVP" and all
8 of a sudden a lot of material starts to appear. And
9 that is when we become aware, as I think as I either
10 mentioned this morning or yesterday, that there had been
11 significant deaths in the States, specifically Florida,
12 so this is us now doing our research of this.

13 Q. There is no mention here of any questions that you wish
14 to research in relation to restraint?

15 A. No.

16 Q. Or ecstasy for that matter?

17 A. No, I think there was a good understanding of the
18 potential effects of ecstasy, there had been ecstasy
19 deaths in the UK. And when we came to matters of
20 restraint we would capture the -- what the officers did,
21 but equally we were going to -- once we had had the
22 final post mortem report, it was then decided we will go
23 to experts, medical experts in the use of restraint and
24 its effects, and that occurred later on.

25 Q. Sorry, the full page is not visible on the screen so is

Transcript of the Sheku Bayoh Inquiry

1 the reason -- if we move down the page, we will see
2 that:

3 "Alpha-PVP is relatively unheard of in Scotland and
4 its use/abuse is unknown~..."

5 Et cetera. So that is the reason why you focused on
6 alpha-PVP?

7 A. Yes.

8 Q. So because there is only mention there of alpha-PVP,
9 would actions be sort of targeted in relation to
10 alpha-PVP in response to that decision?

11 A. I would think so, that -- as I say this -- it's not so
12 much coming out of the blue because it arose from
13 toxicology but none of us had heard of it before, I had
14 contacted -- there was an expert department in
15 Police Scotland called the STOP unit, the Statement of
16 Opinion Unit and we had contacted them and said: have
17 you heard of this? I also contacted the -- I can't
18 remember the name of the group but it was -- it wasn't
19 part of the police, some drug research group in
20 Scotland, and said: have you heard of this? Have you
21 heard of any incidence of deaths or whatever? Somebody
22 said: we have heard of one incident. Which was the one
23 I mentioned about something that happened at a music
24 festival in England. Tried to find out a background to
25 that.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. So you contacted the Statement of Opinion Unit?
- 2 A. Yes.
- 3 Q. Had they any information that they could provide to you?
- 4 A. They had very limited information. They had had heard
- 5 of it but I don't think there had been any seizures of
- 6 it in Scotland. And that is why I also went to the
- 7 Independent Drug Advisory Service, I think it was
- 8 called, because obviously they also maintain records,
- 9 statistics et cetera. So --
- 10 Q. And they had heard of one incident?
- 11 A. They had heard of one incident.
- 12 Q. Were they able to provide you with some information as
- 13 well?
- 14 A. Very limited information. Only that they had heard of
- 15 it and it appeared to relate to an incident at a music
- 16 festival, one incident. So from that it is like, we've
- 17 got one previous mention of it.
- 18 Q. Did you consider going back to the toxicologists who had
- 19 provided the information to Dr Shearer to complete the
- 20 final post mortem report?
- 21 A. We wouldn't go back to the toxicologists, potentially
- 22 Kerryanne Shearer would do so.
- 23 Q. Did you go back to her to ask about alpha-PVP?
- 24 A. I think initially we wanted to research it to find out
- 25 what it was and also its effects. Because you would

Transcript of the Sheku Bayoh Inquiry

1 want to present as comprehensive a picture as possible.

2 Q. If we can move on to number 52, please. This is
3 an entry from 19 June:

4 "Obtain and examine Airwave Automatic Resource
5 Location (ARL) data~..."

6 We have heard some evidence about ARL data:

7 "... and compare against officer account of events."

8 Again is this taking the statements given by the
9 officers on 4 June and looking at other evidence that
10 may --

11 A. Yes, does it support --

12 Q. -- add to that picture?

13 A. -- their accounts, does it differ from their accounts.
14 ARL, some police cars but not all police cars have --
15 it's basically GP. It records where that vehicle is at
16 any time. You can then look at the timestamp on the ARL
17 data to say where was that vehicle at that time and does
18 that accord with other information we know within the
19 timeline, and the officers' accounts.

20 Q. In terms of recovering that ARL data, had that been
21 considered at an earlier stage? This is obviously
22 19 June. The events took place on 3 May.

23 A. Yes.

24 Q. Had there been consideration about recovering that in
25 that period between those two dates?

Transcript of the Sheku Bayoh Inquiry

1 A. I can't recall. There would have been an action raised,
2 so the action would show when that was raised.

3 Q. So we have this entry in the management policy file, the
4 decision noted on 19 June. Can we look down towards the
5 reason. It says:

6 "Provide independent corroboration of officer and
7 vehicle movements prior to at the time of and following
8 the incident."

9 Had there been consideration of recovering this
10 prior, say, to the officers giving statements?

11 A. I can't recall.

12 Q. There is no reference in your log to that, is it
13 possible that this is the first consideration that has
14 been given to recovering ARL data?

15 A. Potentially, yes.

16 Q. Looking at number 53:

17 "Arrange and interview senior police officers who
18 managed and directed the early stages of the
19 [Police Scotland] investigation."

20 You have listed there a number of senior officers,
21 including Garry McEwan and Pat Campbell, and seeking to
22 obtain SIO policy files. Again, this is dated 19 June.

23 If we look at the reasons, it is:

24 "To obtain comprehensive understanding of the
25 [Police Scotland] management of the incident and

Transcript of the Sheku Bayoh Inquiry

1 incident response including dealings with the
2 family~..."

3 Had consideration been given prior to 19 June of
4 seeking statements from these officers? We know that
5 Garry McEwan, Nicola Shepherd and Pat Campbell had all
6 been at the Gold Group meetings at different times?

7 A. Yes, absolutely.

8 Q. So was this not part effectively of the 5 May formal
9 letter that was sent to the Deputy Chief Constable?

10 A. I think within that letter, from memory -- I am not
11 asking you to bring it back up, but we say obtain
12 statements from all officers involved in the incident.
13 This is just me recording the need to obtain that
14 information in respect of the senior officers in command
15 of the incident, so some of this is retrospective. So
16 for example obtaining the statements from
17 Patrick Campbell, that occurred over six interviews over
18 a lengthy period of time. So we didn't have all the
19 information available from Mr Campbell.

20 Q. My understanding is that there may have been delays in
21 securing enough time or sufficient time with
22 Patrick Campbell to take a full statement from him, and
23 that is why there was six occasions arranged?

24 A. Yes, I understand that is his position.

25 Q. Do you have a different position in relation to that?

Transcript of the Sheku Bayoh Inquiry

- 1 A. I think considering the importance of the Bayoh
2 investigation he should have prioritised it more. That
3 is a personal opinion.
- 4 Q. How long did it take you to get all the details from
5 Pat Campbell that you wanted?
- 6 A. The statements would show that but there was six
7 interviews over a period of weeks.
- 8 Q. Looking back, do you think there is a way that period
9 could have been condensed on the part of PIRC to
10 a shorter period?
- 11 A. Part of the challenge was Mr Campbell would say: I can
12 give you half an hour on this day. You know: that's it,
13 you've got half an hour. And then he would say -- well,
14 you know, we're capturing as much as we can within that
15 half an hour, at the end of it I am saying: we still
16 have a lot of information to go over here. Well,
17 I can't do it today, you will need to see me next week
18 at such and such a time. My own opinion was he should
19 have prioritised it more, given the gravity of what had
20 occurred.
- 21 Q. Thank you. We talked about -- a moment ago about you
22 going back to one of officers to seek a supplementary
23 statement, and you said it was PC Walker?
- 24 A. Yes.
- 25 Q. And the Inquiry does have a supplementary statement from

Transcript of the Sheku Bayoh Inquiry

1 PC Walker or noted which was dated 9 January 2017; is
2 that the date that you were thinking of?

3 A. Can you tell me who took the statement?

4 Q. Yourself and Mr Little visited Walker on 12 January 2017
5 at Kirkcaldy Police Office, and he declined the request
6 to provide a statement on 13 January 2017 --

7 A. That is right.

8 Q. -- is that correct? I think the reason for that visit
9 was because Crown Office had directed PIRC to examine
10 intelligence and/or information on threats to police
11 officers to attempt to establish the provenance of this
12 information?

13 A. Yes.

14 Q. But he declined at that stage. That was in
15 January 2017?

16 A. Yes.

17 Q. Thank you. I think we were turning to decision number
18 54. This is 23 June:

19 "Meeting with Mr Anwar, solicitor for the family of
20 deceased."

21 There is an attached note of meeting which follows
22 on from here and then if we move down to the reason it
23 says:

24 "Update Mr Anwar as to progress of the PIRC
25 investigation."

Transcript of the Sheku Bayoh Inquiry

- 1 He was the single point of contact at that stage?
- 2 A. Yes.
- 3 Q. Tell me about PIRC resources by 23 June, the end
4 of June?
- 5 A. We were becoming stretched as we know, so we had the
6 Bayoh investigation, which was absolutely a priority,
7 and then of course the M9 death crash occurred. So that
8 is two huge significant investigations within a matter
9 of six weeks. I think what we have also got to consider
10 is that this was not the only work that was coming in.
11 There were other referrals coming in, other
12 investigations coming in. These certainly were the top
13 priority but you are spreading your resources pretty
14 thin now with two huge investigations and other work.
15 And you've only got 22 staff.
- 16 Q. At the point that the M9 road traffic accident occurred,
17 what did that do to the resources that were dealing with
18 the investigation into the death of Sheku Bayoh?
- 19 A. Some of them had to be pulled away to deal with that.
- 20 Q. How many were you left with on this investigation?
- 21 A. I can't recall the exact number, but I would suggest it
22 was approximately a 50/50 split, so it might have been
23 10 or 11 staff.
- 24 Q. What impact did that have on your ability to continue
25 making progress with the actions and reviewing matters?

Transcript of the Sheku Bayoh Inquiry

1 A. Well, obviously slows things, because you have now got
2 even less resources and, therefore, you can be
3 effective, as I stated yesterday, but it's the
4 timeliness of being able to achieve this with even less
5 resources, and that considerably then extends how long
6 everything is going to take.

7 Q. You have slotted in a paper on the note of the meeting
8 with Mr Anwar. It is a page and a bit. If we can move
9 on with the log. Do we see there that that meeting took
10 place on 22 June at 2 o'clock in the afternoon. So the
11 entry in the log is prepared the following day.

12 A. Yes.

13 Q. You were present along with Brian Dodd?

14 A. Yes.

15 Q. There is discussion on a number of matters here with
16 Mr Anwar. There doesn't appear to be any reference to
17 issues of race in connection with that meeting, is that
18 correct?

19 A. If it doesn't say so in the briefing note then I am not
20 aware of it being raised. If it had been raised I would
21 have probably included it in the briefing note.

22 Q. So would this briefing note have really encompassed all
23 the issues that were discussed, to the best of your
24 collection?

25 A. The post mortem report was sent to Mr Anwar and

Transcript of the Sheku Bayoh Inquiry

1 ourselves on the same day, so he would see that cause of
2 death. Because none of us, including Mr Anwar, had
3 heard of alpha-PVP, we informed him we will undertake
4 research in respect of this matter. And we would have
5 done that anyway in respect of the investigation.

6 Q. What it does say here at the first bullet point,
7 regarding the post mortem report, is that:

8 "Mr Anwar was informed PIRC would seek expert
9 opinion on the effects of these drugs and restraint."

10 A. Yes.

11 Q. So at least in relation to the conversation you had with
12 Mr Anwar there was a recognition that PIRC would be
13 moving forward with investigating the issue of
14 restraint, although it hadn't been noted in the log?

15 A. Yes, and we later did. We went to experts, additional
16 medical experts and restraint experts.

17 Q. If we look at bullet point 4:

18 "Mr Anwar said that the family were still concerned
19 ..."

20 Do you see that there on the screen?

21 A. Yes.

22 Q. "... that Police Scotland lied to them on the day of
23 death, giving them several differing, competing accounts
24 of what happened. I told him we had still to interview
25 various senior officers and we would seek detail of what

Transcript of the Sheku Bayoh Inquiry

1 had occurred."

2 A. Yes.

3 Q. So was this the part of the investigation -- well, part
4 of the reason you were speaking to senior officers?

5 A. Yes.

6 Q. To see what information had been provided to the family?

7 A. Yes.

8 Q. And was one of those officers Pat Campbell?

9 A. Yes. I think if I remember back on the day when the two
10 initial detective officers went to the Bayoh family
11 house, on the second occasion they read out from a note
12 provided by Pat Campbell and we had recovered that note
13 as documentary evidence.

14 Q. Thank you. Was there any other discussion at that
15 meeting with Mr Anwar in relation to where the focus of
16 the investigation lay at that moment? Was there
17 discussion about alpha-PVP being something that
18 investigators didn't know about and were exploring?

19 A. I can't recall exactly what was said, but none of us had
20 heard of alpha-PVP and all of a sudden it is appearing
21 in the post mortem report. So you would expect there to
22 be discussion about it, and we had said we are going to
23 research this. We needed to know what it was. He
24 certainly would have an interest in understanding what
25 it was on behalf of the family.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. Then at the bottom of page 1:
- 2 "I informed Mr Anwar that, in light of the
- 3 toxicology and PM findings it was the PIRC intention to
- 4 re-interview close associates of the deceased to
- 5 discover whether we could trace when and where he
- 6 consumed the drugs and his background in respect of
- 7 illegal drug consumption."
- 8 How would that assist the investigation?
- 9 A. So where did he get the drugs? Was he aware that it was
- 10 alpha-PVP? There was a suggestion that he wasn't aware
- 11 of it. He thought it was crystallised ecstasy. As we
- 12 began to explore this, I can't remember who it was but
- 13 I think one of the witnesses was a Mr Hume, and he --
- 14 from memory, I think he told us that potentially people
- 15 were cutting ecstasy with alpha-PVP. You might need to
- 16 check that, but I think it came from him.
- 17 Q. We have a statement from Mr Hume.
- 18 A. Yes. Because, as I say, we had never heard of it, so
- 19 where is this suddenly coming from? There was mention
- 20 that Mr Bayoh had previously consumed drugs. I think
- 21 Mr Hume had also told us that about a week before that
- 22 himself and Mr Bayoh had taken what they thought was
- 23 crystallised ecstasy and he said he got a strange
- 24 feeling out of this. So was this ecstasy cut with
- 25 alpha-PVP? So we were exploring that matter.

Transcript of the Sheku Bayoh Inquiry

1 Q. Of course you knew that alpha-PVP had appeared on the
2 post mortem --

3 A. Yes.

4 Q. -- from the results. Can we move on to 55, please.

5 LORD BRACADALE: I think we might stop there, Ms Grahame.

6 We will continue with your evidence, Mr McSporran, on
7 Tuesday, 27 February.

8 A. Yes, my Lord.

9 LORD BRACADALE: The Inquiry will now adjourn until then.

10 (4.12 pm)

11 (The Inquiry adjourned until 10.00 on Tuesday,
12 27 February 2024)

13

14

15

16

17

18

19

20

21

22

23

24

25

Transcript of the Sheku Bayoh Inquiry

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

MR JOHN MCSPORRAN (continued)1

Questions by MS GRAHAME (continued)1