

Transcript of the Sheku Bayoh Inquiry

Tuesday, 27 February 2024

(10.00 am)

MR JOHN MCSPORRAN (continued)

Questions from MS GRAHAME (continued)

LORD BRACADALE: Good morning, Mr McSporran.

A. Good morning my Lord.

LORD BRACADALE: Ms Grahame.

MS GRAHAME: Good morning, Mr McSporran.

A. Good morning, ma'am.

Q. You were here on Friday, 16 February --

A. Yes.

Q. -- and there is one thing I would like to recap on, if I may.

We were talking about when the officers went to give statements on 4 June 2015, and we talked about a number of them going to the Scottish Police College --

A. Yes.

Q. -- and giving statements during the course of the day there.

A. Yes.

Q. And I just wanted to confirm, two of the officers weren't present that day, were they?

A. No, I think it was Nicole Short and Alan Paton.

Q. So they gave statements that day, but they were in different locations, not in the Police College?

Transcript of the Sheku Bayoh Inquiry

1 A. I don't think they gave statements that day. They gave
2 them a few days later. I think PC Short had been
3 injured, so we had to make separate arrangements to get
4 her statement.

5 Q. Am I right in saying at that time they were both absent
6 from work?

7 A. Yes.

8 Q. Right, and so alternative arrangements were made to
9 accommodate them to give their statements?

10 A. Yes.

11 Q. And at some point around about 4 June, they gave those
12 statements, according to your recollection?

13 A. I think it was slightly after 4 June. Their statements
14 would show when they were taken.

15 Q. They would. All right. We can double-check that.
16 Thank you.

17 Can I take you back to the log, please, and I think
18 we were just about to turn to decision number 55. This
19 is pdf page 81. There we are, you will see on the
20 screen.

21 If we look towards the bottom of that page, we will
22 see that the date and time of this entry is given as
23 23 June 2015. Was this roughly around about the time
24 that you prepared this entry?

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. If we look at the top of the page, it said -- so this
2 is -- I think we looked at the final post mortem report
3 on 16 February, when you were here last; that came in on
4 18 June.

5 A. Yes.

6 Q. And it says here:

7 "PIRC to identify Medical Experts who can provide
8 opinion on cause of death including effects of drugs,
9 restraint, medical & drug misuse history of deceased,
10 and present their CVs to [Crown Office] so that they can
11 select experts whose opinions can be sought."

12 A. Yes.

13 Q. So you had received the final post mortem by that stage.
14 We discussed that last time. This entry is 23 June, not
15 long after that had been received, and a decision had
16 been taken that PIRC were to identify medical experts in
17 relation to certain areas.

18 A. Yes.

19 Q. And whose decision was that?

20 A. I think it was probably a discussion between PIRC and
21 Crown. I think I covered it last time I gave evidence,
22 which is we then went to the College of Policing, the
23 National Crime Agency, to obtain a range of experts and,
24 as it says there, present their CVs to Crown for them to
25 choose which ones for us to approach on their behalf.

Transcript of the Sheku Bayoh Inquiry

1 Q. How common was it for PIRC to then go on and look for
2 medical experts in terms of an investigation?

3 A. Very uncommon. I think the challenge we had, as I spoke
4 about earlier -- so we know the drug ecstasy. We didn't
5 know the drug alpha-PVP. And, as we previously said,
6 the cause of death was drug intoxication whilst being
7 restrained, but the final post mortem didn't say whether
8 restraint played a part in the death. So in discussion
9 with Crown, that is why we wanted to go to medical
10 experts to obtain a range of opinion.

11 Q. You have said it was very uncommon.

12 A. Yes.

13 Q. What would the normal process at that time have been in
14 terms of perhaps seeking further medical opinion?

15 A. Usually the pathologist will give you all that
16 information. But there was an unusual aspect to this.
17 As I say, I don't think anybody had heard of alpha-PVP,
18 and then there was this -- he died from drug
19 intoxication whilst being restrained. So did the
20 restraint play any part in the death? Because the final
21 post mortem report didn't say that. And that is why we
22 wanted to go to medical experts.

23 Usually the pathologist will give you all that
24 information, but it wasn't in the final post mortem
25 report at this time.

Transcript of the Sheku Bayoh Inquiry

1 Q. I understand that was your understanding of the final
2 post mortem report. Was that something that you went
3 back to Dr Shearer or Dr Bouhaidar on in relation to
4 the cause of death?

5 A. I don't think at that time. I think we held a
6 discussion with Crown and Crown said, "Right, go to
7 further experts". I know Billy Little did go back to
8 Dr Shearer at a later date --

9 Q. I think you said, yes.

10 A. -- but not at this time.

11 Q. Why -- can you explain to us why the Crown told you,
12 PIRC, to start looking into things with medical experts,
13 rather than taking matters on themselves?

14 A. We investigate on their behalf. They direct us and we
15 investigate on their behalf. And that is really what we
16 are doing here, is undertaking investigation on their
17 behalf.

18 Q. And was it -- you have said it was very uncommon for
19 PIRC to be investigating with medical experts. So how
20 common is it for PIRC to investigate matters with -- in
21 relation to cause of death, for example? Or was,
22 I should say, in 2015.

23 A. I think that is quite a complex question, if I could
24 explain.

25 There is a range of deaths that PIRC investigate:

Transcript of the Sheku Bayoh Inquiry

1 deaths in cells we have talked about, death in custody,
2 death following police contact. Particularly in deaths
3 following police contact, there can be all sorts of
4 factors that come into play, and you've really got to
5 probe and investigate them to see whether the actions of
6 the police played any part in the death or was an
7 inaction. Did that contribute or -- so that's why it's
8 quite a complex question and a hard one to actually pin
9 down with a precise answer.

10 Q. We've heard that the cause of death was multifactorial.
11 That was a word that was used to describe how a cause
12 may not simply be one stab wound to the heart.

13 A. Yes.

14 Q. It could be a number of factors contributing together to
15 cause the person's actual death.

16 A. Yes.

17 Q. That's your understanding?

18 A. Yes, and I think that is what I have alluded to there,
19 that there can be a whole combination of factors.

20 Q. So if the cause of death is multifactorial, would you
21 consider at that time that it would still remain PIRC's
22 responsibility to look into each of those factors?

23 A. We would explore them as much as possible. Report to
24 Crown. Crown can then direct additional investigations
25 or additional inquiries. Sometimes that can be quite

Transcript of the Sheku Bayoh Inquiry

1 common; other times, we've managed to answer all the
2 questions.

3 Q. So when I asked about how common it was for PIRC to
4 explore issues with medical experts, and you said it was
5 very uncommon, what situation were you envisaging when
6 you said very uncommon?

7 A. I think in relation to this particular investigation,
8 the sheer range of medical experts that we went to was
9 highly uncommon. I have never seen that before or since
10 in a PIRC investigation, and that is really what
11 I meant, was this was very uncommon.

12 Q. So how common was it for PIRC to actually investigate
13 a multifactorial cause of death with medical experts?

14 A. Again, relatively uncommon. Usually what you may get
15 is, as was the case here, you will get the initial
16 post mortem report, which will tell you "unascertained
17 pending further investigation". Now, usually what
18 happens is samples will go for toxicology analysis or
19 other analysis. That will come back, and it's the
20 pathologist that then takes all these additional factors
21 when coming up with the cause of death.

22 When you've got, let's say, a death following police
23 contact, so a person has had contact with the police,
24 they don't die in custody, they die maybe two or
25 three hours later, so did anything the police do or not

Transcript of the Sheku Bayoh Inquiry

1 do contribute to that person's death? And that is where
2 you have got to undertake further investigation. Now,
3 that is not necessarily -- and it certainly most of the
4 time is not going to be -- seeking medical opinion, but
5 you might go to GP or other things to understand whether
6 they had underlying health conditions, drug addiction
7 issues, et cetera.

8 Q. Right. So that is in relation to determining the cause
9 of death, but once you have the post mortem report, the
10 final post mortem report, from the forensic pathologist,
11 I am trying to get a sense of how often PIRC were asked
12 to go down the route of identifying medical experts,
13 instructing medical experts, and seeking opinions from
14 medical experts.

15 A. It's not common. Now, I can't give you a precise
16 number, but it's not common.

17 Q. So you've said in relation to the tasks carried out by
18 PIRC in relation to Mr Bayoh's death that that was
19 unusual. You had never seen as many experts explored --

20 A. Correct.

21 Q. -- by PIRC.

22 A. Yes.

23 Q. And leaving aside Mr Bayoh's death, either before 2015
24 or after, how many other investigations had you been
25 involved in where the Crown asked PIRC to explore these

Transcript of the Sheku Bayoh Inquiry

1 matters with medical experts?

2 A. I don't recall. Not very often is my best recollection.

3 Q. Do you have any recollection of you being involved in
4 an investigation where PIRC or you personally had to
5 instruct medical experts and find out what their
6 opinions were about cause of death?

7 I am not talking about the forensic pathologists who
8 have done the post mortem, but other experts. Have you
9 personally been involved in any of those?

10 A. Well, you go to experts all the time for forensic
11 matters, forensic examination, the Scottish Police
12 Authority --

13 Q. Yes.

14 A. -- and that is relatively common, but --

15 Q. So I am not talking about forensic, I am talking about
16 medical.

17 A. For medical experts --

18 Q. Yes.

19 A. -- it is very uncommon, and I don't recall another
20 example. It might have occurred, I just don't recall.

21 Q. Right, thank you.

22 Can we move on to number 56, which is the next page.
23 This relates to correspondence, an email. The entry is
24 24 June, and it's correspondence from Mr Anwar seeking
25 answers to various points raised and highlighting issues

Transcript of the Sheku Bayoh Inquiry

1 for investigation or examination, and that was forwarded
2 to Crown Office for advice and instruction on 29 June.

3 So this was correspondence Mr Anwar was sending to
4 PIRC --

5 A. Yes.

6 Q. -- on behalf of the family, and I believe the email
7 itself is attached just behind this page.

8 A. Yes.

9 Q. We will see that it's -- the content is covering two
10 pages, but it's a three-page document, essentially, and
11 it mentions a number of questions -- around 12 -- about
12 circumstances surrounding Mr Bayoh's death. It covers
13 lots of areas: the knife, Chief Superintendent
14 Garry McEwan and information he gave, and all sorts of
15 matters.

16 Do you remember that email?

17 A. Yes.

18 Q. Right.

19 Then can we look on page 2, at (xii). There is
20 a question there about the expertise of
21 Professor Flanagan in relation to positional
22 asphyxiation and restraint techniques.

23 Was he someone that PIRC had identified as
24 a possible expert?

25 A. He was one of the experts whose CVs we obtained. We

Transcript of the Sheku Bayoh Inquiry

1 sent it to Crown. Now, Crown didn't proceed or ask us
2 to instruct Professor Flanagan, so I don't know whether
3 the impact of this memo or email -- or Mr Anwar had
4 raised concerns direct with Crown, but we certainly
5 weren't instructed to approach Professor Flanagan.

6 Q. Was Professor Flanagan one of the names that you
7 identified through speaking to the College of Policing
8 or other organisations?

9 A. Yes, it was quite a range of experts whose CVs we would
10 really get. They hold the CVs, the College of Policing,
11 National Crime Agency, so you get almost like a one or
12 two-page summary of their area of expertise, and that is
13 what we would provide to Crown.

14 Q. How common was it for PIRC to be involved in instructing
15 experts in relation to positional asphyxiation and
16 restraint techniques?

17 A. This is the first time I can recall that we did this.

18 Q. Right, thank you.

19 We see at the bottom of page, or the screen I should
20 say, the email says:

21 "As stated on previous occasions in deaths in
22 custody, there will always be the additional difficulty
23 of separating any potential contribution of restraint
24 measures from the underlying pathology. For example,
25 was death due to the police restraint methods, or to

Transcript of the Sheku Bayoh Inquiry

1 positional asphyxia, or from excited delirium
2 syndrome/ABD or from the interplay of all these factors?
3 The causes of these deaths can be seen to be
4 multifactorial; focussing on biophysiological causation
5 alone ignores the narrative of each individual death and
6 the complex factors leading up to the death - hence our
7 concerns."

8 Was this something that PIRC were looking into?

9 A. I would say so, due to the range of experts, medical
10 experts, that we eventually approached on behalf Crown.

11 Q. And it was obviously something that was of concern to
12 the family at that time as well?

13 A. Yes.

14 Q. Thank you.

15 Can we move on to the next decision, number 57.

16 This is an instruction from Crown Office regarding the
17 investigation, "See attached email". This is an entry
18 from 3 July.

19 If we turn on to the next page, can we see the email
20 that has been inserted, and this is 3 July, and it's
21 an email from Les Brown, and we have heard that he is in
22 Crown Office. He was the head of complaints against the
23 police division.

24 A. Yes.

25 Q. There is a mention there, if we can look at (iii) and

Transcript of the Sheku Bayoh Inquiry

1 (iv) at the bottom:

2 "In respect of the allegation concerning Mr Saeed as
3 this appears to include an allegation of criminal
4 conduct this should form part of the investigations by
5 PIRC."

6 So this was effectively, as I understand it,
7 a further instruction for PIRC to look into these
8 allegations?

9 A. Yes. Well, this was, I would say, a separate criminal
10 allegation.

11 Q. Right. Is that (b) (i)?

12 A. Yes. Separate from the death investigation.

13 Q. Just going back to page 57 for the moment, we see that
14 this was a specific Crown instruction. Item 3 was
15 mentioned. It related to Zahid Saeed's allegations, and
16 it related to criminal conduct.

17 There is a note there:

18 "Raise actions & investigate - interview officers.
19 Interview Saeed - He has never previously made these
20 allegations and obtain his statement as to what he says
21 happened."

22 So on this particular page, there is mention of
23 raising actions. That does not appear on all the
24 pages --

25 A. No.

Transcript of the Sheku Bayoh Inquiry

1 Q. -- in relation to the decision. What was the purpose of
2 inserting that into the policy file?

3 A. I don't think there was any purpose, really. It was
4 taken as read that actions got raised to do things
5 within any major investigation, so I probably just put
6 that down there. I haven't -- I don't think I have
7 placed it really anywhere else within the policy file,
8 so there is no specific reason why it's there.

9 Q. Okay. But the plan was to interview Mr Saeed about the
10 allegations and also the -- investigate the -- interview
11 the officers, I should say?

12 A. Yes.

13 Q. And would you have tasked that to other members of the
14 PIRC investigators team and expected them to get on with
15 that?

16 A. Yes.

17 Q. Thank you.

18 Then can we move on to page 58. This is from 7 July
19 and the decision is:

20 "Provision of material to Mr Anwar for onward
21 provision to medical experts acting on behalf of
22 family."

23 Was this at a moment in time when the family were
24 investigating matters, instructed an expert, and
25 required information from PIRC to move that forward?

Transcript of the Sheku Bayoh Inquiry

1 A. Yes, I think Mr Anwar had intimated to us that he wanted
2 to instruct his own medical experts. Of course, we need
3 permission from Crown to release that material.

4 Q. And is that something you obtained in order to
5 facilitate the family's enquiries?

6 A. Yes, because, as I said, we prepared the expert witness
7 packs for all the experts, but we do need the Crown's
8 permission to release that, either to the ones that they
9 have selected or to the ones that Mr Anwar -- we would
10 provide the expert witness pack to Mr Anwar or the
11 experts that he had selected.

12 Q. It says there:

13 "PIRC will not release material but provide material
14 to [Crown Office]."

15 A. Yes.

16 Q. Was that the arrangement that was made with
17 Crown Office, that they would release the actual
18 material?

19 A. Yes, or they could instruct us to do so, but we need
20 that section 44.6 instruction.

21 Q. Thank you.

22 Let's look at page 59 -- sorry, decision number 59.
23 There is reference there of the expert witness packages,
24 and I think we have looked -- we have discussed this
25 previously. There were expert witness packages prepared

Transcript of the Sheku Bayoh Inquiry

1 for each of the experts that were instructed by PIRC,
2 and they were sent a number of documents which we have
3 looked at previously.

4 A. Yes.

5 Q. And that included a statement from Ashley Wise, and we
6 have heard evidence that a section of that statement had
7 been missed out.

8 A. Yeah, I think we have covered that.

9 Q. We have covered that.

10 Can we move on to the next page, please, 60.

11 Now, this is a narrative, and it relates to
12 correspondence received from Mrs Paton, the wife of
13 PC Alan Paton, and there were some concerns expressed
14 about entries in the media.

15 I am interested in the decision to be taken by PIRC
16 here:

17 "[Police Scotland] to be informed & concern from
18 Mrs Paton passed to them for appropriate action."

19 So is that the normal procedure if concerns are
20 raised with PIRC about entries in the media?

21 A. Well, Mrs Paton had, I think, expressed or considered
22 that this placed her husband at risk, herself and her
23 children. So PIRC -- I think as we discussed
24 previously -- we've got to provide that information to
25 the police, because only they can take appropriate

Transcript of the Sheku Bayoh Inquiry

1 action.

2 Q. Thank you.

3 Decision number 61. It appears the decision is:

4 "Update from Mr Anwar seeking details on progress of
5 PIRC investigation."

6 And there is an email, a copy of an email, attached,
7 if we move down the page. You will see this is dated
8 28 July 2015 -- keep going, please -- and it's from --
9 to Alistair, who is Alistair Lewis, as I understand
10 it --

11 A. Yes.

12 Q. -- who was the FLO.

13 A. Yes.

14 Q. They are expressing dissatisfaction in progress in the
15 PIRC investigation.

16 "... it may be best to arrange a further meeting
17 with yourselves to address the concerns they have."

18 And there are a number of concerns that are listed
19 there. And this is from Mr Anwar to Mr Lewis.

20 A. Yes.

21 Q. And can I ask, first of all, what was the level of
22 resourcing at this time? So this is dated end of July,
23 28 July. What was the level of resourcing at that stage
24 that PIRC had on the investigation?

25 A. We still had the same 20 basic investigators, but we are

Transcript of the Sheku Bayoh Inquiry

1 now mid-July, middle of the summer holidays. We have
2 the investigation into the death of Mr Bayoh, which is
3 a significant investigation; we have the investigation
4 into the fatal road traffic accident on the M9 motorway;
5 and there's other inquiries coming in at the same time,
6 other investigations to be undertaken. So we are spread
7 pretty thin.

8 Q. Right. And was that having an impact on the speed at
9 which investigators could proceed with the
10 investigation?

11 A. Yes.

12 Q. You will see that, number (i), they expressed -- the
13 family had expressed concerns regarding the failure, as
14 they put it, to robustly challenge officers on their
15 accounts and contradictions.

16 Now, by 28 July, you obviously had statements from
17 the officers.

18 A. Yes.

19 Q. They had been given on 4 June, and I think there were
20 concerns raised about the fact that there hadn't been
21 robust challenges in relation to some of those
22 statements.

23 A. I would say that is an opinion.

24 Q. Yes. And I am interested in whether PIRC were in
25 a position to go back to the officers by this stage, to

Transcript of the Sheku Bayoh Inquiry

1 have considered the statements, to go back and ask them
2 further questions, supplementary questions, maybe probe
3 a bit deeper?

4 A. I think as I previously said, these were some the
5 longest witness statements I have ever taken, and some
6 of the lengthiest witness statements. I think they
7 fairly comprehensively covered matters.

8 Now, if something arose where there was, and I think
9 as I mentioned, glaring discrepancy, we would have the
10 opportunity to go back. As I say, I think this is
11 an opinion.

12 Q. All right.

13 Can we look on to the next page, please. Now, we
14 may hear further -- item 5. We may hear further
15 evidence about this from Kate Frame, but it says:

16 "On a number of occasions a meeting has been
17 requested with Kate Frame but the family and ourselves
18 have not had the courtesy of a response to this request
19 following her return from leave. If it is the case that
20 Ms Frame is unwilling to meet us and the Bayoh family
21 please advise."

22 Were you aware of issues in connection with meetings
23 or requests for meetings that weren't being responded to
24 at that time?

25 A. I think this is probably better addressed by Ms Frame

Transcript of the Sheku Bayoh Inquiry

1 and Mr Lewis --

2 Q. Okay.

3 A. -- because he was the point of contact with Mr Anwar and
4 the family.

5 Q. Thank you.

6 Can we look at decision number 62 then. Again, this
7 is a narrative in your policy log on instruction of
8 experts:

9 "Following presentation of CVs to [Crown Office],
10 they have instructed PIRC to engage services of
11 Dr Jason Payne-James and Dr Steven Karch to provide
12 expert opinion on cause of death."

13 Was that the only two experts at that stage that you
14 were instructed to approach?

15 A. I think what it was, was we weren't getting all the
16 experts' CVs just arrive in a single bundle, if I can
17 describe it like that, they would come in over a number
18 of days or potentially weeks, and therefore as we got
19 them, we would then inform Crown.

20 Q. Thank you.

21 And although it says, "to provide expert opinion on
22 cause of death", can you tell us what Dr Payne-James was
23 instructed to do specifically, do you remember?

24 A. No, there would be a letter of instruction for him, so
25 maybe that would inform you.

Transcript of the Sheku Bayoh Inquiry

1 Q. Right. Do you remember what Steven Karch was being
2 instructed to provide an opinion on?

3 A. Again, there would be a letter of instruction.

4 Q. Those were the -- they are the first two that are
5 mentioned in the log. Do you remember where you got
6 their CVs from?

7 A. As I say, probably College of Policing or National Crime
8 Agency. Dr Karch might have come about by another
9 route. We were seeking an expert with knowledge of
10 alpha-PVP, a medical expert, and it might have been the
11 case that, as we were researching that, we came across
12 his name and then put that name back to the College of
13 Policing or National Crime Agency. So it might not have
14 been such a direct route as the other experts.

15 Q. Do you remember how PIRC came across his name?

16 A. It might have been through open-source research.

17 Q. What does that mean?

18 A. Internet research.

19 Q. Googling something or --

20 A. Yes.

21 Q. -- using a different --

22 A. Uh-huh. Because I think as I mentioned earlier, the
23 first thing myself I did, when we saw alpha-PVP, was put
24 it into Google, what is this, and of course it throws up
25 a large number of items, because there had been hundreds

Transcript of the Sheku Bayoh Inquiry

1 of deaths in America, unheard of to us.

2 Q. So you were obviously seeking opinions on cause of
3 death. What was your understanding at that time of
4 Steven Karch's qualifications?

5 A. He would have sent a CV, so the CV would show you that.

6 Q. Do you remember now what his speciality was or what his
7 experience was? Did you think he was a forensic
8 pathologist?

9 A. I would say so.

10 Q. Did you think he was a toxicologist?

11 A. I can't say now. You would need to check his CV.

12 Q. All right.

13 We have a statement from Dr Karch, and he has
14 explained to the Inquiry that he is not a forensic
15 pathologist. Would that be a surprise to you or do you
16 not have any recollection now?

17 A. I think it's the difference -- the difference between
18 a medical expert and a forensic pathologist, that
19 a person can -- forensic pathology is a specialism
20 within medicine. There are much better people who could
21 explain these matters than me.

22 Q. Dr Shearer has explained it to us.

23 A. Yes. But we are also seeking medical experts in certain
24 specific areas. So I don't think it would necessarily
25 concern us that he wasn't a forensic pathologist. What

Transcript of the Sheku Bayoh Inquiry

1 we are doing is seeking medical opinion in specialist
2 areas.

3 Q. So, really, if we want to know the details, we would
4 have to look at the PIRC letter of instruction?

5 A. Yes.

6 Q. If you say you've come across his name through
7 open-source research, did you then put that name to one
8 of the bodies like the College of Policing or the
9 National Crime Agency for confirmation in relation to
10 Dr Karch?

11 A. I can't remember. When it came to Dr Karch, it was
12 Mr Little that primarily had dealings with Dr Karch. He
13 met him down in London. I know one or two of the other
14 experts had heard of Dr Karch, or even met Dr Karch, but
15 it was Billy Little that was dealing with that, not
16 really me.

17 Q. All right. Thank you. So that wasn't something that
18 you had discussions with Billy Little about or were
19 involved in the instruction of Dr Karch?

20 A. As I say, the letters of instruction would show you
21 exactly what we asked for.

22 Q. All right.

23 Let's move on to decision number 63. This mentions,
24 for the first time, contact with HSE, Health and Safety
25 Executive.

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. "... apprise them of [the] case and whether they would
3 wish to examine the circumstances at this time."

4 I am interested in the possible involvement of HSE,
5 and if you could explain something about the background
6 to that?

7 A. Could you go down to the reason?

8 Q. Yes, sorry. Go down to the reason:

9 "Potential for health & safety implications in the
10 [Police Scotland] approach to arrest and restraint."

11 Then at the bottom of page, we have now moved to
12 29 July.

13 A. From memory now, I think somebody in Crown had asked us
14 to speak to the HSE about this matter. In fact, I am
15 fairly certain that occurred, and it might be within
16 other correspondence. But certainly we wouldn't
17 immediately go to the HSE; Crown would need to direct us
18 to do that. So I think it has come from Crown.

19 Q. Right.

20 How often had you spoken to or approached the HSE
21 before in an investigation?

22 A. One or two times. Sometimes what you will have is --
23 and there have been instances where you get
24 a prosecution of the police by the HSE, and it has
25 occurred. It has occurred in relation to one of our

Transcript of the Sheku Bayoh Inquiry

1 other large-scale inquiries. So we do do it. It is not
2 frequent, but we do do it.

3 Q. If we look at the reason again, we see that there was
4 a potential for health and safety implications. Was
5 that something you were considering, the health and
6 safety implications that may have impacted on the work
7 of the police on that day?

8 A. I think by this stage we are exploring all avenues now,
9 including how the officers carried out the arrest, how
10 the officers carried out the restraint, did that have
11 any HSE implications. It doesn't necessarily mean it's
12 a criminal matter, but does it cross into health and
13 safety.

14 Q. Can you explain to those listening, how can a restraint
15 by police officers have implications for the HSE?

16 A. So throughout the course of this, we have heard about
17 officer safety training. Now, if a technique is held to
18 be inherently unsafe, that is where you could get HSE
19 implications, and that is why police policy and training
20 in respect of officer safety training, restraint,
21 continuously evolves.

22 Q. And the police are at work when they are carrying out
23 a restraint, so --

24 A. Yes.

25 Q. -- that is where -- thank you. That is great.

Transcript of the Sheku Bayoh Inquiry

1 So, as I said, at the bottom of this page we see
2 that this entry is 29 July, and you've told us about the
3 resourcing implications for PIRC around about the end
4 of July.

5 Can we look at the next entry. This is decision
6 number 64. If we look at the bottom of page first of
7 all, we see that this has come on to 25 August. So it's
8 moved from the end of July to the end of August, and
9 this is the first entry in the log on that date.

10 Again, what are the resourcing issues with PIRC at
11 this time, so between that period?

12 A. Probably I was on holiday, and that is why --

13 Q. Right.

14 A. -- you've not got an entry, because it is the middle of
15 the summer holidays, so ... at which point, when
16 I return, I would start to play catch-up.

17 Q. Right.

18 So you've come back at least by 25 August, and if we
19 can go to the top of the page, I think in your statement
20 you have explained that PIRC had issued the interim
21 report to Crown Office on 7 August.

22 A. Yes.

23 Q. So at the beginning of that month, the initial interim
24 report had been sent off to the Crown.

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. And take it from me, it is 351 pages long. It was
2 a substantial document.
- 3 A. I wrote it.
- 4 Q. And you wrote it. That is what I wanted to ask you.
5 And was that something you would have done before you
6 went on holiday and before it was sent to the Crown?
- 7 A. Yes, I write it, the Commissioner then quality controls
8 it, and then she approves it to go to Crown.
- 9 Q. So you are essentially drafting the interim report from
10 scratch.
- 11 A. Yes.
- 12 Q. Gathering together, as I understand, the fruits of your
13 investigation, the statements you've obtained,
14 information about forensics, all of that, and bring it
15 together into what is known as an interim report.
- 16 A. Yes.
- 17 Q. And then it wasn't the final report.
- 18 A. No.
- 19 Q. That wasn't actually sent until, I think you say in your
20 statement, 10 August the following year.
- 21 A. Yes.
- 22 Q. So the interim report comes in in August 2015, so that
23 is around three months or so after the death of
24 Mr Bayoh, and then it's a further year before the final
25 report.

Transcript of the Sheku Bayoh Inquiry

1 A. Yes. That also allows Crown, should they wish, to
2 direct us to undertake additional investigation, usually
3 when you have a major investigation. For small
4 investigations, you just do the investigation and issue
5 the report. For major investigations that will take
6 quite a long time, you send an interim report to Crown.
7 That really updates them on where you are at that point
8 in time. That allows them to examine it and issue
9 additional instructions, should they wish, which you can
10 see on this page. So, potentially, Crown have had the
11 initial report, and we have now got this Crown
12 instruction to undertake these additional lines of
13 investigation.

14 Q. Thank you.

15 So this entry in the log is 25 August. By this
16 stage, the Crown have had the interim report for about
17 three weeks, or thereabouts.

18 A. Yes.

19 Q. And we see that an instruction comes in, Crown Office
20 instruction, and I think you say in your statement, when
21 the interim report goes in, you can commonly receive
22 further instructions from the Crown at that point.

23 A. Yes.

24 Q. So PIRC's role has not concluded at the interim phase --

25 A. No.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. -- and then you will continue to carry out any
2 instructions that the Crown instruct?
- 3 A. Yes, and I think all the approaches to experts, that was
4 going to take a number of months, and then they've got
5 to do their thing and send their expert reports back to
6 us, so these things can go on for a long period of time.
7 I have been involved in several major investigations
8 within PIRC where they can go on for two or three years.
- 9 Q. Right. And the final report is contained within four
10 volumes.
- 11 A. Yes.
- 12 Q. And the final volume is essentially an appendix
13 containing statements, and --
- 14 A. Yes.
- 15 Q. -- suchlike.
- 16 Is it fair to say that, although there will be
17 changes in the final report, some of the content will
18 remain the same as the interim report?
- 19 A. Yes.
- 20 Q. Okay.
- 21 A. Really what you were doing is adding in the additional
22 information you get between the interim report and
23 sitting down to do the final report.
- 24 Q. So let's look at the policy log here. It says:
25 "Investigate all the circumstances set out in the

Transcript of the Sheku Bayoh Inquiry

1 attached letter from Mr Anwar to [Crown Office].

2 "In this regard the inquiry will now progress the
3 following main lines of enquiry and actions will be
4 raised accordingly."

5 Decision 64 is continued on to a second page. So
6 can we move on to the -- two pages from where we are,
7 and we will see the letter from Les Brown, head of
8 criminal allegations against the police division, to
9 Kate Frame, the Commissioner, and at the top of that
10 page you will see the date was 24 August.

11 A. Yes.

12 Q. So this is after they have received the interim report,
13 and this is the letter of instruction that you have
14 inserted.

15 A. Yes.

16 Q. They refer to section 33A. There is no reference there
17 to whether it's a (b) (i) or a (b) (ii) investigation.

18 If we can move down, please. Keep going.

19 We see that attached to that letter from
20 Crown Office is a further letter from Aamer Anwar & Co.
21 You'll see, if we go down -- sorry, can we see the top
22 of that page. We will see his headed notepaper. And
23 it's a letter dated 31 July 2015.

24 This has been attached to the Crown Office letter
25 saying your instructions are: carry out what is asked

Transcript of the Sheku Bayoh Inquiry

1 for in this letter.

2 A. Yes. Now --

3 Q. This is a letter to Mr Stephen House, who was then the
4 Chief Constable, and then it goes through a number of
5 points. You will see it's a four-page letter.

6 Now, I know, Mr McSporrán, you watched the evidence
7 of Mr Little and you probably have seen me discussing
8 this with Mr Little.

9 A. Yes.

10 Q. And it may be that I can short-circuit this, because you
11 have heard his evidence.

12 This is a four-page letter from Mr Anwar dated
13 31 July 2015 to the Chief Constable, and there is no
14 mention of race or anything of that sort in that letter,
15 but there was another letter sent on -- dated the same
16 day, 31 July, and if we can look at that for a moment --
17 I will come to it in a moment, sorry -- and that was
18 sent to PIRC, to you and Kate Frame, and that is a much
19 more detailed letter, it's 11 pages, and it contains
20 a number of references to race. Now, we can look at
21 them in a moment.

22 Mr Little said the Crown instruction attached the
23 letter to the Chief Constable on that date, but it
24 looked like the view taken by PIRC in the decision, 64,
25 actually included things that were in the PIRC letter

Transcript of the Sheku Bayoh Inquiry

1 from the same date.

2 Do you remember me talking to Mr Little about that?

3 A. I do, and I think there was a degree of confusion
4 surrounding this, because -- so Crown sends a letter
5 intended for the Chief Constable, then Mr Anwar sends us
6 a letter almost about the same time but raising
7 additional matters. Now, we can't investigate these
8 additional matters without a Crown instruction to do so,
9 and we did go to Crown and they did issue
10 an instruction. So I think -- there's two letters, but
11 they seem to have almost come together at the same
12 juncture.

13 Q. They are both the same date, certainly.

14 A. Yes.

15 Q. So let's look at this -- this is the letter that was
16 attached to the Crown Office instruction letter, and
17 this is the one to the Chief Constable. You will see on
18 the final page of that, it's page 4, and it's a letter
19 from Mr Anwar. Do you see at the bottom?

20 A. Yes.

21 Q. If we can go to the bottom. That's it there. You see
22 his name, "Aamer Anwar".

23 And if we can go to the top of that letter, where it
24 says Stephen House, Chief Constable, it relates to
25 "Death of Sheku Bayoh in Police Custody":

Transcript of the Sheku Bayoh Inquiry

1 "We appreciate that the matter has been referred to
2 the PIRC for investigation however the Bayoh family have
3 asked me to raise a number of concerns which they
4 believe are relevant to Police Scotland ..."

5 So this is his letter to the police.

6 Then if we move down, you will see that on page 2,
7 and if we can go to number 6, you can see there is
8 reference to PC Alan Paton, there is reference to the
9 Data Protection Act, and issues to do with perhaps
10 an audit, public -- police databases, I should say.

11 A. Yes.

12 Q. Then on the next page, number 7, again refers to
13 Mr Paton, number 8 refers to an audit, and no references
14 in that letter -- I appreciate it is redacted on the
15 screen, but there are no references to race as part of
16 the instruction from the Crown.

17 Can we look at the other letter. This is the letter
18 that Amer Anwar sent direct to PIRC, and if we can look
19 at COPFS04726A.

20 Again, you will see it's from Amer Anwar. Same
21 date as the previous letter, but this one is addressed
22 to PIRC, and it's for the attention of John McSparran
23 and Kate Frame. And if we go to the end of that letter,
24 you will see this is on page 11 of the letter, again
25 it's a letter signed by Amer Anwar, copied to

Transcript of the Sheku Bayoh Inquiry

1 Frank Mullholland, the Lord Advocate; copied to
2 Kate Frame, the Commissioner; copied to Les Brown in
3 Crown Office; and Lindsey Miller.

4 A. Yes.

5 Q. If we look at this letter -- go back to the first page.
6 It is, again, same heading, "Death of Sheku Bayoh in
7 Police Custody":

8 "We understand that you are preparing a report for
9 Crown Office. However, a number of concerns arise, some
10 of which we advised Lindsey Miller and Les Brown of last
11 week."

12 I think there had been a meeting in Crown Office
13 where there had been some discussion:

14 "Over the course of the last 12 weeks various issues
15 have been raised on behalf of the family but we have not
16 received a full response to these matters."

17 Do you see that?

18 A. Yes.

19 Q. Can we go on to page 2, item 11:

20 "It also has been alleged that this officer has
21 a history of racism from a young age."

22 So there is a specific mention about racism in that
23 paragraph.

24 If we go on to page 3, item 16:

25 "It was also alleged that Alan Paton and his

Transcript of the Sheku Bayoh Inquiry

1 colleagues regularly accessed the police data bases and
2 other Crime file systems to check up on the personal
3 data of individuals without the consent of the data
4 controller namely the Chief Constable, without there
5 being a policing purpose.

6 "[And that would be] a clear breach of the Data
7 Protection Act ..."

8 Then a number of individuals' names are given after
9 that.

10 A. Yes.

11 Q. Can we move on to page 4. 23, there is reference there:

12 "Can you advise whether PIRC has identified the
13 primary, contentious features in case including
14 restraint and race?"

15 So, again, a specific reference to race there.

16 A. Yes.

17 Q. 24 has a specific reference to race and a matter being
18 investigated with Fife Police.

19 Then 26 at the bottom of that page, reference to
20 Inquest, a charity dealing with deaths in custody, and
21 talking about cases they have worked on involving
22 racism. Again, so specific reference there to race.

23 Then on page 5, paragraph 2:

24 "In the context of black deaths in custody the issue
25 of race/racism has not been referred to by the PIRC or

Transcript of the Sheku Bayoh Inquiry

1 include in the terms of reference. Why not?"

2 Then below that, there is mention of evidence of
3 racial stereotyping by the Met, mention of
4 Stephen Lawrence.

5 Then beneath that:

6 "The Bayoh family is concerned that racial
7 stereotyping may have been a contributory factor in the
8 death of Sheku Bayoh resulting from restraint/use of
9 force."

10 And there is mention after that, in 27, of value
11 laden language.

12 So it would appear that, through two routes, you
13 have had a direct letter from Aamer Anwar which
14 specifies a number of entries regarding race, and you
15 have also had a letter from Mr Anwar to the
16 Chief Constable, copied to you direct from the Crown.

17 A. Yes.

18 Q. And they were both involving letters written by Mr Anwar
19 on the same day, 31 July.

20 A. Yes.

21 Q. Now, in light of the letter that you received in PIRC,
22 what did you do about that letter?

23 A. Can we go back to my -- to the policy file entry?

24 Q. The policy file? Yes.

25 A. Because I think that is what I did, was create this

Transcript of the Sheku Bayoh Inquiry

1 policy file entry.

2 Q. So decision number 64:

3 "[Crown Office] Instruction - Investigate all the
4 circumstances set out in the attached letter from
5 Mr Anwar to [Crown Office]."

6 It was actually a letter to the Chief Constable.

7 "In this regard the inquiry will now progress the
8 following main lines of enquiry and actions will be
9 raised accordingly."

10 A. Yes.

11 Q. So we look at number 1. It says:

12 "Race - examine whether race/racism/institutional
13 racism within the Fife area of Police Scotland and in
14 the approach of individual officers played any part in
15 or impacted in how officers dealt with Sheku Bayoh."

16 Now, that appears to be the first reference in the
17 policy log to an active line of investigation being
18 developed. I appreciate we looked at decision 21,
19 the -- taking cognisance, but this seems to be a much
20 more active line of investigation that you wished to
21 pursue.

22 A. Yes, because we have now got a Crown instruction to
23 investigate.

24 Q. So in relation to the Crown instruction, obviously that
25 specific Crown instruction only dealt with the

Transcript of the Sheku Bayoh Inquiry

1 Chief Constable's letter, which didn't mention race. So
2 was this in response to some further correspondence
3 where the Crown instructed investigation into race?
4 This is dated 25 August, this entry.

5 A. Yes.

6 Q. Or was there a mix-up --

7 A. Whether this is -- I think there has been a mix-up, but
8 I think also we would be in discussion with Crown over
9 the telephone, because when Mr Anwar's letter comes in,
10 of course he is asking for additional lines of
11 investigation. Consequently, we need a Crown
12 instruction to do that. So I would think that there
13 would have been a discussion, a telephone call, or
14 whatever, because there was a mix-up over the two
15 letters arriving at the same time.

16 But I was quite clear that Crown were instructing us
17 to now fully examine issues of race.

18 Q. You may not know the answer to this. I am just
19 wondering if the mix-up could have been that the Crown
20 attached the wrong letter to the -- the letter including
21 race was copied to the Lord Advocate. So we can see, on
22 the face of it, the Crown also had a copy of that.

23 A. Yes.

24 Q. I am wondering whether you think that would be
25 a Crown Office mix-up, attaching the wrong letter, or

Transcript of the Sheku Bayoh Inquiry

1 whether it was a PIRC mix-up, and you took instructions
2 from the wrong letter?

3 A. I couldn't say now. Potentially either.

4 Q. All right.

5 Am I right in saying this is the first active line
6 of investigation that -- in relation to race that was
7 being pursued by PIRC, noted in this entry?

8 A. Yes.

9 Q. And then item 2:

10 "In pursuance of the last, examine the PSD records
11 of officers involved in the incident for racist or
12 discriminatory behaviour & report accordingly."

13 So the -- item 1 is to examine racism within the
14 Fife area of Police Scotland and the approach of the
15 individual officers; 2 is examining their Professional
16 Standards Department records regarding racist or
17 discriminatory behaviour.

18 A. Yes.

19 Q. And 3 is:

20 "Examine the PSD history of PC Alan Paton and
21 historic incidents ..."

22 So it's specific to him.

23 A. Yes.

24 Q. And then 4:

25 "Undertake an audit of Police Scotland IT systems

Transcript of the Sheku Bayoh Inquiry

1 operational in Fife ... to determine if the 9 officers
2 or any officers unlawfully accessed the data of the
3 persons named in the attached letter."

4 A. Yes.

5 Q. So those are the specific -- four specific elements that
6 are being mentioned there.

7 A. Yes.

8 Q. Now, tell us what -- we should move on to the next page,
9 actually, and then there is another entry, 5:

10 "Correspond with Mr Anwar setting out Scottish
11 position in law, regarding conferring/collusion,
12 resignation, compulsion about providing statements, IPCC
13 position ..."

14 So that is not a race-related matter.

15 A. No.

16 Q. So looking at the four items on the previous page, they
17 are really race-related.

18 What actions were then instigated or tasks were
19 allocated in relation to these four items?

20 A. So if we take the simplest one, which is number 2,
21 examine the Professional Standards Department records of
22 the officers involved, and that will show you all
23 complaints that have been made against the officers and
24 the outcome of those complaints. If anybody had an
25 allegation of racist conduct or profiling or whatever,

Transcript of the Sheku Bayoh Inquiry

1 that would show in their PSD records. So -- and we were
2 obtaining those PSD records evidentially for provision
3 to Crown.

4 Q. In relation to number 1:

5 "... examine whether race/racism/institutional
6 racism within the Fife area of Police Scotland and in
7 the approach of individual officers played any part in
8 or impacted in how officers dealt with [Mr] Bayoh."

9 How was that to be actioned?

10 A. I think you're -- these are sort of intertwined. They
11 are not necessarily separate. So there had been other
12 matters occurring in Fife Division that we became aware
13 of. There had been three officers sacked who worked at
14 the same police office for exchanging racist texts and
15 photographs. So was there any contact between the nine
16 principal officers and these three officers that had
17 been sacked for racism? Was this pervasive within
18 Kirkcaldy office?

19 We obtained, later on, phone records for the
20 officers who had been sacked, and those were huge files,
21 27,000 pages, and we wanted to see whether there was any
22 contact between the nine principal officers and the
23 three officers who had been sacked. But also, was
24 anything else occurring within that police office
25 amongst other officers?

Transcript of the Sheku Bayoh Inquiry

1 Q. As well as doing that in relation to the incident with
2 the three officers who had been sacked, in what way was
3 your investigation going to examine whether race or
4 racism played any part in or impacted in how officers
5 dealt with Mr Bayoh? How was that aspect specifically
6 going to be actioned?

7 A. Well, I think you are closing examining the officers'
8 career histories to see whether there had been
9 complaints of how they have handled issues of race, how
10 they have approached black minority ethnic people, that
11 you need to profile the officers, and you do that by
12 going through their records.

13 We already know what the officers said they did that
14 day, and really what you are doing is now layering all
15 that information. What did the officers say about what
16 happened that day? Specific allegations against
17 PC Paton, which I think you have explored.

18 You are also undertaking these huge audits of
19 Police Scotland IT systems to see: what have the
20 officers done? Have they researched any members of the
21 Bayoh family, Mr Anwar -- I know you covered that
22 previously -- to see whether: have they been profiling
23 individuals, and are they still profiling individuals?

24 So you are doing all this work and then you are
25 layering it and outlining exactly what you have found.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. So you are investigating their prior career history?
- 2 A. Yes.
- 3 Q. You're looking at any actions, profiling, auditing,
4 taken by officers after the death of Mr Bayoh?
- 5 A. Yes.
- 6 Q. What was being done about the officers' actions on 3 May
7 in Hayfield Road? What was that aspect of the
8 investigation --
- 9 A. Well, we already had the officers' accounts and we had
10 witness accounts as to what occurred. The difficult
11 one -- and I appreciate it is difficult -- was the
12 approach of the officers affected by Mr Bayoh's race?
13 And all we can do is gather as much material as we can
14 and present that to Crown. It is a difficult -- overt
15 racism is very obvious, and you see it and it just jumps
16 off the page. But was the approach of the officers
17 influenced by prejudice at all? That is a difficult
18 one. As I say, all you can do is gather the material
19 and present as comprehensive a picture as possible to
20 Crown.
- 21 Q. And what material do you try to gather that would give
22 you an insight into whether they were influenced in some
23 way by his race?
- 24 A. Primarily their PSD records, which would show that. You
25 are also examining, as I said, the incident that went on

Transcript of the Sheku Bayoh Inquiry

1 in Kirkcaldy Police Office, where three officers had
2 been sacked for exchanging racist material. They worked
3 in the same office. So was this common throughout
4 Kirkcaldy Police Office? Therefore, you are examining
5 the three sacked officers' telephone records to see
6 whether they had any contact with the nine principal
7 officers. We didn't find that. But was there any other
8 material within those 27,000 pages that showed anybody
9 else in Kirkcaldy office sending racist texts or
10 offensive material?

11 We went through that, and I think we discovered five
12 items in the 27,000 pages of that. Did not -- was not
13 indicative of a widespread problem. Certainly there was
14 a problem when three officers got sacked, you know.

15 Q. But that was not items relating to the nine attending
16 officers?

17 A. No.

18 Q. You said you had the officers' accounts. By this stage,
19 you have got the statements from 4 June, but when we
20 looked at the witness interview strategy last time you
21 were giving evidence, it was clear that there was no
22 questions in relation to race.

23 So this is now part of your official investigation,
24 race, and you have specifically noted that you are going
25 to look at whether race or racism played any part in or

Transcript of the Sheku Bayoh Inquiry

1 impacted on how officers dealt with Mr Bayoh. Was there
2 any consideration given at that stage to go back to the
3 officers to ask additional questions about race
4 specifically?

5 A. I can't recall. Now, you may examine the officers'
6 initial statements. I don't know whether they mentioned
7 that race did not influence how they approached
8 Mr Bayoh. But their statements would tell you whether
9 they mentioned that.

10 Q. Well, did you look at their statements --

11 A. I read --

12 Q. -- after this instruction came in?

13 A. I was repeatedly reading their statements, but I can't
14 recall.

15 Q. Was there any instruction about analysing statements or
16 noting anything that may have been a red flag for race
17 or racism?

18 A. I think I have explained what we did.

19 Q. Right. I think you said previously that you hadn't at
20 that stage analysed the statements for -- when we talked
21 about the references to "coloured", links made between
22 the fact Mr Bayoh was black and terrorism, references to
23 Lee Rigby, that type of thing, I think you said you
24 hadn't analysed that.

25 A. We were certainly aware of it, because the officers

Transcript of the Sheku Bayoh Inquiry

1 specifically mentioned the Lee Rigby incident, so did
2 that influence how they approached Mr Bayoh? I think
3 that is for the Inquiry to determine.

4 Q. Right.

5 When you were -- well, let's carry on before I turn
6 to this.

7 So from this point in time, regardless of whether
8 there has been some sort of mix-up with the Crown
9 instruction, race is within your policy log and so you
10 are now considering race as a factor.

11 A. Yes.

12 Q. And there is a positive line of enquiry being developed
13 in that regard.

14 So can we turn now to page -- decision number 65.
15 I think we maybe looked at that. There is a reference
16 to the Commissioner meeting with the family. This is on
17 28 August. Again, about an update and family concerns.

18 So that is quite a long letter, that 11-page letter.
19 We will just go through that.

20 So 65, there's discussion of a meeting to take
21 place, and then can we move on to 66.

22 Now, if we look at the bottom of that page, this is
23 3 September, so we have now moved into the beginning
24 of September in relation to the progress of the
25 investigation, and if we move to the top of the page,

Transcript of the Sheku Bayoh Inquiry

1 this again refers to instruction from Crown Office, "See
2 attached letter". Additional investigation and request
3 for information, and let's just turn to that letter, and
4 let's have a -- we will come back to this page in
5 a moment.

6 Now, this letter is dated 2 September 2015, so that
7 is the day prior to your entry in the log. It is to the
8 Commissioner, and it's a -- we don't need to turn to the
9 final page, but it's five pages, and it is from
10 Les Brown, head of criminal allegations against the
11 police division, to the Commissioner.

12 Do you recognise this letter?

13 A. Yes.

14 Q. So this is 2 September.

15 Let's look at the beginning, "Death of Sheku Bayoh",
16 and it refers to the Lord Advocate meeting with the
17 family of Sheku Bayoh, and the solicitor, presumably the
18 solicitor -- or their solicitor at Crown Office on
19 26 August. There is some discussion there.

20 It then says:

21 "The following matters require further investigation
22 in this regard."

23 So this is a formal letter to Crown -- to PIRC.

24 A. Did we not discuss this letter on day one?

25 Q. On day one of your evidence?

Transcript of the Sheku Bayoh Inquiry

1 A. Of my evidence. Because I have a feeling I covered some
2 of these points.

3 Q. Perhaps. But I think if I did mention it, I said
4 I would come back to it when I looked at your log.

5 A. Okay, my apology.

6 Q. But I am happy to be corrected if you have a different
7 memory. But I do want to go through it in some detail
8 now, and I don't think we have gone through it in any
9 detail before.

10 A. Yes.

11 Q. So the detailed analysis -- so this is a letter of -- to
12 PIRC to investigate. This is a formal letter of
13 instruction.

14 A. Yes.

15 Q. This expands your terms of reference on 2 September,
16 compared to where it was prior to the interim report
17 going in on 7 August.

18 A. Yes.

19 Q. So this is in response -- they've got the interim report
20 and they've now sent you further expanded terms of
21 reference.

22 A. Yes.

23 Q. So these things are in addition to what you were doing
24 before.

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. The first says:

2 "A detailed analysis should be prepared covering the
3 accounts given by all officers and civilian witnesses in
4 relation to the restraint process from beginning to
5 end."

6 So they are looking for a more detailed analysis of
7 that.

8 A. I think we -- this is where my memory of our previous
9 discussion -- I think I had said we were doing that
10 anyway, it was just that this was Crown officially
11 confirming that they wished us to do that, but we were
12 doing it anyway.

13 Q. All right.

14 They have also asked for you to:

15 "... compare and contrast the evidence between
16 the officers themselves highlighting and attempting to
17 resolve inconsistencies ..."

18 So they are looking for something quite detailed in
19 terms of the statements.

20 A. Yes.

21 Q. Then the second bullet point on that page:

22 "That account must thereafter be analysed and
23 commented upon by an independent expert who is qualified
24 to comment on restraint techniques that were employed.
25 That person should be asked to provide an opinion as to

Transcript of the Sheku Bayoh Inquiry

1 whether the techniques were in accordance with the
2 training provided to officers, whether those techniques
3 were authorised and recognised, and furthermore whether
4 the use of them was reasonable and proportionate in the
5 circumstances."

6 So is this summarising, effectively, the Crown
7 asking you to get an expert in relation to the question
8 of restraint and to look at the question of whether that
9 use of force by officers was justified?

10 A. Yes.

11 Q. And that is why there is reference there to
12 "reasonable", "proportionate", it's also necessary has
13 to be the minimum -- absolute minimum use of force.

14 A. Yes, and I think we wanted to go to medical experts and
15 experts in the use of restraint from outside the police,
16 because if we go to Police Scotland -- officer safety
17 training and say, "Comment on the action of your own
18 officers", or even if you go to another police force and
19 say, "Will you provide opinion about the actions of
20 officers from a different force", police forces are
21 quite reluctant to do so.

22 Q. Can they be quite favourable, perhaps, towards other
23 police officers, as opposed to more objective?

24 A. I don't think I would like to comment on that.

25 Q. No, all right.

Transcript of the Sheku Bayoh Inquiry

1 Can we look at the next bullet point:

2 "An independent expert should be instructed to
3 comment upon the circumstances of the deployment of CS
4 and PAVA sprays including an examination of the
5 guidelines and an opinion provided on their use and
6 appropriateness of deployment."

7 So this is covering the use of sprays.

8 A. Yes.

9 Q. Again, an independent expert to be instructed looking at
10 whether it was appropriate for sprays to be used at that
11 time.

12 A. Yes. I think there was two stages to that. So one, to
13 go to medical experts, and we wanted -- we also went to
14 the Porton Down chemical weapons -- chemical
15 biological --

16 Q. Was that a Dr Rice that you spoke to?

17 A. I think so.

18 Q. Right.

19 Then there is a:

20 "... similar process to be followed so that
21 an opinion is obtained from a suitable expert on the
22 drawing and use of batons ..."

23 Do you see that there on line 5?

24 A. Yes.

25 Q. So they are not just interested in the use of the spray,

Transcript of the Sheku Bayoh Inquiry

1 CS and PAVA, it's also the use of the baton.

2 "It is particularly important that these experts are
3 given the opportunity to comment upon all of the
4 accounts given with the various witnesses."

5 And they specifically mention Ashley Wise's
6 statement, and we looked at this last time you were
7 here, talking about the duration of the time that
8 officers were said to have held him down, crossing his
9 body, and the use of a baton on his upper chest, towards
10 his throat, to hold him down, and that comes directly
11 from Ashley Wise's statement.

12 A. Yes.

13 Q. They say:

14 "It is important that this account and all of the
15 other accounts given by the witnesses are made available
16 to these expert witnesses so that they are aware of all
17 of the evidence that is available in relation to the
18 restraint process."

19 Were you aware at this stage about the difficulties
20 with Ashley Wise's statement that we discussed
21 previously?

22 A. I can't recall. It was Crown that flagged it up,
23 that -- it might have been after this point, because
24 Crown are saying: go to additional experts, and we were
25 preparing the expert witness packs, and we sent the

Transcript of the Sheku Bayoh Inquiry

1 expert witness packs to Crown to check and approve, and
2 we know that we had sent them to some experts, but not
3 all. Crown come back and said, "There is a bit missing
4 out of Ashley Wise's statement, can you go back to these
5 experts". So the exact sequencing of that, I can't
6 recall now, but that is what occurred.

7 Q. Looking back now, do you remember if you also sent the
8 complete statement of Ashley Wise to Dr Shearer or
9 Dr Bouhaidar?

10 A. I didn't. I don't recall if anybody else did.

11 Q. Right. The next bullet point is:

12 "Independent evidence should be obtained to comment
13 on the guidance for deployment of CS and PAVA sprays ...
14 any guidance on the importance of monitoring the
15 condition of a person upon whom such sprays have been
16 deployed and an opinion whether there is evidence of
17 an appropriate level of monitoring of [his] condition
18 after deployment of the sprays and restraint measures."

19 So, again, looking for an expert opinion.

20 The fifth bullet point, a toxicology expert,
21 reference to alpha-PVP, and sixth:

22 "It will be essential to establish precisely what
23 information was conveyed and received to each individual
24 officers in relation to the incident prior to their
25 attendance."

Transcript of the Sheku Bayoh Inquiry

1 So that is in relation, on the next page we see, to
2 what can be found from the Airwaves communications.

3 A. We had already done this.

4 Q. We have talked about this.

5 A. Now, I think there would be -- there was quite a lot of
6 ongoing dialogue between Crown and ourselves, so some of
7 this I think is just Crown committing it to paper. They
8 were aware that we were doing a lot of this, but this is
9 just them formally recorded it, so it's a formal letter
10 of instruction to us.

11 Q. So they have got the interim report, and they are
12 setting down on paper the precise nature of either what
13 has been started by you or what they want you to do?

14 A. Yes, because we know that we had explored with the
15 officers what was in their mindset as they were
16 travelling toward the incident. We had already captured
17 that information, which is why I say I think this is
18 just Crown formally recording an instruction to us that
19 they want specifically this information. We had already
20 captured it, and in the final report, I broke that down
21 into a separate -- entirely separate section going over
22 what was in each officer's mindset as they were
23 attending this incident.

24 Q. This bullet point is specifically about establishing
25 precisely what information was conveyed and received to

Transcript of the Sheku Bayoh Inquiry

1 each individual officer prior to their attendance, and
2 it specifically mentions the Airwaves communication.

3 A. Yes.

4 Q. So that would have been what was audible to them, what
5 was responded to, perhaps, by officers, that type of
6 thing.

7 A. Yes. So, as we know, there was various telephone calls
8 from members of the public. The area control room
9 I think at Bilston Glen takes control and issues
10 instructions to the officers to attend the incident, and
11 provides them with some information. Equally, on
12 receipt of that information, and before you get there,
13 what was in your mindset? What did you think was
14 happening here? Because it is quite unusual, 7 o'clock
15 on a Sunday morning, on a rainy morning in Kirkcaldy,
16 for a person to be walking down the street carrying
17 a large knife. So what was in your mindset?

18 Q. Then the next bullet point, which is on page 3, they're
19 asking you to instruct a pharmacist. The eighth bullet
20 point on page 3, they requested:

21 "... sight of the terms of your instructions to the
22 pathologists who have been approached to provide expert
23 evidence on the cause and mechanism of death."

24 Requiring:

25 "... confirmation that all of the pathologists ...

Transcript of the Sheku Bayoh Inquiry

1 have been advised ... and have been asked to comment
2 upon the significance of ... evidence and in particular
3 whether such restraint could have contributed to any
4 positional asphyxiation given the fact that these
5 restraints continued to be applied after he became
6 unresponsive and following resuscitation attempts."

7 I missed out the bit there about the handcuffs and
8 the leg restraints. But they are asking again to see
9 your instructions to pathologists so that they can check
10 that this has been raised.

11 A. Yes. These are the expert medical witnesses, so we
12 prepared these packs and sent them to Crown for their
13 consideration, and then they approve and issue
14 an instruction to us: right, fine, go and see that
15 expert.

16 Q. So, really, this is the element of the letter
17 specifically referring to cause and mechanism of death.

18 A. Yes.

19 Q. And then 9:

20 "I would be grateful for an update on the forensic
21 work instructed regarding comparison of the knife
22 recovered ..."

23 So that is a separate forensic matter.

24 A. Yes, and that was ongoing.

25 Q. We talked about that before.

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. And you had raised -- already raised that, so that is
3 certainly something you were in the process of doing at
4 that time.

5 A. Yes.

6 Q. And then the tenth bullet point:

7 "I have corresponded previously in relation to
8 the potential involvement of the Health and Safety
9 Executive ..."

10 And you, Mr McSporran, were going to facilitate
11 a meeting with them to discuss the evidence available.
12 So this is specifically in relation to the HSE.

13 A. Yes.

14 Q. And you had already raised that in your policy log.

15 A. Yes.

16 Q. And then the eleventh matter:

17 "Previous correspondence instructed PIRC to examine
18 whether there is any evidence of unauthorised access to
19 and interrogation of the information systems of
20 Police Service of Scotland."

21 Whether that could be a breach data protection. You
22 have already got that in your log.

23 A. Yes.

24 Q. Twelve:

25 "I require confirmation from the Commissioner that

Transcript of the Sheku Bayoh Inquiry

1 issues of race and whether there is any evidence of
2 racial motivation a primary focus in the PIRC
3 investigation. The investigation should examine whether
4 there is any evidence that any of the [officers]
5 involved has expressed any racist views or opinions in
6 the past."

7 So, regardless of any confusion about matters at the
8 end of August, by 2 September, on receipt of this
9 letter, it is quite clear that the Crown are interested
10 in the issue of race --

11 A. Yes.

12 Q. -- and asking PIRC to investigate that matter.

13 A. Yes.

14 Q. Thank you.

15 Then the thirteenth bullet point:

16 "The family once again raised the question of
17 whether there was evidence of officers inappropriately
18 conferring prior to the provision of statements to PIRC.
19 Please advice whether social media sites that may be
20 linked to any officers involved have been considered for
21 examination in this regard."

22 Is that something that was already being done or was
23 that a new thing that you started from that date?

24 A. I can't recall. I know it did occur. Now, you can only
25 check open-source material. As I said, PIRC don't have

Transcript of the Sheku Bayoh Inquiry

1 a cyber capability, and the legality of exploring the
2 officers' private social media is open to question. So
3 if they openly put matters onto social media, the
4 internet, the world can view that, but you can't go
5 behind that.

6 Q. Is that something, again, you required assistance from
7 Police Scotland in investigating?

8 A. PIRC has some staff trained in researching social media.
9 There is a specific course for that. But to go into the
10 deeper matters, that is the specialism of Cyber Crime or
11 the -- there is a special unit at Gartcosh.

12 MS GRAHAME: Thank you.

13 Let's go back now. We've gone through that letter.
14 Go back to decision number 66.

15 Could you just give me a moment --

16 LORD BRACADALE: Ms Grahame, it might be a good time at this
17 stage to have the 20-minute break.

18 MS GRAHAME: Okay.

19 (11.27 am)

20 (A short break)

21 (11.50 am)

22 LORD BRACADALE: Ms Grahame.

23 MS GRAHAME: Thank you.

24 We were looking at decision number 66 on the
25 management policy file -- we will get that back on the

Transcript of the Sheku Bayoh Inquiry

1 screen -- and we had just finished looking at the letter
2 of instruction from Crown Office, which was dated
3 2 September.

4 A. Yes.

5 Q. That was the one that specifically referred to race --

6 A. Yes.

7 Q. -- for the first time in a letter of instruction from
8 the Crown.

9 A. Yes.

10 Q. So we see here on decision number 66 you've got six
11 items on this page mentioned. Number 1 is the detailed
12 analysis of accounts given by officers; 2, obtain
13 an expert opinion regarding the restraint techniques in
14 accordance with training. There is no specific mention
15 there of asking the expert to express a view on whether
16 or not the use of force was justified, which was in the
17 letter of 2 September. Was --

18 A. Yes, I think the letters of instruction to the experts
19 would set out those --

20 Q. Set out the details.

21 3, obtain expert opinion by a person qualified --
22 sorry, I have just read that.

23 3:

24 "Obtain expert opinion on use of CS/PAVA."

25 So there were a couple of bullet points in the

Transcript of the Sheku Bayoh Inquiry

1 letter that mentioned CS and PAVA, and the implications,
2 but you have mentioned there is an expert to be obtained
3 on that.

4 A. I think what I am doing is summarising the Crown letter
5 there.

6 Q. Right.

7 Then 4:

8 "Obtain an expert opinion on effects of drugs found
9 in [his] system ..."

10 That will be in relation primarily to the alpha-PVP
11 that was mentioned.

12 Then 5:

13 "Establish what info was provided to each officer
14 prior to arrival at [the] incident ..."

15 There is mention of the Airwaves, we have discussed
16 that.

17 And 6, obtain the pharmacist.

18 So there are six items there. There were 13 bullet
19 points.

20 A. Yes.

21 Q. There is quite a lot not mentioned. Is there a reason
22 why you didn't simply summarise all 13 or ... can you
23 explain?

24 A. Well, I think as we have seen throughout the policy log,
25 where I do get large letters or whatever, I make

Transcript of the Sheku Bayoh Inquiry

1 a simple entry, and then "See attached", and you attach
2 that, because otherwise you are just rewriting what
3 somebody else has sent to you, which is why at the
4 bottom there it says "See attached".

5 Q. So this wasn't a refinement of the instruction or
6 a cutting out, for example, of bullet point 12, about
7 race, or any of those points that are not mentioned?

8 You weren't --

9 A. Definitely not.

10 Q. No, okay.

11 A. I was quite clear that we were to investigate those
12 matters, and we did.

13 Q. Thank you.

14 I would like to move on now.

15 There are a number of subsequent entries after
16 3 September. I don't want to labour those with you.
17 The Chair will be able to look at those in detail at
18 some other time. So they include things -- further
19 correspondence seeking clarification and matters of that
20 sort, other letters of instruction from the Crown, and
21 I think at decision number 71 you refer to following
22 discussion ... if we go up to 71. I can simply read
23 this out, actually:

24 "Following discussion between the Crown and PIRC and
25 Mr Anwar and the family of the deceased, additional

Transcript of the Sheku Bayoh Inquiry

1 medical experts should be identified."

2 And that -- here it is. Oh, no.

3 Let's not take time in relation to that.

4 But there are some further entries about
5 the position regarding the medical experts who are being
6 instructed, and I think you summarise at decision 73 --
7 we won't need to look at it -- you summarise some
8 medical opinions that have been received by PIRC. So
9 there is obviously work going on at this time, in
10 furthering -- making progress with the experts.

11 A. Yes. And as I say, the response from the experts came
12 in over a period of months, and on some occasions we had
13 to physically visit them, deliver the expert witness
14 pack, and provide them a briefing. Certainly
15 Billy Little, myself and Keith Harrower did visit some
16 of the experts.

17 Q. Can we look at decision number 75, please. I think this
18 is getting towards the end of the policy file.

19 "Examine all aspects of [Police Scotland
20 Professional Standards Department]/CCU investigation
21 into racial text messaging ..."

22 We have mentioned that already today.

23 A. Yes.

24 Q. So this is a part -- an element of your investigation
25 into race.

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. And then the reason is given:

3 "Expanded inquiry to determine whether racism played
4 any part in the approach or background of the principal
5 officers."

6 Can I just ask you about that reference to "expanded
7 inquiry", and we have looked at the letter of
8 2 September in detail.

9 Why was race not an active line of investigation
10 from the very beginning?

11 A. We didn't have a Crown instruction to investigate. That
12 is why decision 21, I recorded, "Take cognisance of it
13 should it arise". Now, it definitely ... it was raised,
14 it was raised by Mr Anwar on behalf of the family, and
15 at that point, as we have seen, the two letters that got
16 mixed up --

17 Q. The 31 July letters?

18 A. Yes, and then Crown give us that specific instruction.

19 Q. Was there any consideration given by PIRC to raise that
20 themselves with the Crown, to seek an instruction in
21 relation to race?

22 A. I think if we had come across what might be termed
23 "overt racism", something that is very obvious, we would
24 have immediately went to Crown and says, "We've
25 discovered this, do you now wish to instruct -- expand

Transcript of the Sheku Bayoh Inquiry

1 the terms of reference or instruct us to do a criminal
2 investigation?" You know, you've got to have evidence.
3 So if something was very obvious, then we would,
4 would've went back to Crown, and certainly as soon as
5 Mr Anwar raised these points towards the end of July,
6 and we get the Crown instruction, that is when we began
7 to investigate these.

8 Q. Right.

9 You've -- can we maybe look at your statement
10 briefly, your Rule 8 response in relation to -- we will
11 have that on the screen here.

12 If we can start with paragraph 170. I think you
13 have told the Chair at paragraph 170 ... (Pause)

14 Yes, I think here you were asked:

15 "Prior to 3 May ... what experience did you have in
16 deaths in custody or deaths during or following police
17 contact in which race was a factor to investigate?"

18 And:

19 "Had you ever acted in a PIRC investigation in which
20 the issue of race was within your terms of instruction?"

21 Your reply is:

22 "I had never had an instruction from [Crown Office]
23 before 3 May ... to investigate where race was
24 a factor."

25 So no investigations --

Transcript of the Sheku Bayoh Inquiry

1 A. No.

2 Q. -- that you had been involved in.

3 Then if we can look at paragraph 167. You were
4 asked:

5 "On and before 3 May ... had PIRC ever considered
6 the issue of race when dealing with a death in custody
7 or death during or following police contact? Has that
8 changed between then and now?"

9 You say:

10 "Before 3 May 2015, PIRC had not had
11 an investigation where we had to consider issues of
12 race. Since 3 May 2015, PIRC has investigated the death
13 of minority ethnic persons either in police custody or
14 following police contact. In none of these
15 investigations was there a suggestion that police
16 actions were driven or motivated by racism."

17 So if we can just move up slightly, is it fair to
18 say, then, that the investigation into the death of
19 Sheku Bayoh was the first investigation that PIRC had
20 ever had where race became part of the investigation?

21 A. Yes.

22 Q. And since 3 May 2015, none of the investigations have
23 involved a suggestion that police actions were driven or
24 potentially driven or motivated by race?

25 A. No.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. Thank you.
- 2 Can we look at paragraph --
- 3 A. Sorry, ma'am.
- 4 Q. Sorry.
- 5 A. I think as I touched on, we did -- we have done criminal
6 investigations where there was allegations that the
7 officers' actions were motivated by race, but not
8 a death investigation.
- 9 Q. Right. So maybe just to be clear about this particular
10 answer, the question was whether PIRC have considered
11 the issue of race when dealing with a death in custody
12 or death during or following police contact, and the
13 answer to that is no --
- 14 A. Yes, I am specifically answering about death here.
- 15 Q. -- but that's specifically deaths in custody or after
16 police contact.
- 17 A. Yes, whereas we have done criminal investigations into
18 allegations that the actions of the officers were
19 motivated by race.
- 20 Q. Where the actions of officers --
- 21 A. Yes, motivated by racial prejudice.
- 22 Q. So they weren't deaths?
- 23 A. They weren't deaths.
- 24 Q. Right.
- 25 A. They were criminal investigations. From memory, one of

Transcript of the Sheku Bayoh Inquiry

1 them -- in fact, I think I covered this either on
2 day one or day two -- it was a serious injury to
3 a 17-year-old youth who was of Pakistani origin, and we
4 had uncovered CCTV with what we considered racial
5 comments, and we had also uncovered other CCTV that
6 significantly changed what the officers had been telling
7 us had occurred in the first instance. So that is
8 an example.

9 Q. In any of those investigations -- it sounds like at
10 least one -- PIRC found evidence supportive of
11 allegations of racism?

12 A. Yes.

13 Q. How many involved that?

14 A. I couldn't say now, but certainly that wasn't the only
15 one. There had been other ones. What we will tend to
16 do when investigating is capture CCTV, witness
17 testimony, any allegations made, but equally, if persons
18 get brought into custody, we will examine custody CCTV
19 to see whether there's -- how they are treated as they
20 are brought into custody, whether there's any comments
21 or anything like that. So you can capture it from
22 a range of sources.

23 Q. And of the number that you have found evidence
24 supportive of potential racism, were they examples of
25 overt racism that you mentioned earlier?

Transcript of the Sheku Bayoh Inquiry

- 1 A. Yes.
- 2 Q. Any that do not involve or did not involve examples or
3 evidence of overt racism?
- 4 A. Well, I think as I said earlier, overt racism is very
5 obvious. It jumps off the page at you. Whereas -- and
6 I don't really know how to answer this, because you are
7 looking at: is a person's behaviour influenced by their
8 unconscious bias? That is a very difficult one to
9 detect, you know. Overt jumps off the page at you. But
10 was their behaviour influenced by unconscious bias or
11 opinions? That is very difficult to spot.
- 12 Q. Is that something that you would find difficult to work
13 out what evidence you were looking for?
- 14 A. Yes, and I think that is why one indicator is you go
15 through the officer's disciplinary records. Has there
16 been several complaints from black or minority ethnic
17 persons against that specific officer that shows you
18 a pattern? And I think you have the officers'
19 disciplinary records, so you can see some of the
20 instances.
- 21 Q. From your awareness and experience of other PIRC
22 investigators at the time, do you think they would have
23 a similar experience, feel the same, that that is
24 a difficult thing for PIRC investigators to investigate?
- 25 A. I think I can only answer for myself.

Transcript of the Sheku Bayoh Inquiry

1 Q. Okay.

2 Have you ever had discussions with other PIRC
3 investigators about the difficulties to do with
4 identifying potential racism that is not overt or
5 obvious, that doesn't leap off the page at you?

6 A. We certainly get training in matters such as unconscious
7 bias.

8 Q. When did you get training in unconscious bias?

9 A. I can't recall now, but I think I have had at least two
10 training sessions within PIRC, and I have -- within the
11 police, I have done a lot of training in diversity
12 matters such as that, including at the Police Staff
13 College at Bramshill.

14 Q. But when you are talking about your time in PIRC, was it
15 before the investigation into Mr Bayoh or after?

16 A. I don't know. PIRC training records might show that.
17 I can't recall.

18 Q. All right.

19 We were going to look at paragraph 167. This
20 relates to training. Sorry, 169.

21 You were asked if you had had any training during
22 your time at PIRC in relation to investigating an
23 allegation of race being a factor in the conduct of
24 Police Scotland, and your answer here was:

25 "I had no specific training on this matter.

Transcript of the Sheku Bayoh Inquiry

1 I consider my role is to thoroughly investigate any
2 matter referred to PIRC, and present all the available
3 evidence to [Crown Office].

4 "In addition, PIRC has no powers to investigate ..."

5 And you mention something else.

6 So do you want to expand on this? You have said
7 here you had no specific training about investigations,
8 how to carry out investigations, where there is an
9 allegation of race, where racism may be a factor. Is
10 that -- does that remain true or do you wish to change
11 that?

12 A. No, I think that remains broadly true, that I had no
13 specific training in relation to investigating a death
14 or even a criminal investigation where race was
15 a specific factor. I had had diversity training, I had
16 had training in unconscious bias.

17 I think we have also got to recall -- and this is
18 the second paragraph here -- that if we come across
19 something that is a conduct matter, not obviously
20 criminal, or not obviously having a bearing on the
21 death, but we consider that it's a conduct matter or
22 gross misconduct by an officer, the way the legislation
23 is structured is we can't investigate that. We must
24 take that back to the police. I think as I said on
25 day one, we can only investigate Assistant Chief

Transcript of the Sheku Bayoh Inquiry

1 Constables and above, and it's the way the legislation,
2 which we agree is complex, has been structured. So that
3 would be taken back to Professional Standards
4 Department.

5 Q. And it would be a matter for Police Scotland through
6 that department?

7 A. Yes.

8 Q. Looking back now, Mr McSporran, what do you think the
9 impact was on the investigation into the death of
10 Mr Bayoh, the fact that you -- that PIRC didn't have
11 experience of this type of investigation and, in
12 particular, you and perhaps other investigators hadn't
13 had specific training in investigating a death where
14 race is said to be a factor? Looking back now, what do
15 you think the impact of that lack of training and
16 experience has had?

17 A. I think that is quite a difficult one to answer now.
18 I think as I said somewhere else in here, reflective
19 learning is always positive, you know, you never stop
20 learning, you never stop improving. Could we have
21 obtained additional training? Potentially, yes. But we
22 didn't.

23 Q. Do you think it is possible that further training may
24 have benefited the investigation that you did in
25 relation to Mr Bayoh?

Transcript of the Sheku Bayoh Inquiry

1 A. I think -- as I said, I think we did a very thorough
2 investigation and presented all the available evidence
3 to Crown.

4 Q. Okay.

5 So I think you have also said in your statement
6 that, essentially, when PIRC brought in investigators
7 into the organisation, that there was to some extent
8 reliance on what training investigators had had with the
9 police.

10 A. Yes.

11 Q. Is that true?

12 A. When we -- we had to set up in a very short period of
13 time and recruit people and hit the ground running. The
14 only way you can do that is by recruiting people who
15 have experience of undertaking investigations. Some of
16 those were police officers, primarily detectives with
17 specialisms, and we had people from the Army Special
18 Investigations Branch, from the fire service, from
19 Trading Standards, from Borders and Immigration. So it
20 wasn't just ex-police officers or former police
21 officers, but it was people with investigative skill
22 sets and a knowledge of how to investigate. Some of
23 those had the specialisms we needed.

24 Q. Right.

25 Paragraph 166, you are asked about your experience

Transcript of the Sheku Bayoh Inquiry

1 of racism or the race of the victim being a factor in
2 any way in a death in custody or death following
3 a police contact, and you said you do not have
4 experience of racism or the race of the victim being
5 a factor in a death in custody or death during or
6 following police contact, but you did have experience of
7 race or racism being a factor in other types of cases:
8 a murder, terrorist and other enquiries, and you have
9 given us a number of examples there. The top one was
10 the murder of Kris Donald in Glasgow.

11 A. Yes.

12 Q. So you had some experience from your work as police
13 officer --

14 A. Yes.

15 Q. -- where race was factor?

16 A. And the third bullet point there, I am not going to go
17 into the details, because we are crossing into the
18 highly sensitive area, but of course the unit that I was
19 in charge of was conducting a lot of, I suppose, covert
20 operations to support other significant inquiries.

21 Q. I won't ask you to go into any details at all in
22 relation to that, but it is clear from that paragraph
23 that you did have experience as an officer in relation
24 to cases where race was a factor.

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. Thank you.

2 A. And we touched on it when we were doing my quick CV at
3 the start, where I had done sensitive inquiries
4 instructed by Crown into allegations of racism and
5 religious abuse.

6 Q. Thank you.

7 Is there a difference between the way that you or
8 PIRC would investigate a death in custody as opposed to
9 a death in custody where racism may be alleged?

10 A. I think it completely changes the ballgame, for want of
11 a better expression, where if you think the actions of
12 the officers have been motivated by racism, you
13 immediately need to go back to Crown about that, because
14 that could change the whole direction of the
15 investigation, and change it into potentially a criminal
16 investigation.

17 Deaths in custody do occur. It is unfortunate, but
18 some people lead chaotic lifestyles, blighted by alcohol
19 and drug abuse, et cetera, and frequently come into
20 custody, and -- but if we think there is wrongdoing by
21 the officers, we will take that back to Crown.

22 Q. Right. So that would be an immediate change in
23 direction in that respect?

24 A. Yes.

25 Q. Right.

Transcript of the Sheku Bayoh Inquiry

1 We have heard evidence that there wasn't much
2 diversity in the investigations team within PIRC
3 in May 2015. I wondered if you -- looking back now, you
4 considered that to be a disadvantage when you were
5 involved in the investigation?

6 A. I think a diverse workforce is always beneficial. Part
7 of the challenge we had when we -- and it's my
8 recollection of when we were recruiting staff just
9 before PIRC came into being, is there had been no
10 applications from persons of black and minority ethnic
11 background. It was primarily white people that had
12 applied for the jobs. So unfortunate, but that was what
13 happened.

14 Q. Right. Do you know much about the recruitment process
15 or how it was advertised or how it was promoted?

16 A. Back then -- I really can't remember. I know how it
17 operates now, but I can't remember whether, due to the
18 compressed timescale that we had to set up, we had to
19 basically obviously shorten the process. We needed
20 staff, and I remember I did some of the interviews, and
21 we are trying to bring people in within four to
22 six weeks, which is incredibly short for a recruitment
23 process. You know, normally, most companies, by the
24 time you put the advert out, you get applications, you
25 sift the applications, you invite people for interview,

Transcript of the Sheku Bayoh Inquiry

1 you know, that can take three/four months, and then the
2 person -- especially within PIRC, they've got to be
3 vetted to work in investigations, because some inquiries
4 we get, we will deal with secret material. So the staff
5 have to be vetted.

6 Q. Right, and is that another process that takes some time
7 to complete?

8 A. Yes. And I don't know what the timescales were back
9 then, but Covid had a significant impact on vetting
10 timescales. That is quite recent, but it does take
11 a long period of time to get somebody vetted. Because
12 we require SC enhanced level vetting. As I say, it
13 allows you access to secret material.

14 Q. Right.

15 We have looked at the letter from 2 September and we
16 have looked at the log. The Crown were asking to
17 confirm that -- whether there was evidence of racial
18 motivation, asking for confirmation that was a primary
19 focus at that time.

20 At that stage, did PIRC consider indirect
21 discrimination?

22 A. Insofar as ... could you expand?

23 Q. Well, I am asking you if it was considered or discussed.
24 Did PIRC investigators understand what the concept was?
25 Did they know what they were looking for?

Transcript of the Sheku Bayoh Inquiry

1 A. I certainly understood the concept.

2 Q. Are you satisfied your investigators did?

3 A. Yes, because they get training in it.

4 Q. Had they had training prior to 3 May 2015?

5 A. Ex-police officers would have had that training.

6 Q. Right.

7 A. Probably people from the other investigative backgrounds
8 would have had some form of training. I couldn't tell
9 you exactly what it was, but somebody coming from,
10 for example, the military or the fire service would
11 probably have some type of training there.

12 Q. Was that part of any discussion amongst the team that
13 were involved in the investigation?

14 A. I can't recall now.

15 Q. Did PIRC consider whether any inferences could be drawn?
16 We have talked about the statements of the officers and
17 entries within that. Was there any discussion amongst
18 the investigators about the possibility of drawing
19 inferences regarding racial motivation, racial
20 discrimination?

21 A. I think we were -- as I have outlined in my log at
22 number 21, we were going to take cognisance of it if it
23 arose, and then we got a specific instruction from
24 Crown. At that point, we certainly scaled up what we
25 were examining.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. So was part of that whether any inferences could be
2 drawn?
- 3 A. Yes, and I think I have spoken about that, what we did.
- 4 Q. Did you have discussions with the investigators about
5 drawing inferences from adminicles of evidence?
- 6 A. The investigators would be briefed on the progress of
7 the investigation and what our intentions were, what our
8 actions were, and how we were going to proceed with that
9 aspect of the investigation. They would certainly be
10 briefed.
- 11 Q. And in relation to whether inferences could be drawn
12 from evidence that was being gathered in, was there any
13 discussion, consideration, given to that in relation to
14 race?
- 15 A. I really can't recall. I would think, as Crown expanded
16 this, we would certainly discuss it. But nine years
17 later, I can't recall.
- 18 Q. Do you remember if PIRC ever considered whether
19 inferences could be drawn from the circumstances of the
20 events at Hayfield Road, and in particular I am thinking
21 about the speed at which officers resorted to the use of
22 force?
- 23 A. Is that not really for the Inquiry to determine?
- 24 Q. You didn't think that was something for PIRC to
25 consider?

Transcript of the Sheku Bayoh Inquiry

1 A. Well, certainly I was aware of everything that happened.
2 It did happen very fast. We know that the first two
3 officers, PC Walker, PC Paton, they got out their van,
4 Mr Bayoh was coming towards them, they told him to stop.
5 They didn't see a knife in his hand, and they say they
6 didn't see the knife in his hand. But just because they
7 don't see the knife didn't mean that he didn't still
8 have the knife on his person. We know the knife was
9 dropped probably as he saw the police van arriving or
10 heard the sirens. So ... they don't see the knife, but
11 they are told he has got a knife. He keeps coming
12 towards them, at which point they discharge their CS and
13 PAVA. Now, that then blows back in their faces and they
14 get temporarily incapacitated, at which point the next
15 two officers arrive. Then he attacks PC Short, and then
16 he is taken to ground.

17 Now, it happened very quickly, but sometimes
18 incidents do happen very quickly, so --

19 Q. But did you consider -- I'm not saying you had to reach
20 a conclusion on the matter, but did you consider, from
21 what PIRC knew about the speed at which matters
22 occurred, whether race could have been a factor?

23 A. Not initially. Later on --

24 Q. When you say "later on", when do you mean?

25 A. When we get the Crown instruction.

Transcript of the Sheku Bayoh Inquiry

1 Q. Tell us about that consideration. Was it on paper, was
2 it in a discussion, was it with other investigators?
3 How did that take place?

4 A. I think as I said, you would discuss it with the
5 investigators because you would brief them on the
6 progress of the investigation, the expanded nature of
7 the terms of reference, because many of them would have
8 to go out and complete those actions and complete those
9 investigations, so you would certainly discuss it and
10 brief them.

11 Q. Do you remember having a discussion with other
12 investigators after a briefing about whether the speed
13 at which events occurred was something which -- from
14 which an inference could be drawn?

15 A. I don't recall.

16 Q. Do you ever remember raising it with the Crown?

17 A. Sorry, I don't recall.

18 Q. From your recollection now, do you remember ever -- PIRC
19 ever seeking guidance from other investigations or
20 looking for guidance that was available from other
21 investigations that may have taken place prior to
22 3 May 2012?

23 A. Sorry, could we go back to the last question about the
24 Crown?

25 Q. Yes, of course.

Transcript of the Sheku Bayoh Inquiry

- 1 A. The fact is we were sharing video, statements, material
2 with Crown, so Crown were aware of how fast this
3 happened. So that material was shared with Crown.
- 4 Sorry, I have forgotten your next question.
- 5 Q. No, no, that's fine. I think I was asking if you
6 remember raising the matter with Crown or discussing the
7 matter with Crown or putting anything in writing in
8 relation to your communications with the Crown,
9 specifically about this issue about the speed of the use
10 of force, and whether any inferences as to race could
11 have been drawn.
- 12 A. Not the fact that any inference of race could be drawn,
13 but we certainly shared the material with Crown, which
14 included the video and other material. So they knew how
15 fast this occurred. They knew Mr Bayoh was black.
- 16 Q. So you would have -- am I right in saying you would have
17 seen that as part of the function of the Crown Office,
18 rather than of PIRC?
- 19 A. Yes, and, as I say, we explored what was in the
20 officers' mindset as they were approaching, what were
21 their considerations, and Crown would certainly be aware
22 of that because it was contained in the officers'
23 statements.
- 24 Q. Before you retired, is that an approach that would have
25 continued, that it would have been for Crown to consider

Transcript of the Sheku Bayoh Inquiry

1 inferences rather than PIRC, or do you think the new
2 guidelines with PIRC would have required PIRC to
3 consider inferences?

4 A. I think if we become aware or find something obvious
5 that may alter matters, we alert Crown, and that has
6 occurred. And Crown, particularly for major
7 investigations, there was that ongoing dialogue all the
8 time. The relationship between Crown and PIRC is quite
9 close when it comes to discussing these matters, that
10 you do hold regular discussions with them, and as I say,
11 if something jumps off the page at you, you will go back
12 to Crown.

13 Q. I was about to ask you about whether guidance had been
14 sought.

15 Now, we've not heard yet from John Mitchell,
16 director of investigations, but he has provided
17 an Inquiry statement to the Chair, and I want -- he has
18 given us some information. I just want to check with
19 you if you agree with that or if you have any other
20 recollection.

21 He indicates that PIRC had never sought guidance,
22 from previous investigations into race, from other
23 bodies or other organisations. Do you agree with that?

24 A. I would agree with it. We did our own research, I think
25 as I have mentioned earlier, like the Mark Duggan case,

Transcript of the Sheku Bayoh Inquiry

1 so -- and various cases before the European Court.

2 Quite few cases down in the Met, so we had researched

3 a lot of these matters.

4 Q. All right.

5 He says PIRC never sought guidance from previous

6 enquiries, such as the Stephen Lawrence Inquiry,

7 regarding the approach to be taken in an investigation.

8 Would you agree with that or --

9 A. Yes.

10 Q. Yes.

11 There was never a discussion about the

12 Lawrence Inquiry or how it had progressed.

13 A. I think, as a police officer, I was well aware of the

14 Lawrence Inquiry.

15 Q. Right.

16 PIRC didn't seek guidance from third parties

17 regarding the race investigation or how it should be

18 conducted.

19 A. Yes.

20 Q. You would agree with that?

21 A. I would agree.

22 Q. He was asked if he had ever discussed with anyone,

23 either with professional or lived experience, about race

24 issues that might arise in an investigation, and he

25 said -- or he has not given any details of any

Transcript of the Sheku Bayoh Inquiry

1 discussions with a professional person or someone with
2 lived experience.

3 A. No.

4 Q. Had you ever done anything like that?

5 A. No.

6 Q. He was asked if he had ever sought guidance from the
7 Crown about the race investigation. His statement says
8 they rarely instruct specific lines of enquiry. We have
9 obviously looked at the letter on 2 September. Would
10 you agree that race -- Crown Office would rarely provide
11 specific guidance to PIRC?

12 A. Yes, usually they set broad terms of reference. They
13 don't specifically instruct: do this, do that. They
14 very much leave that up to the investigators to take
15 forward the investigation, because each one is
16 different. So you get your terms of reference, and that
17 broadly sets the parameters for your investigation.
18 Thereafter, the expectation is that the investigators
19 will then go out and investigate, and then report back
20 to Crown. But you must address the terms of reference
21 set for you. If you don't, they will ask for further
22 enquiry.

23 Q. All right.

24 Did you, when you were involved in this
25 investigation, ever look at -- you've talked about going

Transcript of the Sheku Bayoh Inquiry

1 online and checking things out online. Did you ever
2 look at any other reference materials of any sort that
3 would have assisted you in carrying out an investigation
4 where race was potentially a factor?

5 A. Certainly I had read the Duggan decision, two or three
6 other decisions from the Met and decisions by the
7 European Court. So ...

8 Q. I think on the first day I took you to one of the
9 documents that existed in PIRC prior to Mr Bayoh's death
10 and I think it referred to Mr Duggan, and you had -- you
11 thought you were the author of that paper.

12 A. Potentially.

13 Q. Potentially.

14 Did PIRC ever consider whether inferences regarding
15 race could be drawn as a result of any of the events in
16 the immediate aftermath of Mr Bayoh's death? In that
17 regard, I am thinking about the criminal allegations
18 made by Zahid Saeed; searches of the homes of
19 Martyn Dick and Kirsty MacLeod, recovery of their
20 clothing, recovery of their DNA, their removal to
21 Kirkcaldy Police Office to give statement; seizure of
22 the home of Mrs Rashid and Mr Ahmed, who were relatives
23 of Mr Saeed, searching their home and removal of the
24 family from the home. So those were events in the
25 aftermath of Mr Bayoh being pronounced deceased.

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. And I am wondering if PIRC considered whether any of
3 those circumstances could give rise to inferences
4 regarding racial matters.

5 A. No. We knew what those events were and what had
6 happened. We certainly reported to Crown in respect of
7 those matters.

8 There was a complaint from the Saeed family. That
9 was a complaint against the police --

10 Q. Yes.

11 A. -- which is not a matter PIRC can investigate, because,
12 as we know, they had went in to the Saeed family without
13 a warrant, ejected them from their house. They had
14 a severely disabled son.

15 Q. So that wasn't part of your terms of reference --

16 A. No.

17 Q. -- those allegations?

18 A. But the Saeed family did inform us about it, and we
19 notified them of the process, which was to put in
20 a formal complaint to the police.

21 Q. Right, thank you.

22 But in terms of inferences regarding race or racial
23 discrimination, were there any discussions about the
24 implications of those events or --

25 A. Not that I recall.

Transcript of the Sheku Bayoh Inquiry

1 Q. Right.

2 So looking back now, do you think that more
3 assistance, more guidance, more training could have been
4 provided to PIRC investigators to help with this
5 investigation prior to 3 May 2015?

6 A. I think the challenge is hindsight is always an exact
7 science. If we had more staff, more training, could we
8 have improved things? That is a difficult one to say.
9 I think we did a thorough and effective investigation,
10 but elements of it were significantly slowed by the
11 various factors we have discussed, including the lack of
12 staff.

13 When you've got a very small team, particularly in
14 those early days, we had to rely on the previous
15 training of people. Now, the world has moved on. The
16 investigations team is now significantly larger, and
17 there is a lot more training. But that is the way it
18 was back in 2015.

19 Q. All right, thank you.

20 Can we go back to the log, please, and we will look
21 at the -- decision number 79. It is not the last page,
22 but it's the last decision number in the log.

23 While that is being done -- it is maybe not
24 necessary, but it was to say that the decision number
25 79, which was the final numbered decision, was dated

Transcript of the Sheku Bayoh Inquiry

1 20 October 2015, and it talks about:

2 "PIRC continues to keep track, where possible, of
3 all correspondence in respect ..."

4 Here it is:

5 "PIRC continues to keep track, where possible, of
6 all correspondence in respect of the investigation and
7 the authors of all outgoing PIRC correspondence should
8 place a copy of letters, email and attachments into the
9 appropriate folder in the correspondence file ..."

10 So this is you concluding your final decision in the
11 policy log, and you are asking for copies of letters and
12 correspondence effectively to be retained.

13 A. Yes.

14 Q. What was the position here in October 2015 about
15 resourcing?

16 A. I think I have probably covered that, which is we had
17 20 staff. I have explained the challenges that we had
18 back then.

19 Q. So no change? No change at all?

20 A. No real change.

21 Q. Right.

22 A. Potentially there was even more work had come in since
23 then and, as I say, just because policy file finishes,
24 there is that ongoing dialogue with Crown, additional
25 actions to be undertaken, and that went on for the next

Transcript of the Sheku Bayoh Inquiry

1 two, three, four, five years.

2 Q. So 2 September, the interim report is already with
3 Crown, substantial document. They provide a lengthy
4 letter with 13 bullet points giving further
5 instructions.

6 A. Yes.

7 Q. Expert evidence to be obtained and other matters to be
8 investigated.

9 By this date in October 2015 there has been no
10 change to the resources at all, although it appears
11 you've got additional lines of investigation now to
12 cover.

13 A. Yes.

14 Q. And if we move further down this page, do we see at
15 "Reason", it says:

16 "Due to the significant volume of correspondence
17 including telephone calls and other interactions in
18 respect of the investigation failure to effectively
19 record, minute and index material may lead to oversight
20 of actions or a failure to raise actions and create the
21 potential for matters to be missed or overlooked."

22 Was this a concern of yours at the time?

23 A. The volume of correspondence was getting significant.
24 I think we have disclosed all correspondence, emails,
25 et cetera, to the Inquiry. There was over 1,500 items.

Transcript of the Sheku Bayoh Inquiry

1 But also, the number of statements that we had and other
2 material. In preparation for the Inquiry I think we
3 disclosed potentially tens of thousands of items to the
4 Inquiry. So there was a huge volume, and it was
5 managing that, so as nothing got lost, and that is why
6 I am putting this down as my final entry, which is we
7 need to manage all this.

8 At that time, we were operating a CLUE 2 operations
9 system, which recorded all the actions, but the sheer
10 volume of material coming in -- what I am saying here is
11 we need an effective filing system, and that is what we
12 did, where we broke it down by each correspondent, so
13 you had Crown Office, Mr Anwar, Scottish
14 Police Federation, Police Scotland, the expert witness
15 pack. You're creating folders, you know, just like --
16 we have all seen them within our computers, to record
17 all this and make sure that we didn't lose it, but also
18 make sure we could easily find it, and as it was coming
19 in, it would get actioned and recorded in the CLUE 2
20 operation system.

21 Q. What were you doing after this date on 20 October, after
22 this final decision number?

23 A. I was still doing investigations, and particularly as
24 the inquiry progressed, though, and we had less staff,
25 myself and Billy Little started to do some of the

Transcript of the Sheku Bayoh Inquiry

1 investigations. Rather than have oversight or
2 management of it, we started to undertake some of those
3 investigations; for example, the audits, and I think
4 Billy has touched upon that, the intelligence entries.
5 So we had to start doing that ourselves because we were
6 running out of staff.

7 Q. So after October 2015, did it come down to you and
8 Billy Little?

9 A. If we required additional staff to do specific things,
10 we could take them away from another investigation and
11 say, "Right, can you now go and do this", and you would
12 brief them. But on occasion -- not after this, I would
13 say more as you progressed into the next year, a lot of
14 it was myself and Billy Little. We still had staff who
15 were very familiar with the investigation that we drew
16 on as and when required, but by that time, PIRC are
17 undertaking multiple investigations. As I think I said
18 earlier, it's the practicalities of who does what. So,
19 for example, the audit stuff, myself and Billy did that
20 specifically, just due to our knowledge and familiarity
21 with the systems.

22 Q. As at this point, after 20 October, looking back now, do
23 you think you had adequate resources to complete all of
24 these additional lines of investigation?

25 A. We did complete them all, but the fact is, it took a

Transcript of the Sheku Bayoh Inquiry

1 significantly longer time frame, and you will have seen
2 it because some of this stuff went into 2016, 2017.

3 I think the last time we did something was 2019.

4 Q. Then the final page of the policy log, there is no
5 number, it says:

6 "Conclusion of Policy File.

7 "From this point forward all additional enquiries
8 etc will be managed as actions within the inquiry.
9 Correspondence will continue to be recorded and acted
10 upon."

11 And was that at the point at which the management
12 policy file no longer was added to?

13 A. Yes. I mean, at some point, all management policy files
14 need to come to a conclusion. But we were then managing
15 the rest of the inquiry as actions within the CLUE 2
16 system, within correspondence, et cetera.

17 Q. Then as I understand your statement, the final report
18 was sent to Crown Office the following year, 2016, and
19 was that on 10 August?

20 A. I would think so. You will know the date. I won't.

21 Q. I have taken that from your statement.

22 A. All right.

23 Q. Or round about August 2016.

24 A. Yes.

25 Q. So the interim report had been sent on 7 August 2015 --

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. -- policy file completed in the October, and then the
3 final report from PIRC, August 2016.

4 A. Yes.

5 Q. But, again, PIRC's role did not completely end at that
6 point because the Crown could still ask you to carry out
7 additional investigations.

8 A. Yes, and we did.

9 Q. And you did do that.

10 But once the final report was sent, that was
11 essentially your initial investigation, and the
12 supplementary matters that were raised post-2 September,
13 they were completed and sent to Crown.

14 A. Yes.

15 Q. Can I ask you one question about the final report.

16 I asked you earlier if there were some entries in the
17 interim report that remained the same in the final
18 report, and you said there were.

19 So can we look at the final report, please. I am
20 interested in -- I think it's page 15 of the final
21 report. Sorry, it's PIRC00002, and there should be
22 a paragraph that begins -- so this is -- let's go up to
23 the beginning of that.

24 This is an introductory section of the PIRC report,
25 and it is called "Executive Summary", and it is a number

Transcript of the Sheku Bayoh Inquiry

1 of paragraphs setting out the circumstances,
2 effectively, of what happened on 3 May and the death of
3 Mr Bayoh.

4 If we can look at page 15, the paragraph that
5 begins:

6 "The second pair of officers to arrive ..."

7 Do you see that at the top?

8 A. Yes.

9 Q. It is talking there about Short and Tomlinson being the
10 second officers to arrive, and I am interested in the
11 part at the bottom of that. It says:

12 "PCs Tomlinson and Walker and witnesses Robinson and
13 Nelson ..."

14 That is Kevin Nelson and Daniel Robinson:

15 "... state that they saw the deceased stamp on
16 PC Short's back. The deceased was then struck
17 repeatedly with a police baton to his head and body by
18 PC Tomlinson."

19 The reference there to Robinson and Nelson stating
20 they saw the deceased stamp on PC Short's back, that is
21 also referred to in the interim report that was sent on
22 7 August.

23 Now, we've heard evidence that it was Tomlinson and
24 Walker who saw the stamp, but Mr Nelson in particular
25 gave evidence that he didn't see that. It's not in his

Transcript of the Sheku Bayoh Inquiry

1 statements PIRC. And we have the statement given by
2 Daniel Robinson and he doesn't make any mention of
3 a stamp.

4 I am wondering how that apparent error could have
5 crept into that report? As I say, it was in the interim
6 report and it's in the final report.

7 A. It is erroneous and it is probably my fault. When you
8 are preparing a report this size, you are reading vast
9 amounts of material, and I have simply made an error.

10 Q. All right. Thank you.

11 Can I ask you about something completely different
12 now. We haven't heard from Kate Frame yet. We are
13 hoping to hear evidence from Ms Frame. But in her
14 Inquiry statement, she talks about the PIRC's family
15 liaison policy, and the policy states that the FLO
16 should actively discourage the family from issuing
17 statements to the media that are independent of
18 investigation and could impact on the investigative
19 process. So that is part of the FLO's policy for PIRC.

20 A. Yes.

21 Q. We asked her if any attempts were made by PIRC to
22 discourage Mr Anwar on behalf of the family from
23 liaising directly with the media, and she said she
24 wasn't aware of that and she didn't know whether that
25 has been raised by anyone in the -- in FLO -- in PIRC or

Transcript of the Sheku Bayoh Inquiry

1 the FLOs, and I just wondered: are you aware of any
2 attempts to discourage Mr Anwar or the family from
3 issuing statements to the media?

4 A. I am not aware of it, but I would take you back to what
5 I previously said, which is, particularly in the early
6 stages, where you have not managed to interview all the
7 witnesses, you don't want to potentially cloud their
8 memories, where they are reading stuff in the papers
9 that may or may not be accurate -- in the papers or the
10 media, which may or may not be accurate. So clouding
11 their memories or potentially give them false memories
12 because they read something and they think: well, that
13 is what happened. So that is why generally you try and
14 restrict information that goes into the media, so as not
15 to cloud witnesses' memories.

16 Q. So not to cloud witnesses' memories.

17 Is there a policy or a practice in PIRC that also
18 seeks to discourage police officers or anyone on their
19 behalf from liaising with the media or issuing
20 statements in the media?

21 A. We in PIRC do engage with the police media department.
22 Because if there is death or fatalities, there is a lot
23 of media attention. Now, the police do put out media
24 statements all the time through their media department.
25 Where it's a PIRC investigation, what should be

Transcript of the Sheku Bayoh Inquiry

1 happening is, firstly, we will clear any media release
2 with Crown and co-ordinate with Police Scotland.
3 Police Scotland have a wider role. So it's not just in
4 respect of the PIRC investigation, they may have other
5 matters that they want to take into account. So the
6 media departments do co-ordinate. When it comes to
7 bodies like the Scottish Police Federation, we have no
8 influence over what they decide to put into the media.

9 Q. So does that mean PIRC take no steps in relation to
10 liaising with SPF or individual officers to
11 discourage --

12 A. We certainly wouldn't be clearing anything with them.

13 Q. Okay. Are there any attempts to discourage them?

14 A. The challenge is that you can't. Because if they decide
15 to go and put that in the media, once it's out there,
16 it's out there. By which time it is too late.

17 Q. Thank you. You mentioned on I think the 16th you had
18 gone to America to a conference to look into the issue
19 of alpha-PVP. Was that something that you did off your
20 own bat or was it through PIRC?

21 A. No, it was through PIRC.

22 Q. We have asked Mr Little about some intelligence matters.
23 You have mentioned that yourself. He has explained the
24 process so far, so I don't need to go over that again
25 with you, but he got to the end of it and the

Transcript of the Sheku Bayoh Inquiry

1 Information Commissioner's involvement and he said we
2 should probably ask you a little bit more about how it
3 was resolved. His recollection was that there were
4 recommendations made -- so this related to the data
5 protection issues and the intelligence that was being
6 gathered in relation to -- specifically in relation to
7 Mr Anwar, and Mr Little said he remembered it had gone
8 to the Information Commissioner and there had been
9 recommendations, but he couldn't remember and suggested
10 you might be in a position to remember what the
11 recommendations were.

12 A. So myself and Billy Little did sit down with staff from
13 the ICO, briefed them, gave them the material. Because
14 when we reported initially to Crown what we had found,
15 Crown said: okay, take this to the Information
16 Commissioner's Office, because this maybe breached the
17 Data Protection Act, and that is what we did. Now, the
18 ICO, my understanding is they initially came back and
19 said, "We're taking this no further." Then they later
20 reversed that decision. But what their eventual outcome
21 was you would need to ask the ICO.

22 Q. Right. So you don't have any recollection either? Or
23 you are not prepared to say?

24 A. It's not that I'm not prepared to say. I don't think
25 that the ICO took any -- any criminal prosecutions in

Transcript of the Sheku Bayoh Inquiry

1 respect of the Data Protection Act against any person in
2 Police Scotland. Whether they took any other
3 enforcement action, that is what I am not aware of.

4 Q. Do you have any recollection of recommendations that
5 they may have been making to Police Scotland about their
6 admin or matters of that sort?

7 A. I think certainly within volume 3 of the PIRC reports
8 I have outlined what my concerns there were.

9 Q. Yes.

10 A. And that was long before the involvement ICO, where I am
11 saying, you know, I think this potentially breaches the
12 Data Protection Act, they are not keeping proper
13 records, they are keeping entries in relation to
14 a solicitor which they should not be doing under any
15 circumstances whatsoever.

16 Q. I think you made your -- so if the Chair wants to look
17 at that in more detail, volume 3 is where he can find
18 your concerns?

19 A. Yes.

20 Q. I won't go back over all of that again. We have dealt
21 with that with Mr Little.

22 A. Okay.

23 MS GRAHAME: But that is very helpful to know.

24 I wonder if it would be perhaps possible to rise
25 slightly early today? I have perhaps one or two

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. But there might be learning opportunities for
3 Police Scotland from that. I wondered if you had any
4 thoughts you would like to share with the Chair?

5 A. That occurs all the time, insofar as if we find an issue
6 that needs addressed, and we consider it needs addressed
7 immediately, we will draw that to Crown's attention and
8 ask permission to either share that element or share the
9 report with Crown -- with the police. And that does
10 happen on a regular basis, because I don't think that we
11 can wait two, three years until the end of a matter if
12 you know that there is something that needs sorted, and
13 it needs sorted as soon as possible. So we do go and
14 approach Crown and say, "We've come across this. We
15 think policy, procedure or practice needs to be changed,
16 and it needs to be changed as soon as possible", and we
17 will ask Crown to share it.

18 Sometimes what will happen is Crown will say, "Yes,
19 well, you can share it, but not the full report", so we
20 will provide a summary of the relevant area, send it to
21 Crown, but as I think I have touched on, before we can
22 make the disclosure, we need a section 44(6) permission
23 from Crown.

24 Q. Was there anything like that in connection with this
25 PIRC report?

Transcript of the Sheku Bayoh Inquiry

1 A. No, not in respect of the Bayoh investigation. We have
2 done it in other investigations. Crown, of course, can
3 consider our report and, without us having to approach
4 them, decide, "I think there's issues to be addressed
5 here", and then send the report to Police Scotland,
6 without discussing it with ourselves.

7 Q. Was there any process or consideration given in PIRC to
8 whether the police could learn some lessons from having
9 sight of the PIRC report and maybe speaking to the Crown
10 about that?

11 A. I think that is a very difficult one to answer. With
12 respect, it might be for the Inquiry to consider. We
13 send the reports to Crown. If they wanted to share them
14 with Police Scotland, they could have done so. They
15 wouldn't have to come back to us. You will have read
16 the reports and examined them. With respect, it might
17 be for the Inquiry to decide, "Well, we think that those
18 matters should have been shared with Police Scotland
19 earlier".

20 Q. In 2015, was there any sort of formal step and process
21 that was taken by PIRC with regard to that specific
22 question: should we be asking Crown for permission to
23 disclose this?

24 A. With respect of the Bayoh reports?

25 Q. Just in general, was there any part of a procedure that

Transcript of the Sheku Bayoh Inquiry

1 was followed by PIRC?

2 A. Yes, I think that is what I touched on, which is if we
3 identify something that needs sorted or addressed, we
4 would approach Crown, draw it to their attention. But
5 equally, Crown may decide themselves to share that
6 matter.

7 Q. So it wasn't automatic?

8 A. No.

9 Q. It wasn't automatically done? That was just something
10 that if it appeared to PIRC it might be merited, they
11 would take that extra step?

12 A. Yes, and I think I touched upon one example, which was
13 death in police cells with constant monitoring of
14 prisoners. We had picked up on areas that we considered
15 improvements should made, discussed that with Crown and
16 then share it with the police. Because we don't want
17 another death in the same set of circumstances to occur.

18 Q. Right, thank you.

19 Then equally, it's not available to the public,
20 where a man has died. Did you -- do you have any views
21 on whether there would be benefit in making your report
22 transparent and available to the public?

23 A. So police-referred matters can be reported to the
24 public. Crown ones, it's for Crown to decide. Now, it
25 doesn't prevent us saying to Crown, "Do you think this

Transcript of the Sheku Bayoh Inquiry

1 should be published?", but really Crown have control of
2 that.

3 Q. All right, thank you.

4 You've mentioned earlier about reflective learning.

5 A. Yes.

6 Q. We have asked other people about lessons learned
7 exercises, a debrief.

8 Do you remember if there was an exercise carried out
9 in relation to this investigation?

10 A. No, there wasn't, due to the length of time it took.
11 Because it started in 2015 and we were still undertaking
12 actions up to 2019, so there was no debrief. We have
13 held debriefs in respect of other investigations, but
14 there was none in respect of the Bayoh investigation.

15 Q. Do you think that is something that would have been of
16 benefit to PIRC in terms of maybe improving, making
17 improvements in the future, after 2015?

18 A. Yes. As I say, I think reflective learning, where you
19 consider what you've done -- and there is always room
20 for improvement. I do consider we did a thorough and
21 effective investigation, but is there room for
22 improvement? Probably, if I am being frank.

23 Q. Are there any areas coming to mind in particular?

24 A. I deeply regret the breakdown in the relationship
25 between PIRC and the family. The family were rightly,

Transcript of the Sheku Bayoh Inquiry

1 in my opinion, very angry on day one, and that is an
2 area that I deeply regret. That is my own personal
3 opinion.

4 Q. Looking back now on that matter and the relationship
5 with the family, have you thought that there may be ways
6 that it could be improved, you know, in a similar
7 situation in the future?

8 A. I think you've got to let the FLOs do their job. Most
9 of the time, there is a good relationship between PIRC,
10 directed through our FLOs, towards families to provide
11 them with support. You do get an occasional breakdown,
12 and if we are talking about learning the lessons, well,
13 why did it go wrong and how do we ensure it doesn't go
14 wrong again?

15 Q. Well, we may hear further evidence from Mr Lewis about
16 the involvement of FLOs.

17 A. Yes.

18 Q. Who in PIRC would have been responsible for instigating
19 a lessons-learned exercise or considering what lessons
20 could be -- what improvements could be made?

21 A. Usually that was either the head of investigations or
22 the director of investigations, where, as you are
23 submitting your reports to either Crown or to the
24 police, they could -- they would hold debriefs and say,
25 "Right, let's walk our way through this investigation

Transcript of the Sheku Bayoh Inquiry

1 and see if there are any lessons to be learned".

2 Q. Is that normally done at the stage where the final
3 report is sent to the Crown?

4 A. Yes. It doesn't always happen in what I would describe
5 as relatively minor -- or matters that are not complex,
6 I don't think you necessarily need a debrief. But in
7 complex matters, it does provide assistance.

8 Q. Given the evidence you have given to the Inquiry, is it
9 fair to say this was a complex matter?

10 A. Highly complex.

11 Q. And we've heard that the final report was August 2016.

12 A. Yes.

13 Q. So it would have been either for Ms Scullion or
14 Mr Mitchell to consider a debrief or a lessons learned.

15 A. Yes. But, as I say, we were still undertaking a lot of
16 investigations after the final report, and that didn't
17 finish up until 2019, by which time both of them had
18 retired. I had taken over as head of investigations,
19 and our work volumes were ever increasing. So we didn't
20 do a debrief. Would it have been beneficially?

21 Potentially. Are there lessons to be learned?

22 Possibly. Probably.

23 Q. All right, thank you.

24 I think you became head of investigations in 2017.

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. And I think your Inquiry statement does mention further
2 requests for information and additional material were
3 being received in October and November 2019.

4 A. Yes.

5 Q. That included a request in relation to information about
6 Nicole Short's vest --

7 A. Yes.

8 Q. -- and the mark on it.

9 A. Why.

10 MS GRAHAME: Thank you.

11 Can you give me a moment, please.

12 A. Of course. Ma'am.

13 MS GRAHAME: Thank you very much, Mr McSporran.

14 Thank you, I have no further questions.

15 LORD BRACADALE: Thank you.

16 Are there any Rule 9 applications. Ms Mitchell?

17 No one else?

18 Mr McSporran, would you mind withdrawing to the room
19 while I hear submissions.

20 A. Of course, my Lord.

21 (The witness withdrew)

22 LORD BRACADALE: Yes, Ms Mitchell.

23 Rule 9 application by MS MITCHELL

24 MS MITCHELL: I am obliged.

25 The first issue I would like to ask this witness

Transcript of the Sheku Bayoh Inquiry

1 about is in relation to his comments when he gave
2 evidence about understanding the rationale as to why the
3 police officers might be told the results of
4 Sheku Bayoh's post mortem.

5 What was said by this witness was that -- about his
6 colleague's decision to do that:

7 "I understand his rationale. He was trying to break
8 the logjam. This is the only case in which this has
9 occurred because we will usually not pass that
10 information without Crown's approval."

11 He also said that part of the rationale was because,
12 in the very early days, there was a complete lack of
13 understanding as to what had occurred.

14 I want to --

15 LORD BRACADALE: Can you give me the reference for that,
16 please?

17 MS MITCHELL: Yes, certainly. That is of this witness's
18 evidence at line 156/10. I am afraid I haven't checked
19 whether or not that was Thursday or Friday, but I will
20 find that out for you. If someone could do that.
21 156/10.

22 As the Inquiry knows, at the time in question they
23 had the statement of Ashley Wise, they had a Snapchat
24 video, they had the statement of Kevin Nelson, so it's
25 clear that they had a significant amount of information.

Transcript of the Sheku Bayoh Inquiry

1 The first thing I would like to ask was: did this
2 witness think to himself: why did the police officers
3 want to know the outcome of the post mortem before
4 giving a statement? What could be the reason that they
5 won't give statements until the outcome of the
6 post mortem is known? And I don't think that has been
7 explored.

8 The next issue, which is connected with that, is the
9 taking of evidence from officers and the post mortem.

10 Lesley Boal, on Day 66 of this Inquiry, in her
11 evidence at page 116 and 117, was asked whether or not
12 she would have given officers the outcome of
13 a post mortem, and also whether or not it would have
14 caused her concern that officers that had failed to give
15 initial accounts or basic facts or operational
16 statements were being given information about the death
17 from the post mortem on the Monday evening, and also --
18 sorry, on the Monday evening, and also they were still
19 looking for that information of the full post mortem
20 afterwards.

21 She answers that she wouldn't have agreed to provide
22 information to the officers:

23 "... because they haven't given us a statement.

24 "Question: So why would you provide sensitive
25 information in terms of the results of a post mortem to

Transcript of the Sheku Bayoh Inquiry

1 a witness who hadn't provided a statement?"

2 She answers:

3 "What would be your concerns have been if that
4 information was to be provided."

5 That is literally the quote. And it says:

6 "That if the information was in some way negative to
7 their viewpoint, it might change the way that they would
8 provide their statement. It is just -- it's just not
9 appropriate."

10 This witness also said that he wouldn't give the
11 pathologist any information that might colour their
12 judgment, that he wouldn't want to put out things in the
13 media in case it might cloud their memory, that in
14 an investigation and securing the best evidence you want
15 to keep that evidence as uncontaminated as possible, and
16 also used the phrase he wouldn't want to be "putting
17 ideas into the pathologist's head".

18 So in light of those, why -- what I want to put to
19 him is why, in those circumstances, was it not the case
20 that PIRC did not see it is completely inappropriate to
21 provide witnesses with the outcome of the post mortem,
22 and why did he consider it appropriate to be bargaining
23 with witnesses, especially witnesses who were possible
24 suspects in a fatality, particularly where it was clear
25 that a question of the legality of the use of force

Transcript of the Sheku Bayoh Inquiry

1 would be an issue that had to be considered?

2 Further, an investigation in respect of a death in
3 custody must be independent and adequate because the
4 public must have confidence in the state's monopoly of
5 the use of force, and I think this witness and the
6 previous witness highlighted the fact that the police
7 were in a singular position in that regard, being the
8 people who are entitled to use force where appropriate.

9 What I want to ask is: does trading with the
10 officers involved in the death of Mr Bayoh in relation
11 to the post mortem not fundamentally undermine the
12 confidence that the public should have in respect of
13 these matters?

14 In relation to following up enquiries, this witness
15 said -- moving on to the issue of statements that had
16 been taken, this officer said that they investigated --
17 brought in information and then they considered it.
18 This witness, I would respectfully submit, should also
19 be asked: did he consider the changes in the evidence
20 from Mr Bayoh being clearly in possession of a knife to
21 have not a knife something that he should have
22 investigated?

23 There is a document, which is COPFS02781, where the
24 Crown give a detailed instruction in relation to being
25 in possession of a knife and not being in possession of

Transcript of the Sheku Bayoh Inquiry

1 a knife. That was some 18 months later. They clearly
2 thought it was of import and asked them to follow that
3 up. What I would like to know is what the outcome of
4 those enquiries was.

5 Did he consider that Ashley Wise's evidence and the
6 Snapchat showed that the restraint was not in accordance
7 with proper restraint, and if so, why was she not asked
8 further questions?

9 LORD BRACADALE: Sorry, is this still under the same
10 subject?

11 MS MITCHELL: Yes, it's under the review of statements. He
12 said that he would take in and review all these things,
13 so these are issues that I would like to ask him about.

14 There is another document, COPFS02436. This is
15 a Crown document which indicates that, having viewed the
16 Snapchat video, the Crown are concerned that police
17 officers have given -- it raises matters of concerns
18 that there may be a misleading account of events by
19 police officers. Did it cause him the same concern when
20 he reviewed these documents?

21 Did it cause him -- sorry. Did it cause him concern
22 that some officers had said that a female officer was
23 going to be attacked and, after investigation, it didn't
24 turn out that there was a basis for this? Did it cause
25 him to give consideration as to why that might be said

Transcript of the Sheku Bayoh Inquiry

1 if it wasn't true?

2 Did -- again, on a review of the evidence, he said
3 the reason for him going to the post mortem was that he
4 had been told by Mr Ferguson that there had been blood
5 in Sheku Bayoh's ear. When he came to find out this was
6 incorrect, he did speak to Mr Ferguson about it to
7 ascertain how this could have come about?

8 And then moving on to a separate issue, was he aware
9 from Peter Benson of the Cyber Crime unit that that
10 Sheku Bayoh's phone had been switched on while being in
11 possession of Police Scotland on two occasions? There
12 is an Inquiry number document INQPIRC03834. This is --

13 LORD BRACADALE: Say that again, please.

14 MS MITCHELL: There's a PIRC Inquiry document, 03834, email
15 from Mr Benson. Could that possibly be brought up? The
16 Inquiry might wish to see my concern in that regard.

17 It was to ask him whether or not he knew about this
18 report. At three lines down, it says:

19 "It would be foolish to fail to mention what seems
20 to have happened when the device was out of our hands
21 and [possibly] yours."

22 And that appears to be PIRC.

23 "If there is a reason for the activity that can be
24 explained i.e. someone switched it on to look for
25 something let me know and I can add something in. If

Transcript of the Sheku Bayoh Inquiry

1 I do not mention it in some form then any future defence
2 examination will attempt to use it to discredit the
3 seizure and examination - they may still but at least we
4 are being up front."

5 So it's to ask him whether or not he was aware of
6 that and what enquiries he made into the telephone being
7 switched on on 6 May 2015 at 16.42 and on 2 June 2015 at
8 1140 hours and 1145 hours.

9 LORD BRACADALE: Ms Mitchell, is this a matter that was put
10 in a written application?

11 MS MITCHELL: I am not -- I don't think it was put in the
12 written application. We have been getting a lot of
13 disclosure as the hearing is going on, and I am not sure
14 whether or not these are one of the ones that came at
15 that time or came later, but there certainly have been
16 issues I have had to raise as a result of not coming
17 upon documents until a later stage, or not realising the
18 import of documents until I see later documents.

19 So my apologies if that hasn't been the case, but
20 nevertheless, I think that might be something that ought
21 to be followed up.

22 I will leave out the next question.

23 In relation to the issue of race, the Inquiry will
24 recall that, on a previous occasion, it refused to allow
25 questioning in relation to the investigation of the

Transcript of the Sheku Bayoh Inquiry

1 three police officers who had been found to be sharing
2 racist apps, and I think the understanding at that time
3 of the Inquiry was that these related to the public
4 events of an allegation of racist WhatsApps, but this is
5 in fact a different incident, as I think the evidence
6 earlier today showed.

7 It appears from the documentation in this regard
8 that there was difficulty in obtaining the information
9 in relation to the -- in relation to these three
10 officers' contact with any other officers on shift from
11 Police Scotland, and I would think it might be helpful
12 for the Inquiry for this witness to be asked what that
13 difficulty was and how that difficulty was overcome.

14 LORD BRACADALE: Sorry, where is the reference to the
15 difficulty?

16 MS MITCHELL: There are a number of -- there are a number of
17 documents where -- there are a number of documents which
18 show communications. I don't have the individual
19 documents, but they are communications between PIRC and
20 Police Scotland talking about the difficulties with data
21 protection and whether or not these should be given
22 over, and they resulted in, I think, a meeting at which
23 Mr McSporran may have been present where these issues
24 were discussed.

25 In relation to the post mortem, this witness says

Transcript of the Sheku Bayoh Inquiry

1 that he did not discuss the issue of batoning to the
2 head with Kerryanne Shearer. Kerryanne Shearer gave
3 evidence on Day 53, 9/5/23, where she said -- and she
4 also said in her witness statement, witness number 0003,
5 that she knew there was an issue about blunt-force
6 trauma, so if he did not give that information, might it
7 have been the police who attended that gave that
8 information?

9 Further, in respect of the issue of restraint, the
10 Inquiry will remember the view of Mr McSporran that he
11 took the view that what the post mortem says is -- what
12 it didn't say is that the restraint contributed to the
13 death, and said that what it says is sudden death in
14 a man intoxicated with ecstasy and alpha-PVP whilst
15 being restrained. So it didn't say restraint
16 contributed to the death.

17 The first thing I want to ask him about that is does
18 he know the system in place on a death certificate,
19 which is 1a, 1b, 1c and 1d; in particular, that that
20 system identifies 1a as the primary cause of death, and
21 so when he said that he did not consider that to be the
22 case, how would he be able to do that in light of the
23 fact that this was a 1a identification? So it's to ask
24 him -- to explore with him whether or not he understood
25 that.

Transcript of the Sheku Bayoh Inquiry

1 Secondly, having heard what he said about those
2 matters, I won't need to take him to the detail of it,
3 but the post mortem makes it clear -- the post mortem
4 report makes it clear -- and that is page 18 of
5 PIRC01445 -- that asphyxia was a possible cause. And
6 also, was he aware that, in terms of the post mortem,
7 that blunt-force trauma was in fact not ruled out in the
8 primary findings of the post mortem, and that in fact
9 what had to be done was that the piece of brain had to
10 be examined and that was sent away for that to be done?

11 The next thing is something that arose as a result
12 of something the witness said when he was referring to
13 media communications which were being had by the family
14 and the family solicitor on one side and the Federation
15 and/or Police Scotland on the other. What he said is
16 that he was not there to referee the opposing factions.
17 He said:

18 "We are not there to referee between the opposing
19 faces, if you could call it that."

20 And that was on Friday at line 47/6 to 10.

21 Firstly, in that regard, there is a document,
22 Inquiry number PS02571, which is an email from
23 Garry McEwan giving instruction to Kate of
24 Media Edinburgh about a proposed media release, and
25 Garry McEwan instructs her that:

Transcript of the Sheku Bayoh Inquiry

1 "This is the proposed media release that will go to
2 PIRC and Crown for approval prior to us releasing it."

3 So was he aware PIRC were conducting a supervisory
4 role in respect of media releases that were going out by
5 the police?

6 And then on 14 May, William Little sent an email to
7 the police, namely Keith Hardie and Stuart Wilson. It's
8 a very short email, and I will just read it. It's
9 an email, I think, from Mr Little. It says:

10 "Morning Keith/Stuart

11 "The PIRC was made aware of this late yesterday
12 afternoon. John McSporran spoke to Mr Anwar late last
13 night and it would appear that the thrust of this
14 conference will be to criticise the police officers'
15 decision not to provide statements regarding their
16 involvement."

17 And thereafter it appears that the draft copy which
18 was supplied to Mr McSporran was then supplied, via
19 Mr Little, to the police.

20 So my question is asking him why he gave that
21 document to Mr Little, and was he aware that Mr Little
22 passed that document to the police.

23 LORD BRACADALE: I am sorry, Ms Mitchell, I just didn't
24 understand that at all.

25 MS MITCHELL: Sorry.

Transcript of the Sheku Bayoh Inquiry

1 LORD BRACADALE: You will need to go over that again.

2 MS MITCHELL: Sorry. So unfortunately I don't have this as
3 a document that I can bring up on the screen, but there
4 is a document on 14 May from Mr Little. It's an email
5 to Keith Hardie and Stuart Wilson, and this relates to
6 a family press conference, that is the subject of
7 matter, "Importance: High", as it is written.

8 This appears to be an email from Mr Little, from
9 William Little, and it is sent at 0755 hours in the
10 morning. That email informs the police that the thrust
11 of the press conference will be to criticise the police
12 officers' decisions not to provide statements regarding
13 their involvement, and it would appear that a copy of
14 the draft document was sent via PIRC to the police.

15 I suppose at a basic level, the question is: why
16 were PIRC doing that?

17 LORD BRACADALE: What is the draft document?

18 MS MITCHELL: The draft document is a draft copy of a press
19 statement by Mr Anwar given to Mr McSporran. So
20 Mr Anwar appears to be telling Mr McSporran, "This is
21 what we propose to do", and Mr McSporran appears to have
22 given that to Mr Little, and Mr Little appears to have
23 given that to the police. The question is: why?

24 LORD BRACADALE: Now, was this a matter that was put in the
25 written application?

Transcript of the Sheku Bayoh Inquiry

1 MS MITCHELL: I don't think so.

2 LORD BRACADALE: Well, why should I consider it then?

3 MS MITCHELL: I think it is a matter of importance. If the
4 Inquiry wishes to see whether or not there truly was
5 independence between these bodies, then these sorts of
6 interactions were important.

7 What I can also do, my Lord, is I can find out where
8 in the bundle these documents arose, because I have been
9 having to work through some of the tranches as they
10 arrive, and in this more than other parts of the
11 Inquiry, that has been an issue, and I have in fact
12 flagged it up in conversation with my learned friend,
13 counsel to the Inquiry.

14 (Pause)

15 In relation to the issue of race, this witness said
16 that he would look for and be aware of officers
17 exhibiting obvious racist sentiments. He said overt
18 racism is one thing, but otherwise it is difficult.

19 What I want to ask him about was that two police
20 officers had described Mr Bayoh as "coloured".
21 Kayleigh Good at page 7, paragraph 5 of PIRC00274 said
22 that:

23 "I made the conclusion that she may have been
24 stabbed. I was also thinking at that point of the
25 Lee Rigby incident in London, mainly due to the fact of

Transcript of the Sheku Bayoh Inquiry

1 the coloured male and the potential terrorist
2 connotations."

3 And also Scott Maxwell, PIRC00267, page 2,
4 paragraph 4:

5 "On arrival at the locus I witnessed a black
6 coloured male ..."

7 What I wish to ask him is whether or not he
8 considered those comments were offensive and of a nature
9 relating to race. Did he consider them racist and, if
10 so, why was this not flagged up with the Crown in
11 particular?

12 Finally, a question in relation to the Health and
13 Safety Executive. This arises from a document
14 COPFS02430. It is an email from[sic] John McSporran
15 from Fiona McNeil of Health and Safety, and it sets out
16 that Fiona McNeil considers that PIRC is the appropriate
17 regulator to investigate this death, but if they become
18 aware of a breach, to bring it to their attention.

19 The question is: did he go back to PIRC,
20 Fiona McNeil or anyone -- sorry, did he go back to
21 Fiona McNeil or anybody in Health and Safety with any of
22 the findings and, if not, why not.

23 LORD BRACADALE: Those are all the matters?

24 MS MITCHELL: Yes.

25 LORD BRACADALE: Thank you. I will rise to consider these

Transcript of the Sheku Bayoh Inquiry

1 a difficulty in relation to the three officers who were
2 alleged to have been texting racist remarks. I shall
3 allow questions about what that difficulty was.

4 The next issue is in relation to who told Dr Shearer
5 about the head injury. It seems to me the important
6 thing was that Dr Shearer knew about the head injury and
7 I am not assisted by exploring who told her.

8 As to the next issue, the understanding of this
9 witness of what was meant by a cause of death, I think
10 I have more than adequate evidence about that, and it's
11 a matter for submission.

12 The next item related to the media communications
13 and I shall allow that.

14 The next item related to racist language by officers
15 in statements. That is adequately covered in the
16 evidence and is a matter for submissions.

17 In relation to going back to the Health and Safety
18 Executive, I shall allow that question to be asked.

19 Can we have the witness back now, please.

20 (The witness returned to the stand)

21 LORD BRACADALE: Ms Mitchell.

22 Questions from MS MITCHELL

23 LORD BRACADALE: Mr McSporran, you're going to be asked some
24 questions by Ms Mitchell KC, who represents the families
25 of Sheku Bayoh.

Transcript of the Sheku Bayoh Inquiry

1 A. Yes, my Lord.

2 MS MITCHELL: I am obliged.

3 You have explained to us that you have listened to
4 the evidence of your colleague that gave evidence before
5 you, so some matters that I might raise with you might
6 already have been raised with him and you might have
7 heard me discuss them with him.

8 A. Yes, ma'am.

9 Q. I want to ask you your view in relation to the changes
10 in evidence from the expression that Mr Bayoh was
11 clearly in possession of a knife when he approached the
12 officers, to your understanding, as it came to be, that
13 he didn't have a knife.

14 A. Yes.

15 Q. What I would like to ask from you, in the same way as
16 I asked from your colleague before, is: did that not
17 cause you a concern that matters had been stated so
18 positively in a way which showed Mr Bayoh to be a person
19 who was an aggressor, and that then changed to something
20 different? Did that cause you concern?

21 A. I don't think it initially caused me concerns because of
22 how it was reported. As I have said, ma'am, we had
23 members of the public reporting and seeing Mr Bayoh in
24 the street with a knife. We didn't have accounts from
25 the officers. We know that the officers eventually said

Transcript of the Sheku Bayoh Inquiry

1 that they didn't see the knife in his hands. We had
2 Kevin Nelson telling us that he didn't see the man with
3 a knife. But what we didn't have was the precise
4 details.

5 But by the time I got DC Connell's statement, which
6 I referenced earlier, the knife was found 30-40 yards
7 away, and that seemed to throw some doubt on the fact
8 that it was alleged on day one that he had possession of
9 the knife. But I think as I said, sometimes at the very
10 early stages of these matters, it can be quite
11 a confusing picture, and reports vary.

12 That is why I say it doesn't immediately cause me
13 concern, but it threw doubt on the initial version
14 presented to us, and that is why, when I got to my
15 policy file come the 5th, which was two days later,
16 I did not record the fact that he was in possession of
17 a knife because it cast doubt on it.

18 Q. I wonder if we can have before us production number
19 COPFS02781 -- or Inquiry number, I should say, not
20 production number.

21 If we can scroll down from this. Do we see that is
22 from Alisdair MacLeod and that is to Mr Little?

23 A. Yes, ma'am.

24 Q. What was requested there from Alisdair MacLeod in that
25 first paragraph was related to the issue of possession

Transcript of the Sheku Bayoh Inquiry

1 of a knife, and it says, in the second line:

2 "As you know there appears to have been a belief
3 amongst them that Sheku Bayoh was in possession of
4 a knife when he was engaged by police officers and
5 I would like to try and ascertain where their
6 information came from."

7 And there are further questions added.

8 Then if we just scroll through briefly -- I won't go
9 through them -- a job has been done assessing the
10 evidence of the witnesses and asking further questions,
11 and also identifying various issues that wanted to be
12 dealt with.

13 Now, what I would like to ask from you was: were you
14 involved in the enquiries to try and ascertain how it
15 came to be that the phrase "clearly in possession of
16 a knife" came to be?

17 A. No. I think possibly Mr Harrower and Mr Little, which
18 was day one and day two, would have been better placed
19 to answer that, because come day three, I had doubts
20 about that due to the position where the knife was
21 found.

22 Q. Now, this email is dated 11 December 2017, so that is
23 of course clearly a considerable period of time after --
24 some 18 months or so after the date, and enquiries were
25 caused to be made by that time, by the Crown via the

Transcript of the Sheku Bayoh Inquiry

1 PIRC. What was the outcome of those enquiries?

2 A. I think Mr MacLeod was precognoscing some of the
3 witnesses and, therefore, when these things were thrown
4 up, he asked us these additional questions.

5 Now, come December 2017, I had previously that year
6 taken over as head of investigations, so at that point
7 Mr Little had become the person in charge of the
8 investigation. I don't specifically remember this
9 email.

10 Q. But you were still involved with the inquiry at this
11 time?

12 A. Yes, ma'am, yes.

13 Q. So are you telling us that you don't know what the
14 outcome of those enquiries were?

15 A. No, I think it was clear that we knew by this stage --
16 clearly knew by this stage that Mr Bayoh did not have
17 possession of the knife when he confronted the police
18 officers.

19 Q. Indeed. But, with respect, I think the question that
20 was posed by the Crown for PIRC to answer is, and it
21 says in terms:

22 "... I would like to try and ascertain where their
23 information came from."

24 So it was well known, even by early days, as you
25 have already said, that it wasn't correct.

Transcript of the Sheku Bayoh Inquiry

- 1 A. Yes.
- 2 Q. They were asking you to investigate a different
3 question, which was where that information came from.
4 Are you saying to the Inquiry that you can't remember
5 the outcome of those enquiries?
- 6 A. I don't remember that, ma'am, sorry.
- 7 Q. Do you remember if the senior police officers were
8 interviewed in respect of that?
- 9 A. Yes, certainly, there was statements taken from
10 Garry McEwan, from Detective Superintendent
11 Pat Campbell. What the basis was for, on day one,
12 saying he was clearly in possession of a knife, I don't
13 know. But by day three, I had my doubts about that.
- 14 Q. And to this Inquiry at the moment, you still don't know
15 the outcome of the request by the Crown to ascertain who
16 that had come from?
- 17 A. No, I think that was Billy Little that undertook those
18 enquiries.
- 19 Q. In relation to the issue of race, you discussed with the
20 Inquiry the WhatsApp messages between three police
21 officers, and those police officers -- I think you used
22 the phraseology "sacked". I think they were required --
- 23 A. Required to resign before being dismissed, I think is
24 the official term, or required to resign ... it's
25 something like: or be dismissed.

Transcript of the Sheku Bayoh Inquiry

1 Q. Yes, I think it is an alternative.

2 A. Yes.

3 Q. And I'm --

4 A. I think I was just using the colloquial expression,
5 "sacked".

6 Q. Indeed. Indeed. I make nothing of it. I am just
7 clarifying that issue, really, before I go on.

8 In the documentation that we have seen for this
9 Inquiry, there appeared to be a difficulty which arose
10 in the investigation that you were doing to try and
11 ascertain whether or not there was communication --

12 A. Yes.

13 Q. -- or contact between these three officers who had been
14 found to exhibit racist beliefs in their WhatsApp
15 messages and the officers in question.

16 Can you explain to the Inquiry what those
17 difficulties were and how, if possible, they were
18 resolved?

19 A. Yes. Initially we had asked Police Scotland for copies
20 of the downloads of the three officers' phones, and
21 Police Scotland initially refused to provide them to us.
22 But we were aware they were reporting these matters to
23 Crown, so we approached Crown to break the deadlock, and
24 we did eventually get those phone records, which were
25 very extensive, as I mentioned. One of them was

Transcript of the Sheku Bayoh Inquiry

- 1 27,000 pages. So that is how we broke the deadlock.
- 2 Q. Can you give the Inquiry an understanding of how long
3 that took to break that deadlock?
- 4 A. I think it was several weeks. Because Police Scotland
5 considered they were doing a criminal investigation,
6 their own criminal investigation into the actions of the
7 officers, and therefore they couldn't release that
8 material to us for another purpose, which was the death
9 investigation. But they were reporting to Crown, so
10 Crown eventually unblocked or released the deadlock.
- 11 Q. The Crown also asked you to identify whether or not
12 there was contact between the police officers. It
13 wasn't just digital in form. Do you recall that?
- 14 A. Yes.
- 15 Q. Was that -- those investigations carried out by yourself
16 or your colleagues?
- 17 A. Yes, we had the officers' telephone numbers, that is
18 the nine principal officers, and we went through
19 27,000 pages to see whether any of the officers'
20 telephone numbers appeared in the three officers who had
21 been dismissed, and they didn't.
- 22 Q. I was thinking more about, rather than a digital
23 communication, if there was contact with them in person.
24 You know, they worked together on shifts, et cetera.
25 Was that something that the Crown asked you to

Transcript of the Sheku Bayoh Inquiry

1 investigate?

2 A. They didn't -- we did look at that, and they didn't work
3 on the same shifts or in the same department in relation
4 to a couple of them as the nine principal officers.
5 I think two of the officers -- two of the three worked
6 in the CID, and the other one I knew definitely didn't
7 work on the same shift as the nine officers. I can't
8 remember now exactly where he worked, but we did examine
9 that.

10 Q. Moving on, I would like to consider an issue that you
11 raised earlier in your evidence in relation to media
12 reporting, and you use a phrase that it wasn't your job
13 or perhaps the job of PIRC more broadly to referee the
14 opposing factions. Do you recall --

15 A. I recall using that phrase, ma'am.

16 Q. You recall using that phrase.

17 Now, do you recall meeting with Mr Anwar relatively
18 early on in the process of this inquiry, and by that
19 I mean 13 May, where he gave you a copy of a press
20 release that was due to be coming out the next day?

21 A. I do recall meeting him. I can't recall him handing me
22 the press release, but I fully accept if he says it did,
23 then it would have happened.

24 Q. Okay. Well, we have evidence before this Inquiry of
25 a document. I have now found that document number,

Transcript of the Sheku Bayoh Inquiry

1 although it won't be available to be brought up on
2 screen, but the document number is PS04984.

3 Now, this is a document from William Little, so not
4 from yourself but from William Little. It was sent on
5 14 May, and it related to what is described as a family
6 press conference, and the importance was described as
7 high. This was sent to Keith Hardie and Stuart Wilson.
8 Those are both officers from Police Scotland. Is that
9 correct?

10 A. Yes.

11 Q. The email is very short. I will read it out to you. It
12 reads:

13 "Morning Keith/Stuart

14 "The PIRC was made aware of this late yesterday
15 afternoon. John McSporran spoke to Mr Anwar late last
16 night and it would appear that the thrust of this
17 conference ..."

18 And that means a press conference --

19 A. Yes.

20 Q. -- a later day:

21 "... will be to criticise the police officers'
22 decision not to provide statements regarding their
23 involvement."

24 And then further on in that document is a press
25 release dated Wednesday, 13 May, and it says:

Transcript of the Sheku Bayoh Inquiry

1 "Press conference Thursday 14 May 2015."

2 Indeed, it does go on to raise some of the points
3 that were said there.

4 A. Yes, ma'am.

5 Q. Does it jog your memory that you had a conversation with
6 Mr Anwar about this?

7 A. I knew he was holding a press conference. As I say,
8 I can't remember, but I fully accept that if he handed
9 me a copy of that press release, I would have accepted
10 it, of course.

11 Q. Well, it certainly seems somehow, either by you having
12 a meeting with him -- and that is what the email tends
13 to suggest -- or by -- somehow, Mr Little has a copy of
14 this document.

15 Can you explain to me why that document might be
16 passed from PIRC to the police, advising them of this
17 issue of criticism?

18 A. I think we shared press releases with Police Scotland.

19 The specific thrust of your question is: why did we
20 share this, where it appeared that Mr Anwar was going to
21 criticise the police? Again, I can't recall. I think
22 the challenge was at that time we were looking for
23 DCI Hardie to -- who was taking action on our behalf, to
24 try and obtain the statements from the officers. The
25 exact thrust of why we shared that, I can't recall now,

Transcript of the Sheku Bayoh Inquiry

1 sorry.

2 Q. In retrospective, do you think it was appropriate that
3 you shared that document?

4 A. I think I will let the Inquiry be the judge of that.

5 Q. You mentioned something in that response that I would
6 like to check with you.

7 You said that you think that you showed
8 Police Scotland your press releases; is that correct?

9 A. What happens is if we are doing press releases in
10 relation to a Crown-directed investigation, we run it by
11 Crown in the first instance. We also share it with
12 Police Scotland, because they might also be undertaking
13 aspects of the investigation, and what you don't want is
14 putting erroneous information into the public domain.
15 If Police Scotland are putting out press releases, they
16 are meant to share it with Crown as well, so Crown have
17 oversight of that and then can agree as to what we put
18 out. Most of the time, it is -- you've seen it, ma'am,
19 it is very short and direct to the point.

20 Q. I wonder if it would be possible to have before
21 the Inquiry, Inquiry number PS02751.

22 I might have transposed numbers around. I appear to
23 have transposed numbers around. In that case, I will
24 just explain to you what that document is.

25 The document which I can't put up on screen is

Transcript of the Sheku Bayoh Inquiry

1 an email from Garry McEwan, and he is giving
2 instructions to Kate of Media Edinburgh. It is about
3 a proposed media release and I have, in a quote, what he
4 says. He says:

5 "This is the proposed media release that will go to
6 PIRC and Crown for approval prior to us releasing it."

7 And what I was wondering was: is that something you
8 were aware that PIRC was doing? Did PIRC also have
9 a relationship where they reviewed what Police Scotland
10 were putting out before that was sent out?

11 A. I think it is more co-ordinating. The role of Crown is
12 to co-ordinate. Where you've got PIRC and
13 Police Scotland doing aspects of the investigation, you
14 know, the legislation says we shouldn't be releasing
15 information without the approval of Crown.

16 We operate -- PIRC operates differently from the
17 police, but in relation to an investigation that the
18 police know that PIRC are undertaking, it should be
19 co-ordinated. Not necessarily -- it is not for people
20 to agree. I mean, the police can choose to put out
21 their own version of events, but that should be cleared
22 with Crown.

23 It is different when the police are the sole
24 investigative body, and we have all seen it where they
25 are doing -- if there is a murder, they are potentially

Transcript of the Sheku Bayoh Inquiry

1 doing press conference, witness appeals, all that sort
2 of stuff. But in PIRC death investigations, everything
3 we put out has to be cleared through Crown.

4 Q. Okay. Really, I understand that, but what I was more
5 interested in was Garry McEwan saying the proposed media
6 release would go to PIRC and Crown for approval. But
7 are you suggesting that it is not approval that is being
8 required?

9 A. It is not for PIRC to approve it; it is for Crown to
10 approve it.

11 Q. I wonder if I might move on to an issue you were
12 speaking about in relation to race, and you talked about
13 overt racism and that being easier to spot --

14 A. Yes.

15 Q. -- than racism about views people hold but they might
16 not express those directly and therefore that might be
17 difficult to understand.

18 What you identified was that if there was something
19 obvious or something that was important in relation to
20 race, you would flag that up with Crown Office --

21 A. Yes, ma'am.

22 Q. -- if you came across that.

23 Now, in this particular hearing, we have heard
24 evidence that two of the police officers who were there
25 on that day, that being PC Kayleigh Good and also

Transcript of the Sheku Bayoh Inquiry

1 Officer Scott Maxwell, said phrases which could be
2 deemed offensive and of a race nature.

3 A. I know what you are referring to, ma'am.

4 Q. Can you tell me what I am referring to?

5 A. It is because they use the word "coloured" in their
6 statements --

7 Q. Yes.

8 A. -- as opposed to "black".

9 Q. Indeed. Why, in those circumstances, when those phrases
10 were used, did you not then report that particular
11 matter to the Crown?

12 A. We did report that matter to the Crown, because we
13 shared the statements with Crown -- excuse me, a frog --
14 but we didn't have -- in the initial phase of the
15 investigation, obviously -- it was 4 June before we got
16 the officers' statements, and we thereafter shared the
17 statements and the other material with Crown, and we
18 were constantly briefing them. So Crown would be able
19 to pick that up within the statements.

20 Q. I suppose my question is this: why would it be for Crown
21 to pick it up and why wouldn't it be for PIRC to say,
22 "We've read these statements, there appear to be
23 racially offensive terms in two of these statements and
24 we are flagging that up as an issue of race to you", as
25 opposed to just submitting these things and letting the

Transcript of the Sheku Bayoh Inquiry

1 Crown decide. What was PIRC's job to look at that
2 evidence and assess it and bring that to the attention
3 of the Crown?

4 A. I am having some difficulty with directly answering
5 that, ma'am, and I think the reason is that we were
6 overwhelmed with information. We had information
7 overload in the first several weeks of these matters.
8 Did we immediately pick that up? I think the potential
9 answer to your question is we failed to spot that, and
10 that was an error. We should have spotted it.

11 I had read all the statements several times, and
12 I failed to spot it, and that was an error on my part.
13 If I had -- so, potentially, I should have done more
14 there, and I apologise.

15 Q. Moving on, can I ask you about an issue arising from
16 health and safety.

17 A. Yes, ma'am.

18 Q. I don't have the document to bring before us, but you
19 will be happy to hear I will just give the details of
20 it. COPFS02430.

21 This is an email to you from Fiona McNeil. Do you
22 remember having interactions with her, correspondence
23 with her?

24 A. Fiona McNeil was the HSE?

25 Q. She was indeed.

Transcript of the Sheku Bayoh Inquiry

1 A. Yes, I do.

2 Q. Yes.

3 Now, in this email it states that PIRC -- that the
4 HSE considered -- or is "content", was in fact the
5 phrase used, that PIRC is the appropriate regulator to
6 investigate this death, but should you become aware of
7 a breach -- and that is a breach of --

8 A. HSE.

9 Q. -- HSE, in fact section 3 was referred to at an earlier
10 stage, but it just says there a breach -- "should you
11 become aware of a breach, bring it to our attention".

12 A. Yes, ma'am.

13 Q. And my question is: when you looked at all the evidence
14 before you, was there anything that you saw from the
15 statements of the officers, statements of the civilian
16 witnesses, the Snapchat, what you know of restraint, was
17 there anything in that that made you think, "I should go
18 back to Fiona McNeil and I should raise these issues
19 with her to consider"?

20 A. No, but then again, I think Crown would be the safety
21 net there, that once they considered that, if they
22 thought that HSE should take further action, they could
23 have done so. I didn't consider, following my
24 discussion with Fiona McNeil, that -- I think the
25 problem is my expertise in the field of health and

Transcript of the Sheku Bayoh Inquiry

1 safety legislation is not what it should be. I lack
2 expertise in that area, and therefore, I am falling back
3 on Crown to pick something up, and they could refer to
4 the HSE.

5 Q. Did you flag that up with Crown, that you didn't have
6 that expertise, or that you --

7 A. Crown were certainly well aware that we were engaging
8 with the HSE, and we cannot undertake investigation into
9 HSE matters, and Crown were well aware of that.
10 Consequently, we would collect the evidence and submit
11 it to Crown.

12 Q. You see, what I am concerned about is you say Crown were
13 well aware that you were interacting with HSE, but what
14 I am concerned about was that if Crown thought you were
15 interacting with Health and Safety, and Health and
16 Safety had written to you saying that PIRC is the --
17 "HSE is content that PIRC is the appropriate regulator
18 to investigate, but should you become aware of a breach,
19 bring it to our attention", that in that mix, the
20 question of whether or not there has been a breach of
21 health and safety regulations has not been properly
22 considered by the appropriate body.

23 A. I know it is Ms McNeil's opinion that we are the
24 appropriate body, but we are the appropriate body to
25 investigate the death. We cannot be the appropriate

Transcript of the Sheku Bayoh Inquiry

1 body to investigate health and safety matters.

2 I fall back on what I have said already. The safety
3 net there is Crown, who can receive this, and if they
4 think action should be taken by HSE, they can do so, and
5 they have done so in other PIRC investigations.

6 Q. I suppose the -- I suppose I understand what you say
7 about your area of expertise not being health and
8 safety, but these are, of course, criminal allegations,
9 and what you had before you was evidence of -- in
10 particular I am talking about restraint -- behaviour
11 that may have been a breach of section 3. Did that
12 cross your mind at all, that that information might
13 trigger --

14 A. No, ma'am, because it was never a criminal allegation,
15 in my mind, that the actions of the officers crossed
16 into the area of criminality. And as I think
17 I mentioned last time I was giving my evidence,
18 ultimately the Lord Advocate considered all these
19 matters and considered that there was no criminality on
20 the part of the officers.

21 MS MITCHELL: Thank you.

22 I am obliged.

23 LORD BRACADALE: Thank you.

24 Mr McSporran, thank you very much for coming to give
25 evidence to the Inquiry. I am very grateful for your

Transcript of the Sheku Bayoh Inquiry

INDEX

1	
2	MR JOHN MCSPORRAN (continued)1
3	Questions from MS GRAHAME (continued)1
4	Rule 9 application by MS MITCHELL108
5	Questions from MS MITCHELL124
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	