

Transcript of the Sheku Bayoh Inquiry

Thursday, 7 March 2024

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(10.00 am)

LORD BRACADALE: Good morning Mr Green. Will you take the oath.

MR DAVID GREEN (sworn)

LORD BRACADALE: Ms Thomson.

Questions from MS THOMSON

MS THOMSON: Good morning Mr Green. Are you Mr David Green?

A. That is correct.

Q. May I ask how old you are?

A. I am 64.

Q. Until your retirement in August of last year, you were a Procurator Fiscal?

A. That is correct.

Q. And you had been so for some 40 years?

A. I retired after 40 years and one day.

Q. Mr Green, there is a blue folder in front of you and if you can open it up -- in fact I see you have already done that -- I would like to go through the contents of that folder with you.

The Inquiry has on two occasions written to you under a procedure that we refer to as Rule 8, inviting your response to a number of questions set out in a letter. You should have within that folder the first Rule 8 request, its reference number -- we don't need it

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1 on the screen, but its reference number is SBPI 00226.
2 There should also be your response to that first request
3 which we will bring up on the screen, although there is
4 a hard copy in front of you. It's SBPI 00227. Are both
5 of those documents there in the folder, Mr Green?

6 A. Yes.

7 Q. Grand. So we have brought up your first Rule 8 response
8 on the screen. This is in effect your statement to the
9 Inquiry, so if I slip into referring to it as your
10 statement rather than your Rule 8 response you will know
11 what I am referring to. The pages I don't think are
12 numbered but if we scroll through to the very, very end
13 we will see that it comprises 78 paragraphs and
14 concludes with a form of words that I think was provided
15 to you by the Inquiry:

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

20 Do you see that Mr Green, on the final page?

21 A. Yes, indeed.

22 Q. If we scroll to the very bottom we will see that this
23 page is dated 22 December 2022. Your signature has been
24 redacted on the copies that on the screen but will
25 hopefully be visible on the hard copy in your folder?

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1 A. It is.

2 Q. So when you signed this statement you understood that it
3 would form part of the evidence before the Inquiry, and
4 would be available to the Chair for his consideration?

5 A. I did.

6 Q. When you prepared that response, did you take care to be
7 truthful and accurate in the answers that you gave to
8 the questions?

9 A. Yes. I would say this, however: on review of the
10 statement, and I have had a look at it obviously in the
11 last couple of days, at one point in the statement
12 I state that I had a discussion with Pat Campbell about
13 the family's attitude to post mortem and on mature
14 reflection that is not accurate, it was only
15 Keith Harrower that I spoke to.

16 Q. All right. Can we go perhaps then to paragraph 70,
17 I think that is the paragraph that you have in mind.

18 A. Yes, that is correct.

19 Q. Let's have a quick look at this:

20 "I recall a discussion with the DSU Patrick Campbell
21 regarding the family refusing to attend the mortuary to
22 identify Mr Bayoh. I believe I had a similar discussion
23 with Keith Harrower. The content of that discussion and
24 my decision and reasons for so deciding are set out
25 earlier."

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- 1 So on mature reflection, as you put it, your
2 recollection is that in fact you only spoke with
3 Mr Harrower and not with Mr Campbell?
- 4 A. To be clear, I did speak to Mr Campbell about other
5 matters but not about that. It was only Keith Harrower
6 I spoke to about the family's potentially identifying
7 Mr Bayoh.
- 8 Q. Thank you for clarifying that. The Inquiry then issued
9 a second Rule 8 request. We don't need it on the screen
10 but it will be in your folder SBPI 00434. The response
11 that you submitted to that request, which we will bring
12 up on the screen please is SBPI 00426. Again, are both
13 of those documents in your folder, Mr Green?
- 14 A. They are.
- 15 Q. So this I will refer to as your second Inquiry
16 statement. Again, if we scroll to the very, very end,
17 this statement comprises 82 paragraphs, and it concludes
18 with the form of words that we looked at a moment ago at
19 the foot of your first statement. Again, your signature
20 has been redacted but would you kindly confirm for me
21 that the version in front of you shows your signature on
22 every page of the document?
- 23 A. It does.
- 24 Q. And that it was signed in December of 2023?
- 25 A. That is correct.

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1 Q. Again, in preparing this statement did you do your best
2 to be truthful and accurate?

3 A. Indeed, and on review I have no concerns about what is
4 stated in this.

5 Q. Grand. From time to time I will ask for paragraphs from
6 one or other of these statements to be shown and they
7 will come up on the screen in front of you, the hard
8 copies are in that folder, Mr Green, for you to refer to
9 at any time if you would find that to be helpful when
10 you give your evidence. If there is anything that you
11 would like to be put up on the screen, please just let
12 me know and we can arrange for that to be done.

13 I understand that prior to your retirement in August
14 of last year you were the head of the Homicide and Major
15 Crime Unit in Crown Office?

16 A. Yes, that's correct.

17 Q. And prior that you had been the head of the Scottish
18 Fatalities and Investigation Unit?

19 A. Yes, I was head of SFIU from 2012 until 2019.

20 Q. So seven years in that post before you became the head
21 of Homicide and Major Crime?

22 A. Correct.

23 Q. And we will be concerned today with the events
24 of May 2015, as at May 2015 you were the head of SFIU?

25 A. That is correct.

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1 Q. I want to begin by asking you some questions about the
2 role of the Fiscal in deaths investigations. If we
3 could perhaps bring up your first statement and look at
4 page 2. The paragraph at the top of the page, where you
5 provide a little background information. You say:

6 "The Lord Advocate has responsibility for the
7 investigation of all sudden unexpected, unexplained
8 uncertificated and suspicious deaths occurring in
9 Scotland. In former times the local Procurator Fiscal,
10 as representative of the Lord Advocate would be
11 responsible for all such investigations. More recently
12 the service has been reorganised with specialist units
13 brought into being with responsibility for specific
14 areas of work such as homicides (Homicide Unit) and
15 deaths investigation (SFIU). Staff in SFIU would
16 receive reports of deaths from the police medical
17 practitioners, registrars of death etc and would take
18 all necessary steps to investigate the death such as
19 instructing post mortem examination, toxicology and any
20 other specialist reports."

21 You go on to explain how you can instruct the police
22 to carry out investigations and bring to bear the
23 expertise of other organisations such as the Health and
24 Safety Executive, the AAIB is that the Air Accidents
25 Investigation Branch?

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1 A. Bureau. Air Accident Investigations Bureau.

2 Q. And RAIB, what's that?

3 A. Rail Accident Investigations Bureau.

4 Q. Thank you. And take any other action required, and you
5 explain:

6 "On completion of the investigation the final report
7 would be sent to Crown Office for Crown Counsel
8 instruction on whether or not a Fatal Accident Inquiry
9 should be held. The decision on whether to hold a [FAI]
10 is entirely a matter for the Lord Advocate."

11 A. Correct.

12 Q. I wanted to ask you some further questions arising from
13 a reading of that paragraph. You explain that
14 the reorganisation within COPFS took place in 2012, and
15 you mention the Homicide Unit and SFIU.

16 Before that reorganisation the local Fiscal was
17 responsible for deaths investigation, and I think you
18 explain elsewhere in your statement that at an earlier
19 stage in your career, in the 2000s, you had
20 responsibility for the Glasgow Deaths Unit?

21 A. That is correct, for about seven years.

22 Q. Seven years. So seven years managing the Deaths Unit in
23 Glasgow. You have told us that you were head of SFIU
24 for a further seven years and then between 2019 and
25 2023, that is a further four years, you were head of the

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- 1 Homicide and Major Crime Unit?
- 2 A. Correct.
- 3 Q. So if my maths is any good that would be 18 years where
4 your exclusive focus has been on the investigation of
5 sudden, suspicious and unexpected deaths within one unit
6 of Crown Office or another?
- 7 A. That is correct.
- 8 Q. Are you able to say how many deaths you have
9 investigated over the course of your career?
- 10 A. When I left SFIU one of my team did some research and
11 told me that I had been responsible for over 100,000
12 deaths passing through the unit. Obviously I did not
13 investigate every single one of those but I had
14 significant involvement in large numbers, and obviously
15 was the last decision-maker in relation to any difficult
16 cases that came up. I have investigated hundreds of
17 murders, I have indicted hundreds of murders, it is
18 deaths without number frankly. I couldn't begin to
19 guess, but thousands and thousands of them.
- 20 Q. Are you able to say how many deaths in custody or deaths
21 following police contact you have investigated over the
22 course of your career?
- 23 A. Deaths in custody, I think probably -- there is
24 a distinction, is it deaths custody in prisons or deaths
25 in custody in police custody? So in police custody,

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1 I think probably about seven. In prisons, significantly
2 more than that.

3 Q. Thank you. Returning to the text on the screen you
4 explain here that:

5 "Staff in SFIU would receive reports of deaths from
6 the police, medical practitioners, registrars ... and
7 would take all necessary steps to investigate the
8 death~..."

9 And you go on to list the sorts of steps that you
10 might take. Can you help us to understand the purpose
11 of SFIU investigating the deaths that are reported to
12 it?

13 A. Deaths investigations in SFIU would include the
14 unexpected, the unexplained and the uncertificated.
15 Suspicious deaths generally would go to Homicide,
16 although there is a crossover insofar as a death might
17 start off looking suspicious and quickly become
18 non-suspicious once a post mortem had taken place, or
19 some other evidence had come to light.

20 So that would transfer -- you know, we would
21 transfer between the two units, so ... in dealing with
22 the deaths that are unexpected, unexplained and
23 uncertificated, no one can be buried or cremated or
24 remains disposed of in any other way without there been
25 a death certificate, and a very significant number of

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1 these deaths would be cases where doctors weren't
2 prepared to provide a certificate of cause of death and
3 we would then have to carry out examinations to obtain
4 a certificate. Now, sometimes that was done by
5 discussion and explanation to doctors, and they would
6 ultimately provide a certificate, but more often than
7 not we would carry out a post mortem.

8 So, to put it in context, I think the average number
9 of deaths that SFIU would deal with during my tenure
10 would be about 12,000 to 13,000. Out of that we would
11 instruct about 6,800 post mortems. We would then have
12 a diminishing number of cases that would require full
13 investigations, so probably somewhere about 700
14 per annum.

15 Q. Thank you. Just to be clear, the figures you have
16 shared with us, are they per annum or over the course
17 of --

18 A. That is per annum, yes. Per annum.

19 Q. So you say that within SFIU you would be responsible for
20 the unexpected, unexplained and uncertificated deaths.
21 Those that had the hallmarks of being homicide would go
22 directly to the Homicide Unit. For members of the
23 public who are perhaps listening to your evidence, can
24 you give us examples of the sorts of deaths that the
25 SFIU might have reported to it?

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1 A. As I say, any death where there was no death
2 certificate, any death that resulted from an accident.
3 Part of SFIU was at that time the Road Traffic
4 Fatalities Investigation Unit, road traffic fatalities
5 were part of it. Ultimately they transferred to
6 homicide, so I took them over again at a later point.
7 All deaths in prison custody would be reported to us.
8 Any death in police custody. Anything at all that is
9 sudden, unexpected, unexplained, accidental, that needed
10 to be dealt with. Literally almost any kind of death,
11 to be honest. I am sorry to put it that way but that is
12 the fact of the matter.

13 Q. What would be the ultimate purpose of your unit taking
14 on the responsibility for investigating that death?

15 A. Well, the purpose in relation to those deaths that are
16 uncertificated and eventually get a medical certificate
17 of cause of death that allows the body to be disposed
18 of, there would be no further purpose to that.

19 In a case of an accident, a road traffic accident,
20 an accident at work, something of that nature, the
21 purpose is to find out why the accident happened, and to
22 prepare to -- if appropriate, to have a fatal accident
23 inquiry so that a sheriff could determine the cause of
24 death, and the cause of any accident that resulted in
25 the death and potentially make recommendations that

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1 might prevent future deaths.

2 Q. Should we understand that the inquiries that you might
3 instruct would depend very much on the circumstances of
4 the death?

5 A. Yes, they are entirely case-specific.

6 Q. You give some examples in this paragraph, where you say
7 that you might instruct:

8 "... post mortem examination, toxicology and other
9 specialist reports."

10 That you can instruct the police to carry out
11 investigations on your behalf, you can seek specialist
12 medical reports, and reports from the other
13 organisations that we have discussed. And these are but
14 examples, I think, of the sorts of powers that
15 the Fiscal has to investigate a death that is
16 unexpected, unexplained or uncertificated.

17 A. Yes.

18 Q. Tell me, Mr Green, what happens when a death occurs
19 outwith office hours?

20 A. It depends on the type of death, if it is a homicidal
21 death then it would be reported directly to the Homicide
22 on-call Fiscal. Any other death would have come to me
23 because there was no on-call provision for SFIU, so
24 I was in effect on call all the time. It has to be said
25 that not a great number of such deaths would be

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1 reported, there was no provision say for example for
2 general practitioners to call in deaths 24 hours a day.
3 But deaths after police contact or a death in custody
4 would -- police custody would be reported to me out of
5 hours.

6 Q. So if the death was an uncertificated one where the GP
7 didn't feel they could issue a death certificate, you
8 wouldn't be troubled by the GP over the weekend, that
9 might wait until say the Monday morning. But if it was
10 an unexpected or unexplained death, or there was any
11 concern around the circumstances, then you would be
12 contacted out of office hours?

13 A. Yes, that is correct. And also for all cases of organ
14 donation.

15 Q. You have explained that you were on cover all the time,
16 I think as you put it in your statement 24 hours a day,
17 365 days a year. Can you help us to understand just how
18 often you were in fact contacted out of office hours?

19 A. There was no typical week but what I can say is that
20 I never managed to see a single one of my son's rugby
21 games right through on a Saturday morning because
22 invariably I was called about something and had to leave
23 the other parents and go to somewhere quiet to take the
24 call. So it was ... I would imagine maybe 30-40 times
25 at the weekend over the course of a year, something like

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- 1 that.
- 2 Q. Sorry, is that 30-40 times over the course of a 12-month
- 3 period?
- 4 A. Yes.
- 5 Q. Not 30-40 calls on a single weekend?
- 6 A. No, not at all. And some weeks you might get a huge
- 7 number of calls for organ donation or whatever other
- 8 reason and other times, you know, it's quiet, you
- 9 just -- it's entirely unexpected, the phone rings and
- 10 your heart sinks, to be frank.
- 11 Q. So every week would be different, there was no such
- 12 thing as a typical week but if you were to average it
- 13 out, just to give us a feel for the level of commitment,
- 14 it would 30 to 40 calls per annum?
- 15 A. Yes.
- 16 Q. Am I right to understand that as a Fiscal, and indeed as
- 17 an on-call Fiscal, you had a number of resources
- 18 available to you provided by the Crown Office?
- 19 A. I had a mobile phone which had an ability to send
- 20 and receive emails. For major incidents, major
- 21 disasters, I had a folder that I had prepared for myself
- 22 and various items of on-call kit, but really nothing
- 23 beyond that.
- 24 Q. In terms of the Crown Office publications, would you
- 25 have had access to, for example, the Deaths Manual of

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- 1 Practice?
- 2 A. No, not normally. I could have printed it out and taken
3 it home but I didn't do that, I didn't feel the need to.
- 4 Q. You are a very experienced Fiscal, did you contribute to
5 the writing of the Deaths Manual of Practice?
- 6 A. Yes. Myself and a colleague wrote them.
- 7 Q. All right, so it might not be something that you would
8 need to have to hand as a ready reckoner, if you were
9 responsible for the content?
- 10 A. I certainly didn't feel the need to do so. Had I done,
11 had I felt the need I would have printed them out. But
12 sometimes I would get calls from other Fiscals
13 throughout the country who would have been contacted by
14 the police about a death when they shouldn't necessarily
15 have gone to them rather than me, and I would give
16 advice to them, so I was immersed in it.
- 17 Q. All right. Just for completeness, should we understand
18 that there is a Deaths Manual of Practice that is
19 published by the Crown Office?
- 20 A. Yes.
- 21 Q. It's available as a resource to Fiscals, presumably on
22 your intranet, but in printable format if you wanted to
23 take it home for on-call purposes. Are there also
24 Crown Office circulars that might bear on the subject of
25 death investigation?

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1 A. Yes. Even some other things going back further to the
2 book of regulations, so there is a lot of information
3 there. And we would train new entrants into SFIU on
4 that.

5 Q. Finally, was there also something called Serious and
6 Complex Case Guidance: Preliminary Investigation of
7 Suspicious Deaths and On-call Duties?

8 A. Yes.

9 Q. Is that a document that you are familiar with?

10 A. Yes.

11 Q. Did you play any part in authoring that document?

12 A. Not that I recall.

13 Q. All right. I want to ask some questions about
14 the instruction of post mortem examinations, in a very
15 general sense. Can you help those listening to your
16 evidence to understand in what circumstances the Fiscal
17 would instruct an autopsy?

18 A. In a case of a death arising out of an accident or from
19 a homicidal act the Fiscal would always instruct
20 a two-doctor post mortem. As I have said in relation to
21 SFIU deaths where the death is unexplained or
22 uncertificated, sometimes it was possible to speak to
23 the doctor to say: what is your concern here? And get
24 them to provide a certificate. If no certificate was
25 forthcoming we would instruct a single-doctor

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1 post mortem, simply to obtain an MCCD that allowed death
2 to be registered.

3 Q. That is a medical certificate of cause of death?

4 A. Cause of death.

5 Q. All right. You said in any homicidal death you would
6 instruct two doctors?

7 A. Correct.

8 Q. Is that for reasons of corroboration?

9 A. Indeed, absolutely. And it goes without saying that
10 that also applies to those deaths where there is
11 a potential for a fatal accident inquiry, because once
12 again you are looking for that requirement of
13 corroboration.

14 Q. Would that include a death in custody?

15 A. Absolutely.

16 Q. Where, as I understand it, there is a mandatory
17 requirement for a fatal accident inquiry?

18 A. It is a mandatory inquiry.

19 Q. Typically, after a death has been notified to the
20 Fiscal, how soon does the autopsy take place?

21 A. It's important to have the autopsy at the earliest
22 possible time. That is where you get the best
23 examination. It's most likely that the results won't be
24 corrupted. When I was first a depute, and for many
25 years when I was doing on-call for Homicide in Glasgow,

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1 30 plus years ago, we would do post mortem examinations
2 in such cases more or less immediately, the body would
3 be taken straight to the mortuary and a post mortem
4 would happen at all hours of the day and night, weekends
5 included. That has slightly changed but we would still
6 be trying to have a post mortem as quickly as possible.
7 So unfortunately pathologists are a very limited
8 resource, mortuaries are a similarly limited resource
9 there is not infrequently delays in dealing with what
10 I -- perhaps it's the wrong word to use, but the routine
11 deaths, the deaths where you are simply seeking an MCCD.
12 Different criteria apply where you are looking at
13 a homicide or something akin to that, where you would be
14 seeking to have the pathologist deal with that
15 post mortem as soon as possible, at the earliest
16 possible time they could undertake the examination.

17 So that is dependent on mortuary availability, and
18 dependent on there being two suitably qualified forensic
19 pathologists available to carry out the examination.

20 Q. You said that an autopsy, and in particular a homicidal
21 autopsy, should take place at the earliest possible time
22 to minimise -- I think you said the risk of corruption
23 of the evidence. Sorry, I don't have access to the
24 transcript while we are speaking. Can you elaborate on
25 that please, explain a little more what you mean by

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1 that?

2 A. Well, bodies deteriorate from the moment of death. The
3 natural breakdown of the body that occurs in every case,
4 starts immediately. So, for example, it's not uncommon
5 in a post mortem that is delayed to find post mortem
6 alcohol which the body generates itself, it is not
7 a reflection of alcohol that has been consumed by the
8 deceased, it is alcohol that has been generated in the
9 body. Marks can be -- can be less visible, they can
10 deteriorate, you can end up with all sorts of issues if
11 there is a delay in the examination. So any death where
12 an individual is found after a period of time after
13 death, it's a more difficult post mortem because of the
14 degeneration of the body tissues.

15 Q. I would like to ask you some questions -- again, general
16 questions at this stage around identification of a body
17 and if we could turn to paragraph 72 of your statement,
18 please. Sorry this may be the second statement. It has
19 the paragraph numbers.

20 A. I think it's the first statement.

21 Q. Sorry, it's the first statement, thank you. In the
22 first statement there is a lengthy passage which doesn't
23 have a paragraph number and then towards the end of the
24 statement there are paragraph numbers, so it's page 12.

25 A. Yes.

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1 Q. Thank you Mr Green. So page 12 of the first statement,
2 paragraph 72. Here you explain that:

3 "As part of the post mortem process the Fiscal must
4 ensure that the deceased is properly identified. Often
5 that is by visual identification by friends or relatives
6 but other means such as fingerprints, DNA and odontology
7 can be used. It is a matter for the Fiscal to decide
8 the means of identification dependent on the
9 circumstances of the death and the condition of the
10 body. There are international standards for this~...
11 A body is not released until identification is certain."

12 In what circumstances would you instruct
13 identification by visual means, through friends or
14 relatives? Would that be the first port of call in
15 an ordinary case?

16 A. Historically certainly yes. It is my understanding that
17 following the pandemic the Fiscals are moving to try to
18 identify by other means rather than, you know, having
19 nearest relatives attend at the mortuary and go through
20 what is potentially very likely a trauma in having to
21 identify. So we seek to have visual identification less
22 and less, and in some cases visual identification is
23 simply not possible because of the nature of the
24 injuries that the deceased has suffered. I would say
25 historically, and certainly at the time of Mr Bayoh's

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1 death, it would be normal practice to seek to have
2 nearest relatives identify.

3 Q. Would it only be in a case where, for whatever reason,
4 that wasn't possible or desirable that you would move to
5 looking to establish identification via fingerprints,
6 DNA or odontology?

7 A. At that time, yes, but as I say I think things are
8 moving towards a less -- a more scientific
9 identification rather than a visual one.

10 Q. I want to ask a few questions around the role of the
11 Fiscal and family liaison, again just by way of setting
12 the scene and background. If we can scroll to
13 paragraph 45, please of this statement:

14 "The role of COPFS in family liaison begins at the
15 point of handover from the FLOs assigned to the family.
16 In the greatest majority of cases these are police FLOs
17 but in a smaller number of cases they will be from PIRC.
18 In most cases a FLO/Victim Information and Advice (VIA)
19 handover takes place shortly after an individual has
20 been charged and appeared in court. VIA staff are part
21 of COPFS. In certain cases where a prosecution will not
22 take place the handover happens at a suitable point
23 after the case has been reported to us. Such cases
24 might be where no action is contemplated or possible or
25 an FAI is in contemplation."

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1 So the handover from the FLOs, whether it's police
2 FLOs or PIRC FLOs, is to VIA, Victim Information and
3 Advice. Can you tell us just a little bit about the
4 Victim Information and Advice Service within the Crown
5 Office?

6 A. There are really two levels of Victim Information and
7 Advice, some deal with summary cases where there is
8 simply telephoning and updating victims of crime about
9 what has happened in the court that day or bail status,
10 something like that. But in deaths cases there are more
11 highly trained Victim Information and Advice officers,
12 who will take to do with the families meetings, they
13 will meet the family, they will explain the process,
14 they will find -- find out from the family what sort of
15 contact they wish, whether that is in person, by
16 telephone, on Teams, whatever, and they will keep the
17 family abreast of developments throughout the whole
18 process of the case, so through the investigative
19 process up to the conclusion of a trial, if there is
20 such a thing, or the end of an FAI if that is the
21 ultimate outcome.

22 Clearly not all cases end up in court, so they are
23 also dealing with them until there is a point where
24 there is an explanation, probably in the presence of the
25 VIA officer but carried out by an investigator in SFIU

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1 or one of the Fiscals in SFIU where it is explained to
2 the family that our investigations have come to an end
3 and why that has happened.

4 Q. You say that in a case involving criminality the point
5 of handover will ordinarily be when the individual has
6 been charged and appeared in court, and in other cases
7 it would be after the matter has been reported to the
8 Crown Office. Can we take it that could be weeks or
9 months later, weeks or months after the death?

10 A. No, not -- not -- I wouldn't suggest it would be weeks
11 or months. FLOs -- FLO officers in the police, and
12 indeed in PIRC, are again a very limited resource, there
13 are very, very few of these individuals who are highly
14 trained to carry out that role. So in something like
15 a major disaster it's a real problem to have enough FLOs
16 to actually deal with the number of deceaseds that you
17 are facing.

18 So, you know, the role of the FLO is to get in to
19 meet the family, to support them in the early stages of
20 the investigation but they would be seeking to get out
21 of that and pass that responsibility to the Crown at the
22 earliest opportunity, so they can go on to the next case
23 so to speak.

24 Q. So --

25 A. So it varies depending on the nature of the

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1 investigation. Some cases where there is plainly
2 a homicide, there may not be an individual identified as
3 the perpetrator and that would mean that the FLO
4 involvement would be extended, potentially for a very
5 long time. There are some unsolved cases that I am
6 aware of, they are solved now, but FLOs were engaged
7 with the family over a period of years. Now, that
8 contact was not constant but they maintained
9 a relationship with them. So it's all case dependent,
10 to be frank.

11 Q. All case dependent. But in the ordinary course of
12 things, with say a death in custody, would there ever be
13 a role for VIA in your experience before the point that
14 the matter is reported to the Crown Office by the PIRC?

15 A. There might be handover from PIRC FLOs to VIA once they
16 have reached a point in their investigation that all
17 sides are confident that more or less the -- that what
18 has happened is understood and that it can then be
19 passed over. But again, I don't know what happened in
20 this case, I have no knowledge of that.

21 Q. Do VIA provide a service outwith office hours?

22 A. No.

23 Q. I want to move on to asking questions, again general
24 questions, about the role of the Fiscal in directing the
25 investigation into the circumstances of a death in

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1 police custody. So if we could stay with your first
2 statement, please, and look at page 2. Paragraphs 3 and
3 4:

4 "Before the advent of Police Scotland it was open to
5 the Procurator Fiscal, in consultation with the local
6 Chief Constable to instruct an outside force to
7 investigate any death in police custody. When
8 Police Scotland were established it was necessary for
9 the role of the ... (PIRC) to be extended to include
10 an investigative role in order that they could,
11 independently, investigate any death in police custody
12 or following contact with the police.

13 "In advance of Police Scotland coming into being in
14 2013 and having regard to the enhanced role of the PIRC,
15 meetings had to be held involving Crown Office, the
16 Police and PIRC to establish the process for dealing
17 with deaths in custody of the police or following
18 contact with the police in order that all organisations
19 understood their role. I was involved in these
20 discussions along with my then colleague Kate Frame who
21 was the Head of Criminal Complaints Against the
22 Police Division at Crown Office."

23 I will stop there because I don't think we need to
24 concern ourselves with the remainder of that paragraph
25 for now. So you go on, however, to say that a procedure

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1 that was agreed was that in such cases it would be the
2 Professional Standards Department of Police Scotland who
3 would contact you or your deputy, such that you might
4 consider whether the PIRC should be instructed to
5 investigate or whether an investigation should be left
6 with Police Scotland. Was that the mechanism that was
7 put in place?

8 A. Yes, indeed.

9 Q. You say too that not all deaths following police contact
10 require to be independently investigated, but all deaths
11 in police custody do. Can you explain please to anyone
12 who is listening what the difference is between a death
13 in custody and a death following police contact?

14 A. Well, as I indicated earlier, a death in custody is
15 a mandatory fatal accident inquiry so that requires to
16 be independently investigated with a view to the FAI
17 further down the line.

18 In relation to a death after police contact, it very
19 much depends on the scenario, so for example I might get
20 a telephone call from Professional Standards out of
21 hours to tell me that -- and this happened frequently in
22 the early days before we sort of established what the
23 parameters were, I would get calls to say: we were in
24 contact with this deceased individual nine months ago,
25 for example, about a certain thing, and you know there

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1 was no -- no nexus whatever between the earlier contact
2 and the death, and I would decline to become involved in
3 those circumstances. So again, it would very much
4 depend on the nature of the contact, and if I felt it
5 was necessary and appropriate I would instruct PIRC to
6 investigate.

7 Q. As you said a moment ago, all deaths in police custody
8 require to be independently investigated, and there
9 would be a mandatory fatal accident inquiry and it's the
10 PIRC who would be instructed by you to carry out that
11 investigation?

12 A. Yes.

13 Q. For completeness we have heard evidence that
14 the legislation that gives you the authority to instruct
15 the PIRC to investigate a death in police custody is the
16 Police, Public Order and Criminal Justice (Scotland) Act
17 2006 and it's section 33A(b) (ii). Is that correct?

18 A. (b) (i) and (ii), I think.

19 Q. I wondered whether the Act by virtue of (b) (i) also
20 gives the authority to carry out an investigation where
21 there is an indication that a police officer may have
22 committed an offence?

23 A. Yes.

24 Q. So a (b) (i) instruction would be in relation to
25 potential criminality, and a (b) (ii) instruction would

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1 be in relation to a death following -- a death in police
2 custody, amongst other things?

3 A. Yes, a death the Fiscal has to investigate, yes. That
4 is correct.

5 Q. I am using a shorthand but just to understand that there
6 is a distinction in the legislation in terms of which
7 provision the instruction would be issued to the PIRC
8 under, depending on whether you are instructing the PIRC
9 to investigate a death in police custody or a suspicion
10 of criminality on the part of a police officer?

11 A. Indeed.

12 Q. I want to move on now to ask some questions about your
13 involvement following the death of Sheku Bayoh on
14 3 May 2015. I wonder if we might look at the first page
15 of your first statement. I beg your pardon, page 3 of
16 your first statement and it's the final paragraph on
17 that page:

18 "On Sunday 3 May 2015 I received a telephone call
19 from the on-call senior officer at Professional
20 Standards, Police Scotland. I cannot now recall who
21 this was. I was advised that an incident, resulting in
22 a death in custody had occurred in Kirkcaldy. I was
23 advised that at about 07.15 hours police had received
24 calls from the public alerting them to a black male,
25 stripped to the waist, brandishing a knife and

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1 approaching members of the public in cars. My
2 recollection was that he was said to have banged the
3 knife on the roof of a car being driven by a nurse on
4 her way to work. I was advised that officers had been
5 detailed to search for this male and that 4 police
6 vehicles containing 7 officers had located the man. On
7 approaching him he had run at the officers and
8 a struggle ensued."

9 If we can scroll down to the top of the next page:

10 "I was advised that he had struck a female officer
11 but that this was not with a knife. I was told that
12 PAVA spray had been used but that this had no effect.
13 That the man had been struck with batons and that during
14 the restraint handcuffs and leg restraints had been
15 utilised.

16 "I was told that during this the male had collapsed
17 and that CPR had been commenced by police officers and
18 continued by ambulance personnel who were called to the
19 scene. The man, who was named as Sheku Bayoh, was
20 conveyed to the Victoria Infirmary, Kirkcaldy where he
21 received treatment but despite the efforts of medical
22 personnel he had succumbed."

23 Now, you say in your statement, Mr Green, that you
24 can't recall who called you. We heard evidence from
25 Pat Campbell, the SIO, that it may have been

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1 a Superintendent Craig Blackhall who was on call for
2 Professional Standards who made contact with you. Does
3 that jog your memory at all?

4 A. It certainly was Craig Blackhall, because again I have
5 been thinking about this, as you would anticipate, and
6 I did recall that it was Craig Blackhall who called me.
7 I hadn't remembered that at the time of preparing the
8 statement.

9 Q. Do you recall what time he called you?

10 A. I think it was about 9 o'clock.

11 Q. The Inquiry may have before it an email, which
12 I'm afraid I am not in a position to put on the screen
13 just now, from Craig Blackhall to others, which tends to
14 suggest that he might have called you at about 9.25 am.
15 Would you take any issue with that?

16 A. I wouldn't take any issue with that. I know I was
17 immediately trying to speak to PIRC and I spoke to them
18 about 9.30, so that may very well be absolutely
19 accurate.

20 Q. You explain in your statement, we don't need to go to
21 the paragraph but you do explain that you took notes at
22 the time that you received the call but you cannot now
23 locate them, and you have provided here quite a detailed
24 description of the information that was provided to you
25 some years ago now. I wanted to ask, have you provided

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- 1 that account from your memory?
- 2 A. Yes, I suppose it was appropriate to say this though,
3 there were a lot of phone calls and I was given
4 different little bits of information at different times
5 and at this remove I can't be absolutely certain what
6 bit of information I received at what point in time.
7 But I do know that when Superintendent Blackhall called
8 me, he advised me that it had happened at about 7.15,
9 that there was a black male, that a knife had been
10 involved, there was -- the police were sent to search
11 for him, there had been this altercation and the other
12 elements of CPR et cetera were all given at that time.
- 13 Q. If we could scroll back up a little bit so we are
14 looking at the final paragraph on page 3, please. There
15 is a reference here about halfway down to the black male
16 being "stripped to the waist", and otherwise bare
17 chested, I just wondered how confident you were in your
18 recollection that that information had been provided to
19 you by Mr Blackhall at that time?
- 20 A. I can't swear to that, I'm afraid. I was certainly told
21 that at some point. I think it was at that point but
22 I really couldn't be absolutely sure at this remove and
23 without access to my contemporaneous notes.
- 24 Q. The very final line of text there is a reference to
25 Mr Bayoh running at the officers. Again, is that

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1 information that you are confident you were provided
2 with by Craig Blackhall or perhaps someone else?

3 A. I can't be sure if it was Craig Blackhall who said that
4 but certainly he told me that there had been
5 a confrontation between the individual and police
6 officers. That part may have come later, to be honest.
7 As I say, there were many calls.

8 Q. I appreciate there were many calls and it was many years
9 ago now, but should we understand that your evidence is
10 that at some stage you were told that Mr Bayoh was
11 stripped to the waist?

12 A. Yes.

13 Q. And that at some stage you were told that the officers
14 attended, located him and on approaching him he ran at
15 the officers?

16 A. Yes.

17 Q. If we can go to page 4 of your statement, please. It's
18 the third paragraph down:

19 "I informed the officer ..."
20 Craig Blackhall, I think?

21 A. Yes.

22 Q. "... that I intended to refer the matter to PIRC who
23 would take over the investigation. I was also advised
24 that it appeared Mr Bayoh had been watching a boxing
25 match earlier in the morning with friends and that there

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1 had been some sort of altercation between them.
2 I instructed that Police Scotland could carry on
3 investigating this earlier incident but that
4 the circumstances leading up to his death were to be
5 investigated by PIRC."

6 You go on to say in the next paragraph:

7 "I then tried to contact the PIRC on-call number, my
8 recollection is that the call went to voicemail
9 and I asked to be called back. I then called my
10 colleague Stephen McGowan and made him aware of the
11 circumstances as I understood them, that I was referring
12 the matter to PIRC and would also take steps to arrange
13 a 2-doctor post mortem. I was concerned that the Crown
14 Agent, Law Officers and other colleagues be made aware
15 of this as I anticipated media interest in what was
16 obviously a high-profile incident."

17 I wanted to ask you questions arising from these
18 paragraphs in your statement. You said, I think a few
19 moments ago, that it was about 9.30 that you called
20 PIRC?

21 A. Yes.

22 Q. Is that right? You obviously left a message and I think
23 perhaps spoke with PIRC a short time later. Was it 9.30
24 that you called and left a message or was it 9.30 that
25 you spoke to someone at PIRC, do you recall?

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- 1 A. I can't say.
- 2 Q. You said you called the PIRC on-call number. Is that
3 a number you had ever had occasion to use before?
- 4 A. I had used it many times.
- 5 Q. Was it usual for it to go to voicemail?
- 6 A. No, but at that time in the morning, you know,
7 potentially someone in the shower. I thought nothing of
8 it. Normally the call would be picked up immediately.
9 And that phone was passed around the on-call PIRC
10 investigators, so it was a number I was familiar with.
- 11 Q. Was there much of a lapse of time between you calling
12 and leaving the message and you speaking with someone
13 from PIRC?
- 14 A. I don't think there was much lapse of time at all.
- 15 Q. You mention there your colleague Stephen McGowan. Who
16 is Stephen McGowan and what was his role at the time?
- 17 A. Stephen McGowan was my immediate senior officer, so to
18 speak, based in Crown Office and who had responsibility
19 for some of the specialist units, in particular at that
20 time SFIU, also Homicide and other units.
- 21 Q. Is that why you were calling him, just to make him
22 aware?
- 23 A. Yes, I thought that he needed to be made aware
24 immediately and I was concerned to ensure that such
25 information as we had was passed on to the Crown agent,

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1 law officers et cetera in order that there was knowledge
2 of this potentially before it hit the media.

3 Q. Yes. You say that you anticipated the matter being high
4 profile. You say:

5 "... I anticipated media interest in what was
6 obviously a high-profile incident."

7 What aspect of the circumstances as they were made
8 known to you made you anticipate a high profile and
9 media interest in the case?

10 A. Well, my entire role was to deal with deaths
11 investigations and as a consequence of that I maintained
12 an interest in deaths that were happening elsewhere in
13 the United Kingdom, deaths that were happening abroad.
14 I was aware there had been a very high profile matter in
15 America, where an individual who was black had died,
16 again at the hands of white police officers. I was
17 aware of similar cases that had occurred in England. It
18 seemed to me very obvious that this would be a matter of
19 significant concern given Mr Bayoh was black and the
20 officers were, I assumed, white.

21 Q. The case that you mentioned in the USA, where about in
22 America was that?

23 A. Gosh, at this remove I can't say. I think it might have
24 been Baltimore but I am not 100% certain on that. And
25 there have of course been many other cases since.

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1 Q. Can we look at the final paragraph on page 4, please:
2 "At about 9.30 I made contact with Keith Harrower,
3 Senior Investigator at PIRC who was on call. I made him
4 aware of the circumstances and instructed that PIRC
5 should investigate the incident from the point of the
6 reports coming into the police about his behaviour till
7 his being confirmed dead at the hospital. That
8 the police would investigate the matters that occurred
9 elsewhere, earlier that morning as they did not appear
10 connected and that I would arrange a 2-doctor
11 post mortem. I confirmed that the body was at the
12 Victoria Infirmary and would be transferred to Edinburgh
13 City Mortuary for examination. I also advised that all
14 officers involved were either at or on their way to
15 Kirkcaldy Police Office where a post-incident management
16 process would take place."
17 So this was your first direct contact with PIRC, you
18 spoke with Keith Harrower and gave him instructions to
19 investigate from the time that reports were received by
20 the police up to the point of death, and that the police
21 would investigate the matters earlier that morning.
22 So the investigation was effectively being split
23 between the PIRC and Police Scotland. You provide
24 an explanation for that in your second statement.
25 I think I can probably just read this out to you because

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1 it is short. For your benefit it's at paragraph 8 of
2 your second statement. You say:

3 "I also instructed the police should investigate
4 earlier incidents and alleged drug taking as at that
5 time they did not appear directly related and in truth
6 I had concerns about the PIRC's ability to staff
7 a potentially large inquiry given they are a small
8 organisation."

9 You reiterate that at paragraph 16 of your second
10 statement, where you say:

11 "I was concerned not to overwhelm the PIRC's limited
12 resources."

13 Can you help me to understand what your concerns
14 were around the PIRC's resources?

15 A. It was a holiday weekend in the West of Scotland,
16 in fact probably all of Scotland other than Edinburgh.
17 I knew that PIRC would have to assemble staff who were
18 not on call, so there may be difficulties in them
19 getting those staff together. They then would have to
20 travel a significant distance to get to Kirkcaldy, I was
21 area Fiscal in Fife for a period so I know how long that
22 journey takes, and it seemed to me that -- I also knew
23 that PIRC were a small organisation, they did not have
24 large numbers of investigators, and in my view given the
25 information I had, I was told that there had been

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1 a boxing match on in the middle of the night, that
2 Mr Bayoh and others had been watching, there had then
3 been some fall out or other -- and some altercation had
4 taken place. That appeared to be quite distinct and
5 separate from what I was being told had happened during
6 the -- during the period that the police were aware of
7 something going on, ie from the time they started to get
8 calls through to the point where Mr Bayoh had died and
9 I felt the two things could easily be separated. For
10 that matter they could be brought back together again
11 later, as in fact transpired. But it was to try to
12 allow PIRC to get proper resources to start
13 investigating the death which was the really important
14 issue for me.

15 Q. Did you discuss your concern around resourcing with
16 Keith Harrower?

17 A. No, I don't recall that I did.

18 Q. If PIRC had had more in the way of resourcing than they
19 did at that point in 2015, would you have been inclined
20 to instruct them to investigate the matter in its
21 entirety?

22 A. To be honest I really don't know what the answer to that
23 is. As I say, the information that I had from
24 Professional Standards suggested that what had taken
25 place earlier was distant in time and place from what

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1 had occurred involving the police and Mr Bayoh. So
2 I might still have made the same decision
3 and I certainly separated investigations in other cases,
4 where it seemed appropriate to do so, where the
5 matters -- where there was a disjunct, if I can put it
6 that way, between the issues.

7 Q. Thank you. If we can look at page 5 of your statement,
8 paragraph 2, please. You say:

9 "I next called back the officer from Police
10 Professional Standards~..."

11 That will be Craig Blackhall. Sorry, I will let you
12 find that. This is your first statement --

13 A. Yes, I have it.

14 Q. -- page 5, the paragraph at the top of the page:

15 "I next called back the officer from Police
16 Professional Standards~..."

17 Who we know is Craig Blackhall:

18 "... advising him of Keith Harrower's identity and
19 contact details and confirmed my instructions. I was
20 advised senior officers were aware and that a handover
21 to PIRC would be facilitated."

22 Were you advised when that handover was likely going
23 to take place?

24 A. No, there was no discussion about that, and plainly no
25 handover really could take place until PIRC had managed

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1 to get on the ground in Kirkcaldy. It was a matter for
2 Keith Harrower and his staff as well as the police to
3 arrange that at an appropriate and convenient time.

4 Q. What were your expectations in terms of the timescale
5 for Keith Harrower and his team mobilising and getting
6 to Kirkcaldy?

7 A. I doubted that Keith would go on his own, I anticipated
8 he would certainly wish to have someone else with him to
9 act as a noter, if nothing else. I thought that might
10 take about an hour to get organised and a couple of
11 hours to travel there, so I was anticipating that there
12 would be at least some PIRC staff on the ground within
13 a period of about three hours. But I believe I made it
14 very clear that I wanted them to get to Kirkcaldy and
15 take control of this as quickly as they possibly could.

16 Q. So by 9.30, or shortly after 9.30, you had been notified
17 of the death, you had taken the decision to instruct the
18 PIRC to investigate from the time that the reports were
19 received to the point of death, and that the police
20 would investigate the earlier events. You had advised
21 the PIRC of your instruction, you had advised
22 Professional Standards of your instruction and you had
23 taken steps to advise colleagues within the Crown Office
24 and ensure that the law officers and the Crown agent
25 were aware of the death. I think you have explained in

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1 your statement, we don't need to go to it, but that you
2 followed up these various instructions with emails?

3 A. Yes, I said by BlackBerry.

4 Q. In particular you mentioned sending an email to the PIRC
5 making clear that the basis of your instruction was that
6 they should investigate a death in custody as opposed to
7 an instruction to investigate criminality.

8 A. Yes, I instructed PIRC in terms of 33A to investigate
9 the death.

10 Q. You explain in your second statement, paragraph 4, it's
11 a short paragraph we may not need to bring it up but you
12 explain that at the time of your original instruction
13 you did not consider that you had any indication that
14 a person serving with the police may have committed
15 an offence.

16 A. That is correct.

17 Q. That was the reason for the instruction being to
18 investigate a death in custody rather than criminality?

19 A. Indeed.

20 Q. Can we return to -- sorry, we are on page 5. The bottom
21 of page 5, please, where you go on to explain the
22 arrangements that you then put in place for the conduct
23 of an autopsy. You say:

24 "I then spent some considerable time making
25 arrangements for the transfer of the body to Edinburgh,

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1 for 2 forensic pathologists to conduct the examination
2 and that a Quasar examination would be utilised in
3 advance of the PM. As 4th May was a public holiday in
4 Glasgow I also arranged that an experienced colleague
5 from the Edinburgh office, Bernard Ablett, on call for
6 homicides in East Scotland, would attend the PM."

7 I wanted to ask some questions around that. You say
8 you made arrangements for the transfer of the body to
9 Edinburgh, what did those arrangements involve?

10 A. That was an instruction to the police to have their
11 undertaker -- and they have are a contract for moving
12 bodies around -- available to transport the body and
13 that it required to go to Edinburgh City Mortuary for
14 examination. That would -- the movement of that body
15 would be in control of PIRC, I expected PIRC would take
16 control of the body at the Victoria Infirmary in
17 Kirkcaldy so the timing of that was not set down, it was
18 simply that this required to happen and the body had to
19 be in Edinburgh effectively that day, so that it was
20 available for a post mortem process starting at about
21 12 noon the following day.

22 Q. You mention contact with the two forensic pathologists,
23 and also the Quasar examination. What arrangements are
24 in place for contacting a pathologist out of hours?

25 A. Generally speaking on-call homicide deutes would go

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1 through police force control to contact them because
2 they keep a note of who the on-call pathologists are.
3 My recollection is that I knew it was Kerryanne Shearer
4 who was on call, and I know all the forensic
5 pathologists very well so I had all their telephone
6 numbers anyway, so I simply called her directly to ask
7 about mortuary capacity, mortuary availability, the
8 availability of another pathologist, and indeed whether
9 she herself could do the examination on the Monday
10 because it might have been that she had a court
11 commitment or something else, so it was to arrange two
12 pathologists and the mortuary.

13 So I would do that via Kerryanne. She would then
14 contact the mortuary and tell them to expect this
15 deceased coming from Kirkcaldy, and that it was
16 a criminal justice post mortem process, so there are
17 arrangements that need to be put in place to ensure that
18 body is not brought into contact with other bodies and
19 all of those sorts of things, to avoid
20 cross-contamination.

21 Q. Tell us more about the conversation you had with
22 Dr Shearer in terms of setting up the arrangements for
23 the autopsy. You asked about her availability, you
24 asked whether a second forensic pathologist could be
25 available, you have mentioned already -- and we will

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1 come to this -- that the autopsy started at midday on
2 the 4th. Had you suggested to her that you wanted the
3 autopsy to take place the following day, and bearing in
4 mind what you said earlier about the desirability of
5 conducting an autopsy as soon as possible?

6 A. I simply asked her what the earliest time an autopsy
7 could be conducted was, and that was dependent, as
8 I say, on mortuary capacity and the availability of
9 the forensic pathologists. I certainly made it clear,
10 not that I think I needed to, to Kerryanne, that this
11 was a case that had to be done as quickly as possible
12 given the circumstances, given it was a death in
13 custody, and we needed to know what had caused
14 Mr Bayoh's death.

15 Q. You said a moment ago you made it clear to Dr Shearer
16 that this was an autopsy that had to be conducted as
17 quickly as possible given the circumstances. By that do
18 you mean because that was the death of a man, perhaps
19 even a black man, in police custody?

20 A. No, it was the death of a man who had died while in
21 custody of police officers. It mattered not that
22 Mr Bayoh was black. That wasn't the issue at all. The
23 issue was that we needed to know whether this man's
24 death had been brought about by acts of the police
25 officers.

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1 Q. So this was imperative for the early post mortem. Over
2 and above what you said earlier about a body begins to
3 decompose from the moment of death so there is
4 a desirability in any case to perform the autopsy as
5 quickly as possible but the imperative in this case was
6 this had been a death in custody and you needed to know
7 whether that death had been brought about by the actions
8 of the police officers?

9 A. Or indeed whether he might have died of natural causes.
10 It was essential to know as best we could from the
11 post mortem why Mr Bayoh had died, that is
12 the foundation stone upon when the entire investigation
13 is built and without that it is difficult to see what
14 you investigate or how because you simply do not have
15 any idea why he has died.

16 I was given information some time during the day,
17 I am sure I discussed this with Kerryanne, that he
18 didn't appear to have any bleeding injuries, there was
19 nothing obvious that had been found at the
20 Victoria Infirmary. Now, I am sure that must have come
21 from the A&E doctors who had tried to save his life but
22 I certainly was left in a situation where there was
23 nothing obvious that could account for his death and it
24 seemed essential to get that information at the earliest
25 possible time.

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- 1 Q. You mention there Quasar. What is that?
- 2 A. Quasar is a light source that can be used to bring up
3 markings on a body that are not necessarily obvious to
4 the naked eye. So it will show underlying bruising,
5 for example, and in this particular case the reason that
6 I instructed a Quasar examination was in discussion with
7 Dr Shearer I explained that Mr Bayoh was black, she
8 expressed a concern that that might make seeing bruising
9 on the body more difficult, and suggested that to assist
10 her and her colleague we should have a Quasar
11 examination. That seemed eminently sensible to me, so
12 I instructed Quasar be deployed.
- 13 Q. You mention arranging for Bernard Ablett, who was on
14 call for homicides in the east of Scotland to attend the
15 autopsy given you were on a public holiday and he, being
16 in Edinburgh, wasn't. Help us to understand what is the
17 Fiscal's role at an autopsy?
- 18 A. The Fiscal's role in any sudden -- suspicious death
19 rather than sudden -- in a suspicious death is to attend
20 to ensure that the autopsy is conducted appropriately,
21 that appropriate samples are taken, that the labels
22 attached to the samples are all signed, but also to get
23 a readout from the forensic pathologists at the end of
24 the examination as to what their findings are. Now,
25 that is not binding them to those findings, sometimes

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1 they will express a view: well, I think this but I will
2 need to do some histology, I will need to do some lab
3 work before I come to a concluded view but these are my
4 findings at this point in time, thus to give the Crown
5 Office an understanding of what it is we are actually
6 looking at.

7 Q. Was it during the course of your call with Dr Shearer
8 that you agreed with her that there was capacity, there
9 were two forensic pathologists available and that
10 the autopsy would commence at 12 o'clock the following
11 day?

12 A. Yes, I am not sure if there was more than one call, I am
13 not sure if Kerryanne had to check with the mortuary but
14 whatever we came to that view and there were two
15 pathologists available, there was a space in the
16 mortuary at that point. When you are doing a suspicious
17 death it is essential that the mortuary be cleaned
18 entirely before you start it. You can't just go in and
19 carry out that examination where you perhaps have done
20 eight, ten routine post mortems earlier in the day. So
21 there is a process where the pathologist will deal with
22 the cause of death examinations, then the mortuary will
23 be fully cleaned in order to preserve any evidence that
24 might be recovered during that process. So it's not
25 just as simple as saying, you know, we expect to finish

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- 1 at 11.30 so we will start again at 11.45. There is
2 a process that has to be gone through.
- 3 Q. Do you recall what time it was that you had this
4 conversation or these conversations with Dr Shearer?
- 5 A. I would be guessing, saying somewhere around about
6 10/10.30ish, I do remember after the initial burst of
7 telephone calls and quick emails which I felt were --
8 had to go immediately, I made myself a cup of coffee and
9 sat down for a few minutes because it was a bit frantic,
10 to be frank. So I then started those other calls.
11 I had no idea when I phoned Dr Shearer whether we would
12 be looking at Monday or Tuesday or potentially even
13 a later date in the week. But I was concerned, as
14 I have indicated, to do this as quickly as possible.
- 15 Q. So by the time you had this call, I appreciate you might
16 be guessing here but you think maybe 10 or 10.30?
- 17 A. It was certainly during the morning.
- 18 Q. Okay, during the morning of the 3rd or let's say by
19 lunchtime on the 3rd the autopsy had been scheduled for
20 lunchtime on the 4th. Would that be a reasonable way
21 of --
- 22 A. Correct.
- 23 Q. -- putting it?
- 24 A. Correct.
- 25 Q. Now at that point in time when you finalised or put

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1 in place these arrangement for the autopsy did you know
2 whether the death message had been delivered to
3 Mr Bayoh's family?

4 A. I did not know that.

5 Q. Did you know whether police FLOs had been appointed?

6 A. I had no knowledge of that. I had no real knowledge of
7 what was going on in Kirkcaldy at all.

8 Q. Did you know whether PIRC FLOs had been appointed?

9 A. No.

10 Q. Did you know whether PIRC FLOs were even on duty on the
11 Sunday?

12 A. No. I was totally unaware of that, and the deployment
13 of PIRC FLOs would be a matter for Mr Harrower.

14 Q. I appreciate it would be a matter for him but I am
15 wondering whether, in your arrangements to schedule the
16 autopsy, you took into account the need for the PIRC and
17 the police between them to notify Mr Bayoh's family of
18 the death, to appoint FLOs, for the FLOs to meet with
19 the family and explain the necessity for the
20 post mortem; whether you factored in the need for these
21 things to happen to the schedule that you had put
22 in place?

23 A. Well, I made both Police Scotland and Mr Harrower aware
24 of the arrangements. They expressed no concern about
25 that. I would have anticipated that the police would

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1 have contacted Mr Bayoh's family and given a death
2 message really as soon as they possibly could. Now,
3 there are difficulties with a death message because
4 the amount of information that is available in the
5 circumstances may be a problem but you still need to
6 tell them that this has happened. I fully anticipated
7 and expected that PIRC would make themselves known to
8 the family and explain the circumstances and explain the
9 need for a post mortem and the timetabling of that
10 post mortem at the earliest opportunity.

11 Q. So those were your expectations, both of the police and
12 of the PIRC, but was there any discussion on the morning
13 of the 3rd with Craig Blackhall from the Professional
14 Standards Department within Police Scotland or
15 Mr Harrower from the PIRC as to what your expectations
16 were?

17 A. Certainly not with Craig Blackhall, I didn't -- I don't
18 think I discussed anything further with him, to be
19 frank. But I certainly had discussions with
20 Keith Harrower and he would have been in no doubt that
21 my expectations were that the family would be told about
22 this at the earliest possible time, and made aware of
23 the arrangements for the post mortem and asked if they
24 would be willing to attend to identify Mr Bayoh. It had
25 happened that way in so many other cases, to be honest.

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1 Keith Harrower with his experience -- and he and
2 I worked together on a number of different
3 investigations -- I don't know there was a need to go
4 into it in any sort of great detail, which is probably
5 why I don't have a memory of it.

6 Q. I think you said a moment ago in your evidence that
7 certainly no concerns were expressed by Mr Harrower --

8 A. No.

9 Q. -- when you advised him of the arrangements for the
10 autopsy --

11 A. No.

12 Q. -- around the timetabling?

13 A. I do recall there was some discussion with Keith about
14 timetabling. That may have been right at the very, very
15 beginning where I was saying to him that I wanted this
16 post mortem as quickly as possible and we needed to know
17 why this man had died while in the custody of the police
18 officers. But I don't recall any further detail than
19 that.

20 Q. I seem to recall, and I will be corrected if I am wrong,
21 that he may have given evidence that there had been
22 a discussion around the possibility of the autopsy
23 taking place on the 3rd, and he had said no, in respect
24 of that is not possible?

25 A. It's possible that that took place. If Keith says it,

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1 I have no reason to doubt it at all. It may well be the
2 case that I said to him in the earliest conversation
3 that I would need to find out about mortuary space and
4 the availability of pathologists but it might be that we
5 could do it today and if we can that is a possibility
6 and that might be an idea.

7 Again, this was about finding out why he had died,
8 excluding natural causes, trying to find out, you know,
9 what had brought about his death. As I have indicated
10 earlier, it seemed to me imperative that we do this as
11 quickly as possible, and historically we did do such
12 post mortems at weekends, and indeed sometimes late at
13 night. Had Dr Shearer volunteered that or offered that,
14 I would certainly not have discounted it.

15 Q. Did Dr Shearer express any concern around the timescale
16 for the autopsy?

17 A. Not at all.

18 Q. Can I read to you please a passage from her evidence.

19 I don't know whether you have followed any of the
20 evidence --

21 A. No, I haven't. Since I retired I have been abroad most
22 of the time.

23 Q. This won't come up on the screen because it's from the
24 transcript evidence but I will read it out to you. This
25 is what she said:

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1 "Answer: I remember it was a very dynamic situation
2 and there was insistence for the post mortem to be done
3 as quickly as possible."

4 She was asked:

5 "Question: I wonder if you could explain a little
6 bit more about that for the Chair?"

7 And she said:

8 "Answer: I remember at the time because I took the
9 phone call on the Sunday and already there was a lot of
10 media interest, there was a lot of information kind of
11 already out there, and there was obviously questions
12 because there had been police involvement as well. So
13 I do remember there being a reasonable amount of stress
14 surrounding that, and also a reasonable amount
15 of pressure to get the post mortem done as quickly as
16 possible. But bearing in mind these sorts of
17 post mortems I would have done as quickly as possible
18 anyway but I do remember because of the circumstances
19 surrounding the case there was pressure that I have
20 never felt before."

21 Can you offer any comment on that?

22 A. I don't know what sort of pressure she is talking about.
23 I wasn't aware of any media or anything of that nature.
24 Quite frankly I was too busy doing my job to be paying
25 any attention whatever to what the media might be saying

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1 or otherwise and I can say without a shadow of a doubt
2 I at no time looked at the media or was aware of the
3 media during the whole course of that day.

4 She may have felt pressure because she was seeing
5 things on the media and was thinking: goodness gracious
6 me, I am being asked to do this post mortem in what is
7 obviously a high profile case. I can't comment on that.
8 She certainly didn't get any pressure from me. It was
9 a perfectly ordinary, reasonable conversation with
10 someone I have known for many years, I gave her such
11 information as I had at the time about what had taken
12 place, I certainly obviously told her that Mr Bayoh was
13 black, which is why there was the Quasar conversation,
14 and I expressed view that this was likely to become very
15 high profile, and that was another reason why I wanted
16 this done as quickly as possible. But I certainly
17 applied no pressure whatever to Dr Shearer.

18 Q. Thank you. I want to move on to ask some questions now
19 around identification of the body, and I wonder if we
20 can turn to page 6 of your statement. Paragraph 4:

21 "Late that night, about 23.30 I think, I was advised
22 by PIRC that the family had indicated they would not
23 attend the mortuary to identify Mr Bayoh. I instructed
24 that the post mortem should proceed as arranged. My
25 reasons for this were that in my view it was essential

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1 to ascertain the cause of Mr Bayoh's death as soon as
2 possible. There were many possible causes, I thought
3 the most likely would be postural asphyxia with
4 cardiopulmonary arrest but there were other
5 possibilities such as a drug-related cause or natural
6 cause due to a medical condition. I had been made aware
7 at some point that Mr Bayoh had consumed drugs and that
8 there were no bleeding injuries found at the hospital.
9 In my opinion it was necessary in the public interest
10 for the post mortem to proceed to inform the nature and
11 direction of the investigation. All arrangements were
12 in place and his identity could be confirmed at a later
13 stage. The body could be identified by PIRC staff."

14 So who was it you spoke with that evening? Would it
15 have been Mr Harrower? Is this perhaps what you
16 referred to at the very outset of your evidence, that it
17 wasn't Pat Campbell you had the conversation with, it
18 may have been Keith Harrower?

19 A. Indeed, it was definitely Keith Harrower.

20 Q. So you spoke with Keith Harrower. And you were advised
21 that the family had indicated they would not attend.
22 Who did you understand the family to be?

23 A. I assumed that Mr Harrower and his colleagues would be
24 in contact with the nearest relatives. I assumed the
25 family were the nearest relatives. I had no reason to

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1 question that, to be frank. At the time I had no
2 awareness of who the family might be or how many of them
3 there might be, who they comprised, who the next of kin
4 was; I had no knowledge of that at all.

5 Q. You say:

6 "... I was advised by PIRC that the family had
7 indicated they would not attend the mortuary to identify
8 Mr Bayoh."

9 Do you see that there?

10 A. Yes.

11 Q. What I would like to do is just hold that thought but
12 perhaps move on to your second statement to compare what
13 is said there. If we can look at your second statement,
14 please, and it's in the numbered paragraphs which are
15 towards the back of the statement. I am looking for
16 paragraph 42, please. This is quite a long paragraph,
17 it might be easier if you can find paragraph 43 please
18 because it is towards the end. If we can scroll to the
19 top of that page. That would be perfect. Thank you
20 very much. So here -- are you with me Mr Green?

21 A. Yes.

22 Q. At the top of the page that has paragraph 43 towards the
23 bottom, in the second paragraph from the top you say:

24 "I ensured that the family were advised of the time
25 and place of autopsy and that they were asked if they

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1 would attend and identify him. There was no obligation
2 on them to do so.

3 "I was advised that the family were not willing to
4 attend the mortuary and that they were waiting for
5 'elders' to travel from, I believe, London. Moreover,
6 I was advised that the family would consider this
7 request once they arrived.

8 "Thus, there was no timeframe for this to occur nor
9 any certainty that the family would ever attend to
10 identify the body.

11 "In the face of this uncertainty and the necessity,
12 in my view, of conducting the autopsy as soon as
13 possible I decided it should go ahead as arranged."

14 I want to be absolutely clear with you, Mr Green,
15 your understanding of the family's position because in
16 your first statement you say:

17 "... I was advised by the PIRC that the family had
18 indicated that they would not attend the mortuary to
19 identify Mr Bayoh."

20 But here you refer to the family not being willing
21 to attend, waiting for elders to travel from London, and
22 that they would consider the request once they arrived.

23 So they seem to be slightly different things to me.
24 It's a matter for the Chair at the end of the day, but
25 I wonder if you could confirm what your understanding

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1 was on the 3rd, whether it was the family were not
2 willing to identify or whether they were waiting for
3 elders to travel from England and that they would
4 consider the request when they arrived?

5 A. My understanding at the time was they were not willing
6 to attend at that point and identify, that they were
7 waiting for elders. And I remember the word being used
8 and it struck me as an unusual word, I didn't quite
9 understand what it meant, but that was of no moment.
10 They were certainly waiting for others to come to
11 Kirkcaldy, and that there would be a discussion,
12 presumably with those individuals who had arrived and
13 those who were already present in Kirkcaldy, about
14 whether or not they would attend to identify Mr Bayoh's
15 body.

16 Thus there was this total uncertainty, and as I have
17 indicated earlier, the family do not have to go and
18 identify. It's a request of them. It is not something
19 that they can be compelled to do, and not infrequently
20 families say: I don't want to go, I am not prepared to
21 go, no one in the family is going. So there was for me
22 this difficulty that had I -- it was obvious when I had
23 the conversation with Keith Harrower he was advising me
24 of the situation and waiting for me to make a decision.
25 He didn't offer any views as to what the best course of

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1 action might be, not that I would have expected him to,
2 I knew it was my decision to take. And it seemed to me
3 that in light of that uncertainty about when people
4 would arrive, when discussions might take place, when
5 discussions might conclude, it was totally unknown as to
6 whether that would go way into the course of the week,
7 that days might elapse.

8 I had to take a decision. Had I decided to delay
9 potentially I would have been criticised by others for
10 so doing. There was the potential to be criticised by
11 the forensic pathologists, by colleagues in Crown Office
12 et cetera, and I came to the conclusion that the proper
13 thing to do in the interests of justice was to carry on
14 with the post mortem as discussed, organised and agreed.

15 Q. So you explain that there was no timeframe and that left
16 you with an uncertainty as to when the family were going
17 to arrive, and indeed whether they would, even following
18 their arrival, wish to attend for the purposes of
19 identification. Did you ask Mr Harrower when the elders
20 were going to be arriving from London?

21 A. My recollection is that he didn't know. I don't recall
22 that part of the conversation specifically, but I do
23 recall thinking: oh my gosh, I have no idea when this is
24 going to occur. And that, I felt, was a problem
25 because, as I indicated earlier, knowledge and

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1 understanding of what had brought about Mr Bayoh's death
2 was the foundation upon which PIRC would build their
3 investigation. Without that, it was hard to see what
4 they were investigating or how they were setting about
5 it.

6 Q. Did you ask him to make enquiries with the family to see
7 if any more information could be obtained about
8 the travel arrangements and the timeframe?

9 A. Given the time of night I did not. But what I did do
10 was ask that the family be revisited the following day
11 in the hope that they could be persuaded to go and
12 identify. Not that that particularly mattered.
13 I should also say that, you know, the family could have
14 gone to see Mr Bayoh at any point in time, so it wasn't
15 necessary for them to see him before the post mortem and
16 that is a cut off and they never get to see him again.
17 It is always possible for families to go to the mortuary
18 and to visit a loved one while they are still within the
19 mortuary, and indeed once remains are released to
20 nearest relatives, to do so in a funeral parlour or in
21 other circumstances.

22 So yes, it was a difficult decision. Given the time
23 of night I didn't feel there was anyone that I could
24 really contact to discuss it with, so I ... thought it
25 through, I have to say quite quickly, and came to the

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1 view that that was the right decision to take and that
2 was the instruction I gave.

3 Q. You said that at this point in time you didn't know much
4 about the family, you didn't know who they were, how
5 many family members there were or who was the next of
6 kin. Can I take it then you were not aware of that
7 Mr Bayoh had a partner with whom he had a baby?

8 A. I had no knowledge of that.

9 Q. I think it must follow then that you wouldn't have had
10 any information about her views in relation to
11 identifying his body?

12 A. I am just thinking about this. I should clarify I think
13 I was told on the Sunday that there was a partner with
14 a baby but I was certainly never told what his partner's
15 views were about identification or anything else.
16 I simply was aware that there was a partner and a child.

17 Q. We will maybe look at her evidence later this morning
18 but if you had been told on the evening of the 3rd that
19 Mr Bayoh had a partner and that she was willing and able
20 to identify the body, what would you have done?

21 A. I would have instructed Mr Harrower not to go and see
22 her at that time given the lateness of the hour but
23 certainly to go and see her in the early hours of the
24 following day in the hope that she would agree to attend
25 at the mortuary, identify Mr Bayoh and matters could

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1 proceed as arranged. I had no knowledge who it was that
2 Mr Harrower had met with at all.

3 LORD BRACADALE: Ms Thomson, would it be convenient to take
4 the break now?

5 MS THOMSON: I think it would be. Thank you.

6 LORD BRACADALE: We will break for 20 minutes.

7 (11.28 am)

8 (A short break)

9 (11.55 am)

10 LORD BRACADALE: Ms Thomson.

11 MS THOMSON: Mr Green, shortly before the break when we were
12 talking about the arrangement for the identification of
13 the body you said, and I am quoting here now from
14 a printed copy of the morning's [draft] transcript:

15 "Answer: ... the family could have gone to see
16 Mr Bayoh at any point in time, so it wasn't necessary
17 for them to see him before the post mortem and that is
18 a cut-off and they never get to see him again. It is
19 always possible for families to go to the mortuary and
20 to visit a loved one while they are still within the
21 mortuary, and indeed once remains are released to
22 nearest relatives, to do so in a funeral parlour or in
23 other circumstances."

24 So you were drawing to the Inquiry's attention the
25 potential for the family to see Mr Bayoh's body at

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1 a later point in time, not necessarily prior to the
2 autopsy but at some point after the autopsy, and you are
3 explaining that was always a possibility?

4 A. Yes, indeed, and it happens frequently. The mortuaries
5 are quite well geared up to that kind of thing, and the
6 EPTs, the pathology technicians, are exceptionally
7 skilled in making bodies presentable for viewing.

8 Q. We have heard evidence already that there is a viewing
9 suite at the Edinburgh mortuary --

10 A. Yes.

11 Q. -- with a glass screen with curtains where the body can
12 be prepared and family members can view from the other
13 side of that glass screen?

14 A. That would be usual prior to a post mortem where the
15 death was suspicious. The reason for having families
16 and others view from behind the glass partition is to
17 prevent them perhaps rushing forward and interacting
18 with the body and potentially cross-contaminating in
19 some way. After the post mortem is concluded all the
20 samples have been taken so there is nothing to prevent
21 the family touching, holding, whatever they wish by way
22 of interaction with the deceased.

23 Q. You will appreciate through your experience as a Fiscal
24 that an autopsy is an invasive procedure.

25 A. Yes, I have been present at very many.

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1 Q. Do you understand that it's a procedure that is deeply
2 resented by people of the Muslim faith?

3 A. Indeed.

4 Q. Would you understand that even those who are not of the
5 Muslim faith might find the prospect of viewing a body
6 after that invasive procedure has been performed upon it
7 to be traumatic, difficult, that they might have
8 a preference to view the body before the procedure is
9 carried out?

10 A. My experience shows that those who are grieving can
11 adopt all sorts of different positions, and you know
12 some want nothing to do with it, some complain they are
13 not allowed to touch before, some complain they are
14 asked to view. I well understand that that may well be
15 the situation, but in my experience no nearest relatives
16 or very few nearest relatives ever wish to have their
17 loved ones subject to a post mortem, I have been
18 complained about for refusing a post mortem but that was
19 a rather unusual situation. The vast majority of times
20 people do not want this to occur, no matter what their
21 faith or religion is.

22 Q. You said in your evidence just a few moments ago that
23 the reason for the glass screen is to prevent, prior to
24 the autopsy taking place, the deceased's loved ones from
25 potentially rushing forward and interfering in some way

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1 that could be problematic from an evidential
2 perspective?

3 A. Indeed.

4 Q. And that it is your understanding that once the autopsy
5 has been performed, that concern falls away and there is
6 not a need for a family to view from behind a glass
7 screen?

8 A. That's correct.

9 Q. Is that your evidence?

10 Now, the Inquiry has heard evidence that some
11 members of Sheku Bayoh's family attended the mortuary,
12 a few days later, I think on the 6th from memory, for
13 the purposes of not a formal identification but to view
14 the body, and they were invited to do so from behind the
15 glass screen. The curtains were opened, and they viewed
16 the body from behind the glass screen. They were not
17 presented with the option of being able to approach his
18 body in the same room, touch his body, kiss his body.
19 Does that surprise you?

20 A. I have no real knowledge of how the Edinburgh mortuary
21 organises those family visits. I would say from
22 a Fiscal's perspective there is nothing whatever to
23 prevent them from interacting by touching, kissing, or
24 whatever the body. I simply don't know what
25 arrangements they have in place at Edinburgh, because to

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1 all intents and purposes as Procurator Fiscal once
2 I have had the post mortem, once the post mortem has
3 concluded, then my intent is to release that body as
4 quickly as I possibly can back to the family, and I am
5 not actually concerned what is happening with it. So
6 I can't say I have ever made enquiry as to how they
7 organise these things in the Lawnmarket but there is
8 certainly no reason why they can't interact with the
9 body, there is -- any evidence that might be recovered
10 has been recovered and the body will have been washed
11 and prepared by the EPTs, so I am sorry I can't really
12 comment beyond that.

13 Q. But from your perspective as a Fiscal there would be no
14 reason why a family should not be able to approach their
15 loved one, touch and kiss the body after the autopsy has
16 taken place and all evidence has been ingathered and
17 samples have been taken?

18 A. Absolutely.

19 Q. Thank you. Returning to the evidence that you gave
20 shortly before the break, I had asked you to confirm
21 your understanding of the family's position as at the
22 evening of the 3rd and I asked you to do that because
23 there was a subtle but potentially important difference
24 between your first statement and your second statement
25 on that point. Again, quoting from the [draft]

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1 transcript you said:

2 "Answer: My understanding at the time was that they
3 were not willing to attend at that point and identify.
4 That they were waiting for elders ..."

5 And you said something about the use of that word:

6 "... to come to Kirkcaldy and that there would be
7 a discussion, presumably with those individuals who had
8 arrived and those who were already present in Kirkcaldy,
9 about whether or not they would attend to identify
10 Mr Bayoh's body. Thus there was this total
11 uncertainty~..."

12 So that was your evidence before the break, that
13 the family were not willing to attend at that point in
14 time for the purposes of identification, that they were
15 waiting for elders to arrive and when they arrived there
16 would be a discussion around whether or not they would
17 attend to view the body. And there was an uncertainty,
18 so far as you were concerned, as to the timescale for
19 these people arriving and this decision being made.

20 A. Yes, I have amplified my first statement in the second
21 statement and the second statement is the position.

22 Q. Thank you for confirming that. What I would like to do
23 now, and I appreciate you have told us that since your
24 retirement you have not been following Public Inquiries,
25 which of course are live streamed. I would like to

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1 share with you some of the evidence that the Inquiry has
2 heard that bears on this issue, really just for the
3 purposes of putting it to you for your comment and I may
4 have some questions around it.

5 I would like to begin with the evidence that we
6 heard from Kadi Johnson. That is Mr Bayoh's sister.
7 She described being visited by a person who she thought
8 was a FLO but it was in fact Keith Harrower on the
9 evening of 3 May. So I am going to quote from the
10 transcript, again I'm afraid this doesn't come up on the
11 screen. But I will read it out. If you want me to
12 repeat anything, just say:

13 "Answer: He said, 'Are you ready to come down to the
14 hospital to identify the body?' That is how he said it.

15 "Question: And what was your reply?

16 "Answer: I said 'No'. I said, 'His mother is in
17 London and I am arranging for her to come up tomorrow',
18 that was the Monday. I said once she is here she would
19 want to see her son as well and we will go and identify
20 the body.

21 "Question: Did you make it clear to that person that
22 you would go the next day once Sheku's mother was in
23 Kirkcaldy?

24 "Answer: I told them that our Mum was coming on the
25 next day and we can arrange to see the body then, yes.

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1 "Question: And when you explained to the person you
2 think is from PIRC, the family liaison officer, that
3 Sheku's Mum would be travelling up the next day, did you
4 make it clear that you would be willing to identify the
5 body once she arrived in Scotland?

6 "Answer: Mm-hmm, yes. It was clear that we will
7 identify the body once my Mum was here. That was made
8 clear.

9 "Question: So you were willing to identify the body?

10 "Answer: Yes, yes. We were willing to identify the
11 body. The only thing we asked for is to wait for my
12 Mum. That is all we asked for.

13 "Question: Right. Did you make that clear to the
14 PIRC?

15 "Answer: Yes.

16 "Question: So when this conversation was concluded,
17 what was your understanding of the position about
18 identifying the body?

19 "Answer: I thought they accepted our request and
20 they will wait for our Mum to come and then we can
21 arrange to go and see the body."

22 I appreciate you haven't heard that before but that
23 is the evidence that Kadi Johnson gave to this Inquiry.
24 It's a matter for the Chair but if the Chair accepts her
25 evidence as to what she said to Mr Harrower, then it

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1 would suggest that Mr Harrower understood that the
2 family were willing to attend --

3 A. Yes, clearly.

4 Q. -- to identify the body, and indeed that Sheku's mother
5 wanted to see his body?

6 A. Indeed.

7 Q. And that they wanted to wait for his mother to travel
8 from London and that she would be arriving the next day.
9 That was all in Kadi's evidence.

10 A. Yes, absolutely, yes indeed.

11 Q. It's entirely a matter for the Chair but if he were to
12 accept her evidence that she said these things to
13 Mr Harrower, then it would follow that there was really
14 no uncertainty or ambiguity as to their position, their
15 position was quite clear. Would you agree with that?

16 A. Well, it certainly was not made clear to me.

17 Q. That is another matter and we will come to that, but if
18 we can stay with Kadi Johnson's evidence for now --

19 A. Yes, I totally accept what you say, and frankly had that
20 information been conveyed to me, while I wouldn't have
21 done anything at 12.30 or 11.30 at night, I would
22 certainly have used my phone from the car the following
23 day to try to organise a post mortem for the Tuesday and
24 put it back given that there is a clear indication that
25 Sheku's mother is going to attend and that they are

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1 willing to attend the mortuary. But that was not made
2 known to me at all.

3 Q. So you accept on the basis of the evidence of
4 Kadi Johnson which I have shared with you today that it
5 gave a clear indication that Sheku's mother was willing
6 to attend to identify the body and she would be arriving
7 the following day?

8 A. Yes.

9 Q. So there was no ambiguity as to her position and no
10 uncertainty about the timeframe; would that be fair?

11 A. Well, it is not a matter for me to assess whether what
12 she says is accurate. On the basis of what you are
13 putting to me, indeed that is the case. And as I have
14 indicated, had that been made to clear to me, had I been
15 made aware of any of that I would have sought to put
16 this back for a day to allow his mother to attend the
17 mortuary.

18 Q. And your very clear position in your evidence is that
19 this was not made known to you?

20 A. Absolutely not. I don't actually recall mention of his
21 mother at all. What stuck in my mind was the use of the
22 word "elders". I didn't ... we are talking
23 a conversation at 11.30 at night, I am due to be up and
24 on my way to Abernyte in Perth by 6 the following
25 morning, I am not digging into it, I am accepting the

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1 information that I am given at face value because
2 I expect it to be accurate.

3 Q. Okay, thank you.

4 So that was Kadi Johnson's evidence and I simply
5 wanted to put it to you -- I appreciate you haven't
6 heard it before today -- I wanted to put it to you for
7 your comment. I wonder if we can look now at
8 Mr Harrower's evidence and if we can look perhaps at his
9 Inquiry statements, which is SBPI 00259. At
10 paragraph 55:

11 "After explaining to the family regarding the PIRC
12 role and function, I then advised the family that COPFS
13 had made arrangements for a post mortem examination on
14 the afternoon of Monday 4 May."

15 Sorry, I should have said this is a conversation he
16 is having with the family on 3 May.

17 A. Yes, I understand.

18 Q. "I asked for two family members to make themselves
19 available to attend the city mortuary in Edinburgh to
20 identify the body. My operational notes, at page 9,
21 state that 'Ade indicated stated the family had
22 discussed matters, and no representatives were willing
23 to do the identification until family members, including
24 the now deceased's mother attended~... She was
25 travelling with a group, including elders from England'.

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1 My understanding of this was that the family were
2 refusing to do the identification in the timescale
3 outlined. I don't think it was the intention that it
4 would be the mother that would do the identification,
5 but that they were not willing to participate in that
6 process until she arrived~... I'm aware she was
7 travelling from down south or was about to travel.
8 I don't have any recollection of being advised as to
9 when she would arrive. I got the impression she was in
10 the process of travelling but I don't think established
11 where she was actually coming from other than it was
12 somewhere in England. I think it was suggested that
13 they would arrive at some time the following day, which
14 was the Monday, and obviously the post mortem was
15 arranged for midday on the Monday. I have been asked if
16 the family understood that I was [it was] the Crown's
17 decision as to the timing of the post mortem. Yes,
18 I think so. I'd explained specifically it was the
19 Crown's decision. My statement records that Mr Johnson
20 wasn't willing to be more specific on the expected
21 arrangements of the arrival of the family members etc.
22 That part of the conversation was closed down."

23 Again, it is entirely a matter for the Chair at the
24 end of the day but can I suggest we see here that this
25 is entirely consistent with what Kadi Johnson said in

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1 her evidence, that there wasn't a refusal to identify,
2 there was a willingness to identify but a request that
3 the post mortem procedure be delayed to allow that -- to
4 allow the mother and elders to travel from England.
5 Would you agree with that?

6 A. Yes.

7 Q. I wonder if we can -- if I can take you now to you what
8 Mr Harrower said in his evidence, again I am reading
9 from the transcript so this won't come up on the screen.
10 But he was asked about the conversation on the 3rd, the
11 conversation that he had with you on the 3rd, late in
12 the evening. And your position, as set out in your
13 first statement, which I appreciate you finessed in your
14 second statement, the position you set out in your first
15 statement was put to him for comment, in response to
16 which he said:

17 "Answer: I am fairly confident that I told him [that
18 is you] regarding the expected visitors travelling and
19 that there would be no decision finally made on that
20 until they had arrived."

21 So basically accurately summarising the discussion
22 with Mr Johnson in relation to the arrangement for the
23 post mortem. But I understand from what you said before
24 I took you to these transcripts that your position is
25 that it was not made clear to you that the mother would

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1 be travelling the following day and that she wished to
2 identify the body?

3 A. I was given no timeframe for her attending, and in
4 particular I was never told that she would wish to view
5 the body. My recollection is clear, that they were
6 unwilling to attend at that time, that they were waiting
7 for the arrival of others, that there would then be some
8 discussion and there was no indication given to me that
9 the family wished to go to the -- to see Mr Bayoh, nor
10 that they would be willing to do so or to carry out
11 an identification. As I said earlier, they don't have
12 to do that, it is a request of them. They could refuse.
13 So that left me in a position where it was completely
14 uncertain, so far as I was concerned, as to when this
15 post mortem might take place if I delayed it.

16 Q. You explained before the break that in those
17 circumstances you came to the decision that the proper
18 course was to proceed with the autopsy on the 4th as
19 planned?

20 A. Well, indeed. And one of things I do remember thinking
21 at the time was having dealt with lots of Muslim deaths
22 in the past, while I knew that they didn't wish
23 post mortems they were accepting of them when we said
24 that we required to do them, but the one thing they
25 always emphasised was that they wanted it done as

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1 quickly as possible and they wanted the remains back
2 with the family as quickly as possible, so I took
3 account of that as well, and frankly I thought I was
4 doing the right thing on the basis of the information
5 I was made aware of.

6 Q. Let's stay with that thought for a moment, please, when
7 you said "they", I think you are perhaps referring to
8 people from the Muslim faith?

9 A. Yes.

10 Q. Like to have an autopsy -- if it has to be done it
11 should be done as soon as possible because burial should
12 take place as soon as possible?

13 A. Absolutely, hence the need to return the body to the
14 family as quickly as is practicable. I used to liaise
15 very frequently with the Central Mosque in Glasgow
16 because it was directly across Ballater Street, the
17 Fiscal's office there, which was where I was based. And
18 I had many discussions with individuals in the mosque
19 and very much understood that time was of the essence,
20 and they wanted things to be progressed as quickly as we
21 possibly could, assuming we required to do
22 a post mortem. And indeed I can say that myself and my
23 staff very frequently were in touch with the mortuaries
24 and the pathologists to say can you expedite this
25 because of the religious requirements. So it was very

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1 firmly in my mind at that time.

2 Q. I wondered if we can look briefly at your second
3 statement towards the very end, paragraph 77. Where you
4 emphasise much the same point as you have made now in
5 your evidence.

6 A. Yes.

7 Q. You say you understood Mr Bayoh was Muslim:

8 "... and though I don't recall from whom I received
9 that information or when I certainly considered it as
10 possibility hence my concern to ensure as far as
11 possible that the post mortem process proceeded as
12 expeditiously as possible in order that his remains be
13 released to his family at the earliest point."

14 A. Yes.

15 Q. So you have explained that you made the assumption that
16 that is what the family would desire on the basis of
17 their faith, and that is based on your own understanding
18 of Muslim burial requirements and your own experience,
19 and in particular your experience in Glasgow of working
20 with the local mosque?

21 A. Indeed.

22 Q. I think you said -- I don't have the transcript of your
23 evidence in front of me but you said a moment ago that
24 that decision or that assumption was well intended or
25 well meaning, or words to that effect?

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1 A. Absolutely. My thought and indeed my hope was that if
2 we could conclude the post mortem on the Monday,
3 Mr Bayoh's remains would be released to the family
4 potentially on the Tuesday, possibly the Wednesday, but
5 within that sort of timeframe. That is what I was
6 really trying to achieve.

7 Q. I would like to share some further information with you
8 from the evidence, and again this comes from
9 Keith Harrower. He was asked:

10 "Question: Would there have been any reason why you
11 couldn't have asked David Green to delay the
12 post mortem?"

13 He said:

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

21 "Question: Can you explain why you didn't choose to
22 give your opinion to David Green about perhaps delaying
23 or deferring the post mortem until the mother had
24 arrived?

25 "Answer: As I say, I didn't know what the

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1 alternatives were. Again, that wouldn't be something
2 that I would ask him, he is a very senior member of the
3 Crown Office and I didn't feel it was my position to
4 push for any sort of alternative. He was armed with all
5 the relevant information on the feelings of the family
6 in relation to that and he has clearly had uppermost in
7 his mind as regards finding out medically what caused
8 the death, which was very important for the
9 investigation moving forward, so I chose not to pursue
10 anything else in relation to those arrangements. He
11 knew what the facts were."

12 Looking back given the evidence that you have given
13 this morning would you agree with Mr Harrower's
14 statement that you knew what the facts were?

15 A. Well, plainly not. I had no idea that the family had
16 been expressing the wishes that you put to me earlier,
17 I had no idea whatever that his mother wished to see him
18 and that they were willing to attend to identify. That
19 was not the position as I understood it, it is not what
20 was said to me. So -- and as I have indicated, had
21 I been made aware of that I would have sought to put
22 back the post mortem.

23 Q. Do you have any comment to make on Mr Harrower's feeling
24 that it wasn't for him to urge you to push the
25 post mortem back, it wasn't for him to ask for a delay

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1 to that procedure?

2 A. I have to say that I am slightly surprised. I had quite
3 a lot of interactions with Mr Harrower, even when he was
4 a police officer. I would say I knew him reasonably
5 well and had certainly quite a lot of contact with him
6 when he was in PIRC. He is quite a forceful character,
7 he isn't backward about expressing his views. I don't
8 doubt that, you know, he would have felt perfectly able
9 to express his views to me but he certainly did no such
10 thing. I would have welcomed his is views, to be frank.
11 He has had interaction with the family. I am remote
12 from the family, I am remote from what is going on, so
13 it would have been helpful to me to have that input.
14 But he offered no input at all.

15 Q. Can we return to your first statement, please, and look
16 at page 6, at the bottom of the page 6. Very bottom of
17 page 6 you say:

18 "I understood that PIRC would approach the family
19 again the following morning to see if they had changed
20 their mind and would identify."

21 You have told us about that expectation already,
22 that contact would be made with the family in the
23 morning. If we can look at the top paragraph on page 7
24 now, please. You will see there are some redactions
25 here, at least on the version on the screen. But you

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1 left about 6 am on the 4th to travel somewhere and you
2 returned home perhaps about 19.00 hours:

3 "During that time I had no contact or calls in
4 relation to Mr Bayoh's death and it follows that
5 I issued no instructions."

6 A. Yes.

7 Q. So you had understood that the PIRC would approach the
8 family again the following morning to see if there had
9 been any change to their position. Had you expected to
10 be updated as to the outcome of that discussion?

11 A. My recollection of this is that I asked that they go
12 back and ask the family to see if they would change
13 their minds and would identify. That I think is
14 supportive of what I have said about the information
15 that I understood at the time. Had there been this
16 willingness to identify and had that been made known to
17 me, there would be no point in me sending PIRC back to
18 ask the family again, but I specifically recall
19 saying: look, it's late at night, go back and see them
20 tomorrow morning, see if they are willing to identify,
21 explain the post mortem is going to have to go ahead at
22 that time, and asking them or giving them a second
23 opportunity to do that.

24 Now, as I say I think that indicates the information
25 that I was given and is supportive of the fact that

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1 nobody told me they were willing to attend. That was
2 not the information that I was given.

3 So, yes, I definitely recall giving Keith Harrower
4 an instruction to that effect. And as for whether
5 I expected him to contact me or someone to contact me to
6 tell me what had transpired, yes, but at the same time
7 colleagues -- senior colleagues had then become
8 involved. Stephen McGowan was involved, John Logue,
9 again a senior colleague, had become involved. They
10 were both aware that I had been deployed to Perthshire
11 to a DVI body recovery, so I expected that they would be
12 getting involved and potentially information would have
13 been given to them. What I can certainly say is that
14 while I was exceptionally busy on that Monday, I did not
15 receive any calls at all about this matter.

16 Q. We see that set out at the end of that top paragraph on
17 the page:

18 "During that time I had no contact or calls in
19 relation to Mr Bayoh's death and it follows I issued no
20 instructions."

21 A. Not that I recall and I certainly issued no further
22 instructions. My view was that in light of the
23 circumstances as I understood them the matter should go
24 ahead at 12 noon.

25 Q. Again, can I share with you some of the evidence that we

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1 have heard already. Again, I'm afraid I am reading from
2 a transcript here. This is the evidence of
3 Billy Little. So on the 3rd Mr Harrower was the duty
4 SIO, and on the 4th Mr Little was appointed as the SIO.
5 In his evidence he was asked about a section in his
6 statement which states that he was:

7 "... further advised during the events on 3 May the
8 immediate family had intimated to Mr Harrower that they
9 did not wish the post mortem process to proceed and
10 asked that it be deferred for relatives and elders to
11 attend from England. The family could not give a date
12 or time of arrival for such persons. This had been
13 passed to Crown Office but instructions had been given
14 that the post mortem would be taking place. The family
15 intimated they would not be engaging in this process.

16 "I have been asked whether I ever dealt with
17 a request from the family regarding the timing of
18 a post mortem for religious or others reasons. My
19 recollection is that no, I haven't.

20 "I have been asked what I did with this request.
21 I did have a discussion with the Crown, David Green,
22 about it in this instance. Keith had had some
23 interaction with the family the night before. Although
24 I was appointing two family liaison officers to deal
25 with the family, but Keith had met the family so I asked

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1 him to phone again and ask them again to engage with us
2 in the post mortem process. So although Keith had told
3 me they didn't want to be involved in the process,
4 I asked Keith to contact the family because they knew
5 who he was. While FLOs had been appointed, they had
6 never met the families. What I got back from Keith was
7 no they are not engaging, they don't want the
8 post mortem to go ahead. I phoned Dave Green at
9 Crown Office about that and David told me that the
10 post mortem was going ahead. I haven't recorded it
11 anywhere but my recollection is his words were 'We need
12 to know how this man died'. So I can only ask the
13 Crown, I can only impart to the Crown the information.
14 It's the Crown's decision to hold the post mortem and
15 when that post mortem takes place and who undertakes the
16 post mortem is not my decision. Dave Green wasn't
17 willing to delay the post mortem."

18 So again, can I invite your comment on that because
19 Mr Little has given evidence that he was told by
20 Keith Harrower to make further contact -- he told
21 Keith Harrower to make further contact with the family
22 which he did, their response was fed back to him and he
23 contacted you about it on the 4th. But you have told us
24 you had no recollection of having received any calls.
25 Does this jog your memory at all?

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1 A. I'm afraid it doesn't. I am not disputing it may have
2 happened but, as I have indicated, I was involved in
3 travelling to and dealing with another incident. There
4 were many calls about all sorts of things. I certainly
5 do not recall that conversation. But if it happened, it
6 wasn't something that was going to cause me to change my
7 instruction. Because there was still no suggestion of
8 a time or a certainty that they would -- that they would
9 attend to identify. So without the benefit of my notes,
10 I can't even say that I made a note about this because
11 I have no recollection of it at all. I can't give
12 another answer than that, I'm afraid.

13 Q. Thank you. We have heard over the last couple of days
14 from Kate Frame, who I think was a former Crown Office
15 colleague of yours?

16 A. Yes.

17 Q. But in May of 2015 was the Police Investigations and
18 Review Commissioner. She gave the following evidence,
19 she was asked:

20 "Question: Sticking with the issue of independence,
21 we have heard some evidence that connects to the
22 post mortem that was carried out on Mr Bayoh.

23 I appreciate this happened on 4 May, you said you were
24 in the office for a brief period during that day.

25 I think in your Inquiry statement you do say that you

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1 had spoken to Dave Green from the Crown Office?

2 "Answer: Yes, Mr Green, yes.

3 "Question: And you were aware of the family's
4 wishes, that they wished his mother to come up from
5 London prior to identifying the body at a post mortem?

6 "Answer: Yes, my recollection is that it was family
7 members, I don't just recall it being tied to the mother
8 coming.

9 "Question: Was the mother to be part of a group of
10 others as well?

11 "Answer: Yes, I understood that to be the case.

12 "Question: How did you become aware of the family's
13 wishes?

14 "Answer: I think that information was shared with me
15 by Mr Little.

16 "Question: When was that, do you remember?

17 "Answer: That would be on the morning of the 4th."

18 Then there was a discussion about where and when the
19 call took place:

20 "Question: Tell us about your discussion with
21 Mr Green at Crown Office?

22 "Answer: Well, I was aware from Mr Little that
23 Crown Office, and I didn't know precisely who, had been
24 made aware of this issue and I wanted to ensure that he,
25 as head of the Deaths Unit -- of the circumstances so

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1 that it can be considered.

2 "Question: What did you tell Mr Green?

3 "Answer: My recollection is that I told him that
4 the family had indicated they wanted other family
5 members present before the post mortem went ahead.

6 "Question: What was his response?

7 "Answer: I think he was trying to balance the need
8 for -- well, to see if a cause of death could be
9 ascertained against that. But the eventual outcome was
10 that the post mortem had been arranged by that time and
11 was to continue.

12 "Question: What efforts did you make to persuade him
13 to delay the post mortem?

14 "Answer: I tried -- well, I did explain to him that
15 the families wishes were for it to be delayed until the
16 other family members had arrived. Unfortunately there
17 was no indication of when that would happen, so
18 I suppose his view was how long was the post mortem to
19 be delayed for and we didn't have that information."

20 So do you recall now having had a conversation with
21 Kate Frame on the morning of the 4th? Does this assist
22 you at all?

23 A. No, I'm afraid it doesn't. I have no recollection of
24 it. I have no reason to doubt that the conversation
25 took place. What I would say is that again on the

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1 information that you have given me, I am not being given
2 any additional information about when this -- when the
3 family might be available, when the post mortem might
4 take place. I think it is entirely conceivable that
5 I did say to Kate: no, there is no certainty here, it's
6 going ahead as arranged because how long is this week
7 going to be? How long is a piece of string, in effect?
8 I was -- as I have indicated earlier, I was
9 exceptionally conscious of the need to find out why
10 Mr Bayoh had died.

11 Q. This was of course an Article 2 investigation by the
12 state bodies concerned. So the next of kin require to
13 be involved in the procedure to the extent necessary to
14 safeguard their legitimate interests. Would you agree
15 with that?

16 A. Yes.

17 Q. I am wondering in a case of this sort, where there are
18 competing interests -- and I understand that your
19 position is that you had no indication of timescale,
20 and indeed no clear indication that the family would
21 attend to identify the body at all. But there was
22 perhaps some suggestion that they were waiting for
23 elders or family members to travel from London before
24 taking a decision. How did you go about balancing that
25 information against the competing interest of the

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1 desirability of having a swift post mortem to ascertain
2 the cause of death following a death in police custody;
3 how do you weigh up these interests?

4 A. I think it is exceptionally difficult to do so and these
5 were exceptionally difficult circumstances. It is
6 an Article 2 investigation, one of things that needs to
7 happen as well as is that it should be conducted as
8 quickly as possible. It is an enormous -- it is very,
9 very, very difficult. It seemed to me that the quicker
10 we knew why it was that Mr Bayoh had died, the better it
11 would be for the nearest relatives because they would
12 have some clarity and certainty. It might have been
13 that he had died of natural causes. There are lots of
14 possibilities as to how that might have come about.
15 There was plainly a need that PIRC were aware of how he
16 had died, we were aware of how he had died and that the
17 investigation could progress.

18 It is an almost impossible balance. What I would
19 say again is this: had I been told that they were
20 willing to identify, had I been told that they were
21 en route or that this was likely to be a short delay,
22 I would have taken a different decision. But that is
23 not the information that I was given and it is not the
24 basis upon which I proceeded.

25 Q. Of course. I understand that that is your evidence. So

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1 should we understand then that if you had been provided
2 with that information and you had weighed that in the
3 scales, against the desirability of a quick autopsy, the
4 scales would have tipped in the other direction and you
5 would have been willing to delay the autopsy until the
6 Tuesday to allow for the family to attend and identify?

7 A. What I would say is this: had that been the case,
8 I would have been in contact with Dr Shearer to check
9 out the availability of mortuary spaces and pathology to
10 ensure that it was going to be the Tuesday and not
11 pushed back a significant period of time. Had I been
12 given information that it would be pushed back further
13 I might well have insisted that it go ahead at that
14 time. So I would have sought more information. I did
15 not seek that information because that was not my
16 understanding.

17 Q. On the assumption that the autopsy could have been
18 rescheduled for the Tuesday, possibly even the
19 Wednesday --

20 A. I would have been happy to do that.

21 Q. I took you to Dr Shearer's evidence earlier this
22 morning, the evidence that she felt that the timeframe
23 put her under a degree of pressure. We have heard some
24 evidence that the PIRC were also feeling the pressure in
25 terms of the timescale. We have heard evidence from the

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1 PIRC that by the time they had deployed and made their
2 way to Kirkcaldy Police Office it was about half past
3 one in the afternoon, there were only six of them, there
4 wasn't a FLO on duty over the weekend, a FLO, an
5 Alistair Lewis, was appointed at a briefing at 9 o'clock
6 on the Monday morning and by lunchtime on the Monday
7 still had not been able to make direct contact with the
8 family. So those were the circumstances, that was what
9 was happening behind the scenes at PIRC,
10 and I appreciate you wouldn't have had that information.

11 A. No, I wasn't aware of any of that.

12 Q. I would like to share with you what Mr Little had to say
13 in relation to the post mortem. He said:

14 "Answer: If the post mortem had been delayed then
15 I could have had my family liaison officers meet with
16 the family, engage with the family, try to explain to
17 them in a controlled and calm environment about what is
18 going to happen, but the post mortem just went ahead.

19 "Question: Would your preference have been for the
20 post mortem to be delayed?

21 "Answer: I understand the rationale, as we needed to
22 identify as soon as possible the cause of death.

23 I understand the rationale for that but to balance that
24 against the family's wishes and the reasoning they gave,
25 sitting here now the post mortem should have been on the

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1 Tuesday.

2 "Question: Would it have hindered your investigation
3 in any way if the post mortem had taken place the next
4 day?"

5 And he said "No". Could I invite any comment you
6 might wish to make on that evidence? I appreciate your
7 understanding of the facts on the 3rd and 4th was
8 different from his but would you wish to comment on that
9 at all?

10 A. No, I don't see what comment I can usefully make.

11 Q. Let me share with you some evidence given by
12 Alistair Lewis. He was the FLO. As I mentioned
13 a moment ago the Inquiry has heard evidence that there's
14 there were no FLOs on call over the weekend. He came on
15 duty at 8 o'clock in the morning of the Monday, the
16 Monday morning, and was appointed as the FLO at
17 a briefing at 9 o'clock.

18 I think we heard evidence too that Mr Harrower's
19 return call to the family was about half past ten in the
20 morning, and of course the autopsy was scheduled to take
21 place at midday. In between time, for one reason or
22 another, it hadn't come to pass that there had been
23 an opportunity for Mr Harrower and Mr Little to
24 introduce the FLO to the family, for reasons that
25 needn't concern us this morning.

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1 But what he did say the FLO, Mr Lewis, in his
2 evidence was this:

3 "Answer: The time constraint created a challenge
4 that didn't need to be there."

5 He explained he started at 8 o'clock in the morning
6 had to get information, then he had to go and speak to
7 the family. He hadn't had that opportunity. He was
8 asked if he had had that opportunity to speak with the
9 family, then perhaps the misunderstanding around their
10 position on identification that was clearly within the
11 PIRC might have been uncovered and some action might
12 have been taken to allow the family to identify before
13 the post mortem took place, and he said yes he was
14 confident if he had had that interaction and spoken to
15 the family then he would have been able to resolve that
16 issue.

17 He was asked whether he was concerned on the morning
18 of the 4th that this perfect storm of events and the
19 timescale that he was working to and the difficulties he
20 was having making contact with the family were creating
21 a situation where he couldn't fulfil his
22 responsibilities in terms of the PIRC standard operating
23 procedure on family liaison officers and he said he felt
24 the initiative had been lost:

25 "Answer: ... Making contact with the family,

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1 interacting with the family, obtaining information, it's
2 very important to speak with the family.

3 And he was asked:

4 "Question: Did it occur to you to say to more senior
5 management, or indeed directly to the Fiscal: hang on
6 here, it's half past ten, I am not long on duty, I have
7 just been briefed, I have just been appointed as the
8 FLO, I have not met the family yet and if this
9 post mortem goes ahead at lunchtime I will not have the
10 opportunity to fulfil my responsibilities in terms of
11 the policy to speak to the family about the need for the
12 post mortem, to speak to the family about the need for
13 identification and did it cross your mind on 4 May to
14 have that conversation?"

15 And he said:

16 "Answer: I wanted to have the conversation but
17 I didn't just want to go and say: I think we should be
18 doing this, [he] wanted to have more information from
19 the family first to present a better case."

20 I appreciate that you won't have heard any of this
21 before but what I would like to ask you is this: if you
22 had had a call from Alistair Lewis the FLO at say half
23 past ten on the Monday morning and if he had said to
24 you: look, I have been appointed as FLO less than
25 two hours ago, I've not yet had the opportunity to meet

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1 the family, I haven't yet been able to establish contact
2 with the family, I have got certain responsibilities in
3 terms of our standard operating procedure, I need to
4 introduce myself, I need to sit down with the family,
5 I need to explain the need for an autopsy to take place,
6 I need to explain the options around identification and
7 I just cannot achieve this by midday, what would you
8 have done?

9 A. I am slightly surprised it was so late in the day given
10 the timing of the post mortem was arranged long before
11 that. But had he contacted me and expressed that view
12 I would certainly have taken some account of it. But no
13 such view was expressed. As I say, my understanding was
14 as set out in my second statement, and that gave me no
15 reason to believe that the family wished to identify or
16 the family wished to go to the mortuary, and that it was
17 simply a matter of delaying. As I have said earlier,
18 had I been aware of that, I would have taken a different
19 decision.

20 Q. Hmm. No, I --

21 A. It follows that I would have taken a different decision
22 had the FLO approached me and explained these matters to
23 me.

24 Q. The issue around identification is perhaps a slightly
25 different issue and your evidence on that is very clear

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1 to me. From the FLO's perspective he felt that having
2 come on duty at 8 o'clock having been appointed at 9.00,
3 having then had a briefing, having then spoken with
4 officers, as he was duty bound to do, who had already
5 had contact with the family and so on and so forth,
6 having been updated by Mr Harrower at half past ten, the
7 clock was ticking, 12 o'clock was not far away. And
8 I am simply wondering whether from -- if he had made
9 that call, leaving the identification issue to one side,
10 and if he had said to you: listen, I am just on duty,
11 I have just been appointed, there are certain
12 requirements that are imposed on me in terms of our
13 family liaison standard operating procedure or policy,
14 and I am being thwarted in fulfilling these
15 responsibilities because the clock is ticking, I have
16 not managed to make contact with the family in spite of
17 my best efforts, I've not been able to sit down with
18 them and introduce myself, explain the need for the
19 autopsy, discuss identification with them; can you push
20 the autopsy back to give me the chance to do that? I am
21 wondering what you would have done?

22 A. I would certainly have taken account of it. But it
23 didn't happen.

24 Q. For the avoidance of doubt, Mr Lewis didn't say that it
25 did happen. He was quite clear that he hadn't made that

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1 call and he hadn't made that ask. So I appreciate we
2 are in hypothetical territory here, but I am simply keen
3 to explore if that call had been made and that
4 information had been brought to your door, that the PIRC
5 had been unable to fulfil their own obligations in terms
6 of their own terms of reference, if you like, because of
7 the timescale, whether you would have considered
8 delaying the autopsy?

9 A. I certainly would have considered it. The FLOs have
10 a very, very, very difficult job to do, and
11 relationships with families are sometimes exceptionally
12 fraught, just because of the fact that you are dealing
13 with a death which has come suddenly and brings with it
14 all the issues you might anticipate. So had he asked me
15 on that basis, I would certainly have considered it.
16 And I probably, given what I am being told now, would
17 have gone back to Dr Shearer to say: look, can
18 we backslide this a little bit. But no such request was
19 made.

20 Now, so far as I was concerned, PIRC were engaged
21 with the family, albeit that that engagement had --
22 seemingly had been unproductive from the perspective of
23 having someone to attend at the post mortem. I was
24 unaware that PIRC had not had FLOs out on the Sunday and
25 didn't have that process in place. So far as I was

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1 concerned those were operational matters for PIRC,
2 I expected that they would have deployed FLOs. I can't
3 say anything other than that.

4 Q. Can I tell you now a little about Collette Bell's
5 evidence. Again, you won't have heard this before. She
6 was of course Sheku Bayoh's partner and she was given
7 the death message on the morning of 5 May, and asked to
8 give a statement immediately after the death message was
9 delivered to her. In her evidence she was asked about
10 the giving of that statement and she said the following.
11 She said:

12 "Answer: ... I would have to give a statement and
13 I said, 'I don't want to give a statement, I want to see
14 Shek'. They said, you know, they understood it was
15 difficult but it was really important to try and get the
16 statement so they could get all the information that
17 they needed to find out what had happened. I had said,
18 'No, I just want to see Shek, I just want to see Shek',
19 and I remember saying it over and over again, 'I don't
20 want to do anything, I just want to see Shek', and they
21 had said, 'If you get the statement done then we will
22 see about you going to see him'."

23 She was asked:

24 "Question: What was your understanding of the
25 position?"

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1 And she said:

2 "Answer: Well, I thought I will do the statement and
3 then I will get to see him. They had said that he would
4 need to be identified anyway and they had said you will
5 get to see him, so if you get your statement done you
6 will get to see him because he needs to be identified
7 anyway."

8 You already told us you had no knowledge really as
9 to who Sheku Bayoh's family were over the course of the
10 short period of time you were involved in the initial
11 investigation of his death. But if you had been told on
12 the 3rd or even on the morning of the 4th that
13 Collette Bell had expressed a very strong desire to see
14 Shek and to identify his body, what steps might you have
15 taken?

16 A. As I said earlier, when you asked a similar question,
17 had I been made aware that she was willing to attend and
18 identify, I would have said that she should do that.
19 And that remains the position. But none of this was
20 known to me at all. I perhaps naively assumed that when
21 Mr Harrower said he was in contact with the family, that
22 he was in contact with all of those who one would
23 consider from a Fiscal's perspective to be nearest
24 relatives.

25 So this is all news to me and puts a totally

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1 different complexion on it. But I was never told that
2 she was willing to identify, nor that she wished to go
3 and see the body.

4 Q. I appreciate this is all news to you. And these weren't
5 matters that were necessarily within your knowledge at
6 the time that you were involved in the investigation of
7 this death. But looking back, might there have been
8 a benefit in you asking more probing questions of
9 Mr Harrower or did you consider that these were entirely
10 operational matters for the PIRC? By that I mean
11 liaison with the family, identifying who the family
12 members were and making appropriate contact with them?

13 A. When I was advised that he had spoken to the family, as
14 I have indicated I was of the clear view that he was
15 referring to all of those nearest relatives. I didn't
16 ask any probing questions because of the manner in which
17 that was presented to me. Those are operational
18 matters. I am not on the ground and it wouldn't be
19 appropriate for me to be there, so I am relying on the
20 information that is being passed to me and making
21 judgements based on that. And as I have indicated now
22 twice, all of these issues with Ms Bell are totally news
23 to me, the first time I have heard them is today.

24 Q. Let's move on to the post mortem. That took place on
25 Monday, 4th and you have explained in your statements,

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1 and we touched on it in evidence already, that
2 Bernard Ablett attended the post mortem as the Fiscal.
3 The PIRC also had a presence at the post mortem,
4 including Billy Little. Did you anticipate the police
5 attending the post mortem?

6 A. I recall some discussion with Keith Harrower about the
7 body being identified, potentially by a police officer
8 who took control of the body in the Victoria Infirmary
9 and then a member of PIRC staff who took over control
10 from the police officer. That post mortem was under the
11 control of PIRC. It's a matter entirely for PIRC as to
12 who is there. It was just a quick discussion about
13 where we might get some identification to ensure we were
14 talking about the same person that had gone into the
15 hospital, that had then gone to the City Mortuary,
16 et cetera. I wouldn't have anticipated police officers
17 being present at all other than potentially, as I say,
18 the witness coming in to identify, but identification
19 witnesses identify and are then sent away. They are
20 not -- they don't have any other purpose in the process
21 in the mortuary. I might have expected that some
22 samples might require to be taken to the forensic lab
23 and would be handed over to police officers potentially
24 to transport them. But I can't see why police officers
25 would have been present in the mortuary at all. It was

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1 a PIRC investigation. They were in control of it. It
2 had been handed over to them. I am surprised if there
3 were police officers present.

4 Q. For completeness, I think you say in your first
5 statement at paragraph 69 -- I don't think there is
6 a need to pull this up, it is in short compass -- that:

7 "You would be unsurprised if the police were present
8 to assist with seizing productions and conveying samples
9 to laboratories but under the direction and control of
10 the PIRC."

11 A. Yes. To explain that, I wouldn't anticipate they would
12 be in the mortuary room, although I would anticipate
13 that PIRC investigators would be, while the examination
14 was carried out, and where there are labelled samples
15 that require to be transmitted, they would taken out of
16 there and handed over to police officers who would be in
17 the building potentially but not within the mortuary
18 suite. Because they have no purpose in being there.
19 It's a PIRC investigation. And moreover, from my
20 perspective, there was a potential we would end up with
21 a police officer accused here but it was also possible
22 we would end up with Police Scotland as an accused here.
23 So I certainly anticipated all of those intimately
24 engaged and involved with the process in the mortuary
25 would be PIRC.

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1 Q. We have heard evidence that there were a number of
2 police officers in attendance, including a DCI Hardie.
3 Does that give you any cause for concern?

4 A. As I have indicated, it is not their investigation.
5 They were left to investigate what had occurred in the
6 aftermath of this boxing match that I understood had
7 been watched. PIRC were instructed to investigate
8 everything that occurred from the time the police were
9 made aware of Mr Bayoh's -- the allegations from members
10 of the public that were called in to them, from that
11 point right through until he was conveyed to the
12 Victoria Infirmary. So there is, to my mind, absolutely
13 no role for the police to be there. I don't recognise
14 the name DCI Hardie and I certainly, had I been asked
15 about it, would have said the police shouldn't be there.
16 But I was certainly never asked, and I have to say I am
17 surprised that they were there. Very surprised.

18 Q. The police of course had retained responsibility for
19 investigating, as you put it, the boxing match and what
20 had happened earlier in the evening up to the point of
21 the 999 calls and the events at Hayfield Road. Does
22 that change anything? Would you consider that their on
23 going responsibility for that aspect of the
24 investigation would have created a legitimate need to be
25 in attendance at the autopsy?

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1 A. No, because any samples that were obtained, say, for
2 toxicology would be obtained as part of the post mortem
3 process to ascertain what part, if any, they played in
4 his death. That information, were it relevant to what
5 had happened earlier on, could readily be conveyed to
6 PIRC and would be conveyed to PIRC -- would be made
7 known to PIRC, rather, after analysis. So I don't see
8 any purpose in them being there. As I say, I am very
9 surprised.

10 Q. We heard evidence from Mr Little. Again, I am reading
11 from his transcript. He was asked whether he had
12 expressed surprise or challenged the presence of the
13 police at the post mortem and he said:

14 "Answer: I certainly never challenged it. I never
15 asked Mr Ablett why the police were there."

16 He also said:

17 "Answer: On reflection, sitting here now all these
18 years later, not only was it untidy, it threw doubt on
19 the independence aspect of the investigation into the
20 death."

21 Would you agree with that?

22 A. I totally agree with that, and I would say about
23 Billy Little, again, he is a former police officer whom
24 I had worked on quite a number of cases with. In fact,
25 he was a DI in Stewart Street in Glasgow when I was the

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1 Fiscal for central and west Glasgow, so I had quite
2 a number of murder cases and things involving him. I am
3 absolutely, frankly, astonished that he let them be
4 there. I would have expected him to say: you have no
5 role here, please leave.

6 Q. Kate Frame was asked about this in her evidence. She
7 didn't have any knowledge, or she gave evidence she had
8 no knowledge of the officers being present at the
9 post mortem. She was asked:

10 "Question: If you had known, would you have been
11 concerned?"

12 And she said:

13 "Answer: Yes, I would have thought it inappropriate
14 for the officers to be present."

15 And I see you are nodding your agreement. She went
16 on to say when asked what her PIRC officers might have
17 done:

18 "Answer: I think they could have raised concerns but
19 my understanding is that post mortems are convened at
20 the hand of the Crown and anyone present is there under
21 the direction of Crown Office."

22 You said a few moments ago in your evidence it was
23 for the PIRC to decide who was there?

24 A. I expected PIRC would staff the post mortem suite for
25 the purposes that we needed them. I had no expectation

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1 the police officers would be there at all, other than,
2 as I say, for the limited purpose of identifying him and
3 then departing, and potentially to be asked to convey
4 samples to the lab at the end of the post mortem. I am
5 concerned and, had I been asked about this or known
6 about this, I would have said that they should leave.
7 I say that because that is to preserve the sanctity of
8 the investigation. Potentially, as I have indicated
9 earlier, we might have had police officers who were
10 going to become accused in this matter. We might have
11 had in fact some form of case against Police Scotland.
12 So I can only say I am astonished and I am very
13 surprised that it wasn't challenged.

14 Q. So this is an autopsy that has been instructed on the
15 authority -- or the instruction of the Crown. The PIRC
16 are investigating again on the direction of the Crown.
17 We have the Commissioner give evidence that it was
18 a matter for the Crown to decide who was present but
19 I understand that your evidence is that really it was
20 a matter for the PIRC to decide who should be present.
21 I am just wondering how we might resolve this
22 difference.

23 A. The post mortem is a Crown-instructed post mortem but
24 the investigation had been handed by me to PIRC.
25 I can't see how it would be thought to be a decision of

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1 the Fiscal who should be present at the post mortem. As
2 I say, my expectation was that it would be entirely
3 manned by PIRC and run by them, and I am ... I am just
4 astonished that police officers were present.

5 Q. So although the post mortem had been instructed by the
6 Crown, do I understand your evidence correctly to be
7 that, because the investigation had been effectively
8 handed over PIRC, the post mortem is a part of that
9 investigation?

10 A. Absolutely.

11 Q. And it was up to them to determine who should be
12 present?

13 A. Or, if they were concerned, to seek advice and guidance
14 from COPFS. I can say without fear or favour, if
15 someone had asked me, I would have said: tell them to
16 leave.

17 Q. Mr Ablett of course was present at the post mortem and
18 doesn't appear to have asked anyone to leave and, from
19 reading his statement, there is no sense that he was
20 concerned by the presence of police officers. Does that
21 concern or surprise you?

22 A. Well, it really is the same answer I have already given,
23 which is I don't think the police had a role there and,
24 had I been aware of it, I would have asked them to
25 leave. I would have made sure they left, and the reason

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1 for that is to protect the sanctity of the investigation
2 as potentially Police Scotland were accused here.

3 Q. I am wondering whether Mr Ablett, who effectively
4 attended the autopsy at your request on your behalf,
5 whether you would have expected the same of him; that if
6 he had realised that police officers were there, might
7 you have expected him to challenge that? To ask them to
8 leave? Or perhaps even to give you a call if he was
9 unsure?

10 A. Well, indeed, yes. Both of those things.

11 Q. Thank you. Can I move on briefly to another matter and
12 it concerns organ retention. I wonder if we can look at
13 Mr Ablett's statement. It is SBPI 00370. Can we look
14 at paragraph 56, please. He was referred to
15 Dr Bouhaidar's statement. That was the second
16 pathologist:

17 "Dr Bouhaidar states the Fiscal would inform the
18 family that the brain had been retained. I have been
19 asked whether I advised the family of the details of the
20 post mortem examination. I did not attempt to make
21 contact with the family immediately after the
22 post mortem to advise them of the post mortem or to
23 provide them with information about organ retention.
24 I had not tasked with the duties of family liaison. At
25 that stage the FLOs deployed by PIRC were responsible

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1 for keeping the family updated. Their first task would
2 be to speak with the family and develop a communication
3 strategy, agreeing what information the family would
4 want to be told, how much detail they would want to hear
5 e.g. did they want to hear the details of the
6 post mortem examination, would the family expect regular
7 updates or would they wish to be contacted only when
8 there was something significant to tell them, which
9 family member would be the primary point of contact.
10 The effect of losing a loved one can be devastating for
11 a family. Hearing details about the post mortem
12 examination could be extremely upsetting. The retention
13 of the brain would very likely cause further distress,
14 even in circumstances where it was necessary to retain
15 the brain for examination. The FLOs would require to
16 deal with the issue of communicating details of the
17 post mortem examination and organ retention sensitively
18 and communication with the family could only be in
19 accordance with the family's wishes."

20 Can you help me to understand that where an organ
21 has been retained following an autopsy, given that the
22 examination is directed by the Crown, whose
23 responsibility is it to tell the family the organ has
24 been retained?

25 A. It very much depends on the nature of the examination.

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1 So in a cause of death coronial type post mortem that
2 information would be communicated directly by SFIU
3 staff, who would advise the family of the retention and
4 the purpose in retaining. That said, very, very rarely
5 would there be FLOs involved in those cases. We would
6 also utilise our VIA staff to communicate that kind of
7 information and give the family explanations. It has to
8 be said that very few organs are retained for any length
9 of time and we don't classify a retention as, say,
10 for example, removing the brain and having it examined
11 on the day following or a couple of days following
12 before it is placed back with the body and the body is
13 released. We talk about retention where we take
14 an organ or a part of an organ and we keep that for
15 a longer period of time for particular investigations to
16 be done. So, for example, it is not infrequent in
17 paediatric cases that there might be cardiac issue and
18 it requires specialist paediatric cardiac examination.
19 That takes months. So we will tell the family that we
20 have retained the heart and, generally speaking, in
21 those circumstances of course parents are quite happy
22 with that because they want to know what has happened
23 and are worried about other children or future children.
24 We don't routinely, as I say, speak about retention in
25 something that is separated from the body for a short

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1 period of time before being replaced with the body and
2 the body released.

3 So I wouldn't describe this as a retention, insofar
4 as my understanding is that the neuropathology was
5 carried out the next day and the brain reunited with the
6 cadaver and then Mr Bayoh's body was ready to be
7 released so far as I was concerned.

8 In homicide-type cases the pathologist, as they
9 would in every case, will let SFIU know, but the
10 Procurator Fiscal who is present at the post mortem
11 would be aware of the retention. And while I wouldn't
12 anticipate that individual Procurator Fiscal telling the
13 family, I would anticipate that SFIU staff would tell
14 the family. Because all issues surrounding retention,
15 release of a body, retention of organs, et cetera are
16 routed through SFIU to ensure there is one route that
17 the pathologists know is the correct route, because
18 historically we have had difficulties where homicide
19 directed that a body be released when it wasn't in fact
20 ready to be released and there was a problem because
21 organs were not matched up. So there was one course and
22 one way of dealing with these things.

23 In this situation we have a post mortem taking place
24 on the Monday. The information would potentially only
25 get to SFIU on the Tuesday, but they wouldn't even need

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1 to do anything with it because by that stage the brain
2 would have been returned. And I would anticipate that
3 SFIU East being told that the brain had been removed for
4 the purposes of examination would make enquiry as to
5 whether that had happened and whether the brain was now
6 reunited with the body, because they would be looking to
7 try and arrange release.

8 So I am not surprised that Mr Ablett didn't do
9 anything with it. The process would be that it would go
10 through SFIU. But, as I say, in this instance events
11 would have overtaken the need to do anything because the
12 brain would have been returned.

13 Q. And you say that you anticipated the brain being
14 returned on the 5th?

15 A. My last involvement in this was to seek to -- or to
16 speak to Dr Shearer about the neuropathology. She
17 advised me it had been done early that morning, I think
18 somewhere about 6 o'clock that morning, by
19 Dr Colin Smith. Now, Professor Smith he was going
20 abroad to some medical meeting or another and he had
21 come in early and carried out the neuropath examination,
22 so my expectation was that the mortuary technicians
23 would have reunited the brain with the body at that
24 time. That is normal practice.

25 Q. There is evidence before the Inquiry. We don't need to

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1 go to this form, but the reference is WIT 00052. It is
2 an organ retention form and it tends to suggest that the
3 brain wasn't reunited with the body until 8 May.

4 A. I have to say that surprises me, but I don't know
5 whether the brain was taken from the Lawnmarket where
6 Edinburgh City Mortuary is and taken to Edinburgh Royal
7 Infirmary where Dr Smith is generally based, dealt with
8 by him on the 5th and then took some time to process
9 back. The organ retention form is simply a way of
10 ensuring that the Fiscal is aware that an organ has been
11 taken out of the body so that the Fiscal can be assured
12 at the time the body is returned that either (a) the
13 organs have been replaced or (b) the family have been
14 made aware that there is a retention and those matters
15 have been discussed with them.

16 MS THOMSON: We may look at that form after lunch, but I am
17 mindful that it is shortly after 1 o'clock. I wonder if
18 this is a convenient moment.

19 LORD BRACADALE: We will stop for lunch and sit at
20 2 o'clock.

21 (1.02 pm)

22 (The short adjournment)

23 (2.00 pm)

24 LORD BRACADALE: Ms Thomson.

25 MS THOMSON: Thank you, sir. Just before lunch I said that

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1 when we came back after lunch we would look at the organ
2 retention form. I wondered if we could put that on
3 screen, it's WIT 00052.

4 Mr Green, this is a pro forma. Is this familiar to
5 you as a pro forma?

6 A. Yes.

7 Q. Can you help me to understand what this form is for?

8 A. Having had a number of instances historically where
9 organs were removed from cadavers and not replaced, some
10 going missing in mortuaries, some being retained by
11 doctors that were not known about, when I started in
12 SFIU I began a spreadsheet to ensure that we were aware
13 of the retention of organs, whether temporary or
14 long-term, so that we knew exactly what had been taken,
15 where it was, when it went back, and we could assure the
16 Lord Advocate that these historic issues were not going
17 to be repeated.

18 Q. Was this a form that you created?

19 A. I think it was probably created by an admin person, to
20 be perfectly honest but~...

21 Q. But it's to fulfil that need that you --

22 A. At my direction.

23 Q. At your direction. This particular form has been
24 completed and we can see that it relates to Sheku Bayoh.
25 The more significant information I think is on the

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1 second page but before we move to that, can I just pause
2 to note that in the left-hand margin we see recorded
3 post mortem type, two doctor; date of post mortem,
4 4/5/15; identification required, yes; Fiscal to attend,
5 yes; police to attend, yes. We discussed that before
6 lunch.

7 Can you help us to understand who would, in all
8 likelihood, have completed this form and at what stage
9 it would have been completed?

10 A. It would be completed by a member of SFIU East,
11 interestingly enough there is no column there or no
12 place there to put "PIRC to attend". I wonder if it has
13 just been filled in on the basis that an investigating
14 authority would attend, potentially the admin member of
15 staff would have no knowledge whatever of PIRC's role or
16 PIRC's involvement in this death, and indeed may have
17 had no knowledge of PIRC, to be quite frank. It is
18 certainly not a direction that was given at all.

19 Q. So the form perhaps simply hasn't been updated since the
20 PIRC came into being?

21 A. Yes, and that is definitely an error. But I have to say
22 I had never noticed that before.

23 Q. If we can scroll down to the second page of the
24 information, please. So here we are, it's headed up:

25 "To: Procurator Fiscal.

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1 "East Federation Fatalities Investigation Team."

2 And if we scroll a little further up we see that the
3 issuing authority is Forensic Pathology at Nine
4 Edinburgh Bioquarter, Little France and we see also in
5 the top left-hand corner that this relates to the death
6 of Sheku Bayoh. If we come back to where we were,
7 "Organ retention":

8 "I hereby confirm that with your prior consent in
9 connection with establishing the cause of death on the
10 above named deceased, I have retained the following
11 organ: Brain."

12 So the "I" there is the pathologist who has carried
13 out the removal of the organ, and the "you" who has
14 given prior consent must be the Fiscal?

15 A. Yes.

16 Q. In this case would that be Mr Ablett, who was present at
17 the autopsy?

18 A. Yes. Because he was present at the time. In
19 single-doctor cases it would probably go in my name on
20 an admin basis but because the Fiscal was present during
21 the examination, his name appears.

22 Q. "Organ removed by", and the signature is redacted. The
23 printed name I think says KA Shearer, although it is
24 difficult to read. The date is 4/5 2015?

25 A. I recognise the signature as Kerryanne Shearer's.

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1 Q. "Acknowledgement of receipt of form by Fiscal
2 Bernard Ablett."

3 On 4/5. And timed at 6.16 pm:

4 "Organ examined by Colin Smith"

5 On 6/5:

6 "Organ returned to body~..."

7 I can't read who returned the organ to the body but
8 that appears to have happened on 8 May and the
9 acknowledgement by the Fiscal has been signed off on
10 14 May and we see at the very bottom:

11 "Pathological examination concluded~..."

12 And again Kerryanne Shearer has signed the form and
13 dated it 8 May 2015.

14 So it would appear that the brain was taken from
15 Mr Bayoh's body at the time of the autopsy on 4 May, and
16 retained until 8 May.

17 Now, before lunch you said that whether or not it
18 would be classified as a retention may be a question of
19 time or degree, and I paraphrase, those were not your
20 precise words. But I wonder if you can help us to
21 understand at what point the taking of an organ on
22 a temporary basis for the purpose of further tests or
23 examinations with a view to returning it to the body
24 crystallises into an actual retention?

25 A. As I think I indicated earlier, to my way of thinking

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1 and indeed how we discussed it in SFIU, was that this
2 was a temporary retention. The organ was clearly
3 removed and retained for a short period of time with the
4 intention that it would be returned to the body before
5 the body was released. A proper retention is the
6 removal of an organ for a longer purpose, and I think
7 I indicated that paediatric hearts are often sent --
8 they go down to England. It is probably not worth going
9 further into that, but they are away for a lengthy
10 period of time. Nonetheless it is essential that COPFS
11 retain oversight and control of what organs have been
12 removed, even if the intention is that that organ is
13 replaced and reunited with the body before the body is
14 released. We have to be absolutely sure that we know
15 what has gone, where it has gone, who has it, et cetera,
16 et cetera.

17 So while this is a retention, it is strictly
18 a retention for a very short period of time. I note
19 that the post mortem concluded well after office hours,
20 I know that Colin Smith did it again on the 6th,
21 I imagine what has happened is that this organ has gone
22 to Little France to the hospital there, been examined
23 and then gone through a return process. I am slightly
24 surprised that it has taken so long but ... I can't
25 explain that. Not with any knowledge of that at all.

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1 Clearly we have been in a position from 8 May, once the
2 brain was reunited with the body, to release the body at
3 that time.

4 Q. So should we understand then that a temporary retention
5 of an organ is in circumstances where the tests or
6 examination are performed or carried out and the organ
7 is returned to the body before the point that the body
8 is released?

9 A. Absolutely. Some pathology takes a lot longer, so
10 for example historically brains used to have to be
11 placed in formalin and allowed to fix before they could
12 be cut. Modern practice is to cut them more or less
13 immediately, and so they can be returned very quickly,
14 so you don't tend to retain those organs for any period
15 of time. You don't tend to retain the bodies for any
16 particularly lengthy time.

17 But when you come to things like ocular pathology,
18 cardiac pathology, different criteria apply and as
19 I have indicated not infrequently those organs have to
20 be sent elsewhere for specialist examination.

21 So we would call this a temporary retention and it
22 is really there just simply for the purposes of audit
23 and to ensure that we are aware of this because there
24 was no expectation or intention and it wouldn't have
25 happened that the body would be released until the brain

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1 had been returned.

2 Q. I think it goes without saying that where an organ has
3 been retained on a longer term basis there is a need to
4 advise the family. What is the Crown Office position in
5 relation to a temporary retention over a period of
6 something in the order of four or five days? Is it
7 deemed appropriate to share that information with the
8 family, or not?

9 A. We would certainly share that information with the
10 family in SFIU, in the coronial type of investigations
11 and we would expect that that information would be
12 shared by the FLOs in any suspicious or homicidal death.
13 We would try to get some sense of the time that would be
14 likely to be taken for the examination. Dr Smith has
15 the -- Professor Smith rather has the contract for all
16 neuropathology in Scotland other than in the Dundee
17 area, so much would depend on the pressure of work for
18 him and his own availability, but we would try to find
19 out from him how quickly the examination would be done,
20 and when it might be expected that the brain would be
21 returned, in order that that information could be passed
22 to the family. In coronial cases that information would
23 be passed by SFIU staff, and in suspicious cases by
24 FLOs.

25 Q. When you refer to coronial cases, are you talking

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- 1 about --
- 2 A. I am meaning non-suspicious cases, SFIU cause of death
- 3 type cases.
- 4 Q. Would that include a death in custody?
- 5 A. No, absolutely not.
- 6 Q. So A death in custody would fall under which banner?
- 7 A. A death in custody is a mandatory FAI, therefore it's
- 8 a two-doctor case, therefore it falls within that group
- 9 of cases one would describe as suspicious, homicidal,
- 10 going to court one way or another. So it is a totally
- 11 different process really to that which you find in the
- 12 ordinary cause of death-type investigation.
- 13 Q. So turning to the particular circumstances that are of
- 14 interest to the Inquiry here and the death of Mr Bayoh,
- 15 even though there wasn't a suggestion or an allegation
- 16 of homicide, when you refer by way of shorthand to
- 17 coronial cases and homicidal cases, his case would fall
- 18 under the homicidal banner rather than the coronial
- 19 banner?
- 20 A. Yes, it's a two-doctor post mortem with full forensics,
- 21 toxicology, anything that might be required depending on
- 22 the circumstances as we understood them, and sits very
- 23 firmly in that category.
- 24 Q. You said a moment ago that in homicidal cases your
- 25 expectation is that the news that the organ had been

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1 retained would be shared with the family by the FLOs?

2 A. Yes, because the Fiscal doesn't have direct contact with
3 the family at this point, there hasn't been a FLO/VIA
4 handover, the matter is not sitting really with the
5 Fiscal from that perspective and the expectation is that
6 that FLOs will have been deployed, will have got to know
7 the family to some extent, will have a point of contact
8 with the family where they can advise, just as they
9 would have advised about the post mortem, date of
10 post mortem, place of post mortem et cetera, they would
11 also advise about the temporary retention of a brain and
12 give some indication of how quickly that retention would
13 come to an end and the body would be likely to be
14 released.

15 Q. We have heard evidence that a number of representatives
16 of the PIRC were present at the autopsy, including
17 Mr Little.

18 A. Yes.

19 Q. Would it surprise you to hear that the appointed FLO,
20 Alistair Lewis, was unaware until the day that he gave
21 his evidence before this Inquiry that the brain had been
22 retained at all?

23 A. Well, yes it would surprise me because, as I think
24 I said earlier, Mr Little was a former DI in central
25 Glasgow, he had a lot of experience of homicide cases

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1 there, he had been a PIRC investigator for a significant
2 period of time. I would have thought that that was
3 an essential matter that his FLO should be made aware
4 of.

5 Q. I want to move on another matter. It's a matter that
6 you are probably unaware of but I would like to share
7 with you some evidence that the Inquiry has heard and
8 simply seek your comment. It's to do with the
9 disclosure of the post mortem results to the officers
10 who were involved in the restraint of Mr Bayoh. So this
11 was Mr Little giving his evidence last month. He said:

12 "Answer: I made the decision to disclose that
13 information ..."

14 The post mortem results:

15 "... to them ..."

16 That is the officers concerned:

17 "... I have to say it is something I have never done
18 previously, I hadn't done prior to that in anything
19 I had been involved in and I haven't done it since, so
20 it wasn't decision I made lightly. But I thought and
21 hoped that it would actually break this deadlock of the
22 officers not providing statements and that was my
23 rationale for doing it."

24 We have heard evidence -- Mr Green, you may or may
25 not be aware but we have heard evidence that the

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1 officers who attended Hayfield Road and participated in
2 the restraint of Mr Bayoh didn't give initial accounts,
3 didn't provide operational statements, they eventually
4 gave statements to the PIRC on 4 June a month later. So
5 Mr Little explained that to try to break this deadlock
6 he shared the information with the officers, and I think
7 what he was keen to convey to the officers was that
8 there had not been any finding that blunt-force trauma
9 had caused the death at autopsy. He went on to say:

10 "Answer: I had been -- my recollection is that I had
11 been contemplating this as a means of breaking the
12 deadlock because at that time my opinion was that this
13 deadlock with the police officers was causing untold
14 harm, not only to the investigation but I envisaged that
15 when I sat down with the family and we hadn't the
16 statements, the untold damage it would do. I can
17 understand the family upset and the concern and also
18 from a point of view it was really, really hard to take
19 this investigation forward."

20 So that was his evidence as to a decision that he
21 took and his rationale for taking the decision. We also
22 heard from Mr McSporran. Now, Mr Little had been
23 appointed as the SIO on 4 May, Mr Harrower had been the
24 duty SIO on the 3rd, Mr Little was appointed on the 4th
25 and then on the 5th Mr McSporran was appointed above him

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1 and Mr Little effectively became the deputy. So he was
2 asked about this too and he said:

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

7 Again, Kate Frame was asked for her comment on this
8 when she gave evidence earlier this week and she said:

9 "Question: Is this something that would have caused
10 you concern, about sharing or disclosing this
11 information about the post mortem prior to obtaining
12 statements from the officers?"

13 And she said yes, that would have caused her
14 concern. I am wondering with your 40 years of
15 experience as a Fiscal whether you have a view as to
16 whether this was a decision that should have been taken
17 without the authority of the Crown?

18 A. Yes, I do have a view, and I would say this at the
19 outset: I was unaware of this and I am absolutely
20 astonished. In homicide cases we never disclose the
21 post mortem report to family and we do -- we maintain
22 that position right through until the case is concluded,
23 until the trial is over. They may hear about it if they
24 are in court for that evidence and if they are going to
25 be in court to hear that evidence we will give them

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1 broadly an outline of what will be said, but we don't do
2 it before that and that is to maintain the sanctity of
3 the investigation.

4 I've never heard of post mortem results being given
5 to persons who might be potentially accused in and
6 a case like this. It's -- I really -- as I said, I am
7 astonished.

8 That said, given what you have been saying about him
9 trying to get officers to give statements, and I was
10 aware of that from some media comment way back, I can
11 understand why he would do that. But frankly if he had
12 asked me for authority to do it -- and of course I had
13 nothing to do with the case at that stage -- I would
14 definitely have referred it to Crown counsel for
15 Crown counsel's decision. It is not a decision I would
16 have taken myself. I am amazed if it wasn't referred to
17 the Crown. Yes, it rather beggars belief, to be honest.

18 Q. Can I move on to another issue, and it's the final issue
19 I wish to discuss with you today, what we might call
20 cultural considerations. If we could perhaps pull up
21 again your first statement, page 8, paragraph 21:

22 "I was advised Mr Bayoh was black at the outset.
23 I immediately apprehended that whatever the facts and
24 circumstances yet to be established that this was very
25 likely to be a very high-profile matter and that

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1 questions of race would inevitably arise. The fact that
2 the deceased was black made no difference to the
3 decisions and actions that I took."

4 I wanted to ask you some questions around this. Why
5 is it that you say that you consider that questions of
6 race would inevitably arise?

7 A. Well, as I answered earlier in respect of another
8 question, I was involved in deaths investigation really
9 for half my service, and in charge of it for very
10 lengthy periods of that, and I was aware of issues that
11 had occurred in England, where there had been tremendous
12 media interest, and indeed speculation, where
13 individuals who were black had died in police stations
14 and that sort of thing. I was aware that there had been
15 a number of such issues in America, and that they had
16 been very, very high profile with lots of interested
17 parties making comment and speculating in a lot of
18 cases.

19 It seemed to me that was very likely to happen in
20 this case. We had not had a circumstance in Scotland
21 where an individual who was black had died while in
22 custody, and I fully anticipated that the media would be
23 very, very interested in this. I fully anticipated that
24 politicians would be very interested in this. Indeed,
25 I thought it was going to become exceptionally high

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1 profile for those reasons.

2 Q. Did you anticipate that Mr Bayoh's race or the
3 possibility of a racial motivation would form part of
4 the PIRC's investigation?

5 A. You simply cannot discount that. Race is always
6 an issue from two perspectives and the first of these is
7 that one wants to be as sensitive as one can to the
8 religious and racial elements and the funerary rites and
9 wishes of nearest relatives, but at the same time you
10 also have to consider immediately whether race is
11 a motivation for what has occurred, and I had certainly
12 had one case that I recall in Glasgow where an asylum
13 seeker was attacked and murdered and that was racially
14 motivated.

15 Q. You say you have to consider immediately whether race
16 was motivation for what occurred. I am wondering
17 whether, when you gave the initial instruction PIRC to
18 investigate this death in custody, you expressly tasked
19 them with looking at whether there was a racial
20 motivation to the officers' behaviour or whether race
21 was otherwise relevant to their investigation?

22 A. I certainly didn't task them in that way because at the
23 time I issued the instruction there was nothing to
24 indicate to me that a crime had been committed.
25 Therefore, there was no indication, no suspicion, and

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1 as I have already said, I think, it was possible that
2 Mr Bayoh had died of a natural cause that was
3 unconnected to or perhaps only very peripherally
4 connected to his interaction with the police officers.
5 So there was nothing that caused me to highlight that.
6 It was certainly in my mind, and I would be
7 exceptionally surprised if the PIRC investigators
8 weren't thinking the same way.

9 Q. You said the fact that Mr Bayoh was black made no
10 difference to your decisions or actions. I am wondering
11 whether the fact that he was Muslim affected your
12 decisions and actions at all, with particular reference
13 to the arrangements around the post mortem?

14 A. Well, they did insofar as I have already indicated. My
15 previous experience showed that those of the Muslim
16 faith were not happy to have nearest relatives
17 post mortemed but would -- were more tolerant, shall we
18 say, of us requiring to carry out post mortems than,
19 for example, those of the Jewish faith who tended to be
20 even more concerned, and very, very, very much trying to
21 avoid a post mortem taking place.

22 So my experience was that those of the Muslim faith
23 would be understanding of this but they would wish to
24 have the remains returned at the earliest point. So my
25 intention, and as I indicated earlier my hope was that

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1 while I absolutely had to do a post mortem, while we
2 absolutely had to investigate this, time and speed were
3 of the essence, and my expectation was that we would
4 carry out these investigations as quickly as possible
5 and return Mr Bayoh's body to his nearest relatives as
6 quickly as we possibly could.

7 Q. Thank you. I wonder if we can look briefly at the Crown
8 Office guidance on cultural and religious awareness.
9 This is COPFS 05922. While that is being brought up on
10 screen -- here it is. We will see it is headed up:

11 "COPFS cultural and religious awareness guidance on
12 death customs and traditions."

13 And the Crown Office have advised this was in force
14 with effect from 14 November 2013 and was in force at
15 the time of Mr Bayoh's death. If we scroll through, we
16 will see that there is guidance in relation to various
17 different religions and if we get as far as Islam.

18 Thank you. And scroll a little further down, please.
19 Stop there the paragraph above the heading "Judaism":

20 "Rules concerning separation of the sexes apply to
21 the corpse therefore the same gender as the deceased
22 should be used to deal with the body."

23 I wonder if that was a requirement of the Muslim
24 faith that you were familiar with?

25 A. It is many years since I saw this, I have to say, and

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1 I can't say that I had it in mind at the time the
2 post mortem arrangements were made. But as I have
3 indicated earlier on, there are only a very limited
4 number of forensic pathologists, and only an even
5 less -- a greater limited number who are actually
6 available to carry out examinations at particular times.
7 If one looks at the numbers of forensic pathologists in
8 Glasgow, I think I might be right in saying there are no
9 men employed in that capacity there. So, you know, one
10 is limited by the -- by that factor if nothing else, and
11 it certainly wasn't something that I had in mind or had
12 regard to.

13 Q. It might be a limiting factor, there might simply not
14 have been a male pathologist --

15 A. Indeed.

16 Q. -- available, but I think you have quite candidly said
17 it wasn't something that was in your mind, so can
18 we take it that you didn't yourself make enquiry as to
19 whether it might have been possible for both doctors
20 performed the autopsy to be male?

21 A. No, it didn't and I can say this: that particularly in
22 the West of Scotland, where the vast majority of the
23 deaths cases arise -- so 50% of all the deaths in
24 Scotland occur within the area served by Glasgow
25 University -- the pathologist there would carry out very

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1 large numbers of examinations, and the female staff
2 there would undertake these cases routinely in SFIU
3 cases, it was never something that was brought to my
4 attention. It was never the subject of a complaint to
5 SFIU. And while I have no doubt that I read this some
6 considerable time ago, it certainly wasn't something to
7 the front of my mind because everyday practice was such
8 that if you died in the west of Scotland and you
9 required to be post mortemed to get an MCCD there was
10 every chance it would be a female pathologist who would
11 carry out that investigation.

12 Q. This of course was a double-doctor autopsy?

13 A. Yes.

14 Q. We have heard evidence, I think, that the division of
15 responsibility was such that one was taking the lead and
16 performing the examination whilst the other had more of
17 a background role and was note-taking?

18 A. Yes.

19 Q. And the second doctor was a male. Did you give any
20 thought to perhaps requesting that the male doctor,
21 Dr Bouhaidar, lead given that the lead pathologist is
22 the one who performs the examination, and that
23 Dr Shearer perhaps perform the secondary role?

24 A. As I indicated, it wasn't to the front of my mind so
25 I didn't give consideration to that at all. It is

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1 certainly something that had it been to the front of my
2 mind it would have been very easy to phone Ralph and
3 Kerryanne and discuss with them, and I don't doubt they
4 would have been happy to swap places.

5 Q. Can I take you back to something you said in your
6 evidence before lunch, and it was when I was asking you
7 questions about your state of knowledge in terms of the
8 family's position on identification. You mentioned
9 elders and I wanted to just ask you some questions about
10 elders.

11 A. Yes.

12 Q. Again, I have the [draft] transcript in front of me so
13 I will read back to you what you said and then ask you
14 some questions:

15 "Answer: My understanding at the time was they were
16 not willing to attend at that point and identify, that
17 they were waiting for elders -- and I remember the word
18 being used, and it struck me as an unusual word and
19 I didn't quite understand what it meant. But it was of
20 no moment, they were certainly waiting for others to
21 come to Kirkcaldy."

22 I just wanted to ask you some questions around the
23 use of the word "elders". What did you think it meant?

24 A. I assumed that it probably meant older members of the
25 family and potentially religious elders. Like I say, it

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1 was of no moment to me but I had never heard that word
2 used in that context before, which is why I recalled it
3 particularly. Like I say, it really wasn't of any
4 moment at all because the whole issue was that, as
5 I understood it, they were not going to attend, they
6 were waiting for this to happen, there was no certainty
7 about when it might happen, that there would be
8 discussion but there was no certainty that they would
9 come to the mortuary thereafter.

10 So to be honest I simply noted it because I thought
11 it was an unusual word in the circumstances. Normally
12 one would have -- you would be told the mother or father
13 are not willing to come and identify, you know, the
14 brothers and sisters are not willing to come. But those
15 words were not used, it was the word "elders".

16 Q. You say that it might have been religious elders or
17 could have been senior or older members of the family?

18 A. Yes, indeed, indeed.

19 Q. In either scenario what were the implications of that so
20 far as you were concerned; were there any?

21 A. There were no implications in that at all.

22 Q. Did it say anything, did it speak to you at all of the
23 culture within the family?

24 A. On mature reflection it suggests to me that they were
25 probably very religious and these would be religious

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1 elders, but I can't say that I thought about that at the
2 time.

3 Q. Did it occur to you at the time to ask Mr Harrower for
4 clarification as to who these people were?

5 A. I don't think he knew. He simply said: they are waiting
6 for people to come, they are waiting for elders.
7 I didn't ask him and he didn't volunteer any other
8 information if he was aware of it.

9 MS THOMSON: Thank you Mr Green. Can you bear with me for
10 just a moment please. I have no further questions, sir.

11 LORD BRACADALE: Thank you. Are there any Rule 9
12 applications? Ms Mitchell.

13 Mr Green, would you withdraw to the witness room
14 while I hear an application.

15 (The witness withdrew)

16 Ms Mitchell.

17 Rule 9 application by MS MITCHELL

18 MS MITCHELL: There are two issues I would like to ask the
19 witness about in respect of this Rule 9. The first is
20 to clarify exactly what his understanding was in
21 relation to whether or not the family wished to attend
22 and were waiting for someone. The reason I say that is
23 because at various points in his evidence it appears
24 that he has been clear that there was no indication that
25 the family wished to see Mr Bayoh. I first make

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1 reference in [draft] line 72/17 of the witness's
2 evidence, where he says:

3 "Answer: I was given no timeframe for her attending,
4 and in particular I was never told that she would wish
5 to view the body. I recollection is clear~..."

6 That is literally what it [draft] says.

7 "... that they were unwilling to attend at that
8 time, that they were waiting for the arrival of others
9 and there would then be some discussion and there was no
10 indication given to me that the family wished to go to
11 see the -- to see Mr Bayoh, nor that they would be
12 willing to do so or to carry out an identification."

13 Similarly at [draft] line 56/18 he said:

14 "Answer: My understanding at the time was they were
15 not willing to go -- attend at that point and identify,
16 that they were waiting for elders~..."

17 And he goes on to explain how that word struck him,
18 and he said:

19 "... and that there would be a discussion,
20 presumably with those individuals who had arrived and
21 those who were already present in Kirkcaldy about
22 whether or not they would attend to identify Mr Bayoh's
23 body. Thus there was total uncertainty~..."

24 When the evidence of Kadi Johnson was put to him at
25 [draft] 68/22, it was put to him by my learned friend:

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1 "Question: So you accept on the basis of the
2 evidence of Kadi Johnson, which I have shared with you
3 today, that she gave a clear indication that Sheku's
4 mother was willing to attend and identify the body and
5 she would be arriving the following day?

6 "Answer: Yes."

7 "Question: So there was no ambiguity as to her
8 position and no uncertainty about the time frame; would
9 that be fair?

10 "Answer: Well, it's not a matter for me to assess
11 whether what she says is accurate on the basis of what
12 you are putting to me indeed that is the case. As
13 I have indicated, had that been made clear to me and had
14 I been made aware of any of that, I would have sought to
15 put this back for a day to allow his mother to attend
16 the mortuary."

17 Then at the end just the end of his evidence there
18 at [draft] 129 he said:

19 "Answer: Like I say, it really wasn't of any moment
20 at all because the whole issue was that I understood it
21 they were not going to attend, they were waiting for
22 this to happen, there was no certainty about when it
23 might happen and there would be a discussion but there
24 was no certainty around that they would come to the
25 mortuary thereafter."

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1 However, in evidence which was put to him in
2 relation to Kate Frame, Kate Frame says herself that she
3 was aware of the family's wishes too, and I quote lines
4 37/9:

5 "Question: And you were aware of the family's wishes
6 too. By that I am understanding you understood and you
7 were aware that Mr Bayoh's family wished his mother to
8 come up from London --

9 "Answer: I remember.

10 "Question: -- prior to identifying the body at
11 post mortem?

12 "Answer: Yes, I think my recollection is that it was
13 family members, I don't recall it being tied just to the
14 mother.

15 "Question: Was the mother to be part of that group?

16 "Answer: Yes.

17 "Question: As well as others?

18 "Answer: Yes, I understood that to be the case."

19 Then later in her evidence at 38/11 she was asked:

20 "Question: Tell us about your discussions with
21 Mr Green at Crown Office."

22 She says:

23 "Answer: Well, I was aware from Mr Little that
24 Crown Office -- and I didn't know precisely who -- had
25 been made aware of this issue, and I wanted to ensure

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1 that he, as head of the -- what was the Deaths Unit
2 before this was aware of the circumstances so that it
3 could be considered.

4 "Question: What did you tell Mr Green?

5 "Answer: My recollection is I told him that
6 the family had indicated they want other family members
7 present before any post mortem went ahead.

8 "Question: What was his response?

9 "Answer: I think he was trying to balance the need
10 for -- well, to see if a cause of death could be
11 ascertained against that. But the eventual outcome was
12 that the post mortem had been arranged by that time and
13 was to continue."

14 Now, her evidence clearly was that she had
15 an understanding of what the family's position was, that
16 she spoke to Mr Green and her evidence was that she
17 tried to persuade him to delay matters. In relation
18 to -- when it was put to him, that message, he said he
19 had no recollection of it, he said:

20 "Answer: No, I'm afraid it doesn't -- I have no
21 recollection of it. I have no reason to doubt the
22 conversation took place. What I would say is that
23 again, on the information that you have given me, I am
24 not being given any additional information about when
25 this is, when the family might be available, when the

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1 post mortem might take place."

2 So that is in fact different, because in the
3 questions that are posed there, it presupposes that he
4 was told that the family were interested in coming to
5 a post mortem. Because the question he asks is:
6 I wasn't given more information about this, when the
7 family might be available, when the post mortem might
8 take place. So that would tend to suggest that in the
9 course of that conversation he had been made aware that
10 the family wished to attend. I would like to put that
11 to him for his consideration.

12 If he does not think that and says that he does not
13 recall it, to ask him why in the circumstances then did
14 he think Kate Frame was asking him to delay it.

15 The second issue I would like to put, somewhat
16 shorter, is my learned friend ascertained in-chief that
17 the witness said the fact Mr Bayoh was black made no
18 difference to his decisions or actions. I want to test
19 that proposition in relation to his decision to press
20 ahead with a post mortem as soon as possible.

21 The reason for that is that, as we have heard, he
22 anticipated the matter being high profile, and when
23 asked about it being high profile earlier this morning
24 he immediately linked that with the fact that there had
25 been a very high profile matter in America where

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1 an individual who is black had died, again at the hands
2 of white police officers. So his first thought in
3 connection with hearing from Superintendent Blackhall
4 that a black male died was to this particular high
5 profile case.

6 What he was asked about in relation to the timing of
7 the post mortem was:

8 "Question: You said a moment ago you made it clear
9 to Dr Shearer that this was an autopsy that had to be
10 conducted as quickly as possible given the
11 circumstances. By that do you mean because it was the
12 death of a man, perhaps even a black man, in police
13 custody?

14 "Answer: No, it mattered not that Mr Bayoh was
15 black, that wasn't the issue at all. The issue was that
16 we needed to know whether this man's death had been
17 brought about by acts of police officers."

18 What I am wondering is -- and whether this witness
19 can assist us with that, was when he was carrying out
20 the balancing act is he sure that the fact that Mr Bayoh
21 was black and therefore that this would be high profile
22 was not a factor that he considered in the speed at
23 which this post mortem took place. And therefore was
24 the fact that Mr Bayoh was black not in a sense
25 indirectly a factor which was important in his

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1 consideration in respect of having the post mortem done
2 as soon as possible. Ie, had it not been high profile
3 because he was a black man who died in police custody,
4 might the imperative for a quick post mortem have been
5 less critical?

6 Those are my questions.

7 LORD BRACADALE: Very well. I shall allow you to explore
8 these lines of questioning. Can we have the witness
9 back, please.

10 (The witness returned to the stand)

11 Mr Green, Ms Mitchell KC, who represents the
12 families of Sheku Bayoh, has some questions for you.

13 Questions from MS MITCHELL

14 MS MITCHELL: I would like to try and clarify your
15 understanding of a matter as a result of your evidence
16 so far. Earlier today you were asked at various
17 occasions about your understanding of the position of
18 the family in the post mortem, and if you will bear with
19 me I will just run through and check that I have
20 understood your evidence correctly. The first is you
21 said:

22 "Answer: I was given no timeframe for her attending,
23 and in particular I was never told that she would wish
24 to view the body. My recollection is clear that they
25 were unwilling to attend at that the time, that they

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1 were waiting for the arrival of others, that there would
2 then be some discussion. And there was no indication
3 given to me that the family wished to go to see
4 Mr Bayoh, nor that they would be willing to do so, or to
5 carry out an identification."

6 You said something similar again at a later stage:

7 "Answer: My understanding at the time was that they
8 were not willing to attend at that point and identify,
9 they were waiting for elders -- and I remember the word
10 being used ..."

11 You have talked about that in detail and you have
12 said after those people arrived that:

13 "Answer: ... there would be a discussion, presumably
14 with those individuals who had arrived and those who
15 were already present in Kirkcaldy, about whether or not
16 they would attend to identify Mr Bayoh's body. Thus
17 there was total uncertainty~..."

18 Then you recall the evidence of Kadi Johnson, the
19 sister of Sheku Bayoh, was put to you about the fact
20 that she had made her position quite clear. And,
21 of course, that wasn't known to you and what you said in
22 that regard, you accepted if that had been said, then
23 there was no ambiguity. And you said:

24 "Answer: Well, it is not a matter for me to assess
25 whether what she says is accurate but on the basis of

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1 what you are putting to me, indeed that is the case.
2 I have indicated that, had it been made clear to me
3 in -- had I been made aware of any of that, I would have
4 sought to put this back a day to allow his mother to
5 attend the mortuary."

6 And that is the evidence earlier today.

7 What I want to check with you is Kate Frame says
8 that she was aware of the family's wishes, and by that
9 I mean that she was aware that Mr Bayoh's family wished
10 his mother to come up from London prior to identifying
11 the body at the post mortem. That is her understanding
12 of what the position was. She said -- in fairness, she
13 said her recollection was family members. She didn't
14 recall it being tied to just the mother coming but she
15 understood the mother would be part of that group. Then
16 she was asked:

17 "Question: Tell us about your discussion with
18 Mr Green at Crown Office."

19 And she said:

20 "Answer: Well, I was aware from Mr Little at
21 Crown Office, and I didn't know precisely who, had been
22 made aware of this issue and I wanted to ensure that he,
23 as head of the -- what was the deaths unit before this
24 was aware of the circumstances so that that could be
25 considered."

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1 Then it is said:

2 "Question: What did you tell Mr Green?

3 "Answer: My recollection is that I told him the
4 family had indicated they wanted the other family
5 members present before the post mortem went ahead."

6 And it is said:

7 "Question: What was his response?"

8 And you talked about balancing it out. Now, you
9 obviously don't recall having that conversation. You
10 have already given evidence in that regard. But in your
11 response you said the following:

12 "Answer: No, I'm afraid it doesn't. I have no
13 recollection of it. I have no reason to doubt that the
14 conversation took place. What I would say is that again
15 on the information that you have given me, I am not
16 being given any additional information about when
17 this -- when the family might be available, when the
18 post mortem might take place. I think it is entirely
19 conceivable that I did say to Kate: no, there is no
20 certainty here, it's going ahead as arranged because how
21 long is this week going to be? How long is a piece of
22 string, in effect? I was -- as I have indicated
23 earlier, I was exceptionally conscious of the need to
24 find out why Mr Bayoh had died."

25 What that suggests particularly -- "I am not being

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1 given any additional information about when this -- when
2 the family might be available, when the post mortem
3 might take place", is that an acceptance from you that
4 you accept that Kate Frame in fact did have this
5 conversation with you and you are saying that it
6 wouldn't have made any difference because the additional
7 information about when the family was going to be there
8 wasn't being given to you?

9 A. I have no recollection of the call, but I don't doubt
10 that Kate recalls it and is saying what happened. I can
11 say this and only this: I do not recall being given any
12 additional information beyond what I was given by
13 Keith Harrower at half past 11 at night. So there was
14 nothing that I remember being said to me that caused me
15 at that time to pause and reconsider the decision.

16 Q. But do you see the issue; that she is clear in her
17 evidence that she was phoning you up to ask to delay for
18 that particular purpose and what you are saying is you
19 don't doubt, if she is saying that, that is correct?

20 A. I don't doubt that there was a call but I have no
21 recollection whatever of the circumstances and
22 I certainly can say that I recall nothing whatever that
23 was changed because, had it been changed, I would have
24 been reconsidering the position and I may have arrived
25 at a different view --

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1 Q. That is perhaps what I am actually putting to you. If
2 during the course of that conversation that took place
3 you were saying: well, when might the family be
4 available? When might the post mortem take place? But
5 you weren't being given answers to those specific
6 questions. So even having been told those factors, you
7 thought: well, I haven't got additional information, the
8 post mortem must continue. But in fact the additional
9 information was the family did want to attend.

10 A. I don't recall ever being told the family wanted to
11 attend.

12 Q. In that case, why might you pause at the question when
13 the family might be available or when the post mortem
14 might take place?

15 A. I am sorry, I am not following that.

16 Q. What you said is you didn't have any recollection of it
17 took place but you said:

18 "I am not being given any additional information
19 about this ... when the family might be available, when
20 the post mortem might take place."

21 So what you are saying is, if that conversation had
22 taken place, it wouldn't have given you additional
23 information, and I am suggesting to you it would have
24 given you additional information. On your evidence, it
25 would have given you the information that the family did

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1 want to attend.

2 A. Well, I can only repeat that I don't recall any
3 additional information given to me.

4 Q. I would like to move on, please. In your evidence you
5 said that the fact that Mr Bayoh was black made no
6 difference to your decisions or actions. You were first
7 informed that a black man had died in police custody
8 when Superintendent Blackhall called you to advise that
9 it had happened you said about 7.15 and that there was
10 a black male, that a knife had been involved and there
11 were police sent to search for him, et cetera. Now,
12 later in your evidence you said that you anticipated the
13 matter being high profile and you have given some more
14 information about that this afternoon. When you were
15 asked about it being high profile you indicated that you
16 were aware that there had been a very high profile
17 matter in America when an individual who was black had
18 died, again at the hands of police officers.

19 In your evidence you also said that you made it
20 clear to Dr Shearer that this was an autopsy that had to
21 be conducted as quickly as possible, given the
22 circumstances, and you were asked:

23 "Question: By that do you mean because that was
24 a death of a man, perhaps even a black man, in police
25 custody?"

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1 And what you said is:

2 "Answer: It mattered not that Mr Bayoh was black.
3 That wasn't the issue at all. The issue was that we
4 needed to know whether this man's death had been brought
5 about by the acts of police officers."

6 So what I want to ask you about that was, when you
7 were carrying out your balancing act, are you sure the
8 fact that Mr Bayoh was black and there had been high
9 profile cases and that this was going to be high profile
10 and it was important for you to know the outcome of the
11 post mortem as soon as possible, not part of your
12 process of consideration of having the post mortem as
13 soon as possible?

14 A. The fact that he was black did not impact on my
15 decision-making at all. The issue for me was that we
16 had an allegation that -- or a situation where he had
17 died while in the custody of a number of police
18 officers. We had no idea why he had died. I had been
19 made aware that there was no blood injury, there was
20 nothing obvious at the Victoria Infirmary and it seemed
21 to me that in everyone's interest we needed to know what
22 that was, and I would have taken the same view had he
23 been white. It was not relevant at all.

24 Q. So was the fact that this was going to be a high profile
25 case because he was black one of the factors in the

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1 consideration of how quickly it would have to be done?
2 Not directly the fact that he was black but the fact
3 that this was going to be high profile. Indirectly, if
4 you like.

5 A. I wouldn't say so. We have a situation where, even had
6 he been white, we have a number of police officers who
7 have been involved in this. They are potentially going
8 to be under suspicion but we don't know really what the
9 situation is with that until we have a post mortem and
10 find out what caused his death. From any perspective we
11 needed to know that. It might have been just as high
12 profile potentially if it had been a well-known person
13 who was white. I was concerned that it would be high
14 profile and concerned that the law officers and others
15 would know that this had happened --

16 Q. That is what I am wondering --

17 A. -- but it really wasn't an impact on my wanting this
18 answer very quickly. As I said earlier in my evidence,
19 the knowledge of what caused him to die is the
20 foundation stone upon which the investigation rests.
21 And really starts; it is hard to see how you investigate
22 if you don't know what has actually caused the death.
23 So I would have been pushing for it just the same.

24 Q. So it's the fact -- it's the fact that it's a person
25 that has died in police custody that has caused the

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1 speed, not -- it bears no relation to the fact that this
2 would be high profile. You mention there for example
3 you were aware it was going to be high profile and then
4 perhaps the law officers would take a particular
5 interest in it. There was no consideration in your
6 mind: I need to get this done as soon as possible. This
7 is going to be high profile. People are going to be
8 asking me questions and I want to say I have acted with
9 speed?

10 A. No, I can say without fear or favour that in the other
11 deaths in police custody that I have dealt with, and
12 I have dealt with a number of them over the years, a
13 similar approach was taken, namely, we want an answer,
14 we want an answer quickly, we need to know whether we've
15 got police officers who are responsible for this death
16 or, you know, whether it's a drugs death or a natural
17 death or whatever it might be, whether that is -- you
18 know, the death has occurred in a police station or
19 outwith a police station. There is a real need to get
20 that answer and to get that information as quickly as
21 possible. Mr Bayoh's colour was not relevant.

22 MS MITCHELL: I am obliged.

23 LORD BRACADALE: Mr Green, thank you very much for coming to
24 give evidence to the Inquiry. I am very grateful for
25 your time. The Inquiry is about to adjourn and then you

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