

Transcript of the Sheku Bayoh Inquiry

Wednesday, 6 March 2024

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(10.00 am)

MS KATE FRAME (continued)

Questions from MS GRAHAME (continued)

LORD BRACADALE: Good morning Ms Frame.

Ms Grahame.

MS GRAHAME: Thank you very much. Good morning Ms Frame.

A. Good morning Ms Grahame.

Q. Yesterday we were looking at some guidelines, PIRC guidelines in relation to investigations. I wonder if we could go back to those, PIRC 04724. These were guidelines for dealing with allegations of discrimination when undertaking investigations.

They weren't in place in 2015 but we were going through. We had reached page 35 of the guidelines, which I think is 36 pdf. And we had reached, "Probing the officer or staff member's account". It is towards the bottom of page 35 of the guidelines. There we are. It says:

"In discrimination cases, it is important to get an account from the officer or staff member and to test and probe their account. While, the officer is not obliged to provide a response, if they do not give their version of events the complaint may be upheld in absence of any other material.

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1 "Direct, closed questions such as 'did you
2 discriminate against the complainer?' Or 'did you treat
3 the complainer differently because they were black etc?'
4 are unlikely to be very helpful. Investigating officers
5 should refer back to the thinking done at the beginning
6 of the investigation to consider what stereotypes or
7 prejudicial assumptions might have informed the officer
8 or staff member's actions. Questions should be asked to
9 test whether these sorts of assumptions informed their
10 decision-making."

11 Looking back now in relation to what you know about
12 the officers' statements that were given on 4 June 2015,
13 were you satisfied that there had been the sort of
14 probing that is described in these guidelines? Do you
15 think there was probing in relation to why certain
16 actions were taken?

17 A. I am aware that as part of the interview process for the
18 Inquiry that it was highlighted that there was
19 an interview strategy where those questions appeared to
20 not feature. My understanding of an interview strategy
21 is, whilst the skeleton can be put out in the interview
22 strategy, depending on the responses received, there
23 should be discretion for the investigator to follow up
24 with further questions. Now, to some extent the
25 statements from recollection which I saw did pursue some

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1 of those lines, whether it was as fulsome as I may have
2 wanted perhaps may not be the case.

3 Q. We have heard evidence that justification for use of
4 force is an important aspect of considering the legality
5 of that force. And in terms of probing or asking more
6 detailed questions about that, or any questions about
7 that, do you agree that that is the sort of thing you
8 would have wanted your investigators to be doing when
9 they interviewed the police officers?

10 A. Yes, and I expected that they would be doing that. They
11 were seasoned investigators.

12 Q. So if there were situations where there were not
13 questions asked about why did you elect to use force in
14 that way at this time --

15 A. Yes.

16 Q. -- would that have caused you concern if those questions
17 had not been asked?

18 A. Yes, I would have expected that type of question to have
19 been asked.

20 Q. Thank you. You would have expected that whether or not
21 they appeared in the witness interview strategy or not?

22 A. Yes.

23 Q. Can we look at the next page, please. Page 36. You
24 will see at the top there is -- in a lilac colour:

25 "Questions should focus on:

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1 "Why the police officer ... undertook the actions
2 that they did."

3 So that is the type of question that is being
4 suggested in relation to this probing exercise of the
5 officers' accounts, and is that the sort of question you
6 would have expected to be asked by investigators?

7 A. Yes.

8 Q. Can we look at page 39 now, please, "Findings and
9 outcomes":

10 "Discrimination complaints, like all other
11 complaints, are assessed on the balance of
12 probabilities. In some cases there will be clear
13 evidence of discrimination which will lead to an adverse
14 finding.

15 "Criminal investigations are based on a different
16 standard, where allegations of criminality need to be
17 proved 'beyond reasonable doubt'."

18 It then goes on to say:

19 "The assessment should consider ..."

20 If we go to that paragraph:

21 "The cumulative weight of all the evidence and the
22 credibility of competing accounts, including any
23 non-discriminatory reasons given by the officer or staff
24 member to explain the behaviour, and whether these
25 reasons are plausible and credible."

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1 So is that suggesting that there should be -- they
2 should be considering all of the reasons given, where
3 they are given and consider non-discriminatory reasons
4 as well as potentially discriminatory reasons?

5 A. Yes, that would suggest that.

6 Q. So nowadays for PIRC investigators they are expected to
7 consider all of the reasons given, and whether those
8 reasons themselves are plausible and credible?

9 A. Mm-hmm.

10 Q. Then it says:

11 "Whether the complainer would have been treated
12 differently if they did not have that protected
13 characteristic, or belong to that group."

14 A. Yes.

15 Q. So it appears from the guidelines now available that the
16 assessment for -- in relation to discrimination, racial
17 discrimination for example, in an investigation that is
18 going on in terms of these guidelines would look at all
19 of those issues?

20 A. Yes.

21 Q. I think in your Inquiry statement you were asked if you
22 recalled whether there was any guidance similar to this
23 or of this type in 2015 that was available to your
24 investigators. I think you said in your Inquiry
25 statement -- 447, if you want to have that on the

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1 screen, please -- you didn't recall at that stage
2 whether you had given any consideration to creating
3 guidance prior to the death of Mr Bayoh.

4 I just wanted to ask you about that. So we have
5 heard there wasn't any guidance available in 2015. When
6 you came into post in August 2014, did you consider
7 whether guidance should be prepared and what guidance
8 that -- how that guidance would look?

9 A. No, I didn't. I had anticipated that that may have been
10 one of the documents that had been created within the
11 investigation team itself.

12 Q. Sorry, it was paragraph 447 and 448. In hindsight, do
13 you think that you perhaps should have given
14 consideration to creating guidance of that sort in 2015?

15 A. I think it should have been considered.

16 Q. Did you check when you came into the role whether there
17 was guidance available to investigators in relation to
18 investigations where there were allegations of
19 discrimination?

20 A. No, I didn't. I was aware that there had been a whole
21 host of documentation created when the organisation was
22 implemented.

23 Q. We looked at some of the documents yesterday --

24 A. Yes.

25 Q. -- with you, and you were aware of them. Do you -- in

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1 448 you mention here:

2 "I have been asked if, during my tenure, there were
3 discussions with the IPCC, PONI or other organisations
4 in relation to PIRC's approach to the investigation of
5 issues of race. I don't recall any discussions that."

6 Just to be clear for everyone who is listening, are
7 these the equivalent of PIRC in England and Northern
8 Ireland --

9 A. Yes.

10 Q. -- these bodies that are mentioned?

11 A. That's right, yes.

12 Q. So did you have contact with those other organisations
13 as part of your duties as Commissioner?

14 A. I recall I had contact in 2014 on taking up post. The
15 contact was fairly broken, particularly because of the
16 pressure of business. I don't know when the following
17 meetings were held after 2014.

18 Q. Was it after Mr Bayoh had died?

19 A. I suspect it was. I can't say categorically, but
20 I think it was.

21 Q. Did you have -- you have told us there was a gap without
22 meetings but did you have any plans to have regular
23 meetings with your contemporaries around the UK?

24 A. Oh, yes.

25 Q. Was that to be a regular feature of your diary or was it

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1 less -- more ad hoc?

2 A. It tended to be ad hoc because of just co-ordinating
3 everything and their availability as well.

4 Q. We have available -- if we could look at SBPI 00386, we
5 have available some IPCC guidelines and I just want to
6 ask you if you are aware of those. These are IPCC
7 guidelines for handling allegations of discrimination.
8 This is the Independent Police Complaints Commission.
9 These are from September 2015, as I understand the
10 position. And I think you were asked to look at these
11 as part of your Inquiry statement, and were you aware of
12 these?

13 A. I wasn't aware of those, I hadn't seen those before.
14 And I did get a brief glance at them as part of the
15 interview.

16 Q. I am not going to ask any detailed questions about them.
17 But I am interested in whether any contact you had with
18 the IPCC at that time mentioned the fact that they were
19 going to create guidelines for handling allegations of
20 discrimination?

21 A. No.

22 Q. No?

23 A. No.

24 Q. So you weren't asked to look at them or comment on them
25 or --

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1 A. No.

2 Q. -- given a copy for your interest? Perhaps we could
3 look at paragraph 485 of your Inquiry statement. You
4 say here:

5 "I have been asked if I would consider that PIRC
6 were sufficiently equipped to investigate issues of race
7 relating to deaths in police custody or deaths following
8 police contact in 2015 and 2016. Possibly not. In
9 a perfect world, if it had been adequately resourced,
10 with capacity to release the existing investigators for
11 additional specialist training in racial matters and the
12 funding for recruiting specialist staff, it would have
13 benefited from greater expertise in investigating issues
14 of race in deaths in custody."

15 So there are a number of factors here that I would
16 like to ask you about, if we can go back to the top of
17 that page. When you say "possibly not" here to the
18 question about whether PIRC were sufficiently equipped
19 to investigate issues of race relating to deaths in
20 police custody, or following police contact, when you
21 say "possibly not", why are you saying that rather than
22 "no"?

23 A. Because to my recollection we had never -- I suppose we
24 hadn't been required to deal with a death of a racial
25 nature in custody that I can recall prior to that.

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1 Q. Had there been any anticipation that at some point you
2 may require to deal with a death of a black man in
3 custody or after police contact, and your investigators
4 may in the future require that type of support?

5 A. I think common sense would suggest that, yes.

6 Q. But that hadn't -- plans hadn't been put in place to
7 equip your investigators with additional skills or
8 additional guidance to deal with an investigation in
9 race?

10 A. I wasn't aware of that.

11 Q. Had you considered -- had you considered putting
12 guidance or training or information or assistance
13 in place, had you anticipated that maybe that should be
14 put in place prior to 2015 once you came into post with
15 a view to preparing your investigators to do
16 an investigation of that sort?

17 A. I think that would have been what I would have expected
18 to actually have been in place. I didn't personally
19 consider that. As I say, I had expected that guidance
20 to be in place and the professional development of that
21 lay within the investigation team.

22 Q. So when you say it lay within the investigation team,
23 what would you have expected from your investigation
24 team to draw this to your attention, the need for
25 additional training or suchlike, guidance?

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1 A. I would have expected that to be communicated to me by
2 the director of investigations.

3 Q. Would you have considered that to be part of your role
4 to be aware of these issues, and for you yourself
5 independently to say: has this been done, should we be
6 putting these things in place?

7 A. We were looking at the organisation in its entirety at
8 that time, and how it had been formed and structured.
9 So this was months into me taking up post. That would
10 have been something that I think in the fullness of time
11 that if it had been highlighted would have been
12 addressed.

13 Q. So if Mr Mitchell had highlighted it to you, that could
14 have incorporated part of the review that you were
15 carrying out?

16 A. Yes, I certainly fully expected a document such as that
17 to be in place.

18 (Interruption by fire alarm)

19 LORD BRACADALE: That is the fire alarm. We will have to
20 leave I'm afraid.

21 (10.19 am)

22 (A short break)

23 (10.25 am)

24 LORD BRACADALE: I understand that was a security alarm
25 rather than the fire alarm. So we can carry on.

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1 Ms Grahame.

2 MS GRAHAME: I think we were looking at paragraph 485. And
3 I was going to move on and ask you, you say:

4 "In a perfect world, if it had been adequately
5 resourced, with capacity to release the existing
6 investigators for additional specialist training in
7 racial matters and the funding for recruiting specialist
8 staff, it would have benefited from greater expertise."

9 We touched on resources yesterday, and when you --
10 if we can move back up to the beginning of that
11 paragraph, where you say, "adequately resourced", what
12 in your view would have been an adequate resource for
13 PIRC at that time?

14 A. As in investigators, the numbers?

15 Q. Yes. Certainly resource that allowed you the capacity
16 to release existing investigators?

17 A. If we were dealing with the demand that we found
18 ourselves dealing with, I think possibly another 40 or
19 50 investigators would have been suitable.

20 Q. So an adequate resource in your assessment would have
21 been up to 40 or 50 additional investigators, or as
22 a whole?

23 A. I think at the time there were about 20/25 staff.

24 Q. We have heard that around the time there were 20
25 investigators with two -- yourself and Mr Mitchell and

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- 1 Irene Scullion at the top of the organisation.
- 2 A. Right.
- 3 Q. But approximately 20/22 in total.
- 4 A. I would have thought about 50 to 60 in total then.
- 5 Q. Had that been adequately resourced you say you would
- 6 have had capacity to release the existing investigators
- 7 for additional specialist training in racial matters.
- 8 Is that something that you envisaged would have been
- 9 done if you had had that capacity?
- 10 A. That was something which was identified in some of the
- 11 budget but it is not particularly in relation to racial
- 12 matters but in relation to training generally.
- 13 Q. So it would have allowed you the opportunity to remove
- 14 investigators from their day-to-day work --
- 15 A. Yes.
- 16 Q. -- to then permit them to seek additional training. In
- 17 investigations or investigations and other matters more
- 18 generally?
- 19 A. In other matters -- well, in everything, in all their
- 20 professional development.
- 21 Q. Thank you. Then if we can move down to the bottom of
- 22 that paragraph you also mention recruiting specialist
- 23 staff. Can you help us understand what you meant by
- 24 that?
- 25 A. Well, staff who would have had a special focus in

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1 relation to racial matters that could have stepped in to
2 provide expertise in these areas.

3 Q. There was nothing like that, as we understand it, in
4 2015?

5 A. No.

6 Q. Is that something that you think on reflection may have
7 been of benefit to the organisation?

8 A. I think it would have been of benefit in this particular
9 matter. I don't know how regularly now the
10 investigators would draw on that source.

11 Q. Thank you. Then at 486 you talk of being asked:

12 "... how PIRC would have obtained a greater
13 understanding of racial matters. That could have been
14 improved through greater diversity within the team
15 itself and the recruitment of specialist staff, as well
16 as having capacity to release existing staff for
17 additional specialist training on racial matters.
18 However, funding for that wasn't there."

19 You mention here greater diversity within the team
20 itself. On reflection do you think that would have
21 assisted and enhance the investigation into Mr Bayoh's
22 death in 2015 if you had had that greater diversity,
23 within the team of investigators?

24 A. Yes, I think it would.

25 Q. Did you make any changes in relation to improving the

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1 diversity within the investigation team when you were
2 Commissioner?

3 A. As I have said, right at the beginning the team was
4 effectively set and the funding for additional staff
5 I think in this period amounted to two additional
6 members of staff.

7 Q. I think you said yesterday neither of them increased the
8 diversity --

9 A. No.

10 Q. -- pool of staff. So within the limitations within
11 which you were working as Commissioner, in terms of
12 resourcing and funding, were there any improvements in
13 your time in relation to improving or increasing
14 diversity among the investigation team?

15 A. Overall my recollection is that there were improvements
16 in the number of females within the team, and I can
17 recall doing some work on this around I think 2018 and
18 what we identified was that the number of trainees
19 coming in, the majority of them actually were female.

20 Q. Right. Did you improve diversity in relation to
21 the trainees that you were bringing in?

22 A. No, there were no trainees that were recruited from
23 a black or ethnic minority group.

24 Q. Thank you. 487. You say:

25 "I have been asked whose responsibility it was to

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1 ensure that PIRC's Investigations Team had sufficient
2 expertise to carry out investigations as instructed by
3 [the Crown]."

4 You say:

5 "The Head and Director of Investigations had
6 responsibility to identify any shortcomings in expertise
7 within the team and draw those to my attention so
8 that I could have sought additional funding."

9 Now, in relation to that process you have said the
10 head, who was Irene Scullion, and the director of
11 investigations, who was John Mitchell:

12 "... had responsibility to identify any shortcomings
13 in expertise ... and draw those to my attention~..."

14 Did you have a formal process with the head and
15 director of investigations to address shortcomings when
16 you were in the role of Commissioner?

17 A. I met weekly with the director and there were a number
18 of standing items on the agenda which included training.

19 Q. Was your expectation in relation to that item on the
20 agenda that he would draw your attention to any
21 shortfall or shortcomings in the training?

22 A. Yes, there was, however, the overall recognition of the
23 limited resources that were available. And certainly in
24 the course of this investigation the requirement for
25 staff to be directed on the investigation rather than

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1 having time out on various training matters.

2 Q. How did you balance the limited resources available to
3 you and the needs for training your investigators?

4 A. That was difficult, and from recollection if there
5 were -- or if there was a business demand it could be
6 that investigators would be removed from the training
7 that they had anticipated going on to deal with the
8 investigations.

9 Q. When you use the phrase "business demand", is that in
10 terms of the demands required by an investigation?

11 A. Yes, and the type of investigation, so if it was
12 an urgent matter that required the investigators to deal
13 with immediately, such as a Crown-directed
14 investigation, and if there were only a limited number
15 of investigators available they would have to deal with
16 that business.

17 Q. Was it part of your role or the role of Mr Mitchell to
18 consider the priorities if someone was faced with
19 increased demand in investigation and a need for
20 training, or attendance at a training course? Whose
21 decision was it to balance those competing interests?

22 A. That was handled within the investigation team, either
23 by Mr Mitchell or Mrs Scullion. Certainly the job
24 description in relation to the director provided
25 responsibility for him being or supervising the

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- 1 professional development of the team.
- 2 Q. In terms of professional development, that would
3 encompass training?
- 4 A. Yes, all training.
- 5 Q. Thank you. Did you ever suggest seeking guidance in
6 relation to investigations which required consideration
7 of the element or factor of race, such as Mr Bayoh's
8 investigation; did you ever consider seeking guidance
9 for PIRC and your investigators from external sources?
- 10 A. No. Other than the discussion with Crown Office in
11 relation to Inquest, and there was an agreement -- there
12 was an invitation by the Lord Advocate that we should be
13 involved in future meetings after we were advised that
14 they had already met with Inquest.
- 15 Q. Did you ever have a meeting with anyone from Inquest?
- 16 A. No, I was told that at the next meeting we would be
17 invited but we weren't.
- 18 Q. You weren't invited or the meeting didn't happen?
- 19 A. I don't know, I think -- I do think there was a meeting.
20 I can't say that categorically but we were never invited
21 to any meeting.
- 22 Q. Would you have -- do you consider that that might have
23 been of benefit to PIRC as an organisation to have
24 contact with someone from Inquest?
- 25 A. Yes, I think it would have been, and I was surprised

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- 1 that we hadn't been invited to the original meeting.
- 2 Q. Is that something you would have attended had you been
- 3 invited?
- 4 A. Yes, and we indicated that we would have.
- 5 Q. Did you ever seek support from any other third party
- 6 organisations?
- 7 A. No, not that I am aware of.
- 8 Q. Any organisations that may have experience in racial
- 9 discrimination or any matters of that sort? I am
- 10 thinking for example of CRER, who are core participants
- 11 to this Inquiry?
- 12 A. Yes, I think I mentioned in my statement that I would,
- 13 or the Human Rights --
- 14 Q. Commission?
- 15 A. -- Commission as well.
- 16 Q. Did you ever make contact with any of these
- 17 organisations to seek their support or to make contact
- 18 with them to see if you could share information?
- 19 A. No, because there was an expectation that having had the
- 20 invitation extended in relation to Inquest, that as
- 21 Crown Office I had led on that, that that was their
- 22 selected choice of expert.
- 23 Q. Right. Did you consider seeking out your own bodies
- 24 from whom you could seek guidance or any of that --
- 25 A. No, not separately.

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1 Q. Not separately. You mention in your Inquiry statement
2 at paragraph 431 that -- this is after 2 September 2015
3 when the Crown Office have extended the terms of
4 reference to specifically include race and factors
5 regarding race. You say:

6 "I have been asked if I recall any consideration
7 being given to PIRC contracting an expert in statistical
8 analysis to carry out this work. No, I don't."

9 I think at this time, post-2 September, there had
10 been an instruction from the Crown about considering
11 an audit of complaints of race or aspects of racism that
12 were alleged in relation to I think Fife Police and
13 perhaps more broadly?

14 A. Mm-hmm.

15 Q. That work was encompassed as part of the ongoing
16 investigation after 2 September?

17 A. Yes.

18 Q. Here you were asked if you recalled consideration being
19 given to PIRC contracting an expert?

20 A. Mm-hmm.

21 Q. We talked briefly about experts already, but this was
22 one who would look at the statistics and carry out an
23 analysis to see if there was a wider issue in that area.

24 A. Yes.

25 Q. You say, "No, I don't", and then at 432 you were asked

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1 if it would have assisted PIRC to have obtained input
2 from such an expert, and you say:

3 "It may have, dependent on the complexity of the
4 analysis required. I don't recall any conversation
5 around that."

6 Were you aware, even on a general level, of the
7 complexity of this type of analysis that was being
8 instructed by Crown?

9 A. No, I learned at a subsequent date that it was quite an
10 extensive exercise.

11 Q. Who brought that to your attention?

12 A. I think it was generally as part of the team brief.

13 Q. In terms of getting an expert to do this work, was any
14 consideration being given to having an expert look at
15 this data and these statistics?

16 A. I don't recall any conversation around that. I suspect
17 what may have played into it again would have been the
18 lack of funding.

19 Q. Right. At paragraph 433 it says:

20 "I have been asked if I was confident that PIRC's
21 investigators had the necessary skills and experience to
22 carry out the statistical analysis. I was satisfied
23 from the information that I had that they were capable
24 of undertaking the exercise. I wasn't aware of any
25 concerns that there was any difficulty or issue around

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1 their ability or their expertise. If there had been
2 I would have expected that to be brought to my attention
3 by either the director of investigations or
4 Mr McSporran ..."

5 If we can move back up to the top of that paragraph.
6 You say:

7 "I was satisfied from the information that I had
8 that they were capable of undertaking the exercise."

9 Regarding the statistics, what information was
10 available to you at that time that made you so
11 satisfied?

12 A. There was nothing flagged to me about the difficulty of
13 the exercise. My understanding is that data was being
14 sought from Police Scotland and no concerns were being
15 expressed about that.

16 Q. So did you have any information available to you in
17 relation to your investigators and how able they were in
18 relation to carrying out this type of analysis?

19 A. No, that was being managed within the investigation
20 team.

21 Q. You say that you were confident they had the necessary
22 skills and experience. Did you actually know what
23 skills and experience your investigators had in handling
24 statistical data and analysing and drawing out any
25 conclusions from that data?

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1 A. No, I didn't have that information available to me.

2 Q. Thank you. If we can move on, between 437 and 441 you
3 refer to a letter -- I won't go to the letter at the
4 moment. It is quoted in the Inquiry statement. It
5 outlines the steps taken by PIRC to carry out the
6 analysis of complaints of racism:

7 "As an initial step the PIRC has examined national
8 police complaints statistics in order to identify
9 whether these indicated a pattern of racist behaviour by
10 officers in Fife Division."

11 So this targets the type of information that was
12 being considered as part of the investigation. If we
13 can carry on, please:

14 "Investigators focused on allegations recorded under
15 the category 'Discriminatory behaviour' (one of the
16 complaint categories adopted nationally by Scottish
17 police forces). Such behaviour is defined as, 'an
18 allegation that a member of a police force engaged in
19 a course of action interpreted as discriminatory towards
20 an individual or group on the basis of race ..."

21 And other types of discrimination. At 438 you say:

22 "I was aware that the Investigation Team were
23 undertaking [that] analysis ...

24 "The letter makes it clear that the analysis was
25 being undertaken on a broader basis than just race.

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1 Other forms of discrimination are included ... The
2 figures that were produced do not solely reflect race,
3 but the broader category of discrimination, as is
4 detailed in the letter."

5 Once you became aware that the actual figures that
6 were being produced covered quite a wide range of types
7 of discrimination, how useful did you consider an
8 analysis to be in relation to all of that data?

9 A. It was clear that race was not going to be able to be
10 extracted from the overall data. So the only inference
11 that could be drawn from any analysis would be in
12 relation to overall discrimination.

13 Q. I think in 441, which is just below, you mention what
14 ultimately found its way into the PIRC findings in the
15 PIRC report. And it says:

16 "From analysis of available data, there is no
17 evidence to indicate that racism or discriminatory
18 behaviour was present in Fife Constabulary or
19 Fife Division of Police Scotland to a greater or less
20 extent than in other police areas of Scotland. The
21 average number of complaints of discriminatory
22 behaviour, which includes allegations of racism, made
23 per year in Scotland is 1.4% of all complaints against
24 the police. The average number of such complaints made
25 in Fife from 2007 to 2014 was 1.37%."

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1 How comfortable were you in that conclusion being
2 drawn given the wide nature of the figures and the data
3 that had been obtained from Police Scotland, when your
4 investigation was specific to race?

5 A. I certainly didn't think that it informed or provided
6 much information in relation to race. It obviously
7 commented in relation to discrimination. To the best of
8 my recollection the information that we were drawing on
9 was shared with Crown Office. So they were aware of the
10 pool or the base for that information.

11 Q. So did you consider that -- whether this ultimate
12 conclusion was of any significance or assistance to the
13 specific investigation that PIRC were carrying out in
14 relation to the death of Mr Bayoh?

15 A. I didn't think it was as pertinent as it could have
16 been, had it solely focused on race.

17 Q. Thank you. Can I move on and ask you specifically some
18 questions about the instruction of experts. Did you
19 take an active role in the instruction of experts by
20 PIRC? We have heard -- we touched on this yesterday,
21 that after the interim report had been sent to
22 Crown Office, or round about that time, which
23 was August 2015, that PIRC then engaged in instruction
24 of a number of experts?

25 A. Yes.

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1 Q. At the direction of the Crown?

2 A. Mm-hmm.

3 Q. Was that something you took an active role in?

4 A. I can recall being involved in discussions at the
5 initial stages, before the research -- or as the
6 research was starting, in relation to which source
7 organisations would be helpful.

8 Q. I think in your Inquiry statement you said that you had
9 actually received training on the identification and
10 instruction of experts when you were in Crown Office.
11 I am interested in knowing what training you had had
12 when you were in Crown Office.

13 A. It potentially was more on the instruction side, rather
14 than the identification, because my recollection is
15 certainly in one of the offices there was almost a list
16 of recognised experts for commonly -- commonly required
17 topics.

18 Q. Can you give us an example?

19 A. Well, yes, medical injuries, severe injuries, in
20 relation to how they may have been caused.

21 Q. Thank you. Can you tell us then about the training you
22 had had in Crown Office that was provided for
23 instruction of experts.

24 A. It related to considering their expertise, their
25 experience, their independence and impartiality.

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1 Q. Did it go as far as to assist you in creating a letter
2 of instruction for an expert and how to set that out, or
3 how to formulate the types of issues you were interested
4 in?

5 A. It perhaps didn't go into that level of detail and it
6 was -- the training, I suppose, was undertaken some time
7 before.

8 Q. Do you remember when this training took place?

9 A. The training that I had, I think would be around the
10 late '90s, early 2000s.

11 Q. Was it ever repeated or refreshed?

12 A. Not for me, no.

13 Q. No. Did you consider at any time when you took on the
14 role of Commissioner whether similar training or
15 something along those lines in relation to experts
16 should be introduced for investigators?

17 A. Yes, I thought training overall should be looked at.
18 That was one of the areas -- as I have said, in the
19 course of the first few months I wanted to look at the
20 structure. We brought in an independent assessor,
21 I suppose, to look at the structure and identify
22 areas -- one of the areas was training -- that he felt
23 could be strengthened and bolstered, and that formed
24 part of some of the business budget bids.

25 Q. I am interested in how regularly investigators were

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- 1 asked to become involved with instructing experts at
2 your time as Commissioner?
- 3 A. I don't recall there being the requirement to seek this
4 level of expert advice.
- 5 Q. In terms of your time as Commissioner, if you think
6 about the investigation into Mr Bayoh's death, and the
7 level of experts who were instructed as part of that,
8 were there any other comparable investigations during
9 your time?
- 10 A. No, not that I can think of, before or after.
- 11 Q. Thank you. In terms of thinking about investigations
12 generally, how often -- can you help us understand how
13 often investigators would have to instruct an expert, if
14 at all?
- 15 A. I think the only -- I kind of hesitate to call them
16 experts, would be things like the officer safety
17 training experts that were within the general police
18 field. But as regards specialist experts, like these
19 medical experts, I can't think of another example.
- 20 Q. Can you think of any examples that you are aware of from
21 your time as Commissioner where investigators were
22 expected to instruct a medical expert?
- 23 A. No.
- 24 Q. Looking back now, do you feel that the directions you
25 got from the Crown about these experts were clear to you

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1 and your investigators and if it was clear whether -- or
2 if it was clearly identified why those specific experts
3 were going to be instructed? Do you think those
4 directions were clear?

5 A. It was very much left to PIRC as an organisation. The
6 various topics were a matter that we did discuss, but
7 again that was fairly general instructions.

8 Q. We may have heard other evidence that CVs were gathered
9 in from various sources. Who was it that was involved
10 in satisfying themselves that the CVs disclosed
11 sufficient qualifications and sufficient experience in
12 relation to the experts who were put forward to the
13 Crown?

14 A. That exercise was undertaken initially within the
15 investigation team and then the material was forwarded
16 to me. I reviewed that, and then drafted the terms of
17 reference before it was forwarded on to Crown Office,
18 and Crown Office instructions were sought in relation to
19 both the range of the experts, the extent of the
20 material to be provided to them and -- there were three
21 items that were in the minute. I can't remember the
22 third right now.

23 Q. That is fine. So you reviewed all the CVs for the
24 possible experts, did you?

25 A. Yes.

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1 Q. And when you say you drafted the terms of reference, was
2 that like the letter of instruction to the expert or
3 something else?

4 A. No that was the memo, or -- yes, it was, it was
5 a memorandum to the Lord Advocate.

6 Q. And the memorandum set out the reasons why the expert
7 should be instructed or ...?

8 A. I can't remember that now. I set out the grounds that
9 we sought to have the experts looking at, which were --
10 well, really the grounds that had been discussed in
11 advance with Crown Office.

12 Q. Thank you. Who would have been responsible for
13 considering issues of impartiality -- you have mentioned
14 that as part of your training, former training -- bias,
15 prejudice, anything of that sort, concerns about
16 instructing an expert perhaps because of conflicts? Who
17 would have been responsible for looking at all of that?

18 A. All of the material setting out for example previous
19 papers or publications was listed and forwarded to
20 Crown Office for their consideration.

21 Q. All of their previous publications are sent?

22 A. Yes, sorry, they were listed, not the actual
23 publications.

24 Q. Oh, I see. Was there any research done in relation to
25 possible conflicts or any potential biases or

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- 1 impartiality?
- 2 A. I don't recall that being undertaken within PIRC.
- 3 Q. Right. Is that something that you would have
- 4 anticipated Crown Office doing, had they decided
- 5 an expert was to be selected?
- 6 A. Yes. They, to my mind, required to be satisfied in the
- 7 experts which they were instructing.
- 8 Q. Thank you. Were you aware of the experience of your
- 9 investigators in relation to identifying experts or
- 10 considering issues to do with their suitability?
- 11 A. I think they too would have formerly relied on
- 12 Crown Office for that expertise.
- 13 Q. So essentially PIRC were -- were they dependent on the
- 14 Crown in this area to review the experts, their
- 15 impartiality, their expertise, any possible conflicts,
- 16 and their suitability in general as to appointment?
- 17 A. Yes, that is why the material was forwarded for their
- 18 consideration.
- 19 Q. Thank you. Can you help us understand why PIRC were
- 20 instructed or directed by the Crown to do all this work?
- 21 A. No, I can't. And I also recognise that Crown Office
- 22 were paying for these experts.
- 23 Q. In Crown obviously they have provided training in
- 24 relation to experts at some time, at least to yourself.
- 25 Their staff, many of their staff will be legally

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1 qualified --

2 A. Yes.

3 Q. -- and have experience of handling matters involving
4 complaints against the police, criminal allegations
5 against the police, insofar as they relate to that
6 prosecutorial role.

7 In PIRC it would appear you are reliant on your
8 investigators who may or may not have much experience or
9 qualifications in identifying experts, assessing their
10 CVs, assessing their suitability. I am just wondering
11 why it was considered suitable for PIRC to take on this
12 aspect of the investigation rather than the lawyers
13 within Crown Office?

14 A. I think that is probably a question for Crown Office.

15 Q. Thank you. Did you consider at any time raising with
16 the Crown whether PIRC were in the ideal position to
17 take on this work and maybe your investigators --

18 A. Yes, well they certainly were aware of how stretched the
19 organisation was generally, and it was recognised that
20 PIRC were to continue with this. As regards the skill
21 base, I can't imagine that they thought that PIRC was
22 any more equipped or better equipped than they were, who
23 held that expertise on a regular basis.

24 Q. Looking back now with the benefit of hindsight, do you
25 think the PIRC investigators and yourself were in the

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1 best position to take this aspect of the investigation
2 forward?

3 A. No, and that is why, having identified as a preliminary
4 sift the information was forwarded to Crown Office to
5 allow them. We didn't want to simply proceed and
6 instruct experts on our own behalf, off own back, that
7 Crown Office felt were inappropriate.

8 Q. We have heard evidence from Mr McSporran, my
9 understanding is that ultimately a direction was given
10 by Crown to PIRC to instruct X, Y and Z?

11 A. Yes.

12 Q. And then investigators prepared what was called
13 an expert witness package?

14 A. Yes.

15 Q. From your experience as Commissioner, were you aware of
16 PIRC investigators ever having previously or after that
17 preparing what was called an expert witness package?

18 A. No, I am not aware of that.

19 Q. Did you have any concerns about the ability of your
20 investigators to prepare a complete and accurate witness
21 package for the experts?

22 A. Well, I can remember that I had a discussion ... I am
23 trying to remember whether it was Mr Little or
24 Mr Harrower who gave me sight of the package.

25 Q. We've heard that subsequently there was an issue

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- 1 identified with one of the statements --
- 2 A. Yes.
- 3 Q. -- from Ashley Wise, which had a section missing from
- 4 that.
- 5 A. Yes.
- 6 Q. And that was ultimately discovered and a fresh copy of
- 7 the complete statement was prepared. Were you aware of
- 8 whether that was sent to all the experts?
- 9 A. I don't -- I don't know but what I do know is following
- 10 the identification of that, the full statement was
- 11 forwarded to any experts, and my recollection is also
- 12 that the relevant sections had been included as part of
- 13 body of the pack.
- 14 Q. All right. Can I ask you about a specific expert,
- 15 a Dr Karch?
- 16 A. Yes.
- 17 Q. Do you remember Dr Karch?
- 18 A. Yes.
- 19 Q. I think in your Inquiry statement you say that you
- 20 reviewed his CV and the details of his qualifications?
- 21 A. Yes.
- 22 Q. And his name was put to Crown Office as a possible
- 23 expert for their consideration?
- 24 A. Yes.
- 25 Q. Do you remember how Dr Karch's name was discovered, how

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- 1 you identified him?
- 2 A. No, that research was done within the investigation
3 team. I don't know how he was brought to the fore.
- 4 Q. Did you know what the purpose of his instruction would
5 have been or was?
- 6 A. Yes, he was instructed on the basis that he was
7 a cardiac pathologist and I think a toxicologist.
- 8 Q. When you say a cardiac pathologist, we have heard what
9 a forensic pathologist is. Do you know what a cardiac
10 pathologist is?
- 11 A. With a -- well, a special interest in the heart.
- 12 Q. Thank you. And a toxicologist?
- 13 A. In relation -- yes, an expert in the analysis of
14 for example blood and other bodily samples.
- 15 Q. Thank you. You drafted or ultimately he was selected by
16 the Crown and you drafted a letter of instruction for
17 Dr Karch; is that correct?
- 18 A. It was drafted and forwarded to me for review, yes.
- 19 Q. Maybe we could look at that. It is PIRC 03435A. So
20 this is a letter from PIRC to Dr Steven Karch, it is
21 dated 13 August 2015, so this is after the interim
22 report has been sent to the Crown, and it is a letter to
23 Dr Karch regarding the death of Mr Bayoh and it is
24 headed up, "Expert witness instruction".
- 25 A. Mm-hmm.

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1 Q. If we go to the bottom of that letter, if we just go to
2 the bottom, we should see that it is sent from
3 Kate Frame, from yourself?

4 A. Yes.

5 Q. Your signature has been redacted there. Can we go up to
6 the top again, please. We will see it is a letter of
7 instruction to produce an expert witness report, and:

8 "In this regard, expert witness opinion is sought
9 from you on~..."

10 And there are I think four elements, if we can move
11 down that page. (a) to (d) and the sort of essentially
12 topics or the questions that are being asked -- he is
13 being asked to give an opinion on are set out. They
14 include:

15 "The physiological effect of the drugs detected in
16 the toxicology sample ...

17 "The physiological effect of the CS or PAVA
18 spray~..."

19 "The physiological effect of the physical restraint
20 of the deceased in the circumstances of his arrest.

21 "The physiological effect of [all of those three] in
22 combination in the circumstances of his arrest."

23 So those are the four topics that he was asked to
24 express a view on?

25 A. Mm-hmm.

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1 Q. You ask if there is any additional information to please
2 let you know you and explain:

3 "... the material provided in this connection is
4 shared with you on a confidential basis and should not
5 be disseminated further without prior consideration with
6 me via my Deputy Senior Investigator~...
7 Keith Harrower."

8 A. Yes.

9 Q. What were your expectations of Dr Karch in terms of
10 drawing to his attention that the information shared
11 with him was shared on a confidential basis?

12 A. It had been highlighted to him in that letter. I don't
13 know if there had been any verbal communication with him
14 or not.

15 Q. Did you consider whether any additional guidance should
16 be given to Dr Karch? We understand he is based in
17 America. Did you consider whether any additional
18 information should be given or guidance about treating
19 matters confidentially and not disclosing them more
20 publicly?

21 A. No, nothing further in addition to what is written
22 in that letter, and I recognise that he was actually
23 a member of a number of the UK forensic medicine
24 societies or faculty actually, it was.

25 Q. Was your expectation that he would maintain that

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1 confidentiality throughout?

2 A. Absolutely.

3 Q. Can we look at the report that he ultimately prepared
4 which was on 10 September 2015 and it's PIRC 02526A. We
5 see that there headed up, "Steven Karch", addressed to
6 you on 10 September, and this report is -- I think it is
7 nine pages long. Yes. But I am going to ask you about
8 three specific parts of it, if I may.

9 If we can look at -- let's look at paragraph 1 first
10 of all. He mentions the four questions that have been
11 raised, he repeats those questions and then he says the
12 answers are all interrelated.

13 Then if we can look at page 2 and I am interested in
14 question 1, which he repeats, and his answer -- that was
15 physiological effect of drugs detected in the toxicology
16 sample, and he comments on the drugs alpha-PVP and MDMA
17 and MDA:

18 "All of the drugs detected ... cause acute and
19 chronic cardiotoxicity. Any, or all of them, might have
20 been the cause of death, but it is impossible to
21 determine which drug actually did."

22 He then gives a more detailed explanation of how he
23 has formed his opinion.

24 A. Yes.

25 Q. So he has set out the question posed, set out a brief

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1 answer, and then given the full detailed explanation.
2 He talks about alpha-PVP and if we go on to the next
3 page, page 3, we see that he continues to talk about the
4 various drugs and speaks to them.

5 Can we move initially to page 6, and if we can move
6 down the page we will see question 3 appears, and again
7 he follows the same format:

8 "What is the physiological effect of restraint of
9 the deceased in the circumstances of his arrest?"

10 He gives a brief answer:

11 "Given the details of this situation the effect of
12 physical restraint would have been de minimis."

13 Then he gives a more detailed explanation of why he
14 has formed that view.

15 He talks about mechanical asphyxia, he talks
16 about -- if we move on to the next page -- the primary
17 effects of prone positioning and then he talks about
18 epidemiological and laboratory studies. Do you see
19 that?

20 A. Yes.

21 Q. Can we go back to page 3 please. So this was his more
22 detailed explanation under the topic of question 1. Do
23 we see on the page there, towards the bottom of the
24 first paragraph, he is talking about the brain and he
25 says:

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1 "... if the increase in brain dopamine is too great,
2 disruption of normal brain function may occur with
3 lethal consequences, sometimes in the form of a disease
4 known as excited delirium syndrome~... Mr Bayoh, the
5 decedent, exhibited many of the features of
6 excited delirium."

7 Can I ask you if, when you read this report, you
8 noticed that he had started talking about something
9 called excited delirium syndrome?

10 A. Yes, I had recognised that he had mentioned
11 excited delirium, yes.

12 Q. Given what you knew from the final post mortem report
13 from Dr Shearer and Dr Bouhaidar --

14 A. Yes.

15 Q. -- and just to remind you, we had looked yesterday at
16 the fact they had said in the final post mortem that
17 excited delirium was a psychiatric --

18 A. Yes.

19 Q. -- and not a pathological matter?

20 A. Yes.

21 Q. Was it of any concern to you to see him mention
22 excited delirium here, knowing he wasn't a psychiatrist?

23 A. Yes.

24 Q. Tell us what your concerns were.

25 A. Well, there had been an instruction given from

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1 Crown Office really that that was not an area which was
2 to be I suppose explored further, or relied on I think
3 would be a better way of putting it. So it was -- it
4 was a surprise to me when I saw that. I did at that
5 stage look back and sift through the number of
6 publications -- the listed publications on his CV and
7 that identified at that stage that -- I can't remember
8 now, I think it was about six to eight topics or papers
9 that were listed in amongst over 100 which talked about
10 excited delirium.

11 Q. You say that there was an instruction from Crown Office
12 not to explore that?

13 A. I think that is perhaps going too far. It was really my
14 understanding was that it was not to rely on that as
15 a cause of death.

16 Q. Certainly in the final post mortem, although it is
17 mentioned in the conclusions --

18 A. Yes.

19 Q. -- it wasn't part of the -- it wasn't named as a factor
20 in the cause of death?

21 A. That is right.

22 Q. And Dr Shearer and Dr Bouhaidar appear to have said in
23 the final post mortem that was a psychiatric, not
24 a pathological --

25 A. Indeed.

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- 1 Q. -- issue as far as they were concerned?
- 2 A. Mm-hmm.
- 3 Q. I think Dr Shearer had also said in the final report
4 that there was some debate that she was aware of in the
5 forensic community with regards to whether it had any
6 application to the cause of death --
- 7 A. Yes.
- 8 Q. -- at all?
- 9 A. That is right.
- 10 Q. My understanding from what you said earlier is you had
11 approached Dr Karch to investigate issues to do with the
12 cause of death?
- 13 A. Mm-hmm, yes.
- 14 Q. Then can we look at page 6 of the report again, please.
15 This related to question 3, which was just below halfway
16 down the page, the physiological effect of restraint of
17 the deceased. And his answer was:
- 18 "Given the details of this situation the effect of
19 physical restraint would have been de minimis."
- 20 Given your understanding of de minimis as a term,
21 which we talked yesterday about it being trifling or
22 trivial, unimportant.
- 23 A. Yes.
- 24 Q. And given Dr Shearer and Dr Bouhaidar's opinion in their
25 final post mortem that restraint was a factor and could

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1 not be excluded as de minimis.

2 A. Yes.

3 Q. When you saw this answer, did you have any concerns
4 about this?

5 A. Yes, and the whole report was discussed with
6 Crown Office.

7 Q. Tell us about that discussion.

8 A. Well, that Dr Karch in himself had come back -- I am
9 trying to think if the report was forwarded at that
10 stage or whether it was forwarded as part of the overall
11 report, but there was discussions --

12 Q. By you to Crown forwarded by you to Crown?

13 A. By PIRC, yes.

14 Q. By PIRC to Crown.

15 A. I am not sure if at the time it was forwarded but there
16 was a discussion detailing concerns. I didn't have that
17 discussion, I understand that others within the
18 investigation team may have. I am aware that I think it
19 was Mr Mitchell may have been involved, whether it was
20 a discussion, but there was certainly additional experts
21 commissioned following that.

22 Q. Then, as we look through his more detailed explanation
23 under question 3, answer 3, if we can move on to page 7.
24 In the first paragraph, just at the top of the page he
25 says:

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1 "... the whole 'concept' of restraint asphyxia, as
2 applied in this case, has been refuted many times in the
3 peer-reviewed literature~..."

4 Yesterday we took some time to look at the officer
5 safety training manual --

6 A. Yes.

7 Q. -- in force at the time from Police Scotland, and there
8 was quite a number of details of risk factors and signs
9 and symptoms given relating to positional asphyxia. So
10 at least at that time Police Scotland were training
11 officers and re-certifying officers in relation to that
12 information?

13 A. Yes.

14 Q. Did that cause you to have some concern that his opinion
15 was saying the whole concept of restraint asphyxia has
16 been refuted?

17 A. Yes.

18 Q. Tell us about your concerns in that regard?

19 A. It conflicted with, I suppose, some of the original
20 suggestions in the post mortem report which did not
21 exclude it.

22 Q. In terms -- he has given you three references in this
23 paragraph here. 27, 28, 29. We can see those on the
24 final page of this report. They are articles that he
25 has relied on. If we can look at page 9 of the report,

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1 this is the second page of the references that are
2 noted. 27, 28, 29. Was any check done by PIRC or the
3 investigators in relation to these references? Were
4 copies obtained of these articles?

5 A. I don't think so.

6 Q. No. Was your expectation that the Crown would do that?

7 A. Yes. Absolutely.

8 Q. Then if we can go back to page 7, can we look at (b),
9 "Primary effects of prone positioning". There is
10 a suggestion here, if we look at line three:

11 "... the results of the initial research were
12 ultimately withdrawn (in open court) by the very author
13 who first suggested the idea."

14 Again, he is talking about prone restraint
15 positioning, being hog-tied, that type of thing. So he
16 is suggesting that the author who first suggested it
17 withdrew in open court the idea that his views had been
18 correct. He talks about a large body of literature:

19 "It is surprising, given the lack of evidence, that
20 anyone would suggest that it can. It is equally
21 surprising that this outmoded idea remains in the
22 vocabulary of modern forensic pathologists, given the
23 complete lack of supporting evidence."

24 Were you starting to see what Dr Shearer had said
25 about being aware of perhaps some debate about this

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1 issue?

2 A. Yes, it was becoming quite clear, yes.

3 Q. Again, was it of concern to you to read Dr Karch's
4 opinion that modern forensic pathologists would refer to
5 the outmoded idea of the effect of prone positioning,
6 given what you knew about the final post mortem report
7 and the OST manual at that stage?

8 A. Yes.

9 Q. Thank you. We have -- the Inquiry have gone to Dr Karch
10 and have an Inquiry statement from him. Did you
11 personally ever have any contact with Dr Karch?

12 A. No, no.

13 Q. Can we look at his Inquiry statement. SBPI 00319. I am
14 interested in paragraphs 15 and 16. You will see this
15 is an Inquiry statement in the same sort of format as
16 your own. Paragraph 15, do you see he says here to the
17 Inquiry:

18 "In terms of my toxicology experience, I have no
19 formal toxicology qualifications or training as
20 a clinical toxicologist."

21 Presumably that is not information you were aware
22 of.

23 A. No, this is the first time I am aware of this.

24 Q. And you had reviewed his CV, as you have said earlier.
25 Was that something that was obvious to you?

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1 A. No.

2 Q. "That is because I only practice post mortem toxicology
3 (and have published extensively in that area, most
4 recently last December). I had taken biochemistry at
5 Stanford as a graduate student for a year before leaving
6 to start medical school."

7 So he appears to have started doing biochemistry,
8 left after a year and then started medical school?

9 A. Mm-hmm.

10 Q. "When I was working as assistant medical examiner, the
11 head Medical Examiner taught me the toxicology
12 techniques (at the time he trained, toxicology
13 proficiency was required for certification as
14 a pathologist in the United States). He only taught me
15 how to use the analytical equipment. He never gave me
16 formal lectures, but he did explain cases as we
17 processed them for court."

18 Were you -- taking that as -- it has been signed,
19 that statement, by Dr Karch. Did you know any of that
20 information when you instructed Dr Karch?

21 A. No, I don't recall any of that information.

22 Q. If you had been aware of that, what would you have been
23 drawing to the attention of the Crown in relation to his
24 expertise?

25 A. Well, I think it undermines any expertise or claim to

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1 expertise.

2 Q. Then at 16 he says:

3 "My position could be described as that of
4 an apprentice, and I learned how to operate the
5 equipment and prepare the materials for analysis.
6 Occasionally I did the analysis, but there was no reason
7 to, as we had about five or six analysts by the time
8 I left."

9 Again, does that accord with your understanding of
10 his expertise in this area?

11 A. No, he was effectively being put forward as an expert in
12 that area.

13 Q. I am interested in who put him forward as an expert. Do
14 you remember?

15 A. From the investigation team?

16 Q. Who put him forward to the investigation team as
17 an expert?

18 A. I don't know. I don't know where that original
19 recommendation, if it was, came from.

20 Q. All right. Can I ask you to look at paragraph 21 now,
21 please. He says here:

22 "In terms of my role as an assistant medical
23 examiner, I have been asked if this involved undertaking
24 the role of a forensic pathologist. If autopsy is
25 required, it may be performed by either a forensic or

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1 clinical pathologist~..."

2 We have heard that Dr Shearer and Dr Bouhaidar are
3 forensic pathologists?

4 A. Yes.

5 Q. So:

6 "... it may be performed by either a forensic or
7 clinical pathologist working for the chief. My role was
8 not as a forensic pathologist as I had no interest in
9 anything but the heart."

10 Was that something that you were aware of, that he
11 was not a forensic pathologist?

12 A. I can't recall being aware of that, no.

13 Q. We've heard that it's generally a forensic pathologist
14 in Scotland --

15 A. Yes.

16 Q. -- and the UK, as I understand it, that would carry out
17 an autopsy.

18 A. Yes.

19 Q. And that that can be -- that is in relation to
20 ascertaining the cause of death, and that that forensic
21 pathology experience is, in the view of Dr Shearer,
22 a significant aspect of her expertise in assessing cause
23 of death.

24 A. Yes.

25 Q. Were you aware that Dr Karch had never carried out

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- 1 an autopsy and was not a forensic pathologist?
- 2 A. No, most certainly not.
- 3 Q. Had you known this, would it have had an impact on
4 whether you sent his name to Crown Office?
- 5 A. Yes, undoubtedly.
- 6 Q. What impact would that have been?
- 7 A. Well, I certainly wouldn't have considered him to be
8 an expert.
- 9 Q. Certainly not in relation --
- 10 A. In these areas, yes.
- 11 Q. Yes. In relation to -- to go back to the
12 excited delirium that was mentioned by Dr Karch, was
13 there any research done by your investigators in
14 relation to whether there was any racial element or
15 factor regarding excited delirium in relation to how
16 that syndrome or disease, as Dr Karch called it,
17 developed over a number of years?
- 18 A. I am not aware of any research being undertaken. It may
19 have been. I certainly wasn't sighted on it.
- 20 Q. We spoke yesterday about Article 2, I have not completed
21 my questions on that. I am about to move on to ask you
22 another element, so another element, one of the five
23 principles we spoke about yesterday was public scrutiny.
- 24 A. Yes.
- 25 MS GRAHAME: I would like to ask you some questions about

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1 that.

2 I don't know if that might be an appropriate time?

3 LORD BRACADALE: Yes, very well. We will take a 20-minute
4 break at this point.

5 (11.26 am)

6 (A short break)

7 (11.45 am)

8 LORD BRACADALE: Ms Grahame.

9 MS GRAHAME: Thank you. I was going to move on to one of
10 the principles of the Article 2 requirements, public
11 scrutiny.

12 A. Yes.

13 Q. I want to ask you particularly about the public sector
14 equality duty. Can we look at paragraphs 80 and 83 of
15 your Inquiry statement. Let's start with 80:

16 "I have been asked what steps PIRC took to comply
17 with the public sector equality duty during my tenure.
18 I discussed that with the Head of Corporate Services
19 shortly after I took up post and he advised me that it
20 did not apply to the organisation."

21 Can you tell us who the head of Corporate Services
22 was at that time?

23 A. Yes, it was Mr Mackay.

24 Q. Did you check independently whether it applied to PIRC
25 or did you rely on Mr Mackay's assurance?

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- 1 A. I think -- I am trying -- no, he seemed to be fairly
2 confident that it didn't apply, and it wasn't a matter
3 that he required to go away and check, he was able to
4 respond immediately to me.
- 5 Q. Did he explain to you why he thought it didn't apply to
6 PIRC?
- 7 A. No.
- 8 Q. So were things arranged on the basis that that
9 particular duty didn't apply to the organisation at all?
- 10 A. That was my understanding from him, yes.
- 11 Q. I think in paragraph 83, which is towards -- if we move
12 down you say you were also asked if:
13 "... despite not being subject to the 2012
14 Regulations, voluntarily carried out impact assessments
15 for its policies and procedures. I am not aware of any
16 impact assessments being carried out."
- 17 A. Yes.
- 18 Q. So that would have been impact assessments -- if that
19 duty had applied to you, you would have carried out
20 impact assessments?
- 21 A. Yes.
- 22 Q. What are impact assessments, could you explain to people
23 listening?
- 24 A. Yes, any documentation or policies that are produced
25 would be assessed before publication to consider whether

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- 1 they had impacts on various groups.
- 2 Q. Groups with protected characteristics --
- 3 A. Yes.
- 4 Q. -- such as race?
- 5 A. Yes.
- 6 Q. But that wasn't done in PIRC?
- 7 A. No.
- 8 Q. Then can we look at paragraph 790. Towards the bottom,
- 9 790:
- 10 "I have been asked if, as at 3 May 2015, PIRC
- 11 recorded the race or ethnicity of the deceased person
- 12 who was the subject of an investigation following
- 13 a death in police custody or death following police
- 14 contact. I don't think that information was recorded."
- 15 A. Yes.
- 16 Q. If the public sector equality duty had applied to PIRC,
- 17 is that the sort of thing you might have considered
- 18 recording?
- 19 A. Yes, I think that would be the type of information that
- 20 would be recorded.
- 21 Q. My understanding, and this will be a matter for
- 22 submission at a later stage, is that the public sector
- 23 equality duty actually does apply to PIRC?
- 24 A. Okay.
- 25 Q. That the duty -- duties are imposed on public

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1 authorities specified within one of the schedules of the
2 Equality Act 2010, and included within that schedule
3 even now is the Police Complaints Commissioner for
4 Scotland. I understand that that was your predecessor,
5 if you like, they existed prior to PIRC being created?

6 A. Yes.

7 Q. And PIRC absorbed their case handling capacity?

8 A. That is right.

9 Q. Under section 61(3) of the Police and Fire Reform
10 (Scotland) Act 2012 any reference in any enactment or
11 instrument to the Police Complaints Commissioner for
12 Scotland is to be read as a reference to PIRC?

13 A. Okay.

14 Q. So if that analysis is correct --

15 A. Yes.

16 Q. -- it may be that the public sector equality duty did
17 apply to PIRC during your tenure?

18 A. Yes.

19 Q. Was there ever any indication given to you that that
20 type of assessment and that the consideration regarding
21 that duty should be given by you? Were you ever given
22 any information other than your conversation with the
23 head of Corporate Services, Mr Mackay?

24 A. No, because it had been discounted so out of hand when
25 I had asked about it, I presumed that his knowledge, as

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1 that was the area on which he was supervising, would be
2 correct.

3 Q. Had he been in his position in his role as Head of
4 Corporate Services, he was in the post before you came
5 into --

6 A. Yes, he was.

7 Q. -- the role of Commissioner?

8 A. Yes, yes.

9 Q. So during the entire tenure where you were Commissioner,
10 is it fair to say that that public sector equality duty,
11 if it applied to PIRC as I have suggested, was never
12 complied with?

13 A. I can't remember any steps being taken to comply with
14 it, no, on the basis of the information that I had been
15 given, yes.

16 Q. Absolutely. Thank you. Can I ask you to look at
17 paragraph 152 of your Inquiry statement. I am
18 interested here in a committee that is mentioned. It
19 talks here:

20 "Public scrutiny is achieved through this Inquiry.
21 Whilst the legislation does not ..."

22 You mean the Sheku Bayoh Public Inquiry; is that
23 what you are talking about?

24 A. Yes.

25 Q. "Whilst the legislation does not permit public

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1 disclosure of Crown directed investigation reports they
2 were forwarded to the Lord Advocate for independent
3 scrutiny. The PIRC Audit and Accountability Committee
4 provided further scrutiny and published minutes of those
5 meetings, which were available externally."

6 If we can read on:

7 "As part of the Audit and Accountability Committee's
8 scrutiny, various audits were undertaken of various
9 aspects of the PIRC's work. I recall that there was
10 an audit of the decision-making within the Investigation
11 Team when the decision-making was audited. That audit
12 provided a strong reassurance and endorsement of the
13 procedures."

14 It then goes on to say:

15 "These audits were ad hoc projects carried out by
16 the auditors and were not a rolling programme of
17 continuous assessment. My recollection is that
18 the auditors chose a selection of investigations.
19 I don't think that this investigation was part of that
20 audit."

21 Then at 154:

22 "I have been asked if the auditors ever found a PIRC
23 investigation not to be sufficiently thorough or not
24 being in compliance with Article 2. I don't think they
25 did."

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1 That was your recollection of events during your
2 tenure?

3 A. Yes.

4 Q. Can we go back up to 152, please. To the top, please:

5 "... the legislation does not permit public
6 disclosure of Crown directed investigation reports they
7 were forwarded to the Lord Advocate for independent
8 scrutiny."

9 A. Yes.

10 Q. That is consistent with other evidence we have heard in
11 this Inquiry, that in relation to Crown-led
12 investigations, such as the one into Mr Bayoh's death,
13 it is not an option for PIRC to disclose those publicly?

14 A. Yes.

15 Q. So that is kept confidential by PIRC?

16 A. Yes.

17 Q. And it is sent to the Lord Advocate and it is the Crown
18 Office and Lord Advocate that make decisions about
19 whether any part of that should be made public?

20 A. Yes.

21 Q. Do you have any reflections on whether you think there
22 might be merit in having the Crown-led investigation
23 reports being made public or when parts could be made
24 public? We've heard that it's a different situation for
25 Chief Constable referrals.

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- 1 A. Yes, it is, yes.
- 2 Q. Do you have any thoughts on whether they should also be
3 made public?
- 4 A. I think any proceedings that were taken on the back of
5 the report would require to be completed obviously
6 before any consideration is given to that.
- 7 Q. Would that be like FAIs or criminal trials?
- 8 A. Yes. I can see some public -- well, some merit in it,
9 clearly there will be in a number of these reports some
10 public interest. And also it may be that it would
11 further secure confidence in policing generally.
- 12 Q. You talk about public interest. Would that be of
13 particular public interest where someone has died?
- 14 A. Yes.
- 15 Q. In what way could disclosure improve levels of
16 confidence? Would that be confidence in PIRC or the
17 Crown, or in what way?
- 18 A. Confidence in -- confidence first of all in the
19 independence of PIRC, confidence in the recommendations
20 and I suppose the investigation that underpinned that.
21 But latterly the recommendations made and then the
22 implementation of those by the police.
- 23 Q. Thank you. Then as well as the public having
24 an interest, I wonder if you have any thoughts on --
25 looking back now, my understanding is that the report by

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1 PIRC was never disclosed to the police until the Inquiry
2 commenced?

3 A. Yes.

4 Q. At a later stage after commencement of the Inquiry.

5 I am interested if you think there might be any benefits
6 in allowing PIRC to share findings with the police in
7 a Crown-led investigation to perhaps allow them to learn
8 lessons if things could be improved?

9 A. Yes, and we have done that in the past.

10 Q. Was that in relation to Crown-led investigations?

11 A. Yes. We received their consent in relation to the
12 disclosure of information.

13 Q. Was that consent from the Crown?

14 A. Yes.

15 Q. Was that sought -- that consent sought by PIRC or was it
16 provided by Crown in the sense of did you go to the
17 Crown and ask for consent, or did they come to you and
18 say: let the police see this?

19 A. It was a bit of both as I recall. They had almost
20 a running tally of reports that we had forwarded, and
21 I think there was -- it may have been a monthly
22 communication in relation to the -- is the Crown
23 finished with that report, and we think that there would
24 be a merit in that being shared with Police Scotland.

25 Q. Looking back now, we are talking about events in 2015.

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- 1 A. Yes.
- 2 Q. And it's only relatively recently that the
3 Police Service have seen aspects of the PIRC report.
- 4 A. Yes.
- 5 Q. Also thinking about the officers themselves, who may be
6 concerned about the content of the investigation, do you
7 think there may be merit in allowing them to see what
8 concerns or criticisms have been highlighted by PIRC
9 during the investigation?
- 10 A. No, I think that should be shared at the conclusion with
11 them. If it is to be shared at all.
- 12 Q. At the same time as the public see?
- 13 A. Mm-hmm.
- 14 Q. Thank you. Looking back at the Audit and Accountability
15 Committee, can you tell us who was in the Audit and
16 Accountability Committee; was it members of your
17 investigation team or was it a separate department?
- 18 A. No, there were various members throughout my tenure that
19 were independent of the organisation.
- 20 Q. So was the committee entirely independent of PIRC?
- 21 A. Yes, there were no employees of PIRC on it.
- 22 Q. So when it says PIRC's committee, it is a committee
23 which considers what PIRC are doing?
- 24 A. Yes.
- 25 Q. Rather than a committee within the body of PIRC?

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- 1 A. Yes -- no, it's external parties.
- 2 Q. Thank you. So are all the members of that committee
3 independent of PIRC?
- 4 A. Yes, completely.
- 5 Q. Completely. Is there anyone who is a former employee of
6 PIRC who is on the committee? Is there anyone with
7 experience of PIRC and it's day-to-day work who is on
8 the committee?
- 9 A. No, the former Crown agent was on it. But nobody who
10 had been associated with PIRC, as I understand, has ever
11 sat on that committee.
- 12 Q. Does the committee ever take soundings or views or
13 advice from anyone who has been involved with PIRC,
14 employed by PIRC?
- 15 A. No, I don't think so.
- 16 Q. So it's completely and utterly independent?
- 17 A. Yes.
- 18 Q. Do you have any information available to you from when
19 you were Commissioner about how the committee selected
20 investigations for audit?
- 21 A. No, the committee didn't do that, it was the auditors,
22 as I understand it, who selected those.
- 23 Q. And they are not on the committee --
- 24 A. No.
- 25 Q. -- the auditing committee?

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- 1 A. No, I don't think so. No.
- 2 Q. You have said at 154 that -- if we can look at that
3 again -- they had never found PIRC investigation not to
4 be sufficiently thorough or compliant with Article 2.
- 5 A. Yes.
- 6 Q. Was there any role for you as Commissioner to
7 say: I would like to you audit a particular
8 investigation?
- 9 A. I think I could have done, and that would have been
10 received, yes. I wouldn't have done that until the
11 conclusion of whichever report ...
- 12 Q. Do you know anything about the criteria that they are
13 assessing the compliance with Article 2 for any
14 investigation or whether it has been sufficiently
15 thorough?
- 16 A. No, I don't think they would assess it directly against
17 Article 2.
- 18 Q. Right. Do you know anything about the criteria that
19 they rely on to assess or audit --
- 20 A. I can't remember that now. I just remember there was
21 that -- what I thought was a one-off in relation to what
22 they investigate -- they do a revolving programme of the
23 work.
- 24 Q. All right --
- 25 A. So it's not a repeated -- it's not a regularly repeated

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1 process.

2 Q. How often did it happen when you were Commissioner?

3 A. For them to look at investigative matters?

4 Q. To do an audit, yes?

5 A. I can't remember because they audited various features

6 of each of the teams.

7 Q. Right.

8 A. I think decision-making in the investigation team was

9 just one of many.

10 Q. So in the period of time that you were Commissioner --

11 A. Mm-hmm.

12 Q. -- can you remember how many audits of the investigation

13 team investigations were audited?

14 A. No, I am sorry, I can't.

15 Q. Thank you. I would like to move on to media issues.

16 Obviously we are talking about public scrutiny. We've

17 heard evidence that there was a press release from SPF.

18 I wonder if we can look at that. SPF 00010A. We could

19 look at paragraph 365 of your Inquiry statement if that

20 is an issue. If you don't have SPF 00010A. Let's look

21 at paragraph 365. SPF media engagement:

22 "I have been referred to a statement released to the

23 media by SPF on 14 May 2015~..."

24 We have heard that is the same day as you were

25 meeting with the Lord Advocate?

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1 A. Yes.

2 Q. "This statement contained details about the incident
3 involving Mr Bayoh including ..."

4 And it's in italics:

5 "... 'A petit [sic] female police officer responding
6 to a call of a man brandishing a knife was subject to a
7 violent and unprovoked attack by a large male. The
8 officer believed she was going to die as a result of
9 this assault'. I recall the news coverage around it.
10 The comments were unhelpful both in relation to our
11 investigation and in relation to the family too. They
12 provided a very one-sided account and appeared to
13 represent the SPF's perspective on events and promoted
14 their view without any balance to that. I am not able
15 to speak for the family, but my own perspective is that
16 Mr Bayoh and the female police officer were being
17 described in a particular fashion by the SPF."

18 I would like to ask you a little more about this.
19 You said that the comments were unhelpful in relation to
20 the investigation. Tell us more about that.

21 A. I was very surprised that the SPF issued this release.
22 I certainly was surprised that any commentary in
23 relation to the evidence was being publicly
24 disseminated.

25 Q. It was on 14 May. This was prior to PIRC having the

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- 1 statements from the officers, which they didn't get
2 until 4 June?
- 3 A. Yes.
- 4 Q. Was that of any concern in relation to your
5 investigation, that comments were being made publicly?
- 6 A. Yes. It didn't sit well, the fact that there was public
7 commentary being offered without statements being made
8 available to the PIRC.
- 9 Q. You also say in this paragraph that the comments were
10 unhelpful not just in relation to the investigation but
11 in relation to the family too. I am interested in your
12 perspective about the family's interest in these
13 comments.
- 14 A. Well, I would have thought that the family would also
15 have been surprised and found the comments to be
16 unwelcome.
- 17 Q. You say they provided -- SPF provided:
18 "... a very one-sided account and appeared to
19 represent the SPF's perspective on events and promoted
20 their view without any balance to that."
- 21 I am interested in this mention of balance. What do
22 you mean by that?
- 23 A. It solely was the SPF's account of events.
- 24 Q. Is it your view that the SPF should do more than simply
25 represent their members and provide some balance?

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1 A. No, I don't think that is a duty in relation to articles
2 like this. My perspective would be that there should
3 have been no dissemination of information publicly in
4 relation to the matter.

5 Q. From a PIRC perspective in relation to the live
6 investigation how would that have been of benefit to
7 PIRC, if there had been no information?

8 A. It would have been preferable that a version was not put
9 out there publicly.

10 Q. Why was that?

11 A. Well, it was potentially promoting a version and
12 potentially influencing public thought on the matter.

13 Q. Thank you. You say there in the final sentence:

14 "Mr Bayoh and the female police officer were being
15 described in a particular fashion by the SPF."

16 Can you expand on that?

17 A. Mr Bayoh was obviously being described as a large man
18 who had attacked a petite female officer.

19 Q. Did that cause you concern at the descriptions that were
20 being attributed to Mr Bayoh and the female officer?

21 A. Well, it was reinforcing a stereotypical view.

22 Q. When you say stereotypical, what do you mean?

23 A. Of a black man who was the aggressor.

24 Q. Thank you. That was a quote from the SPF's press
25 release and then we have heard evidence there was

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1 a subsequent article published in The Herald the
2 following day after the press release. Can we look at
3 that please, AAC 00379. We have looked at these before,
4 we are interested if page 7 of the pdf.

5 You will see that there is -- essentially the
6 content of the press release has been absorbed into this
7 article. In addition to that there is a quotation from
8 Peter Watson, who was the lawyer representing the SPF
9 and at that time representing the officers.

10 So it says -- do you see in the middle column, the
11 second column there towards the middle of the page on
12 the screen there is a reference to Peter Watson of
13 PBW Law?

14 A. Yes.

15 Q. "'While it is deeply~...'"

16 So this is in quotation marks:

17 "'While it is deeply regrettable that Mr Bayoh lost
18 his life, I would ask the media and public to remember
19 that a petite female police officer was chased and then
20 subjected to a violent and unprovoked attack by a very
21 large man who punched, kicked and stamped on her.

22 "'The officer believed she was about to be murdered
23 and I can say that but for the intervention of the other
24 officers that was the likely outcome.

25 "'We all seek the truth and part of that truth will

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1 lie in part in the post mortem and toxicology reports
2 which will follow in due course'."

3 He then goes on to talk about calls for the
4 suspension of the officers serving no purpose. These
5 comments go further than the apparent SPF press release
6 which we looked at in your statement. Were you aware of
7 this article at the time?

8 A. I can't remember the article. I can remember the press
9 release.

10 Q. Were you aware that any of these comments had been made
11 by Mr Watson?

12 A. I can't remember those. No, no.

13 Q. Looking at them now, do you have any concerns in
14 relation to the comments that are made in The Herald?

15 A. There are obviously comments made in relation to what
16 took place in -- during the incident, yes.

17 Q. Does that cause you any concern?

18 A. Standing the fact that no information was being provided
19 PIRC.

20 Q. By the officers?

21 A. By the officers, yes.

22 Q. Earlier you spoke about your views on the PIRC
23 investigation in relation to the press release. Do any
24 of the comments made by Mr Watson and quoted in
25 The Herald give rise to any additional concerns

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- 1 regarding your investigation, or not?
- 2 A. There's further detail there over and above what seems
- 3 to be contained in the press release.
- 4 Q. So did these also cause you concern?
- 5 A. Yes.
- 6 Q. Again, you talked about the concerns you had for the
- 7 family and their perception in relation to the press
- 8 release. Is there anything here that causes you concern
- 9 in relation to the family?
- 10 A. Yes. Again, it's continuing the narrative in relation
- 11 to what the police are promoting within the media.
- 12 Q. There was no public response given by PIRC at that time.
- 13 A. Right.
- 14 Q. Do you -- looking back now, do you think that that is
- 15 something that might have been merited in light of these
- 16 comments that were made, in light of SPF press release?
- 17 Do you think PIRC should have perhaps commented, given
- 18 your concerns about your investigation and the family?
- 19 A. I think that would be a matter for Crown Office.
- 20 Q. Why do you say that?
- 21 A. Well, apart from anything else, Crown Office were
- 22 directing the investigation and would also be alive to
- 23 the fact that evidence was being promoted through the
- 24 media.
- 25 Q. Did you raise this matter with Crown Office at all?

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- 1 A. No, I didn't.
- 2 Q. Can we look at another article in the same bundle of
3 articles from The Daily Record on 5 June, page 27.
4 There's a section where you will see the headline,
5 "Probe row". Do you see that?
- 6 A. Yes.
- 7 Q. "The police watchdog investigating Sheku's death
8 yesterday hit back at claims that the officers involved
9 had fully cooperated with the probe.
- 10 "The [PIRC] confirmed it was only after several
11 attempts to interview the arresting officers that they
12 finally agreed to provide statements.
- 13 "They responded after the Scottish
14 Police Federation's legal adviser Peter Watson said on
15 Tuesday, 'The officers involved have never refused to
16 provide statements'.
- 17 "'PIRC emailed me this morning at 10.46 am asking
18 for our assistance to organise the interviews, and we
19 answered at 11.29 am confirming we would be pleased to
20 assist'."
- 21 A. Yes.
- 22 Q. It says here the police watchdog hit back at claims that
23 the officers had fully cooperated with the probe. We
24 have heard some evidence about this response by PIRC at
25 the time. Can you help the Chair understand why PIRC

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1 responded to these issues about the police officers'
2 statements and the comments made by Peter Watson at this
3 time but did not respond to issues relating -- where you
4 had concerns about the investigation and the family and
5 the narrative that was being put out there?

6 A. Yes, this later release related to a factual inaccuracy
7 and in actual fact my recollection is that the
8 representative of the family approached or communicated
9 with the organisation and challenged what our response
10 had been. So as well as the Police Federation putting
11 out the statement that they had effectively provided the
12 statements at the time and when we put this out, my
13 recollection is that there was then a challenge on
14 behalf of the family that what we were putting out was
15 not the truth.

16 Q. Can you tell us a little bit more about that?

17 A. My recollection is that that was -- I think it was
18 followed up in a letter as well to the effect that who
19 would was telling -- it was more or less a query as to
20 who is telling the truth here.

21 Q. So the police -- Peter Watson had said that the officers
22 had never refused to provide statements?

23 A. Yes.

24 Q. PIRC's position refuted that the officers had fully
25 cooperated?

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1 A. Mm-hmm.

2 Q. And the family had raised the issue of who was telling
3 the truth?

4 A. Yes.

5 Q. So was that why PIRC responded to what Peter Watson had
6 said?

7 A. The largest consideration was that it was a factual
8 inaccuracy, and it didn't relate to the evidence as
9 such.

10 Q. How is that different from your views about the earlier
11 media comments, that you said gave rise to concerns?

12 A. The earlier article did relate to evidence, and I didn't
13 consider that it would be appropriate to be airing that
14 further.

15 Q. Thank you. Can I move on to lessons learned. You may
16 wish to look at paragraph 785 of your Inquiry statement,
17 you have been asked about this before. I think at 785
18 you say:

19 "I have been asked if there was any process within
20 PIRC to assess lessons learned from its investigations.
21 Generally, any lessons learned would be raised at the
22 team briefings and shared at that stage. For example,
23 the issue around the comparison between the handwritten
24 and typed statements was raised at a team briefing."

25 Is this in connection with the statement that

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1 Ashley Wise gave?

2 A. That is right.

3 Q. Where a section was removed -- was not -- was missing:

4 "Generally, in some of the serious investigations
5 there were individual meetings convened with senior
6 investigative staff and those who had been most heavily
7 involved in the investigation."

8 A. Yes.

9 Q. I have asked a number of PIRC witnesses about lessons
10 learned, an exercise, and some have said they call it
11 a debrief. Would you understand that --

12 A. Yes.

13 Q. -- to be a lessons learned opportunity?

14 A. Mm-hmm.

15 Q. I think at 786 you were asked if a briefing -- a meeting
16 was convened for the Bayoh investigation and you say:

17 "Yes, a debrief session was held. A number of
18 the investigators who took a lead part in the
19 investigation were present, and we reviewed some of the
20 aspects of the case, such as the proposal to strengthen
21 Regulation 5 and whether statements required to be
22 requested via the single point of contact."

23 A. Yes.

24 Q. So specific issues that had arisen during the course of
25 the investigation were addressed?

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1 A. Yes.

2 Q. And there was also general discussion around the wider
3 use of the PIM process?

4 A. Yes.

5 Q. We have heard evidence from Mr Harrower, Mr Little,
6 Mr McSporran and Mr Lewis, who was the FLO?

7 A. Right.

8 Q. And I asked all of them -- although my learned junior
9 asked Mr Lewis -- about whether there had been a lessons
10 learned exercise, whether there had been a debrief in
11 relation to Mr Bayoh's investigation.

12 A. Yes.

13 Q. All of them suggested that they had not taken part in
14 any lessons learned exercise.

15 A. Okay.

16 Q. I am just wondering if you can help us understand why
17 you suggest there was an exercise such as this and they
18 seem to not remember such an exercise?

19 A. The exercise was held -- I think Mr Mitchell originally
20 felt that there shouldn't be an exercise held whilst
21 proceedings were still being considered, which appeared
22 to be a valid position at that time. Following his
23 retirement, the next director of operations at that time
24 came into the post and he considered that there would be
25 value in doing that. He held it and my recollection is

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1 that Mr Little in particular was there, because I can
2 remember him making some comments in relation to the
3 process around obtaining the requests for the statements
4 direct.

5 Q. When did this lessons learned exercise take place then?

6 A. It would be after Mr Buchanan took up post.

7 Q. And he replaced Mr Mitchell?

8 A. Mr Mitchell, yes.

9 Q. Do you remember roughly when the meeting, the exercise
10 took place?

11 A. No, it would be in -- I think it would be in the first
12 six months of Mr Buchanan's tenure and I can't recall
13 when he took up post.

14 Q. But that would be after Mr --

15 A. Mr Mitchell left --

16 Q. -- Mitchell retired?

17 A. -- yes.

18 Q. You've mentioned you think Mr Little was there?

19 A. Yes.

20 Q. We've not heard anything about such an exercise from
21 Harrower or McSporran or Lewis either?

22 A. Mm-hmm.

23 Q. Why would they not have been involved in this exercise?

24 A. I am not saying they weren't, it is just Mr Little is
25 the person that I can specifically remember being in

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1 attendance at that meeting. I think -- I would be
2 surprised if Mr Harrower wasn't there, I don't know
3 about the other two.

4 Q. You were there?

5 A. I was there.

6 Q. You think Mr Little was there?

7 A. Yes.

8 Q. How many people were there? Do you have an impression,
9 a recollection?

10 A. I would suggest about a dozen. Ten to a dozen.

11 Q. So, as far as you were concerned, and we see it at the
12 top of the page, so it must be 785, were the senior
13 investigative staff and those who had been most heavily
14 involved in the investigation present?

15 A. Mm-hmm.

16 Q. Could you be mistaken?

17 A. No, definitely not.

18 Q. So, as far as you are concerned -- we've heard in terms
19 of lead investigators in the investigation, Mr Harrower
20 was on the 3rd, Mr Little was on the 4th, and then from
21 the 5th onward Mr McSporran was involved, and they were
22 all at one point lead investigators.

23 A. Mm-hmm.

24 Q. Would you have expected all of them to be present at
25 this meeting to contribute?

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- 1 A. Yes, if they were in attendance in the office.
- 2 Q. Would it be common for Mr Harrower, Mr Little or
3 Mr Harrower, Mr McSporran and perhaps Mr Little to be
4 absent all at the same time?
- 5 A. No, that would be unlikely.
- 6 Q. Thank you. Can I move on to the fifth principle under
7 Article 2 which related to the next of kin. Could we
8 look, please, at the policy log. This is PIRC 04154.
9 Can we look at page -- decision 61 which may be page 16,
10 I am not sure. Not that one. Decision 61, I have
11 noted. Maybe start with 60, that is a continuation of
12 60. No, that is not the right one. Sorry, I seem to
13 have noted down the wrong page number. Instead -- it's
14 always good to have a plan B -- let's look at
15 paragraph 505 of your Inquiry statement. 505, and this
16 is where you were asked about a meeting that you had had
17 with the family.
- 18 A. Yes.
- 19 Q. Do you see here this is the start of a section in your
20 Inquiry statement where you are asked about a meeting
21 with the family on 3 September 2015. As I understand
22 it, this was the only meeting that you had with the
23 family personally?
- 24 A. Yes, that's correct.
- 25 Q. So this is -- the incident happened on 3 May, this takes

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- 1 place on 3 September.
- 2 A. Mm-hmm.
- 3 Q. Is there any reason why you didn't have a meeting with
4 the family in that four-month period?
- 5 A. Yes, a request was made for a meeting and I asked the
6 family liaison officers to ask that suitable dates be
7 identified. I was conscious, given the issues around
8 the post mortem, that some of the family potentially
9 would be travelling from England, so it wasn't just
10 a straightforward matter of people who were local in
11 Edinburgh attending, and I wanted to give them the
12 opportunity to select dates. Now, I don't think dates
13 were offered until about August time.
- 14 Q. When did you ask the FLOs to arrange or find a suitable
15 date for you to meet with the family?
- 16 A. As soon as the request was made.
- 17 Q. Do you remember --
- 18 A. No, I have no idea when that request was made.
- 19 Q. Did you at any time consider a meeting with the family
20 prior to the request being made?
- 21 A. No, I hadn't done that in any other investigation.
- 22 Q. Bearing in mind the obligations under Article 2, and the
23 involvement of the next of kin --
- 24 A. Yes.
- 25 Q. -- on reflection do you think more could have been done

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- 1 to arrange a meeting at an earlier opportunity?
- 2 A. Well, I was providing that opportunity to the family as
3 soon as they had expressed a desire to do that.
4 I recall in the initial stages they had expressed
5 a desire to be left alone.
- 6 Q. To whom had they expressed the request to be left alone?
- 7 A. I think that was to the family liaison officers.
- 8 Q. Did you take that to include a request by the family not
9 to meet with you?
- 10 A. I don't think a request had been made to meet with me at
11 that time.
- 12 Q. Did you assume because they wanted to be left alone that
13 they wouldn't want to meet with you?
- 14 A. No, I didn't make any assumption on that basis.
- 15 Q. So was there any consideration by you given to whether
16 the family might like to meet with you, because you were
17 the Commissioner?
- 18 A. Yes, we had provided the opportunity for family liaison
19 officers, which were -- or was the standard process for
20 families in those circumstances.
- 21 Q. Did you feel that was sufficient to accommodate the
22 family in terms of your Article 2 obligations?
- 23 A. And in addition they were meeting with the Crown Office,
24 and we were aware of that.
- 25 Q. What consideration did you give to the fact they were

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1 meeting with Crown Office?

2 A. That they specifically were engaging through
3 Crown Office in the investigation.

4 Q. Did you consider the family's engagement with
5 Crown Office alleviated any responsibilities on the part
6 of PIRC to have regard to the next of kin or meet with
7 them?

8 A. No, absolutely not, and that is why the family liaison
9 officers were deployed.

10 Q. Thank you. Can we look at paragraph 514. You were
11 asked about some family members' recollection of
12 the meeting with yourself. Do you remember who was at
13 that meeting, as well as yourself as Commissioner?

14 A. Mr Mitchell, Mr Little, Mr Lewis, Mr Tait.

15 Q. Do you remember which family members were present?

16 A. Yes, Mr and Mrs Johnson and Ms Bell and her mother.

17 Q. You referred to Kadi Johnson's Inquiry statement
18 regarding this meeting on 3 September and if we can move
19 down the page:

20 "We had a meeting with PIRC and Kate Frame was the
21 senior there at the time. The meeting was not fruitful
22 for me. When we went to the meeting it was all
23 superiority, that's what we got from her. We didn't get
24 any clear information. We didn't get any clear support
25 from her, yet she just explained how things go, what

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1 their role was, and things like that. For me it was all
2 about her and her organisation rather than any remorse.
3 Where is the sympathy? What are you going to do to
4 support this family? There was nothing there. They
5 lacked compassion towards the family'."

6 Seeing that from the Inquiry statement from
7 Kadi Johnson, can you tell us what your views were about
8 that meeting?

9 A. It was a difficult meeting. The intent from the PIRC
10 perspective was to share information both about the
11 independence of the organisation, about the
12 investigation and to hear the concerns that they held
13 about that.

14 Q. How did you intend to approach that meeting and what was
15 your plan, if I can put it that way, about how to
16 conduct the meeting?

17 A. I thought the question of independence should be
18 addressed, and addressed that first of all within the
19 meeting. Then there were questions put.

20 Q. Questions put by whom?

21 A. Members of the family.

22 Q. Who responded to those questions?

23 A. Various parties that were present.

24 Q. Can we look at 516 and 517. You say:

25 "I have been asked what my opinion would be in

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1 relation to Mrs Johnson's characterisation of the
2 meeting. It is disappointing, because as well as
3 spending time at the beginning of the meeting personally
4 speaking to the family members, I recall speaking to
5 Mrs Johnson at the end of that meeting too and
6 expressing my sympathy for her loss. She didn't express
7 any lack of support at that time or seek support from
8 the FLO who was present at the meeting. She was clearly
9 very upset at her loss."

10 A. Yes.

11 Q. Our understanding is the family were very upset.

12 A. Yes.

13 Q. Then you were referred to Collette Bell's Inquiry
14 statement at 517, and if we could look at that please.
15 She has been quoted as saying:

16 "I remember going to a meeting with Kate Frame, the
17 head of PIRC. I feel those meetings went really badly.
18 I remember being very, very angry. I remember them
19 being almost blase about what had happened and me being
20 really angry and defensive because they didn't seem to
21 show any emotion or care. I just remember being very
22 angry because I remember we had been told all about his
23 injuries when we were at the meeting with Kate Frame.
24 I remember them saying that there was no evidence to
25 suggest that they would have to look at the measures

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1 that were used, the way that he was restrained.
2 I remember shouting at her, 'If this was a member of the
3 public who had all these injuries, somebody would be
4 held accountable for it', and then I remember her saying
5 that the injuries that Shek had received were kind of
6 normal. I remember thinking 'What?' and I remember
7 saying, 'If Shek hadn't got in contact with the police
8 that day, he'd still be here'. I remember Kate Frame
9 almost laughing at my anger, which made me more angry.
10 She just seemed very ignorant and arrogant to it all.
11 I felt a lot of the time with PIRC that they were
12 insinuating that everything had all been Shek's fault
13 and that the restraint and things that were used were
14 his fault."

15 I would like to ask you for your comments on that
16 remark by Collette Bell. Can we go to the top, please.
17 She says she was "very, very angry" and she remembers
18 "them almost being blase about what had happened". Do
19 you have any comment about that?

20 A. There was no intention to be blase, it was recognised
21 that this was a sensitive meeting.

22 Q. Can you understand why Collette Bell may have felt you
23 were blase? Is there anything you can think of that may
24 have contributed to her impression?

25 A. Not that I can think of.

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1 Q. She goes on to say:

2 "... they didn't seem to show any emotion or care."

3 Would you like to comment on that?

4 A. We tried generally to show emotion, to sympathise for
5 their loss, and that was expressed at the meeting.

6 Q. She then goes on to say:

7 "I remember them saying that there was no evidence
8 to suggest that they would have to look at the measures
9 that were used, the way that he was restrained.

10 I remember shouting at her 'If this was a member of the
11 public who had all these injuries, somebody would be
12 held accountable for it', and then I remember her saying
13 that the injuries that Shek had received were kind of
14 normal."

15 Do you remember saying that the injuries Shek had
16 received were kind of normal?

17 A. I said something along the lines of -- there seemed to
18 be a focus on the external blunt-force injuries, and my
19 recollection is that Ms Bell held up a copy,
20 a diagrammatic copy and was pointing to the number of
21 external injuries, and at that time I tried to explain
22 to her that the blunt-force injuries, as I recall, well,
23 first of all were not regarded by the pathologists as
24 the cause of death, but that if someone had been taken
25 to the ground and involved in a struggle, you could

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1 potentially expect the bruising and grazing injuries
2 that were present on Mr Bayoh's body.

3 Q. When it said here:

4 "I remember them saying that there was no evidence
5 to suggest that they would have to look at the measures
6 that were used the way that he was restrained."

7 Do you remember saying anything along those lines?

8 A. No, I didn't say anything about that.

9 Q. Do you remember anyone else saying anything along those
10 lines?

11 A. I can't precisely recall that. I know that some of the
12 investigators were contributing to the meeting.

13 Q. Is it possible that one of the investigators said
14 something along those lines?

15 A. It may be possible.

16 Q. It certainly wasn't you?

17 A. No.

18 Q. Can we move down, please. Do you remember if
19 Collette Bell -- well, she said:

20 "'If this was a member of the public who had all
21 these injuries, somebody would be held accountable for
22 it'."

23 Do you remember her saying that?

24 A. Yes, I think I do.

25 Q. "Then I remember her saying~..."

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1 Presumably that is yourself:

2 "... that the injuries that Shek had received were
3 kind of normal. I remember thinking 'What?' and
4 I remember saying, 'If Shek hadn't got in contact with
5 the police that day, he'd still be here'."

6 Do you remember her saying that at the meeting?

7 A. I think she did say that.

8 Q. She says:

9 "I remember Kate Frame almost laughing at my anger,
10 which made me more angry."

11 Do you want to comment on that?

12 A. Yes, I didn't find that meeting at all entertaining.

13 I had expressed my sympathy at the beginning to the
14 family and I was keen to update them in relation to the
15 investigation and its progress.

16 Q. So in relation to the suggestion that you were almost
17 laughing at her anger?

18 A. No.

19 Q. Would you -- was there any reason you can think of now
20 that might have given her the impression you were almost
21 laughing?

22 A. No, I wasn't laughing.

23 Q. She says that you:

24 "... just seemed very ignorant and arrogant to it
25 all. I felt a lot of time with PIRC that they were

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1 insinuating that everything had all been Shek's fault
2 and that the restraint and things that were used were
3 his fault."

4 Was there anything said at the meeting that you can
5 recall that there was an insinuation that everything had
6 been Shek's fault?

7 A. No, I can't.

8 Q. Was there a view held by you or within PIRC that
9 everything was Shek's fault?

10 A. No.

11 Q. Was there a view held that the restraint and things that
12 were used, presumably to restrain him, were his fault?

13 Was there any view held by PIRC investigators --

14 A. No absolutely not.

15 Q. -- or by yourself?

16 A. No.

17 Q. Thank you. We've also heard some evidence from
18 Kadi Johnson, Day 34 of the Inquiry, where she talked
19 about the meeting with yourself on 3 September. She
20 said:

21 "Answer: The meeting was not fruitful for me. When
22 we went to the meeting it was all that superiority, that
23 is what we got from her. We didn't get any clear
24 information, we didn't get any clear support, yet she
25 just explained how things go, how was their role and

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1 things like that. For me it was like all about her and
2 her organisation rather than any remorse. Where is the
3 sympathy? What are you going to do to support this
4 family? There was nothing there."

5 Do you have any comments to make about
6 Kadi Johnson's impression that there was no support
7 provided to the family from PIRC?

8 A. Yes. As I said, I spoke to her at the end, there was no
9 request for support, and the FLO was actually present at
10 the meeting, who was there with a view to providing
11 support as well.

12 Q. Did either yourself or the FLO, Mr Lewis, offer to
13 support the family in that way by engaging with them?

14 A. No, there was no express instruction to that effect at
15 the meeting. The FLO had already been in touch with the
16 family.

17 Q. Looking back now, do you think there might have been
18 some merit in re-offering to support the family with the
19 FLO?

20 A. That offer was made as part of the meeting before it
21 closed.

22 Q. So the meeting to engage -- re-engage with FLO was made?

23 A. Yes.

24 Q. Who made that?

25 A. I think Mr Mitchell made that offer.

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1 Q. Do you remember what the response to that offer was?

2 A. There was no response.

3 Q. No response at all?

4 A. No.

5 Q. So when there was no response or no immediate response,
6 where was it left?

7 A. It was followed up with a letter restating -- sorry,
8 actually, I offered further meetings and suggested
9 either monthly meetings with them or six-weekly meetings
10 and they opted to select six-weekly meetings.

11 Q. So that was an offer made at that meeting?

12 A. Yes.

13 Q. When the meeting came to a close were you under the
14 impression that from that point there would be
15 six-weekly -- did you say six-weekly or six-monthly?

16 A. Six-weekly.

17 Q. Six-weekly meetings with the family. With you or with
18 your investigators?

19 A. With me.

20 Q. With you. Was that your impression when the meeting
21 closed --

22 A. Yes.

23 Q. -- that that would be instigated?

24 A. Yes.

25 Q. My understanding from your Inquiry statement, I think

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1 at -- is that those six-weekly meetings didn't take
2 place?

3 A. Yes.

4 Q. That the first meeting, six-weekly meeting, would have
5 been taking place on a day where the family met with the
6 Lord Advocate; is that correct?

7 A. Well, we understood so. We weren't advised of that
8 until the day before we found out by chance.

9 Q. Were you aware -- were you assuming to meet with the
10 family on the same day that they ended up going to meet
11 with the Lord Advocate?

12 A. Yes. We had written to the solicitor, proposed the date
13 on this occasion so that the dates were effectively
14 identified from an early start, and my recollection is
15 that we received a response saying that he would get
16 back to us. There was no response after that.

17 Q. I see. Was that chased up on your behalf?

18 A. I think there was an effort and I can't remember who
19 made that effort, for later meetings.

20 Q. But you never had any other meetings with the family?

21 A. I didn't, no.

22 Q. Did you subsequently -- although the first meeting the
23 family went to meet -- you think they went to meet with
24 the Lord Advocate, did you chase up subsequently with
25 the family or their solicitor to see if other meetings

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1 could be put in the diary with them?

2 A. No, I think there was an indication that there was no
3 desire to meet further after that.

4 Q. Where did that indication come from?

5 A. The efforts were made by the FLOs to meet with the
6 family, which were rejected.

7 Q. Did you make any express offers to meet with them
8 yourself?

9 A. Not following the non-response.

10 Q. Right. So I think am I right in saying that actually
11 between 14 September -- so the meeting was on the 3rd,
12 from 14 September 2015 to 10 August 2016 there was no
13 contact between you and the family?

14 A. Not between me and the family, other than through
15 correspondence.

16 Q. Can I -- before we leave the meeting completely,
17 can I ask you to comment on evidence that we heard from
18 Collette Bell in the Inquiry. This was on Day 40 of the
19 Inquiry. She also said:

20 "Answer: I remember her being very snide and almost
21 laughing at me."

22 This is her commenting on her impression of you:

23 "I think at one point she actually did snigger,
24 almost that my anger and my upset were funny to her."

25 Do you want to make any comment about that?

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- 1 A. I didn't find it funny at all, nor did I find her
2 actions funny.
- 3 Q. When you say you didn't find her actions funny, what do
4 you mean?
- 5 A. Well, she was clearly very angry in the course of the
6 meeting.
- 7 Q. You were not amused by her behaviour; is that what you
8 mean when you say actions?
- 9 A. Well, yes, she was very angry, and I certainly didn't
10 find that funny.
- 11 Q. What was your view about the way that Collette Bell
12 presented at the meeting?
- 13 A. I was to some extent concerned, and had considered
14 pausing the meeting to allow her to settle down.
15 However, there really was not any opportunity
16 and I didn't want to disturb her flow of frustration.
- 17 Q. Can we look at paragraph 783 of your Inquiry statement:
18 "I have been asked if, knowing what I know now,
19 there is anything I would have done differently within
20 this investigation. I think where a family in a serious
21 matter like this has chosen not to directly engage with
22 the standard family liaison process that I would be
23 inclined to try and understand better why that was the
24 case, to see if it could be addressed. However, in this
25 case I respected the fact that the family's request was

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1 made through their legal representative and that they
2 requested that the family liaison be channelled through
3 him."

4 I am interested in the suggestion here that in
5 looking back on the meeting and the relationship with
6 the family in a serious matter like this where they have
7 chosen not to directly engage with the FLO:

8 "... I would be inclined to try and understand
9 better why that was the case, to see if it could be
10 addressed."

11 Can you help the Chair understand a little more
12 about what you mean by that?

13 A. Yes, I probably didn't understand fully the impact of
14 the interaction with the police right at the beginning,
15 which clearly I think has created a barrier in
16 connection with communication between the justice
17 agencies and the Bayoh family.

18 Q. Had you understood that, could you have taken steps to
19 address that barrier in communication?

20 A. I would have tried to, yes.

21 Q. What would you have tried?

22 A. Well, potentially setting up an individual meeting, even
23 through their solicitor, with them personally on
24 a smaller scale.

25 Q. Is that something that you did in 2015?

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1 A. No.

2 Q. Did you ever have any meetings with Mr Anwar personally?

3 A. Other than this one, no.

4 Q. The 3 September was the only one?

5 A. Yes.

6 Q. Was there anything to stop you trying that approach,
7 that sort of one-to-one approach, after 3 September?

8 A. I think by that time it had been made clear that there
9 was no further communication sought between them and the
10 PIRC.

11 Q. Once you had formed that impression, that communication
12 was at an end, did you take the view that there were no
13 efforts on your part that would help improve the
14 situation?

15 A. I think that is right, and I think there was
16 an indication -- that Mr Anwar had indicated that he
17 wanted to communicate with the Lord Advocate and not
18 with PIRC.

19 Q. I think you also say at paragraph 533, looking at things
20 now:

21 "It seemed as though there was a level of hostility
22 by some members of the family on arrival and it was
23 always going to be hard to explain in a way which they
24 understood or accepted why the officers had not been
25 detained. Perhaps it might have assisted to hear the

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1 family's concerns at the beginning rather than
2 explaining the role of PIRC and the investigation at the
3 outset."

4 A. Yes.

5 Q. Looking back now on that meeting, would you have,
6 initially at least, attempted to hear the family's
7 concerns?

8 A. Yes, absolutely.

9 Q. And do you think on reflection that might have actually
10 helped the tone of the meeting, if you had begun by
11 listening to the family?

12 A. Yes, it possibly would.

13 Q. And listening to their concerns, rather than starting by
14 telling them about the role of PIRC?

15 A. Yes. I think the view within PIRC was that they were
16 originally really concerned in relation to the
17 independence aspect and there had been various media
18 articles to that effect.

19 Q. Do you feel now, looking back, that maybe you had
20 a misunderstanding that independence was more of
21 a priority for the family at that stage than other
22 matters which were a priority for the family?

23 A. Well, I thought that was a starting point rather than
24 a priority, to clear that up first.

25 Q. But having met with the family and not by simply

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1 listening to their concerns you started with the issue
2 of independence?

3 A. Yes.

4 Q. But now on reflection you think that was maybe
5 a mistake?

6 A. Potentially it was, yes.

7 Q. When you say "potentially" what do you mean --

8 A. Well, having not tried the alternative solution I don't
9 know.

10 Q. I think if you were in that position today --

11 A. Yes.

12 Q. -- would you change the way you approached that
13 meeting --

14 A. Yes.

15 Q. -- completely?

16 A. Yes.

17 Q. Thank you.

18 Can I ask you to look at 564:

19 "I have been referred to a letter dated
20 16 September 2015 ..."

21 So this is not quite two weeks after your meeting
22 with the family?

23 A. Mm-hmm.

24 Q. "... from Aamer Anwar addressed to me in which Mr Anwar
25 states:

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1 "We refer to your letter dated 10th September and
2 the family are grateful for your meeting with them on
3 the 3rd. However, as the family stated, their
4 confidence in the PIRC has been shattered.'

5 "It was very disappointing given the level of work
6 that was being undertaken to investigate the
7 circumstances."

8 565:

9 "I have been asked if I recall PIRC doing anything
10 directly in response to the indication that the family's
11 confidence in PIRC had been 'shattered'. I don't
12 remember what was done at that time as I anticipated
13 that we would be meeting with the family a few weeks
14 later as I had proposed ..."

15 Is that a reference to the six-weekly meetings you
16 thought would take place?

17 A. Yes.

18 Q. "... and expected to address that view then."

19 Looking back at that now with hindsight, do you
20 think that maybe more could have been done by you to try
21 and start restoring the family's confidence in PIRC or
22 dealing with the fact that their confidence had been
23 shattered?

24 A. The comment about the confidence being shattered was
25 made in advance of the meeting as I recall.

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1 Q. This is repeated in a letter --

2 A. Yes.

3 Q. -- after -- almost two weeks after the meeting?

4 A. Yes.

5 Q. So because you mentioned it was made before did you feel

6 there was no prospect of repairing that --

7 A. I had hoped that the meeting would be a step in that

8 direction.

9 Q. I take it from your answers today it wasn't a step in

10 that direction?

11 A. No, it didn't seem to assist.

12 Q. And Mr Anwar wrote afterwards saying it hadn't --

13 A. Yes.

14 Q. Did you consider whether there were any steps that you

15 could take after you got that letter? Because obviously

16 what has been said is that the family were grateful for

17 your meeting with them on the 3rd. Did you think there

18 was any chink of light there that you could expand in

19 terms of rebuilding confidence in PIRC?

20 A. Yes, and that was why I took the opportunity to write in

21 response to the meeting.

22 Q. Is that the letter of the 10th --

23 A. Yes, it is.

24 Q. -- that you sent. When you didn't end up meeting with

25 the family at the six-weekly stage --

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1 A. Yes.

2 Q. -- did you consider at that stage going back to them and
3 asking to have another meeting, or perhaps a smaller
4 meeting?

5 A. I didn't consider the smaller meeting version at that
6 time.

7 Q. Did you consider going back and seeing if they would --

8 A. I can't remember if any further meetings were --

9 Q. There were no further meetings --

10 A. No, no, proposed.

11 Q. I see, sorry. Do you remember proposing further
12 meetings with the family?

13 A. That is what I am saying, I can't remember if there was
14 any efforts made.

15 MS GRAHAME: I wonder -- I am moving on to something else
16 now.

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

19 (1.02 pm)

20 (The short adjournment)

21 (2.00 pm)

22 LORD BRACADALE: Ms Grahame.

23 MS GRAHAME: Thank you. Do you remember before lunch
24 I asked that decision 61 in the management policy log be
25 put on the screen and then I couldn't find the part

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1 I was looking for. I have had a chance to look at it
2 again over the lunch break. Could we look at the policy
3 file please PIRC 04154 and I am actually looking at
4 an email that was sent to PIRC which sits behind --
5 a copy of it sits behind decision 61. This is on
6 page 94 of the pdf.

7 So this just sits behind where they were, and we
8 have heard from Mr McSporrان that sometimes certain
9 documents would be simply slotted into the policy log
10 and then summarised in the log without the need to copy
11 a lot of text out?

12 A. Yes.

13 Q. So this is -- it was forwarded by Mr Lewis but if we can
14 look at the actual email, it is from Mr Anwar, it was
15 sent to PIRC, primarily to Mr Lewis, the FLO, on
16 28 July 2015. So this is prior to your meeting with the
17 family.

18 A. Yes.

19 Q. And it is copied to Mr McSporrان. You will see it says:

20 "Dear Alistair ..."

21 Alistair Lewis, the FLO:

22 "You may appreciate by now the family are highly
23 dissatisfied at the manner in which the PIRC
24 investigation has progressed to date."

25 This may be the correspondence from Mr Anwar that

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1 you were mentioning earlier. I am interested in the
2 second page of this email, primarily (v):

3 "On a number of occasions a meeting has been
4 requested with Kate Frame but the family and ourselves
5 have not had the courtesy of a response to this request
6 following her return from leave. If it is the case that
7 Ms Frame is unwilling to meet us and the Bayoh family
8 then please advice."

9 It would appear at this stage that Mr Anwar is
10 writing to say that a number of -- on a number of
11 occasions a meeting has been requested, but there have
12 been no reply. Are you aware of any failure to
13 communicate with the family in relation to a number of
14 requests for a meeting with yourself?

15 A. No. When the request was made, or that I was aware of
16 it, the FLOs were asked to seek dates from Mr Anwar.

17 Q. So when you had the meeting with the family, did you
18 know that there had been a number of occasions where
19 a meeting was requested that had just not simply been
20 responded to?

21 A. No.

22 Q. So you weren't armed with that information before you
23 went in?

24 A. No, I wasn't.

25 Q. If you had known that a number of meetings had been

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1 requested but no reply received from the family, when
2 you had your meeting on 3 September would you have
3 addressed that with the family specifically?

4 A. Yes, I would have apologise if there had been that
5 pattern shown, yes.

6 Q. Thank you. Can I now move on and ask you some questions
7 in relation to Mrs Scullion, who was the head of
8 investigations?

9 A. Yes.

10 Q. And I think in your own statement you explain that on
11 3 May, although you weren't in the office that day, you
12 had a call from Mrs Scullion?

13 A. Yes.

14 Q. This was after you had heard mention of the incident in
15 Kirkcaldy on the radio?

16 A. Yes.

17 Q. She had contacted you, and updated you, I think there
18 had been some communication with Mr Harrower who was the
19 lead investigator, and a decision was taken that you
20 should be informed that day --

21 A. Right.

22 Q. -- because of the nature of the incident.

23 If we can look at your statement, please and look
24 at -- let's start with paragraph 162. You are
25 describing the conversation you had over the telephone

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1 with Mrs Scullion and the information that was being
2 shared with you by Mrs Scullion.

3 A. Yes.

4 Q. "... the man had been seen chasing after cars with
5 a knife, that the police had been dispatched and that
6 Police Scotland had considered that it might be
7 a terrorist incident. Against the backdrop of
8 the information that she'd provided, I didn't understand
9 why it had been considered to be a terrorist incident
10 and asked why. She said it was because of the man was
11 what she described as~..."

12 And this is in quotation marks:

13 "... 'a coloured gentleman', and I asked her what
14 she meant by that and whether there was anything else to
15 point to it being a terrorist incident, as I still found
16 it quite difficult to understand what would cause the
17 police officers to think that the incident was terror
18 related. She said that his actions in chasing after and
19 striking out at cars with the knife may have contributed
20 to that belief, and she referenced an attack in
21 England."

22 Do you remember the attack in England that was
23 referenced?

24 A. Yes, it was Lee Rigby.

25 Q. So there seems to have been a connection being made

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- 1 between Mr Bayoh being a black man and a possible --
- 2 this being a possible terrorist incident?
- 3 A. Yes, it seems so.
- 4 Q. And you were asking why; what other information was
- 5 available that would indicate that?
- 6 A. Yes.
- 7 Q. And the response was that he was chasing out cars
- 8 and there was a reference to Lee Rigby?
- 9 A. Yes.
- 10 Q. So the use of the phrase there "a coloured gentleman" is
- 11 in quotation marks.
- 12 A. Mm-hmm.
- 13 Q. Can you tell us what your reaction was when you say
- 14 Mrs Scullion, the head of investigations, used that
- 15 language?
- 16 A. I was surprised. I suppose I was even more surprised in
- 17 relation to the reference to it being a terrorist
- 18 incident.
- 19 Q. You were surprised at the connection being made there
- 20 with the terrorist incident?
- 21 A. Well, yes. I was surprised that this was being referred
- 22 to as a terrorist incident.
- 23 Q. We've heard that Mrs Scullion was your head of
- 24 investigations?
- 25 A. Yes.

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- 1 Q. Was it of any particular concern that the head of
2 investigations was using the language "a coloured
3 gentleman"?
- 4 A. It was of concern.
- 5 Q. Can you explain what the concern was?
- 6 A. Well, the concern was the terminology being used.
- 7 Q. Why was that of a concern to you?
- 8 A. Well, it certainly was making the link to the potential
9 terrorist incident.
- 10 Q. We've also heard evidence that people may find the use
11 of the word "coloured" to be -- potentially to be
12 offensive?
- 13 A. Yes.
- 14 Q. Was that something you were aware of at that time?
- 15 A. Yes.
- 16 Q. So what did you do when Mrs Scullion used that word?
- 17 A. I did nothing at the time.
- 18 Q. Why was that?
- 19 A. Because I was more interested in the circumstances that
20 were being described to me.
- 21 Q. Did you subsequently do something after the telephone
22 conversation in relation to Mrs Scullion's use of the
23 word "coloured"?
- 24 A. Yes, I did, later on. Not that week because obviously
25 I was out of office, but later on.

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- 1 Q. Can you remember when you dealt with the matter?
- 2 A. No, I recall it was in the Hamilton House.
- 3 Q. Is that the home of the investigation team?
- 4 A. Investigations team, yes.
- 5 Q. How long after you returned to the office after the
6 break was it before you spoke to Mrs Scullion?
- 7 A. Some weeks, anyway, later.
- 8 Q. You say in your statement you did speak to her about her
9 use of that word.
- 10 A. Yes.
- 11 Q. Can you tell us what you said to Ms Scullion on that
12 occasion?
- 13 A. There was some general discussion in the office and
14 I had said to her did she appreciate that the
15 terminology "the coloured gentleman" was not a suitable
16 term.
- 17 Q. What was her reaction to you raising that matter?
- 18 A. She accepted that.
- 19 Q. When you say she accepted it, did you make it clear to
20 her that it was her use of that phrase that you were
21 referring to?
- 22 A. No, I probably said it in a more general term.
- 23 Q. So did you make it clear that it was a reference to her
24 use of the language during that call on 3 May 2015?
- 25 A. No.

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- 1 Q. When you say she accepted it, is it possible she was
2 accepting that as a general proposition rather than
3 a reference to her use of the language?
- 4 A. Possibly.
- 5 Q. In that you had heard her use those words, and you had
6 concerns, did you feel that you should take the matter
7 forward to deal with the matter on a more formal basis
8 with Mrs Scullion?
- 9 A. No, I didn't. I thought having raised it, that was
10 sufficient.
- 11 Q. Did it cause you to have any concerns generally about
12 your investigative team because the head of the
13 investigations team had used that language?
- 14 A. No, I didn't. I didn't consider that, no.
- 15 Q. Did you consider raising any issue with the team as
16 a whole about the use of language and possible
17 implications of using language that you did not consider
18 suitable?
- 19 A. No, I didn't.
- 20 Q. We've had -- after you gave your statement, Mrs Scullion
21 provided a supplementary statement to the Inquiry.
22 Could we look at that for a moment. SBPI 00452. If we
23 look at paragraph 3 which is on page 8. She was asked
24 about your discussion of the call she had on 3 May, and
25 she was referred to a number of paragraphs from your own

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1 statement, those appear as italics in her response. If
2 we get to paragraph 3 of her statement, where she
3 responds to it, it's on page 8. There we are. It says:

4 "Statement - I have been asked about a call Ms Frame
5 states I made to her about lunchtime on 3 May. While,
6 as per my statement, I recall calling her around 10 am
7 to alert her that an incident had occurred (doing so to
8 assist the on-call manager, Mr Casey, who had been
9 unable to locate Ms Frame's number), I do not recall the
10 later call at around lunchtime that Ms Frame references.
11 Nor do I recall receiving further contact from either
12 Mr Casey or Mr Harrower during the course of the morning
13 that would have provided the information Ms Frame sets
14 out in her statement. Mr Casey's or Mr Harrower's
15 statements may provide clarity on the matter. I do
16 recall having no contact with Police Scotland during the
17 course of that day."

18 Then if we can move down:

19 "As I cannot recollect the call Ms Frame refers to,
20 I am unable to comment on its content as set out in her
21 statement. I can only comment where my values have been
22 questioned or whether there are parts of Ms Frame's
23 statement that I do not understand."

24 Then paragraph 4:

25 "During the call with Ms Frame on 3 May, did you use

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1 the phrase 'a coloured gentleman' to describe Mr Bayoh."

2 Her response is:

3 "I have never in my personal or professional lives
4 used such a pejorative term. Such language is
5 completely alien to me. The only other term I would
6 in place of 'black' is 'person of colour'.

7 "Your statement at paragraph 5 includes that you
8 indicated to Ms Frame that [Mr] Bayoh was black. Can
9 you recall the precise language that you used during
10 this call to describe or discuss [Mr] Bayoh's race?

11 "My recollection is that, in the call I made to
12 Ms Frame at 10 am to alert her that an incident had
13 occurred, I used the term black."

14 I just wonder if you want to comment on what
15 Ms Scullion has said about --

16 A. Yes --

17 Q. -- the comment?

18 A. I don't recall her using any term "black" throughout
19 that call.

20 Q. Where she has said, if we can look back again at
21 paragraph 4, where she says:

22 "I have never in my personal or professional lives
23 used such a pejorative term."

24 Are you aware of any other occasion that you have
25 been aware of that Ms Scullion used the phrase "coloured

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- 1 gentleman" or "coloured"?
- 2 A. No, I am not aware of that.
- 3 Q. "Such language is completely alien to me. The only
4 other term I would use in place of 'black' is 'person of
5 colour'."
- 6 Do you have any comment about that or her use of
7 that?
- 8 A. I haven't -- well, I can't recall her using that phrase.
- 9 Q. In relation to this conversation with Ms Scullion, is it
10 possible that you were mistaken about Ms Scullion using
11 the phrase "coloured gentleman"?
- 12 A. Instead of "person of colour"?
- 13 Q. Instead of "black" or "person of colour".
- 14 A. No, I don't recall "black" at all. "Person of colour",
15 maybe.
- 16 Q. Is there anything else you would like to add to that now
17 I have let you have a look at the statement from
18 Ms Scullion?
- 19 A. Yes, it's at complete variance with my recollection of
20 events, certainly it was later than 10 o'clock as well
21 in the morning, it was much later on. And I recall that
22 she had said that Mr Harrower was actually either there
23 in Kirkcaldy or on his way at the time.
- 24 Q. We've heard evidence he didn't arrive until 1.30.
- 25 A. Yes.

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1 Q. Thank you. I would like to refer you back to some --
2 an issue we addressed yesterday afternoon, and towards
3 the end of my questions yesterday afternoon, I have it
4 at -- for those behind me it's line 172, it starts,
5 page 172, line 13, and I asked if you had any
6 reflections on improvements that could perhaps have been
7 made, things to support your investigators. I asked you
8 in particular about comparator evidence. Do you
9 remember when we went through the guidelines yesterday
10 afternoon --

11 A. Yes.

12 Q. -- one of the topics that they had within the guidelines
13 was about comparator evidence. I asked you about
14 comparing how the person may have been treated compared
15 to someone who was white, for example.

16 A. Yes.

17 Q. I asked you about that and you said that was
18 a consideration as part of the investigation. I asked
19 you if that was after the terms of reference had been
20 expanded, which we have heard took place in September,
21 the Crown extended them to cover race?

22 A. Yes.

23 Q. And you said:

24 "Answer: No, right from the beginning that was
25 discussed."

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1 I asked about what was discussed at the beginning,
2 and you said:

3 "Answer: It was -- well, I certainly discussed it
4 with a number of the investigation team. I discussed it
5 with Mr McSporran, Ms Scullion, Mr Mitchell, and
6 a variety of other investigators."

7 I asked what response you had got when you discussed
8 that issue, and you said:

9 "Answer: They were receptive to it."

10 Then I asked you to clarify whether it had been
11 viewed as a positive and active line of investigation,
12 or whether it was in the context of taking cognisance of
13 issues as they emerged?

14 A. Yes.

15 Q. You said:

16 "Answer: I think it would be more under the second,
17 the taking cognisance of."

18 We have not yet heard the conclusion of
19 Mr Mitchell's evidence, although we do hope to hear from
20 him further, but in his Inquiry statement which we do
21 have available now, and maybe we could look at this,
22 it's SBPI 00423. I am interested in paragraph 433. So
23 this is Mr Mitchell's statement:

24 "I have been asked if, when investigating issues of
25 race, PIRC considered attempting to identify comparator

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1 evidence that might have permitted PIRC to compare how
2 Mr Bayoh was treated against how other individuals, who
3 were not black, were treated in similar circumstances."

4 He says:

5 "I don't believe so. I'm not quite sure how you
6 could do that. I feel that it would have been necessary
7 to identify incidents which were identical in all
8 aspects of the events leading to and including the
9 interaction between the police and Mr Bayoh to draw
10 a meaningful comparison."

11 So in relation to the issue of using a comparator in
12 the investigation, he says he doesn't believe that --
13 I don't believe so, I don't believe that was attempted
14 as part of the investigation.

15 We have also considered the evidence of
16 John McSporrán and his statement, and there is no
17 reference to comparator evidence having been part of the
18 investigation. Similarly, no reference to any
19 discussions of this sort with Irene Scullion in relation
20 to her Inquiry statement.

21 I just wonder if you could perhaps give
22 an explanation why, although you have recollected
23 discussing comparator evidence with investigators, that
24 Mr McSporrán, Mr Mitchell and Mrs Scullion don't
25 remember or don't mention any evidence of this sort

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1 being --

2 A. My recollection is that the discussion was around was

3 there any evidence to show ...

4 Q. All right. That is what you were asking?

5 A. Yes, and also there was a conversation with Mr Mitchell

6 where he too was saying that that would be -- basically,

7 could you show that. Now, whether they went on to

8 investigate that, I can't say definitively, but that

9 question was posed to all of those members of the team.

10 Q. So Mr Mitchell certainly seems to say here --

11 A. That it wasn't possible.

12 Q. Was it considered attempting to identify a comparator?

13 And he says, "I don't believe so". So it would appear

14 that they did not attempt to identify a comparator or

15 have that as part --

16 A. Yes, I could accept that.

17 Q. You could accept that?

18 A. Yes.

19 Q. But is your clear recollection that you did raise the

20 question?

21 A. It was raised, yes.

22 Q. By you, right. Can I move on to ask you some final

23 questions about Article 14. We have spoken about issues

24 to do with Article 2 and the five procedural

25 obligations. You will no doubt also have been aware of

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1 about obligations under Article 14 in relation to
2 requiring all of the rights and freedoms set out in the
3 Human Rights Act to be protected and applied without
4 discrimination?

5 A. Mm-hmm.

6 Q. Were you satisfied, when you were Commissioner, that
7 your investigators were aware their obligations under
8 Article 14? We have looked at documents but they all
9 refer to Article 2 and I have asked them about that.
10 Were you satisfied your investigators knew about
11 obligations in relation to Article 14?

12 A. No, I couldn't say that they were.

13 Q. You couldn't say. Do you accept that PIRC had
14 an obligation under Article 2 to conduct an effective
15 investigation, independent -- I think you already
16 accepted that yesterday?

17 A. Yes.

18 Q. Do you accept that that obligation in carrying out
19 an independent, effective investigation should be
20 discharged without discrimination in itself?

21 A. Yes.

22 Q. It may be the case that we will hear further submissions
23 or evidence about this, that where there is
24 a submission -- a suspicion that racial attitudes
25 induced a violent act, it is particularly important that

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1 the official investigation is pursued with vigour and
2 impartiality, and having regard to reassert continuously
3 society's condemnation of racism and ethnic hatred, and
4 to maintain the confidence of minorities in the ability
5 of the authorities to protect them from the threat of
6 racist violence.

7 Is there anything I have just said that you would
8 disagree with?

9 A. No.

10 Q. So there are these positive obligations on PIRC in terms
11 of the articles under the Human Rights Convention?

12 A. Yes.

13 Q. If we later hear that when investigating violent
14 incidents, and in particular deaths at the hand of the
15 state, such as police officers, state authorities have
16 the additional duty to take all reasonable steps to
17 unmask any racist motive and to establish whether or not
18 ethnic hatred or prejudice may have played a role in the
19 events, do you disagree with anything I have said there?

20 A. No.

21 Q. So do you accept that PIRC had a duty to take all
22 reasonable steps to unmask any racist motive that may
23 have been underlying the death of Mr Bayoh?

24 A. Yes.

25 Q. Do you agree that failing to do so and treating racially

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1 induced violence and brutality on an equal footing with
2 cases that have no racist overtones would be to turn
3 a blind-eye to the specific nature of acts that are
4 particularly disruptive of fundamental rights, such as
5 racism? Do you agree with -- accept that?

6 A. Yes.

7 Q. Do you accept that PIRC would have had to do what is
8 reasonable in the circumstances to collect and secure
9 evidence, explore all practical means of discovering the
10 truth, and deliver fully reasoned impartial and
11 objective decisions without omitting suspicious facts
12 that may be indicative of a racially induced violence?
13 Do you accept that?

14 A. Yes, yes.

15 Q. We have heard evidence that the interim report was sent
16 to Crown in August of 2015. We have discussed that
17 briefly ourselves. I think I indicated to you that the
18 pdf is 351 pages long. There are multiple references in
19 the interim report to "a black male", "black-coloured"
20 and "a black guy". There is references to statements
21 that were given and references to Mr Bayoh being black.

22 A. Yes.

23 Q. There are two references to the UK terror threat level
24 and five to an increased terrorist risk, terrorist plot,
25 or terrorist situation. In the entire interim report

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1 there is absolutely no mention of the words race,
2 racism, racist, racial discrimination, and no part of
3 the interim report at all covers race or discrimination
4 of any kind, not even to address it and exclude it. It
5 is not mentioned.

6 Considering the obligations that you, as
7 Commissioner had under Article 2 and Article 14, looking
8 back and taking what I have said about the interim
9 report, do you feel satisfied that the obligations on
10 PIRC under Article 2 and Article 14 were complied with
11 by PIRC, having failed to make any mention of race
12 whatsoever in the interim report?

13 A. I think the report that was produced was in compliance
14 with the terms of reference given, potentially, rather
15 than those articles.

16 Q. Am I to take it from that that perhaps you are not
17 satisfied that it complied with Article 2 and
18 Article 14?

19 A. I would suggest that it did comply with Article 2.

20 Q. Article 14?

21 A. Perhaps I am less satisfied on that.

22 Q. So if PIRC had properly taken cognisance of race, or had
23 truly considered whether Mr Bayoh was treated
24 differently because he was black and not white --

25 A. Yes.

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1 Q. -- are you satisfied that the interim report could have
2 complied with Articles 2 or 14, or would you like to
3 explain how his race could have been entirely left out
4 of that report?

5 A. I consider that further work could have been undertaken.

6 Q. Looking back now, if, as Commissioner -- if you were
7 Commissioner today and that investigation was ongoing
8 today, would you expect now that race would be
9 specifically addressed in that report?

10 A. I am satisfied it would.

11 Q. You are satisfied it would. Is that what you would have
12 endeavoured to do, if you were doing an interim report
13 today?

14 A. Yes. And had I known how long it would have sat with
15 Crown Office, if I had realised that there was
16 an additional 26 or 28 months available for any
17 investigation to be undertaken, I think every aspect
18 would have been fully explored.

19 Q. Did you feel you could not explore race after 3 May
20 because of time restrictions?

21 A. No, I am not saying that. I am saying that there have
22 been -- most likely to have been almost a perfect report
23 that had covered all aspects if an additional two and
24 a bit years had been provided.

25 Q. So do you consider your final report to be a perfect

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1 report?

2 A. I think there are gaps that could have been addressed.

3 Q. Even with the final report?

4 A. Yes.

5 MS GRAHAME: Could you give me a moment, please. (Pause).

6 Thank you very much. That concludes my questions.

7 LORD BRACADALE: Thank you. Are there any Rule 9

8 applications. Ms Mitchell and the Dean.

9 Ms Frame, would you withdraw to the witness room
10 please for a moment.

11 (The witness withdrew)

12 LORD BRACADALE: Ms Mitchell.

13 Rule 9 application by MS MITCHELL

14 MS MITCHELL: There are three issues. The first issue
15 relates broadly to something that my learned friend
16 ended up on, which was the PIRC report and the question
17 of race.

18 The witness, in her evidence yesterday at page 154,
19 lines 9 to 15, accepted that the use of terminology such
20 as "coloured" or linking the fact he was black with
21 terrorism were issues which related potentially to race.
22 But in a conversation with Mr Mitchell she said a view
23 was taken that these were misconduct matters.

24 Now, this Inquiry has of course the PIRC report
25 before it, and it knows in PIRC report volume 3 at

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1 part 15 there isn't anything about race and language
2 used, ie expressions such as "coloured" or "boy",
3 et cetera, and there is no linking, even potentially, of
4 race and terrorism in the report to the Crown.

5 So the question first of all is simply because it's
6 a misconduct matter doesn't exclude it from a PIRC
7 report, and ask the witness whether or not she would
8 accept that. And then to ask the witness given her
9 evidence and about the potential in relation to race,
10 why these matters weren't contained within the report.

11 The second matter -- issue relates to take of
12 statements, and they relate to two documents which were
13 disclosed yesterday. The first of these documents is
14 COPFS 03679. This is a letter from Mr Lewis to
15 Mr Farrell at Crown Office -- oh, sorry no, that first
16 document isn't, that is a letter -- that is a different
17 letter about the written documents. What is clear from
18 this document is that there are handwritten documents in
19 respect of police evidence. Those handwritten documents
20 are then transcribed and they haven't been transcribed
21 correctly. And it flags up several issues with that.
22 And that is a statement in relation to Ashley Wise, one
23 of the most important eyewitnesses to events.

24 I wonder if the document could be put up on screen.

25 LORD BRACADALE: Sorry, I didn't really understand that at

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1 all Ms Mitchell.

2 MS MITCHELL: Yes. So I think I have a copy of the document
3 if that assists. If we could see -- this is a letter
4 from Les Brown to Mr McGowan, and it's about the typed
5 statements for Ashley Wise. The Crown, unlike the
6 Inquiry, has a copy of a handwritten version, and a task
7 was completed where the handwritten version was compared
8 with the version that was typed up. And even after it
9 was spotted that a paragraph had been left out,
10 an assurance is given that things were now well.

11 As we can see as we scroll down, they are not. If
12 we could scroll down. Mr Alasdair MacLeod writes to
13 Les Brown, and if we can continue down, the paragraph
14 which is left out is identified there. If we continue
15 down further, it says:

16 "I have checked the whole statement and worryingly
17 there are a number of differences. The vast majority
18 are typos but there are a couple of omissions which
19 although perhaps not material are very concerning.
20 I think we can be pretty sure PIRC have not proof-read
21 the statements once they have been typed up. I don't
22 think we can rely on PIRC's letter of 26 October where
23 they say they have checked all the statements and they
24 are in order given they have not even picked up on the
25 mistakes highlighted in this statement when we

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1 highlighted it to them."

2 What they ask to do is for copies of the manuscript
3 statements to compare against the typed copy, and ask
4 PIRC to do it. If we can just scroll down we might see
5 some of the differences involved. Some of them aren't
6 major, but some of them are. For example, I draw the
7 Inquiry's attention to paragraph 4, line 3, the phrase:

8 "'The lights were on' is not on manuscript
9 statement."

10 But it turns up in the typed statement twice. And
11 as we go on there are just various differences. What
12 I would like to ask Kate Frame about this was: was she
13 aware of these problems of the differences between typed
14 up statements and handwritten statements? Did she
15 instruct Mr McSporran and Mr Mitchell to review them?
16 Because, as we will come on to see in the next document,
17 it appears -- this is another document disclosed
18 today -- it appears that the Crown don't think that that
19 job was done when they were given an assurance it had
20 been.

21 So that is the first document I would like to put to
22 the witness, to let her see the difficulties. I would
23 also like to ask about typed up statements. Are typed
24 up statements to be retained? Where are they to be
25 retained, if so, and can PIRC supply them if we don't

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1 have them?

2 Then the next document, COPFS 02126A. If we can
3 bring that up, please. As we see this is from
4 Alasdair MacLeod to Justin Farrell, both of CAAPD. This
5 is to highlight the work done by Crown Office in
6 relation to investigating the death of Sheku Bayoh. The
7 Inquiry heard earlier on, just as Ms Frame ended her
8 evidence, that she expressed the view that the Crown
9 Office had taken some time in order to complete the
10 enquiries after the document had been sent to them.

11 If I can ask you to scroll down, this -- if we go
12 from "Background" to the actual enquiries there is
13 a heading further down. I am sorry, I don't have a page
14 number for that, but if we keep going down. If we keep
15 going down to the next heading, "Crown investigation".

16 In this part of this document there are six issues
17 that the Crown say that hadn't been carried out by PIRC
18 which were important to the investigation. I can take
19 the Inquiry to each of them, the Inquiry might want to
20 read this paper apart, but they are whether or not
21 a comparator has been done with the information given by
22 police officers to the information on the Airwaves, and
23 that doesn't appear to have been done by PIRC.
24 Assurances given by PIRC that statements were now
25 correct, which contained errors was wrong. That

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1 the PIRC timeline that they identified contained
2 inaccuracies and had to be redone --

3 LORD BRACADALE: Sorry, Ms Mitchell, I am not seeing this on
4 the screen.

5 MS MITCHELL: Sorry, if we scroll down I was just going to
6 enumerate them so my Lord could read this. But if we
7 scroll down. Here, "Statements", if you stop there:

8 "PIRC submitted almost 400 witness statements to the
9 Crown which were reviewed by the precognoscers."

10 And they identify that what happened was that they
11 did cross-reference this:

12 "All the statements obtained from the material
13 officers were also examined and compared to transcripts
14 of Airwave messages. This was to establish if there had
15 been any deliberate attempt to mislead PIRC
16 investigators about what they knew about the incident at
17 a certain time eg whilst en route to Hayfield Road,
18 perhaps with a view to justifying the level of force
19 later used. An example where an officer might have
20 appeared to be misleading PIRC was found within
21 PC Walker's statement~..."

22 And then it goes on to identify that:

23 "... PC Walker said he was made aware by an Airwave
24 message that 'the weapon had been described as a sword
25 and the male appeared to be under the influence of

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1 a substance and attacking passing cars'."

2 But then of course what happened was a check was
3 done of the Airwaves to see whether or not that had been
4 the case and it wasn't. The paragraph continues:

5 "PIRC had not compared the material officers'
6 statements with the Airwave transcripts and it was one
7 of the necessary steps taken by the team to establish
8 whether or not any of the material officers had
9 attempted to pervert the course of justice."

10 If we continue on down:

11 "Accuracy of statements.

12 "During the precognition process ... an issue was
13 identified in relation to the accuracy of the statements
14 submitted by PIRC. This came to light during the
15 precognition of Ashley Wise. At page 60 of volume 1 of
16 the PIRC report Wise was attributed as stating 'The
17 deceased was lying on his back and that it looked like
18 one of the police officers was using a baton on the
19 deceased's upper chest, towards his throat, to hold him
20 down'. Wise provided PIRC with two statements neither
21 of which contained the above information. Enquiries
22 with PIRC confirmed that the original version and CLUE 2
23 version both contained the reference but the paragraph
24 had been omitted in error when the statement had been
25 copied as it fell between two pages.

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1 "On 24 October 2016 PIRC were asked to provide
2 an assurance that all statements submitted to the Crown
3 had been checked~..."

4 So that there were -- to see that there were no
5 similar omissions:

6 "On 26 October ... Mr McSporran of PIRC confirmed
7 all statements had been checked and were in order.

8 "At the beginning of 2017 there was further concern
9 that PIRC had not proof-read the statements despite
10 Mr McSporran's earlier assurances. This followed
11 comparisons of Wise manuscript statement and typed
12 statement which revealed a number of typos and
13 inaccuracies between the two."

14 So they see that there is further work that had to
15 be done and it doesn't appear that PIRC had done the
16 work that they said they had.

17 If we go down to the paragraph starting "On
18 28 April":

19 "On 28 April ... the Commissioner advised the Crown
20 by letter that a manual check of all the remaining
21 statements had been completed with each statement having
22 been proof read and compared against the original
23 handwritten version for accuracy. It is now clear the
24 statement checking exercise had not been completed at
25 the time of the Commissioner's letter."

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1 It appears that that wasn't done until a later date,
2 as the paragraph goes on:

3 "The initial failure to provide accurate statements
4 caused significant extra work to be carried out by the
5 precognoscers."

6 And as we can see the amended statement is required
7 to be sent to all the expert witnesses. So it is to ask
8 her about those particular matters.

9 If we scroll down past the rib fracture to, "CCTV
10 and timeline". We see here the CCTV and timeline, at
11 the bottom paragraph of that:

12 "It was analysed alongside a timeline produced by
13 PIRC which was found to contain inaccuracies.

14 "Although the footage is of poor quality, by
15 contrasting with the accounts of material witnesses,
16 Airwave messages, and calls to Police Scotland the
17 precognoscers were able to produce a detailed timeline
18 of events for Crown Counsel. The timeline allowed the
19 precognoscers to pinpoint with confidence important
20 markers in the incident such as the arrival times of
21 police vehicles, the duration of the restraint process
22 and the moment officers realised the deceased was in
23 medical difficulty."

24 Again, it was to put to her if she knew that hadn't
25 been done, whether or not that should have been done.

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1 Then, if we go on to the precognition, we see
2 a question as to -- in the second paragraph:

3 "Consideration was given to whether the Crown could
4 simply rely on the statements obtained by PIRC but this
5 was not considered appropriate given the nature of the
6 decision Crown counsel was being asked to make."

7 And it was again to ask her if she knew that
8 Crown counsel and the Crown were not simply going to
9 rely on the statements that were given to them by PIRC.

10 Finally, if we scroll down slightly further, we will
11 see that the statements -- there is complaints about
12 statements taken by Sean Mullen -- sorry, in respect of
13 Sean Mullen and Danny Robinson and:

14 "Although PIRC made reference in their report to
15 Sean Mullen and his passenger Danny Robinson it is
16 respectfully submitted they did not fully recognise
17 their significance. Both PIRC statements were
18 relatively short and did not reflect the time they were
19 at the locus."

20 I will not go into that in detail but it is just
21 another example of the difficulties that the Crown had
22 in respect of these statements.

23 What I want to put to her is whether or not she was
24 made aware by the Crown of these difficulties with the
25 PIRC investigation and if so what did she do about it.

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1 And the final matter that I would like to ask this
2 witness about is in relation to another document
3 disclosed -- that was disclosed today, and that is
4 SPF 00172. This is a letter dated 17 May 2017. It is
5 from Calum Steele on behalf of the Federation to
6 Ms Kate Frame, and if we scroll down to page 3 of that
7 document, just the very top paragraph, if we stop there.
8 That is fine. These are bullet points which are being
9 set out by Mr Steele. He states:

10 "PIRC declined an invitation to speak to
11 an investigator appointed by the officer's legal
12 representative in order that relevant information,
13 including that of numerous witnesses the PIRC
14 investigation did not identify, could be shared."

15 The questions around exploring that was how did
16 Scottish Police Federation know what statements had been
17 taken and hadn't been taken. And also what, if
18 anything, was done in respect of following up this
19 matter where there is an allegation that statements
20 hadn't been taken of relevant people. And secondly, it
21 says:

22 "PIRC appeared to have no interest in investigating
23 the FULL~..."

24 As they describe it in capitals:

25 "... circumstances of the events leading up to the

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1 death of Mr Bayoh and in particular the actions of and
2 information known by Collette Bell and Zahid Saeed."

3 Again, the question would be: did you have any
4 understanding or did you know how SPF would have known
5 what the PIRC were doing in relation to these witnesses?

6 Those are my questions.

7 LORD BRACADALE: Thank you. If you go back to your seat and
8 if the Dean could come forward.

9 Rule 9 application by THE DEAN OF FACULTY

10 THE DEAN OF FACULTY: My Lord, two issues from me. The
11 first is that yesterday in the course of questioning the
12 witness was asked to comment on, in particular -- this
13 is page 98, lines 13 to 20 -- what her views were in
14 relation to use of force against a particular
15 hypothesis, being that the officers, including
16 Craig Walker, got out of the vehicle and went straight
17 using CS and PAVA spray apparently without warnings. It
18 will be my submission that that is not -- or at least
19 not necessarily an accurate reflection of what happened,
20 and I would like to put the alternative hypothesis to
21 this witness for the same comment that she was invited
22 to make yesterday.

23 The second issue, my Lord, relates to the question
24 of the Federation statements to the media and the PIRC
25 response to that. The witness has today been critical

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1 of the Federation with regard to the making of the
2 statements over and above that which was said in the
3 witness statement and I would like to clarify that with
4 her, in particular with reference to PIRC's own response
5 to what had been said and to take up with her the
6 suggestion that stereotypes were resorted to in the
7 Federation's statement.

8 LORD BRACADALE: Thank you. I will rise to consider these
9 submissions.

10 (2.51 pm)

11 (A short break)

12 (3.31 pm)

13 Ruling

14 LORD BRACADALE: In relation to the Dean's two lines of
15 questioning, I shall allow each of these.

16 In relation to Ms Mitchell's first issue in relation
17 to the PIRC report and race, I shall allow that line of
18 questioning. In relation to her third issue, that is in
19 relation to a letter from Calum Steele to Kate Frame,
20 I consider that touches upon a matter which is the
21 subject of a separate application and I shall refuse
22 permission for questioning on it at this stage.

23 The matter that Ms Mitchell raises in her second
24 issue in relation to a number of matters arising from
25 documents from the Crown which have really only been

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1 just disclosed, I consider that this raises a matter
2 which does require to be explored. Counsel to the
3 Inquiry have not had an opportunity of studying these
4 documents. Ms Frame is travelling abroad tomorrow
5 morning. What I propose to do then in relation to that
6 is not to permit questioning of Ms Frame on that today,
7 but that counsel to the Inquiry should explore these
8 issues with Mr Mitchell, with the possibility of
9 a further Rule 9 application in relation to that with
10 Mr Mitchell. The matter -- these issues of course will
11 be canvassed with the Crown in the next hearing, and
12 they can be revisited with Ms Frame in one way or
13 another in due course.

14 So what we shall have this afternoon is Ms Mitchell
15 on her first issue, and the Dean on both his issues. So
16 can we have the witness back, please.

17 (The witness returned to the stand)

18 LORD BRACADALE: Ms Frame, Ms Mitchell KC, who represents
19 the families of Sheku Bayoh, has some questions for you.

20 Questions from MS MITCHELL

21 MS MITCHELL: Yesterday you gave evidence to the Inquiry in
22 relation to references to language about the term
23 "coloured" and about linking the fact that Mr Bayoh was
24 black with terrorism, and you confirmed to this Inquiry
25 that you thought that those were issues emerging which

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1 related potentially to race. Do you recall saying that?

2 A. Yes.

3 Q. You said on raising them -- and you raised them,
4 we understand, with Mr Mitchell -- a view was taken that
5 these were misconduct matters. Was the view taken by
6 both you and Mr Mitchell that it was better placed as
7 misconduct matters?

8 A. I had reservations about that, but respected
9 Mr Mitchell's view of -- from the police perspective,
10 and the view -- our final view, both views, would be
11 that it was to be submitted to Crown Office and if they
12 took the view that there should be further exploration
13 it could be referred back. But that was in recognition
14 also of the fact that the statements had already been
15 with Crown Office for I think a year.

16 Q. Can you tell the Inquiry what your reservations were?

17 A. My original reservations were that they should be --
18 have been explored.

19 Q. Why simply did you defer to Mr Mitchell on that point?

20 A. I respected his insight into the misconduct -- his view
21 of the misconduct, and what that amounted to.

22 Q. You were the Commissioner and you had been asked by the
23 Crown to examine if race was a factor in the death of
24 Mr Bayoh.

25 A. Yes.

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- 1 Q. So that was an issue that you were to consider.
- 2 A. Yes.
- 3 Q. And you have considerable experience yourself in
4 relation to evidence, as a lawyer, and in relation to
5 whether or not you could assess if that might be
6 a factor. Did you not consider thinking of your own
7 views having any degree of priority in something like
8 that, given the terms that you had been asked to
9 investigate?
- 10 A. I only realised that on exploring the final report, and
11 at that stage raised it.
- 12 Q. What do you mean "on exploring the final report",
13 because that was a matter I was about to come on to.
- 14 A. Right, okay, when the final report was submitted, having
15 been through the quality assurance process, it was
16 forwarded to me and at that point I went back to
17 Mr Mitchell and queried whether there had been any
18 exploration of this.
- 19 Q. So can I just check, that is at a time before the final
20 report was sent to Crown Office?
- 21 A. It was literally as the final report had been prepared.
- 22 Q. Knowing what you did about the fact that the terminology
23 had been used which could be considered race-related,
24 the fact that he was a black man being linked with
25 terrorism, why didn't you say: stop, why isn't this in

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1 the report; why isn't this in the report about race?

2 A. That was my query.

3 Q. How was that followed up?

4 A. Well, we discussed it and his view was that it was to be
5 treated as misconduct.

6 Q. Why isn't it both? Why could you not include it in
7 a report where you have been asked to examine if race
8 was a factor, and also used as something to flag up in
9 the PIRC report under the issue of race?

10 A. That is something that could potentially have been done,
11 yes.

12 Q. Thinking about it now, is that something that should
13 have been done?

14 A. I agree there should have been further exploration of
15 that.

16 Q. Because what we know from the PIRC report, we have
17 received the three parts of it, and at part 15 there is
18 nothing about the issue of possible racist language, and
19 there is nothing about exploring the issue of linking
20 race and terrorism.

21 A. The question of terrorism was ... well, yes, okay, it
22 was ... it was discounted by -- well, I was told by
23 Mrs Scullion that having told me that there was this
24 terrorist thought, that within minutes she said "but it
25 isn't", or words to that effect. So it seemed to have

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1 disappeared from being part of the equation. But I take
2 your point in relation to the connection being made.

3 Q. Yes, it's not a matter of whether or not it was explored
4 that there was an issue of terrorism; there was, from
5 the very outset, no consideration that this was
6 a terrorist issue in any real sense?

7 A. Yes.

8 Q. The question is that when you have been asked to examine
9 as Commissioner if race was a factor in the death of
10 Mr Bayoh, and you have evidence that witnesses are
11 linking the colour of someone's skin with terrorism, why
12 you didn't see this must be explored, and it must be
13 flagged up in a report to Crown Office under the heading
14 of race?

15 A. Well, I had expected that to be done after the receipt
16 of the witness statements.

17 Q. Why didn't you then, when the -- before the report went
18 to Crown Office say: we must stop, and we must put those
19 in because they are important things?

20 A. Because at that time there was the expectation that it
21 was being delivered to Crown Office. This had been held
22 up, there was considerable pressure being placed to get
23 that to Crown Office, and that precisely -- I think
24 I said earlier today, had I thought that it would have
25 been acceptable for there to be another 22 months tabbed

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1 on, that would have been something that I would have
2 certainly ...

3 Q. But surely, with respect, Ms Frame, we shouldn't hear
4 that speed sacrificed content?

5 A. I agree.

6 Q. So do you accept that you should have taken the time to
7 include those issues in relation to race in the PIRC
8 report under the heading of race?

9 A. I think they should have been further explored.

10 Q. And put in -- flagged up in the report?

11 A. And in the report they had been flagged up because those
12 statements had already been submitted to Crown Office.

13 Q. Yes, but in the report itself dealing with the issue of
14 race they hadn't been flagged up?

15 A. That is right.

16 Q. I am asking whether or not you now accept that they
17 should have been?

18 A. I think they should have been, yes.

19 MS MITCHELL: No further questions.

20 LORD BRACADALE: Thank you. If the Dean would come forward.

21 Ms Frame, the Dean of Faculty represents the
22 Scottish Police Federation and certain of the attending
23 officers. He has lines of questioning for you.

24 Questions from THE DEAN OF FACULTY

25 THE DEAN OF FACULTY: Good afternoon Ms Frame.

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- 1 A. Good afternoon.
- 2 Q. There are two issues I want to explore with you please,
3 the first relates to questions that you were asked
4 yesterday about the use of force by the attending
5 officers. And you may recall that the hypothesis was
6 put to you that the first two officers had gone straight
7 to using CS and PAVA, apparently without warnings; do
8 you remember that?
- 9 A. Yes, I do.
- 10 Q. And you were asked for your view in relation to that.
11 Now, you weren't an investigator in this matter, were
12 you?
- 13 A. No, I wasn't.
- 14 Q. You weren't immersed in the detail in the same way as
15 your investigators such as SI Little were?
- 16 A. No.
- 17 Q. Those investigators would have had to look at all of the
18 information available to them at any given point of
19 time; is that right?
- 20 A. That is correct.
- 21 Q. And in this, as in much in the law, context is
22 everything?
- 23 A. Yes, I accept that.
- 24 Q. Do you agree with me that there is a danger in asking
25 you to comment on matters in summary detail now when the

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1 PIRC investigators, very senior investigators, had the
2 whole picture before them?

3 A. Yes, and I considered that at the time.

4 Q. Now, on this scenario of the officers getting out of the
5 vehicle and going straight to the use of incapacitant
6 sprays, if his Lordship were to find that in fact the
7 position was rather different, where we have got reports
8 of Mr Bayoh attacking vehicles with a knife, the
9 possibility of a knife remaining on his person but
10 concealed, training to the officers that they must
11 assume he is still in possession of a knife until it is
12 demonstrated otherwise, officers giving lawful commands
13 to stop and get on the ground, those commands being
14 ignored and Mr Bayoh continuing to advance on the
15 officers; if that is what is found, all of that would be
16 highly relevant to the investigators in their
17 consideration of matters, wouldn't it?

18 A. Yes. Absolutely.

19 Q. As discussed with Ms Grahame in questioning, you
20 yourself drew a distinction between the initial use of
21 incapacitant sprays and the subsequent restraint of
22 Mr Bayoh; those are two separate matters, aren't they?

23 A. Yes.

24 Q. And the investigators would have wanted to know the full
25 picture as to why the restraint was effected?

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- 1 A. Yes.
- 2 Q. And highly relevant in that consideration would have
3 been information to the effect that Mr Bayoh had punched
4 a female officer to the ground?
- 5 A. Yes.
- 6 Q. Also relevant would have been information to the effect
7 that thereafter he had stamped on her?
- 8 A. Yes.
- 9 Q. All of that is material you would expect the
10 investigators to take into account?
- 11 A. Yes, and I understand they did.
- 12 Q. Yes, indeed. These are, in your view, dedicated
13 professional investigators?
- 14 A. Yes, they are seasoned investigators.
- 15 Q. And there is nothing to suggest to you that they didn't
16 take such matters into account; indeed, as you have just
17 told us, as you understand it they did?
- 18 A. Yes.
- 19 Q. Thank you. The second question relates to your comments
20 on the Federation statements, the media statements?
- 21 A. Yes.
- 22 Q. Again, do you agree with me that context is important?
- 23 A. Yes.
- 24 Q. The Federation is there to represent police officers; is
25 that right?

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- 1 A. I recognise that.
- 2 Q. You have not been a police officer but you will be
3 familiar with the responsibilities of the
4 Police Federation?
- 5 A. Yes.
- 6 Q. Thinking back to when this was happening in 2015, there
7 was a somewhat febrile environment in the media about
8 all of this, was there not?
- 9 A. It was exceptionally highly charged.
- 10 Q. The Federation wasn't just coming out with statements
11 off its own bat; it was reacting, was it not?
- 12 A. I can't remember the sequence.
- 13 Q. If his Lordship finds that statements were being made on
14 behalf of the family, for example, through their
15 solicitor, for understandable reasons, but if he finds
16 that that was happening, does that accord with your
17 recollection that the family were being critical of the
18 police and demanding that the police be held to account?
- 19 A. I recall there were critical comments, I can't tell you
20 in what sequence they appeared.
- 21 Q. Does it also accord with your recollection that the
22 family were calling for the officers to be suspended
23 pending the investigation?
- 24 A. I recall that.
- 25 Q. It may be his Lordship may find that these statements

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- 1 were made in response to those demands and if he does
2 find that, that is the sort of thing you would expect
3 the Federation to be doing, isn't it, defending their
4 officers?
- 5 A. I would expect them to be representing their officers.
6 I would not be expecting them to be promoting evidential
7 matters.
- 8 Q. So you would be critical of any public statement being
9 made in this context?
- 10 A. I would be critical of salient evidence being shared
11 publicly, particularly when the officers themselves
12 hadn't provided statements to the investigating body.
- 13 Q. You see the difficulty I have with that, Ms Frame, is
14 that PIRC responded to what the Federation was saying,
15 yes?
- 16 A. Yes, and it didn't provide anything of an evidential
17 nature.
- 18 Q. Well, it contradicted what the Federation was saying?
- 19 A. It contradicted to the extent that it said that attempts
20 had been made.
- 21 Q. If your criticism is that the Federation said X, why are
22 you not equally criticise -- why are you not equally
23 critical of the fact that PIRC went to the media and
24 said: it is not X, it's Y?
- 25 A. I think I explained that this morning, that the

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1 Federation had come out with that version, the family
2 were actually questioning the fact that those statements
3 had been previously requested and the PIRC was actually
4 caught in the middle of what was, in my view,
5 an inaccurate statement by the Federation.

6 Q. There is a distinction, isn't there, between the
7 Federation and the PIRC. The Federation is there as
8 a representative body, it has no obligation to be
9 independent; is that right?

10 A. Well, I don't -- yes, I would presume so, I don't know
11 that.

12 Q. Whereas the PIRC -- you, as we have understood, the
13 Commissioner, not the Commission --

14 A. Yes.

15 Q. -- the independent review Commissioner, you have
16 an obligation to be independent?

17 A. And also to secure public confidence.

18 Q. But in that context is it not rather odd to find that
19 you are critical of a representative body of officers
20 who have been attacked in the media, defending them in
21 the media, and yet you are not prepared to entertain any
22 criticism of the independent body that then goes to the
23 same media with public comments?

24 A. Well, if the Federation were providing an accurate
25 reflection of what the PIRC's action was, that would

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- 1 have been fine.
- 2 Q. Okay. If his Lordship were to find that what was being
3 said by the Federation was understood in good faith by
4 them to be accurate, then you would retract that
5 criticism on the basis of what you have just said?
- 6 A. No, I think the criticism was made. It would have been
7 appropriate for the Federation to retract it publicly.
- 8 Q. If the Federation, if those responsible for these
9 statements genuinely believed what they were saying was
10 accurate, then on the basis of what you have just said
11 to us you wouldn't have a criticism. Your concern is
12 they weren't true, but if they were understood to be
13 true you wouldn't have the same criticism?
- 14 A. The difficulty with them not being true was (a) they
15 were undermining public confidence, they were
16 an inaccurate reflection to the family, and the PIRC was
17 in a very awkward position because of those two
18 conflicting positions, and it would have been perhaps
19 slightly more appropriate if the Federation had
20 expressly approached PIRC with an accurate
21 understanding, or in the case that it would appear to be
22 an inaccurate understanding that could have been
23 corrected.
- 24 Q. But that answer again has as its core tenet your belief
25 that what was being said was untrue. So I am asking you

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1 to look at it in a different way. If it was either true
2 or genuinely and in good faith believed to be true, then
3 your criticism doesn't apply? Is that not fair?

4 A. No, my criticism would still stand in relation to
5 the sharing of any information publicly.

6 Q. And the responding to that by PIRC is absolutely fine,
7 is it?

8 A. No, PIRC were not responding to the evidence, they were
9 responding to the comment about not having been
10 approached and giving that implication.

11 Q. We will perhaps leave that there.

12 Just a final point then please, you were critical
13 about stereotyping in the Federation statement on the
14 basis that it indicates that a petite male [sic] was
15 attacked by a large male?

16 A. Yes.

17 Q. Have you met PC Short?

18 A. No, I haven't.

19 Q. She is 5 foot 2. Do you agree with me that's petite?

20 A. It is small.

21 Q. Mr Bayoh was much taller and much heavier, yes, to your
22 understanding?

23 A. Yes, from my recollection of the report, yes.

24 Q. On any view of the evidence, Mr Bayoh ran at PC Short,
25 chased her, struck her to the back of the head and

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1 knocked her to the ground; is that consistent with your
2 understanding?

3 A. Yes.

4 Q. You were critical, saying that was stereotyping the
5 black man as the aggressor. If he did act in that
6 manner: run at PC Short, knock her to the ground, then
7 he was the aggressor, was he not?

8 A. Yes.

9 Q. That is not stereotyping, you agree?

10 A. Yes, I would agree with that.

11 THE DEAN OF FACULTY: Thank you Ms Frame.

12 I am obliged my Lord.

13 LORD BRACADALE: Ms Frame, thank you very much for coming to
14 give evidence to the Inquiry. I am very grateful for
15 the time that you have given. The Inquiry is about to
16 adjourn and you will then be free to go.

17 A. Thank you.

18 LORD BRACADALE: The Inquiry will adjourn.

19 (3.53 pm)

20 (The Inquiry adjourned until 10.00 am on Thursday,

21 7 March 2024)

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