

Transcript of the Sheku Bayoh Inquiry

1 Wednesday, 28 February 2024

2 (10.00 am)

3 (Delay in proceedings)

4 (10.06 am)

5 LORD BRACADALE: Ms McCall, you have a submission? Please
6 come forward.

7 Submissions by MS MCCALL

8 MS MCCALL: Chair, yesterday an ad hoc Rule 9 application
9 was made by Ms Mitchell and it contained multiple
10 proposed lines of questioning. I wish to address you in
11 relation to one of the lines of questioning for which
12 permission was sought.

13 I had sent in advance, Chair, the transcript
14 references, and I hope that you have them.

15 LORD BRACADALE: I have that.

16 MS MCCALL: The application in respect of the specific
17 matter is found in the unrevised transcript which is
18 [draft] Day 84, page 121, line 15 to page 122, line 11.
19 It relates to documents for which PIRC reference numbers
20 were provided.

21 Chair, you refused permission for that line of
22 questioning to be pursued and the refusal is found on
23 [draft] page 124, lines 14 to 16. The permission was
24 refused on the basis that the issue was already

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1 adequately covered in the evidence.

2 Thereafter, at [draft] page 137, from line 11
3 Ms Mitchell began to pursue the line of questioning for
4 which permission had been refused, I have no doubt
5 inadvertently.

6 Chair, this is not an adversarial process where
7 ordinarily parties might make objections and the judge
8 is the referee. It being an inquisitorial process, it
9 is in my submission a matter for the Chair to control
10 the conduct of proceedings.

11 When the prohibited questioning began, sir, you did
12 not intervene. Ms Mitchell continued to ask questions
13 on the matter up to [draft] page 139 at line 14,
14 contrary to the ruling that you had made.

15 The result, Chair, is this: there is now material in
16 the public record of the Inquiry which was adduced
17 contrary to a ruling made by as Chair of the Inquiry.
18 Sir, the issue is one of principle. A legal ruling was
19 made and not complied with. My submission therefore is
20 that you should rule that the evidence is not properly
21 before the Inquiry and will not be considered in your
22 final determination.

23 If that submission is upheld by you, then my
24 supplementary motion is that steps be taken to redact

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1 relevant passages from the published transcript and the
2 video recording.

3 That is my submission.

4 LORD BRACADALE: Thank you. I shall reflect on that
5 submission. In the meantime I have arranged for the
6 transcript and the video recording of yesterday
7 afternoon to be removed from the website.

8 MS MCCALL: I am obliged.

9 LORD BRACADALE: Thank you. Ms Mitchell, I don't think you
10 need to address me, do you?

11 Very well. I shall hear from you.

12 Submissions by MS MITCHELL

13 MS MITCHELL: Most importantly I want to tender my apology
14 for having asked a question for which a refusal was
15 given. And I think as my learned friend indicated in
16 her submission, she doesn't seem to suggest that it was
17 on purpose and of course I would like to assure the
18 Inquiry of that. It was simply because I was scrolling
19 down a long list of questions that I was being allowed
20 to ask and not being allowed to ask and trying to --

21 LORD BRACADALE: I accept that Ms Mitchell.

22 MS MITCHELL: I am obliged.

23 The second thing I would suppose I would say,
24 my Lord, is the evidence which was adduced as a result

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1 of that question, which this Inquiry heard, was as
2 a result of an error in respect of the ruling on
3 questions to be asked. The reason for the ruling was
4 that you said the evidence could be adduced elsewhere,
5 and indeed of course it had been adduced that those
6 things had been said in the statements.

7 However, you will remember what this witness said
8 yesterday, when I mentioned the issue of the statements.
9 He said, "I know what you are going to say", and he
10 said, "It's about the word 'coloured'", and for the
11 first time in this Inquiry members of the PIRC
12 apologised for failing to identify a comment which was
13 offensive and racist and ought to have been flagged up.

14 I would respectfully submit that albeit from my
15 genuine error, that evidence was adduced, it is
16 an additional piece of evidence that I would
17 respectfully submit would be important for the Inquiry
18 to consider, because it has importance, it has merit,
19 and it has weight. Whilst it came out in circumstances
20 which are unfortunate, I would respectfully submit that
21 it would be more unfortunate if this Inquiry were to
22 take the view that what the Inquiry may come to see as
23 a genuine and heartfelt apology, that is a matter for
24 the Inquiry, would be removed from public knowledge in

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1 these circumstances.

2 LORD BRACADALE: Thank you.

3 MS MITCHELL: I am obliged.

4 LORD BRACADALE: Could we have the witness now, please.

5 MR JOHN MITCHELL (called)

6 LORD BRACADALE: Good morning Mr Mitchell.

7 A. Good morning, my Lord.

8 LORD BRACADALE: Will you take the oath. Just remain

9 seated.

10 MR JOHN MITCHELL (sworn)

11 LORD BRACADALE: Ms Grahame.

12 Questions from MS GRAHAME

13 MS GRAHAME: Thank you. Good morning Mr Mitchell.

14 A. Good morning Ms Grahame.

15 Q. You are John Mitchell?

16 A. I am, yes.

17 Q. What age are you?

18 A. I am 65 years old.

19 Q. You are currently retired?

20 A. I am retired, yes.

21 Q. You served with Strathclyde Police for 34 years?

22 A. 34 years, yes.

23 Q. And retired from the police in July 2012?

24 A. That is correct, yes.

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1 Q. So that was before they became Police Scotland?

2 A. It was, just in the run up to Police Scotland.

3 Q. I understand the majority of that time you spent in the
4 CID?

5 A. I did, yes.

6 Q. You spent around 25-26 years working on investigations
7 with them?

8 A. That is correct, yes.

9 Q. When you retired, you were a detective
10 chief superintendent in charge of the CID in
11 Strathclyde?

12 A. In charge of criminal operations within Strathclyde,
13 yes.

14 Q. I think we will come on to in a moment your Inquiry
15 statement. I think you detail a number of the areas of
16 work that you undertook during that time with
17 Strathclyde?

18 A. Yes.

19 Q. You then -- could you give me one moment, please
20 Mr Mitchell.

21 I wonder if it would be possible to have a very
22 brief adjournment at the moment?

23 LORD BRACADALE: Very well. Sorry, Mr Mitchell, we are
24 going to have to have a short adjournment.

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1 (10.16 am)

2 (A short break)

3 (10.29 am)

4 LORD BRACADALE: Ms Grahame.

5 MS GRAHAME: Thank you.

6 Mr Mitchell, I think you may have had the
7 opportunity to see occasional bits of evidence from the
8 Inquiry.

9 A. Occasional pieces, yes.

10 Q. So you will probably know there is a blue folder in
11 front of you?

12 A. Yes, indeed.

13 Q. There are hard copies of documents that you may find to
14 be of assistance. Please open it, please look at any of
15 the documents that are in there.

16 A. Thank you.

17 Q. As I go through the questions you will probably be aware
18 that I will ask for statements and documents to be
19 brought up on the screen so everyone can see them, and
20 I will refer to a particular paragraph perhaps. If you
21 wish to follow along on the screen that is fine. If you
22 prefer to have the hard copy in front of you, you have
23 that for your statement.

24 A. Thank you.

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1 Q. You may also have seen occasionally a witness will ask
2 for a particular document or remember something that
3 they have seen in the past. If I can't get that on the
4 screen immediately we will try and get it at the next
5 break.

6 A. I understand.

7 Q. So anything at all that you think might help you, please
8 let us know and we will see what we can do.

9 A. Okay, thank you.

10 Q. Let's look first of all at your Inquiry statement. So
11 this is SBPI 00423 and you will see that coming up on
12 the screen. This is your Inquiry statement,
13 John Mitchell, and it was taken over the course of three
14 days in October last year?

15 A. That is correct, yes.

16 Q. It is 160 pages long, and if we look at the final page,
17 we will see it was signed by you on 15 December 2023?

18 A. That is correct, yes.

19 Q. Your signature is redacted on the hard copy.

20 A. I see that, yes.

21 Q. And you will see you have signed every page.

22 A. Yes, I do see that.

23 Q. If we look at the final paragraph, which is 667, it
24 says:

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1 "I believe the facts stated in this witness
2 statement are true. I understand that this statement
3 may form part of the evidence before the Inquiry and be
4 published on the Inquiry's website."

5 You understood that to be the case when you signed
6 it?

7 A. I did, yes.

8 Q. Thank you. You have given your -- you have done your
9 best to give a true and accurate record of your
10 recollections, although I understand you retired from
11 PIRC in 2018?

12 A. That is correct, in March 2018. Coming up on six years
13 now. Yes, that's correct.

14 Q. Thank you. I would like to begin by asking you
15 questions about the time when you were preparing for
16 PIRC coming into existence, and we have heard evidence
17 that it was created on 1 April 2013?

18 A. That is correct.

19 Q. And as I understand it you were involved prior to that
20 with a view to actually pulling everything together, if
21 I can call it that?

22 A. I was, yes.

23 Q. Thank you. Could we look at paragraph 5 of your Inquiry
24 statement. I think here you set out in some detail your

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1 role and how you became involved you and say here after
2 you retired you were:

3 "... contacted and asked if [you] would be able and
4 willing to assist the Scottish Government in finalising
5 an investigative team, which would be attached to the
6 existing Police Complaints Commissioner for Scotland
7 (PCCS)."

8 Now, as I understand it before April 2013 the body
9 that existed was the Complaints Commission?

10 A. Complaints Commission for Scotland. That is correct,
11 yes.

12 Q. And they dealt with -- they did more case handling, they
13 reviewed things on paper but there wasn't
14 an investigative team attached to that?

15 A. No, that's correct. The review team purely and simply
16 reviewed the manner in which Police Scotland had handled
17 complaints about Police Scotland, and made
18 recommendations around that, my Lord.

19 Q. That was done on paper?

20 A. That was, it was a paper, office-based process.

21 Q. There was a decision made that that would change?

22 A. Yes.

23 Q. And for that purpose they created a new body called
24 PIRC?

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- 1 A. Yes.
- 2 Q. And as part of that new body the paperwork and the
3 complaints handling was still part of it, but in
4 addition they created an investigative team?
- 5 A. That is correct.
- 6 Q. And the team were to do what; what was their new role to
7 be?
- 8 A. In real terms it was to investigate matters relating to
9 the police, serious matters. There were two separate
10 areas of business: those areas which were either
11 referred by the Chief Constable to the Commissioner for
12 consideration of an investigation, or indeed if
13 the Commissioner decided that that it was in the public
14 interest to have an investigation, to conduct that
15 investigation. And then over and above that there was
16 also the provision for the Crown Office to direct
17 the Commissioner to conduct investigations into
18 allegations of criminality about the police or where it
19 was found necessary to investigate the matters
20 surrounding a death in police custody, for example,
21 which would go to a fatal accident inquiry.
- 22 Q. And that new investigative team would involve actual
23 investigators going out, maybe knocking on doors, maybe
24 researching issues regarding forensic matters?

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- 1 A. Absolutely.
- 2 Q. That type of thing?
- 3 A. That was it, it was an investigative role and it did
4 include interviewing members of the public, liaising
5 with, as you quite rightly say, forensic experts
6 for example, and conducting a full investigation into
7 the circumstances and then reporting back to either the
8 Crown in a Crown-directed investigation or the
9 Chief Constable where the Chief Constable had requested
10 that an investigation be conducted.
- 11 Q. Thank you. Without going to paragraph 629 in your
12 statement, you have told us you retired from the police
13 in July 2012. You have said in your statement you were
14 appointed to this role with PIRC in November 2012?
- 15 A. That is correct. 1 November 2012.
- 16 Q. As we have said there was no investigative side at that
17 stage, so were you starting effectively with a blank
18 sheet?
- 19 A. I actually started working along with the Scottish
20 Government Justice Department Police Division at the end
21 of July 2012, to pull together an options paper to
22 describe or to lay out plans as to how I might see
23 an investigation unit working and how the set-up should
24 be.

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- 1 Q. Was that at the end of your time with the police?
- 2 A. Yes, I had retired from the police and gone on a short
3 holiday, and on return from holiday, I was contacted
4 initially by -- it was Mr Iain Livingstone, who at that
5 time formed part of the working group moving towards
6 Police Scotland, and I was introduced to members of
7 Police Division within the Scottish Government, who were
8 chairing the working group in relation to the police
9 investigations and the new Commissioner as it would
10 become.
- 11 Q. So were -- the creation of Police Scotland was also on
12 1 April 2013?
- 13 A. Yes, indeed.
- 14 Q. And work was obviously commencing and being discussed at
15 that stage. Was the establishment of this new body,
16 PIRC, also running in tandem with that?
- 17 A. It was, it was important that such a body was available
18 from 1 April 2013 to take on investigations which
19 hitherto would have been undertaken by the police
20 themselves.
- 21 Q. So in the past the police would have investigated the
22 police?
- 23 A. Yes, it wasn't unusual maybe for the Chief Constable of
24 say the then Dumfries and Galloway force to approach

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1 a Chief Constable in one of the other eight
2 Police Services in Scotland and ask them to conduct
3 an investigation on their behalf.

4 Q. We have heard from other witnesses that developments in
5 relation to human rights and in particular Article 2 --

6 A. Yes, Article 2 and 3 were central to the thought process
7 behind the PIRC investigations unit.

8 Q. Was it appreciated then that independence was something
9 that should be strived to be achieved?

10 A. Yes, absolutely it was, yes.

11 Q. And part of that was establishing PIRC?

12 A. Yes, indeed.

13 Q. We have also heard evidence that the independence of
14 that investigation is very significant to PIRC?

15 A. Yes.

16 Q. Thank you. So on 1 April 2013, when PIRC came into
17 existence, was that also coinciding with the end of the
18 PCCS?

19 A. Yes, that was --

20 Q. That completely came to an end?

21 A. Absolutely, yes.

22 Q. I would like to know about your role. So you have
23 talked about being involved in July 2012, after you had
24 retired. And being spoken to by Iain Livingstone?

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- 1 A. Yes.
- 2 Q. Tell us, did you actually start your role with what was
3 to be PIRC in the November or was there a period
4 during July and November that you were working on this
5 matter?
- 6 A. Between July and November I worked to the Scottish
7 Government -- I suppose technically I was self-employed,
8 I was not a member of the PIRC at that time. That
9 didn't occur until my appointment on 1 November. In the
10 early stages, as I say, I answered directly to
11 Police Division within Scottish Government, and it was
12 to them that I was producing papers and ideas and -- in
13 order to move forward the requirement for
14 an investigative ability by 1 April 2013.
- 15 Q. Did you have a team to help with you that, or was it
16 just you yourself?
- 17 A. Generally it was me myself. There were a couple of
18 police officers from Police Scotland, the Professional
19 Standards Department, who had been seconded to Scottish
20 Government at that time as well, but more generally the
21 responsibility fell to me to pull together
22 an investigative unit.
- 23 Q. So on 1 November 2012 when you started officially with
24 PIRC, although they weren't created until the following

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1 year, tell us about your role from that date.

2 A. Should I go back slightly further than that?

3 Q. If it helps, please do?

4 A. Ultimately in July I met with the Scottish Government.

5 They explained the requirement of an independent body to
6 be up and running by 1 April 2013. I spent the next few
7 months visiting similar bodies in the United Kingdom and
8 in southern Ireland, the Ombudsman for Siochana and the
9 PSNI Ombudsman and the complaints set up in England as
10 well, trying to get an idea of how these organisations
11 were set up and how they worked.

12 I then pulled together, as I say, an options paper
13 which was presented to Scottish Government and was
14 discussed at the steering group meeting. That
15 ultimately was accepted and then interviews took place.
16 I was interviewed along with others for the role of
17 Director of Investigations, and after that was appointed
18 on 1 November. So I then became a member of the PIRC
19 staff at that time, albeit still under the title of the
20 Police Complaints Commission for Scotland because the
21 legislation didn't come into effect until 1 April 2013.

22 Q. And you were appointed as Director of Investigations?

23 A. Yes, that was the decision of the then Commissioner to
24 use that title, yes.

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- 1 Q. When was the actual Commissioner appointed?
- 2 A. The Commissioner at that time was Professor John McNeill
3 and he had been the Commissioner in relation to the
4 police complaints authority and remained in that
5 position up until 2014, I believe. So he was still
6 the Commissioner when it became PIRC on 1 April and
7 continued in that role until 2014, I believe, when he
8 was replaced by Kate Frame.
- 9 Q. We may hear from Kate Frame later that she started
10 in August 2014?
- 11 A. Yes, that would be right.
- 12 Q. That would tie in with what you are saying?
- 13 A. Yes, from memory that would be correct.
- 14 Q. So the Commissioner for the previous body continued --
- 15 A. Yes, he did.
- 16 Q. -- beyond the creation of PIRC?
- 17 A. Yes, indeed.
- 18 Q. And you became Director of Investigation?
- 19 A. I did, yes.
- 20 Q. Was that really the top of the tree in terms of the
21 investigations team?
- 22 A. It was, yes.
- 23 Q. Were you immediately below the Commissioner in terms of
24 seniority?

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1 A. Yes, as far as the investigation side was concerned,
2 I had a similar level of -- in the complaints section
3 there was a gentleman there who ran that side of
4 business, but my role was specifically around
5 investigations and yes, I was the highest level within
6 that investigative role.

7 Q. 1 November 2012 you are in that role. Were any other
8 members of the investigation team in place at that time?

9 A. None. That was when we started the recruitment process.

10 Q. Tell us about that recruitment process.

11 A. The biggest challenge for us at that time was the
12 timeframe. We had between 1 November, with me taking up
13 post, and 1 April the following year to pull together
14 an investigative capacity and capability that would be
15 able to take on the types of investigation that the
16 statutory requirement on the Commissioner outlined.

17 Q. Is that around five months?

18 A. Just around five months, yes. It was tight and a big
19 challenge around it was just understanding how much
20 work -- what the demand profile of the organisation
21 would be. It wasn't sufficient just to count the number
22 of inquiries that had gone in years previous, and even
23 that was difficult because we found that each of the
24 different Police Services counted these things

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1 differently. So there was challenges around that. With
2 support of the Corporate Services Unit that was in PCCS
3 at that time, we then went out and advertised for
4 interested parties to apply for roles as investigators
5 within the organisation.

6 Q. Were you heavily involved with recruiting from
7 1 November?

8 A. Yes. I looked closely at job descriptions et cetera
9 from other like organisations. I identified the types
10 of skills that I believed from my experience that
11 investigators would need, and then again, as I say, with
12 the assistance of Corporate Services within PCCS at that
13 time we advertised in newspapers and outlets where they,
14 Corporate Services, having that experience, believed
15 that we would better reach the type of person,
16 individual, that we were looking for.

17 Q. Was diversity considered at that stage in terms of the
18 recruitment process?

19 A. Not directly, I would say. Not directly. It was more
20 around the experience and -- of the roles that had to be
21 filled, it was more related to that.

22 Q. What were you looking for in terms of experience?

23 A. We needed to recruit people who had undertaken major
24 investigations, to be quite honest with you. There are

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1 certain roles that you just can't do without. So we had
2 to have people who had seen management experience, for
3 example, who were experienced in dealing with witnesses,
4 family liaison-type experience, we needed people who had
5 an understanding of interview techniques, of Scottish
6 criminal law. So ultimately it was investigators who
7 could display a knowledge of and having been involved in
8 investigations which may end up in a Criminal Court, or
9 a review to Police Scotland. So it's people who
10 understood the process.

11 Q. Did you envisage at that stage that effectively the PIRC
12 investigators would to some extent replicate the role of
13 police investigators?

14 A. They had to, simply because of the type of
15 investigation, particularly when it became a Crown
16 directed investigation into whether there had been
17 criminal acts by a police officer or whether there had
18 been a death in police custody, or any death relating to
19 the police for that matter.

20 Q. We have heard that Crown-led investigations can be
21 either (b) (i), which is into criminal conduct or
22 (b) (ii), into the circumstances of a death that may
23 result in --

24 A. Fatal accident --

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- 1 Q. -- a FAI. Is that correct?
- 2 A. Yes, that is correct. Section 33 of the Act.
- 3 Q. So at the very least in relation to Crown-led
4 investigations a (b) (i) would be into criminal --
- 5 A. Yes.
- 6 Q. -- allegations, and so you would want investigators to
7 be able to understand the procedures?
- 8 A. Yes, most certainly --
- 9 Q. You have also mentioned family liaison, crime scene
10 management, interview techniques. These would all be
11 the type of roles that police officers would
12 traditionally be --
- 13 A. They are because more generally it's the only area that
14 these specialities are used.
- 15 Q. What were your views at that stage of the recruitment
16 about the importance of independence?
- 17 A. Again, I looked at the whole matter of independence and
18 how it was described, and the way it was described and
19 I read was that so long as the body conducting the
20 investigation were not hierarchically linked to those
21 being investigated, that appeared to me -- and I sought
22 other advice in relation to that -- to meet the needs
23 generally of independence. So ultimately not to have
24 any serving police officers within the organisation.

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- 1 Q. So when you said "not hierarchically linked", you mean
2 no serving officers?
- 3 A. Not serving officers, no one in the service of or being
4 paid by Police Scotland. Everyone within the
5 investigations unit was employed by PIRC and were under
6 the control of the Commissioner.
- 7 Q. So in terms of balancing the need for people with
8 experience in investigations but not people who are
9 engaged by Police Scotland --
- 10 A. Yes.
- 11 Q. -- as they would become, how did you decide to balance
12 that?
- 13 A. Again, it was through the interview process, so people
14 applied, we considered their application, we considered
15 the amount of experience that they had, we interviewed
16 them and we decided at that stage, with a balance in
17 mind, that -- whether we had identified that the right
18 people. So as a result we did employ initially people
19 with varied backgrounds.
- 20 Q. We may come on to this later but I understand there was
21 a lot of former or retired police officers?
- 22 A. There were, there were.
- 23 Q. And you say there were people were varied backgrounds?
- 24 A. Yes.

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- 1 Q. Tell us about the variety?
- 2 A. We had people from the military; we had a member of
3 staff who had previously worked with The Crown Office
4 Procurator Fiscal Service, and indeed worked within the
5 deaths unit; we had someone from Trading Standards; we
6 had ex-fire investigators; we had border officers; and
7 indeed my deputy came from the Care Inspectorate.
- 8 Q. Who was your deputy?
- 9 A. It was Irene Scullion.
- 10 Q. We have heard Ms Scullion's name, was she Head of
11 Investigations?
- 12 A. She was. As I said, the instigation of the whole
13 process, the Commissioner at that time
14 Professor McNeill, didn't have particularly strong
15 experience of criminal investigations, if at all. It
16 was him who decided that my role would be that of
17 director and initially to support him, greatly through
18 the process because of his lack of a criminal knowledge
19 background. And he then suggested strongly that
20 I should have a deputy to take on the roles below that,
21 but have a controlling hand on the investigations team.
- 22 Q. Can you explain to the Chair the distinction between
23 those roles? You as Director of Investigations at the
24 top of that team, and Irene Scullion as Head of

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1 Investigations.

2 A. I suppose my role was more strategic and in support of
3 the Commissioner at that time. It was more around
4 liaising with other bodies who we would come across. It
5 was to get the message across of who we were and what we
6 did. However, there were occasions that our roles would
7 cross over, there is absolutely no doubt about that.
8 And it was a support function as well because we were
9 going through a new process, there was leave, there was
10 responsibilities, there was meetings, so there was
11 always someone at the appropriate level there to take
12 control if that was necessary.

13 Q. We have heard that there was you as director at the top?

14 A. Yes.

15 Q. Irene Scullion as head --

16 A. Yes.

17 Q. -- below you. There were then senior investigators?

18 A. There were, yes.

19 Q. We have heard the name Richard Casey?

20 A. Richard Casey.

21 Q. And then there were deputy senior investigators?

22 A. There were, yes.

23 Q. And -- sorry, Mr Harrower was a senior investigator
24 I think at one stage?

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1 A. At one stage he was --

2 Q. He became one?

3 A. I think just as I actually retired, prior to that he had

4 been employed as a deputy senior investigator.

5 Q. I think the deputy senior investigators were at that

6 next level and then below that there were investigators?

7 A. General investigators, yes.

8 Q. We've also heard evidence there were roughly around 20

9 in the team?

10 A. That would be correct at the outset.

11 Q. Then you and Irene Scullion, effectively it was 22 in

12 that entire investigations team?

13 A. That would be correct, yes.

14 Q. Looking at the issue of resources, you've talked about

15 doing -- working with the Scottish Government?

16 A. Yes.

17 Q. And doing papers?

18 A. Yes.

19 Q. Working with the working group. You've talked about

20 coming in as director initially, and then Irene Scullion

21 comes in as your deputy effectively?

22 A. Yes.

23 Q. How long did it take you to recruit the remaining

24 members of the team?

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1 A. It took through until nearly the end of January from
2 memory, and even maybe beyond that because we reached
3 a set of circumstances where we believed that we had
4 recruited a team and one or two people then dropped out,
5 and we had to re-recruit. So it would be around about
6 the mid to end of January where we had the bulk of the
7 team in place.

8 Q. In terms of your role, once you had the team in place,
9 what steps did you take in terms of bringing them
10 together, getting them ready to start on 1 April 2013?

11 A. You are right, we did gather them together and at that
12 time we had office premises out in Paisley because even
13 that hadn't been settled by the time January arrived,
14 there was still work ongoing in relation to the business
15 area that we would use, the office space that we would
16 use. So during that time that we had between January
17 and the start of the PIRC on 1 April we got a better
18 understanding of the skills that the individuals had.
19 We sat down and we spoke greatly about the legislation
20 that pulled the PIRC into place. We also talked about
21 the powers that the legislation, both the 2006 Act and
22 the other Acts, gave the investigators, and we tried
23 desktop exercises in relation to responding to
24 incidents, et cetera. So we laid the ground rules of

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- 1 the expectations if the staff were called to incidents.
- 2 Q. I am very interested in the desktop exercises, would you
3 call this part of the training of the team?
- 4 A. Yes, I think -- yes, it was in-house training. So we
5 took, for example, an incident relating to a police
6 shooting, what the expectation would be if that call was
7 received. And tried to bring people up to speed with
8 the requirements of that type of investigation, how it
9 would look from our perspective, what our expectations
10 of the police would be at that time, and talked it
11 through and tried to make it fit into the legislative
12 framework. And again, tried to express to people who
13 did not come from a police background initially what
14 powers they had in terms of conducting investigations.
15 Whilst conducting an investigation under the direction
16 of the Crown Office, the investigators had the same
17 powers as a constable.
- 18 Q. These desktop exercises, were there examples created
19 that were then discussed through; how did you actually
20 work through those exercises?
- 21 A. Yes, we did, and not just in the January, that continued
22 after 1 April that year, it was -- for example we
23 managed to get some of our investigators to go to and
24 listen to a fatal accident inquiry to get

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1 an understanding of the role of fatal accident
2 inquiries. Again, we considered and sent certain
3 investigators to train -- training days with
4 Police Scotland where the post-incident management
5 process for a firearms incident was being explained. So
6 it was all about building up -- one, refreshing the
7 experience of those who already had the knowledge but
8 building experience for those who hadn't been involved
9 in that type of investigation previously.

10 Q. You have said that one was a shooting, you sent them to
11 an FAI, and they went to see a post-incident management
12 procedure?

13 A. Yes.

14 Q. Were there any other examples that were used to allow
15 the team to work through how an investigation should
16 look; were there any deaths in custody?

17 A. No, not that I recall at that stage, no.

18 Q. Any deaths involving anyone of an ethnic minority?

19 A. No, but as regards to deaths in custody, yes, we did use
20 the experience of the staff member who had come from
21 COPFS and who had worked in the Scottish deaths unit to
22 explain to the staff what the deaths unit would expect
23 from an investigation like that.

24 Q. Tell us about that work that was done?

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1 A. Again, it was delivered in-house. We had previously
2 discussed the response to an investigation of that sort
3 and then we used that member of staff's experience
4 working in the Crown Office department to explain what
5 type and in what format the Crown would expect to
6 receive evidence. And then that bolted on to sending
7 them to hear a fatal accident inquiry and get
8 an understanding of the way a fatal accident inquiry was
9 conducted.

10 Q. This member -- former member of Crown Office was
11 an investigator. What was their name?

12 A. I knew you were going to that and for the life of me --
13 I am sorry, nine years ago~... She wasn't with us
14 particularly long because she returned to a legal post
15 within maybe a year to a year and a half.

16 Q. All right.

17 A. But I am sorry, I just --

18 Q. Someone will no doubt be able to give me the answer to
19 that. We will come back to that. So this former member
20 of Crown Office led an exercise in relation to
21 a death --

22 A. Yes.

23 Q. -- involving an FAI?

24 A. Yes.

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- 1 Q. How long did that training take for the team?
- 2 A. I think we spent most part of a day in-house.
- 3 Q. And then other -- did all the investigators go and see
- 4 an FAI or just ones that had not seen one before?
- 5 A. We started with those who had not seen one before, but
- 6 it was open and available to all depending on other
- 7 responsibilities, as you appreciate.
- 8 Q. Of course. As well as recruiting staff, and training
- 9 staff, were you also involved in creating policies and
- 10 procedures for PIRC?
- 11 A. Yes, I was, yes.
- 12 Q. Did you create or instruct the creation of any guidance
- 13 for staff?
- 14 A. That was a work in progress, yes. Most definitely we
- 15 were looking at standard operating procedures and the
- 16 likes, many of which were already available from other
- 17 organisations, and it was about ensuring that they were
- 18 fit for purpose for the PIRC as an organisation.
- 19 Q. You have told us you had around five months before PIRC
- 20 were due to start. What work did you do in terms of
- 21 reviewing standard operating procedures from other
- 22 organisations and making them fit for the purpose of
- 23 PIRC?
- 24 A. Yes, that was part of the ongoing work. Once we had

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1 employed the senior investigators it was initially,
2 because unfortunately Irene Scullion didn't join until
3 slightly later because she had to work out a notice
4 period with her ex-employer. But, yes, we utilised at
5 that stage the senior investigators, of whom there were
6 two at that stage, and we worked around SOPs and
7 standard operating procedures, protocols et cetera.

8 Q. Do you remember what you started with; can you give us
9 any examples?

10 A. I think family liaison was probably quite early on in
11 that process. We considered that. Albeit it was later
12 in the whole process once we got trained family liaison
13 officers in and up to speed we continued with that type
14 of work. It was around -- and it went on for quite
15 a time as well, a memorandum of understanding with Crown
16 and with Police Scotland and with the Police Authority,
17 particularly in relation to the provision of forensic
18 support. So these things were all going at the early
19 stage of development.

20 Q. Thank you. I am going to ask you to look at some
21 documents for me. But before I do that, can I just
22 finalise my questions on one area which is in regard to
23 training.

24 A. Yes.

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1 Q. You have given us a description of the training that was
2 going on. I think in your Inquiry statement, and
3 I don't need to go to it, at 657 you said that you were
4 asked about diversity and race training for staff and
5 you described it as much of a disjoint or disjointed?

6 A. Yes, I think at the end of the day that many of our
7 investigators over a period of time had had diversity
8 training, particularly those who were working with
9 public bodies. I think we did not have bespoke human
10 resources within PIRC or PCCS at that time, I know that
11 the later on there was certainly training for all staff
12 in relation to matters concerning diversity.

13 Q. When you say "later on", when do you --

14 A. Certainly beyond 1 April 2013, and I think maybe it was
15 18 months to two years, again from memory. It might
16 even have been longer than that.

17 Q. We've obviously been talking about the death of
18 Mr Bayoh.

19 A. Yes, indeed.

20 Q. And that occurred in May --

21 A. Yes.

22 Q. -- 2015. From your memory, did the diversity training
23 take place prior to that or after?

24 A. I think it was after, from memory.

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- 1 Q. All right. Thank you. Before I move on to the
2 document, looking at that five-month period between
3 1 November and 1 April 2013, there was a lot going on
4 from your description of recruitment and training and
5 getting people in post.
- 6 A. Yes.
- 7 Q. Looking back now, what are your thoughts or reflections
8 on that timescale?
- 9 A. It was a massive challenge because also built into that
10 was the need to vet all of the staff, before they could
11 get access to Scottish Government-based computer systems
12 et cetera.
- 13 Q. How long was that process taking?
- 14 A. It was undertaken by the vetting department within
15 Scottish Government, and it varied, depending on how
16 busy they were. It could take weeks, some took months
17 on occasions. It was very demanding as far as the time
18 was concerned. Very demanding because, as I think
19 I explained earlier, we didn't actually have office
20 premises at that time, they were being remodelled, we
21 didn't have access to motor vehicles, we were in
22 negotiation with hire companies et cetera. And I know
23 that might sound like the minutiae but that takes time.
- 24 Q. So looking back now, do you think you had enough time to

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- 1 set up an entirely new investigations team as part of
2 a new body, PIRC?
- 3 A. Would I have liked longer? Yes. Was that an option?
4 No. Because the position was that PIRC would be up and
5 running on 1 April 2013, in line with the new
6 Police Service of Scotland. There was never any
7 suggestion that that could be delayed, none whatsoever.
- 8 Q. In terms of being ready on 1 April 2013, had there been
9 plans and propositions put in place looking at the
10 number of cases that you would have to handle, the
11 number of investigations the team would have to deal
12 with and the resourcing for each of those --
- 13 A. That was the other major challenge for me, as I think
14 I mentioned briefly earlier. Gathering information to
15 truly understand what the demand profile would be was
16 almost impossible. Even Crown were unable to say just
17 exactly how many investigations they would consider that
18 we would receive in a year. In fact I think it was
19 mentioned at one time maybe a handful or no more,
20 I think they found out very, very quickly after 1 April
21 that that wasn't the case.
- 22 Q. Again, looking back now to 1 April 2013, do you think
23 you had sufficient resources in PIRC to cover the
24 investigations that you were going to be expected to

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- 1 handle?
- 2 A. Because of the difficulty around the profile of the type
3 of investigations and the numbers, because numbers are
4 only one thing, the profile of an investigation, some
5 investigations will take longer than two or three days,
6 maybe a week, others last much longer than that and are
7 far more resource-intensive, so it is very, very
8 difficult to get a clear understanding of how many
9 people you need. Unfortunately it wasn't a blank
10 cheque, so ultimately I had to build an organisation
11 within finite resources. As we moved beyond that and we
12 gathered evidence which clearly showed that the demand
13 was greater than we might first have thought, yes,
14 Scottish Government did provide limited extra funding to
15 expand the organisation. But I think as an investigator
16 you would always like more but there has to be a realism
17 around it.
- 18 Q. We heard some evidence from Mr McSporran that the
19 Sheku Bayoh investigation was significantly complex --
- 20 A. Yes.
- 21 Q. -- and lasted over a very long period.
- 22 A. Yes.
- 23 Q. In terms of the type of investigations that PIRC were
24 carrying out, was that at the upper range of complexity?

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- 1 A. I would say so. And shortly after Mr Bayoh's tragic
2 death there was another tragic incident within
3 Police Scotland, deaths on the M9 motorway, which
4 happened within a number of months, so clearly that
5 brought more pressure to be on our finite resources.
6 There is no doubts that it was challenging.
- 7 Q. I was going to ask you to look at some documents. Could
8 we start with PIRC 00446. You will see this on the
9 screen and we have moved on from the date which is
10 Monday, 12 November 2012. Do you see that at the top?
- 11 A. Yes, I do. Yes.
- 12 Q. That would have been 11 or 12 days after you started
13 initially in your position?
- 14 A. Yes.
- 15 Q. It's headed:
16 "Police Investigations and Review Commissioner.
17 "Operational model - response to Article 2
18 investigations."
- 19 A. Yes.
- 20 Q. Do you recognise this document?
- 21 A. I do, yes.
- 22 Q. I think in your statement you say this formed quite
23 a bit of discussion in the run-up to 1 April 2013?
- 24 A. Yes.

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1 Q. When was this -- was this completed in November 2012?

2 A. I think it was. From memory again, I believe that was
3 with the assistance of other members of the steering
4 group. I think I spoke earlier -- one member in
5 particular, the superintendent from Police Scotland who
6 was seconded to that group, so at the early stages and
7 before I had senior staff, I had to rely on assistance
8 from that seconded member of staff. So given the
9 importance of investigations in relation to Article 2
10 and 3 it was important to get that document formalised
11 and up and running as soon as we could, so we could use
12 it to explain to staff and so that staff would
13 understand the responsibility in relation to that.

14 So now that I see it, that was certainly one of
15 the earlier documents. I apologise for -- nine years,
16 it was nine years ago, and I couldn't be quite specific
17 on what order these documents were prepared in and
18 became ready.

19 Q. Don't apologise. We will go through these documents and
20 you can tell us your views. If we could look briefly at
21 your Inquiry statement actually. 629. This might help
22 refresh your memory. You were asked to look at the
23 document and you say -- that is the document there,
24 "Response to Article 2 investigations":

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1 "It identifies on page 2 the principles of
2 independence and an effective investigation to be the
3 most important to PIRC."

4 A. Yes.

5 Q. "I certainly had a hand in drafting it~..."

6 A. Yes.

7 Q. Is that correct?

8 A. Yes, definitely.

9 Q. "... that is my initials. That whole matter formed
10 quite a bit of discussion in the run-up to 1 April but
11 certainly that was under discussion before I was even
12 appointed in the role on 1 November. There were ongoing
13 discussions we were having with Police Scotland and
14 Crown about the independent aspect of the PIRC."

15 A. Yes.

16 Q. You have said on page 2 of the document that the
17 principles of independence and an effective
18 investigation are the most important to PIRC?

19 A. Yes.

20 Q. Tell us about how important they were in terms of your
21 sharing of that with the staff?

22 A. Well, they underpinned everything that we would be
23 expected to do if we were conducting an investigation
24 where Article 2 was invoked.

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1 Q. If we can go back to the document, 4446, please. If we
2 can look at page 2. We have heard some evidence about
3 this document already from other witnesses.

4 A. Okay, yes.

5 Q. And the Chair has it available so I won't ask you
6 detailed questions about every paragraph.

7 A. Okay.

8 Q. But I wonder if we could look at page 2, paragraph 5
9 which is the one that begins:

10 "The Human Rights Act 1998 ..."?

11 A. Yes.

12 Q. "... and obligations imposed under Article 2 apply
13 equally to~..."

14 I think that is Police Service of Scotland --

15 A. Yes.

16 Q. -- Crown Office --

17 A. Yes.

18 Q. -- and PIRC?

19 A. Yes.

20 Q. So it was your understanding that Article 2 obligations
21 applied to all bodies --

22 A. Yes.

23 Q. -- who were involved. And:

24 "Where Article 2 is engaged, the Police Service have

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1 a duty to ensure that they conduct themselves in
2 a manner that is consistent with the five procedural
3 obligations that the courts have held to exist."

4 A. Yes.

5 Q. So these are obligations you viewed on police?

6 A. Yes.

7 Q. You then give them in bullet points. There are five:

8 "The investigation must be independent insofar as it
9 should have no hierarchical or institutional connection
10 to those implicated.

11 "The investigation must be effective.

12 "The investigation must be reasonably prompt.

13 "There must be a sufficient element of public
14 scrutiny.

15 "The next of kin must be involved to an appropriate
16 extent.

17 A. Yes.

18 Q. Now, can I be clear, it goes on to say:

19 "So far as this document is concerned it's the first
20 two obligations that are relevant and which must be
21 observed by the [Police] and PIRC under direction of
22 [the Crown]."

23 That wasn't to suggest that only the first two were
24 relevant, was it?

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1 A. No, I would agree that when I read that now that that is
2 not particularly well worded. I would also agree that
3 where it says in the paragraph immediately above the
4 bullet points that the Police Service have a duty to
5 ensure that every one of or all of the bodies mentioned
6 in the line above had an equal responsibility to those
7 duties.

8 Q. So as far as you were concerned, and you have said that
9 you were one of the authors of the document?

10 A. Yes.

11 Q. In terms of the Article 2 obligations, they applied
12 equally to all three bodies, including PIRC?

13 A. Yes.

14 Q. Even though that just refers to the police?

15 A. Yes. That is poor.

16 Q. You mentioned the hierarchical connection earlier.
17 Where it says "institutional connection", can you
18 explain what that meant?

19 A. I think again it was more of a cover-all. So ultimately
20 I know that within the legislation there was provision
21 for the Commissioner, if they chose, to second police
22 officers to augment the numbers in an investigation
23 where there was a challenge around resources. I think
24 that institutional aspect related to that type of

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1 provision. I would quickly have to say, however, that
2 was never given consideration by any of the
3 Commissioners that I worked with because we believed
4 that that diluted the independence.

5 Q. Thank you. Then if we could turn to page 5,
6 paragraph 1. There is a reference here to providing the
7 direction that officers should not confer prior to
8 recording their first account. We have heard quite
9 a lot of evidence about conferral and separation of
10 officers. Can you tell us what your understanding of
11 the position was?

12 A. Separation of officers is a difficult thing, I think.
13 This process is usually -- or should be conducted under
14 the direction of a post-incident manager, so a senior
15 police officer. And it's normally in relation to
16 firearms incidents. But I have often thought that in
17 any circumstance where a death or serious injury has
18 occurred, that it's transferable, that process would be
19 transferable. Now, I know that my experience of PIM
20 tells me that as well as being the initial source for
21 gathering evidence, initial statements, initial beliefs
22 of the officers, it is also used as a support function
23 for officers as well.

24 Q. We've heard evidence that as part of the post-incident

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1 procedure and the management of officers, that they be
2 asked to provide initial accounts?

3 A. Yes, that is right.

4 Q. Or brief --

5 A. Initial accounts, and then you would have an expectation
6 that they would follow that up -- within I think it is
7 48 hours, from memory -- with a full operational
8 statement.

9 Q. And that is more of a detailed statement taken within
10 48 hours of the incident?

11 A. Yes.

12 Q. So when this document was being prepared and when PIRC
13 came into existence, a matter of months later, did you
14 have a clear idea in your own mind about what the
15 position on conferral would be?

16 A. Yes.

17 Q. In an incident?

18 A. Sorry, yes, I did. And indeed within my time in the
19 Police Service I had responded initially to a police
20 shooting and was aware of the PIM process and what the
21 expectations would be. As I say, it was argued
22 regularly about the need to separate but I certainly
23 would expect that there should have been someone there
24 to ensure that there was no conferring and that that

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- 1 should have been made clear to the officers.
- 2 Q. I think if we look at page 8, there is a section called,
- 3 "Additional advice to staff". If we can have that on
- 4 the screen. At the bottom of paragraph 1 it says:
- 5 "We must be clear that we are not seeking for
- 6 officers to be separated and we understand that they are
- 7 entitled to legal advice."
- 8 A. Yes.
- 9 Q. "Each case will be dealt with on its own merits~..."
- 10 And it then goes on to say:
- 11 "It should be pointed out that the adoption of this
- 12 process is to obtain best evidence, to preserve the
- 13 principles of accountability and independence and should
- 14 not be seen as attributing guilt at an early stage."
- 15 A. Yes.
- 16 Q. Sorry, I lost my page there. So was it the expectation
- 17 by PIRC that staff would not be separated as such but
- 18 there would be someone there supervising?
- 19 A. Yes.
- 20 Q. Or that separating them was an option also?
- 21 A. Separation was always a difficulty, for the reason that
- 22 I outlined there, that police also understood that the
- 23 PIM process, post-incident management process, could
- 24 also be and was indeed a support role for officers who

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1 had probably just been involved in a tragic and
2 demanding set of circumstances. The very least that my
3 expectation would be that it was made clear to those
4 officers that they did not discuss what had occurred and
5 that it was their own personally held belief that was
6 the evidence, not a shared belief, a discussed belief,
7 but their honestly held belief.

8 Q. Actually on the screen just under the additional advice
9 for staff do we see in the second line there a reference
10 to what you have just said, "an honestly held belief"?

11 A. Yes.

12 Q. And do we also see in the paragraph just below the
13 middle of the page:

14 "It should be pointed out that~..."

15 Do you see that paragraph?

16 A. Yes, yes.

17 Q. Can you look at line four at the very end. It starts:

18 "The PIRC is clear~..."

19 A. Yes.

20 Q. "... that its investigators do not treat officers as
21 suspects unless there is evidence that an offence has
22 been committed."

23 Was that the position?

24 A. That is absolutely the position. Yes.

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1 Q. At what point would it become -- would it give rise to
2 a situation that it was clear that there was evidence
3 that an offence had been committed? How did a PIRC
4 investigator come to that view?

5 A. That might be some time down the line because ultimately
6 what you are relying on there is following the evidence.
7 So ultimately you are still expecting the officers to
8 produce operational statements. You would then read
9 these operational statements, consider those statements,
10 and consider other evidence that was available to you at
11 that time. Now, it would be at that stage, if it were
12 possible, that you would again consider the officers'
13 status, whether they were either a witness or whether it
14 was reasonable to suspect that they had been involved in
15 a criminal act.

16 Q. Thank you. Can we now look at PIRC 04453. Again, this
17 is a document we have already heard some evidence about.
18 But you mentioned a memorandum?

19 A. Yes.

20 Q. Is this a memorandum of understanding between
21 the Crown Office, and PIRC, and is this a document you
22 recognise?

23 A. I do, yes.

24 Q. I think without the need to go to the last page, it is

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- 1 signed on behalf of PIRC on 10 December 2015.
- 2 A. Okay.
- 3 Q. And 11 December -- sorry, 2013, and 11 December 2013, so
4 it's signed by both the Crown Office and PIRC
5 in December 2013?
- 6 A. Yes.
- 7 Q. Was this the document that you were referring to earlier
8 when you mentioned a memorandum?
- 9 A. Yes, it was indeed, yes.
- 10 Q. I wonder if we could look at this. We could maybe start
11 first of all by looking at page 2. So this document
12 came into existence or was signed around eight months
13 after PIRC came into existence. Was this something that
14 you were working on as part of your role of director?
- 15 A. Yes, it was an ongoing piece of work, it was also
16 an ongoing piece of work within Crown Office, and needed
17 that agreement before it would reach a final stage.
- 18 Q. Thank you. It sets out at the beginning the statutory
19 background, and the functions of initially the role of
20 the Crown Office and then at the bottom of that page
21 PIRC's statutory responsibilities. You have already
22 mentioned (b) (i) and (b) (ii) which we see starting at
23 the bottom of that page.
- 24 A. Yes.

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1 Q. I am interested in section 5 which is on page 4. This
2 is the role of PIRC in investigations?

3 A. Yes.

4 Q. It sets out here again the statutory background, the
5 powers of PIRC investigators, and stipulates that PIRC
6 is independent from the Police Service?

7 A. Yes.

8 Q. Looking at 5.5, we see:

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

13 A. Yes, and I think we agree that that should have been
14 included in the first document we looked at, it was
15 beyond just the police responsibility.

16 Q. But equally the five principles that are identified are
17 mirroring the ones that were included in the first
18 document as well?

19 A. Yes, indeed.

20 Q. So again, is this something that staff were trained in,
21 in relation to --

22 A. Yes --

23 Q. -- their role?

24 A. Yes.

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- 1 Q. Can we turn to the third document, which is PIRC 04438.
2 This is headed up:
3 "PIRC independent investigative processes following
4 police use of firearms."
5 Again, we have heard evidence about this. The
6 Inquiry have been advised that this document is dated
7 17 June 2014. It is not contained within the body of
8 the document.
- 9 A. Okay.
- 10 Q. Do you agree with that or was it prepared earlier or at
11 a different time?
- 12 A. Again, I think that that was one of the documents that
13 we considered relatively early on. So it would be one
14 of the earlier documents, I am sorry, I can't put
15 an exact date on it.
- 16 Q. No, that is fine. Would this document have been
17 in place and available to PIRC investigators prior to
18 3 May 2015?
- 19 A. Yes.
- 20 Q. Thank you. In relation to this -- I have asked a number
21 of witnesses about this document. It says at the top
22 it's to do with firearms. But as we look down towards
23 paragraph 5, down the page, we will see that
24 the definition of firearms includes discharge of CS gas?

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1 A. Yes.

2 Q. As I read your Inquiry statement, I think you have said
3 you firmly believed that this was transferable and did
4 include situations involving the discharge of a CS gas;
5 is that right?

6 A. I think at the end of the day CS gas is a prohibited
7 weapon in terms of the Firearms Act so had to be given
8 that consideration. Maybe not such a demanding
9 investigation as if someone had been shot using
10 a conventional firearm, but as a result of that, where
11 CS gas is discharged, the Commissioner -- or certainly
12 six years ago when I left -- conducted an investigation
13 into all of these discharges.

14 Q. So would this document be helpful for investigators who
15 are not just simply investigating a shooting, but any
16 discharge of gas, any use of a firearm?

17 A. Yes.

18 Q. So this document could be relied on by investigators at
19 the time of May 2015?

20 A. I believe so, yes.

21 Q. Thank you. You have talked about obviously the profile
22 of investigations, some are much more complex?

23 A. Yes.

24 Q. A police shooting perhaps would be classed in that way

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1 but there could be less complex cases such as the use of
2 a Taser or the use of CS gas?

3 A. Yes, definitely.

4 Q. And the circumstances can be adapted depending on the
5 profile and the complexity --

6 A. Yes, a triage process to see just exactly what level of
7 investigation would be required would be the best way to
8 describe it.

9 MS GRAHAME: Thank you. I would like to move on now to your
10 involvement on 3 May but I am also conscious it is now
11 11.30 am.

12 LORD BRACADALE: We will take a 20-minute break at that
13 point.

14 (11.31 am)

15 (A short break)

16 (12.00 pm)

17 LORD BRACADALE: Ms Grahame.

18 MS GRAHAME: Thank you. We were going to move on.

19 A. Yes.

20 Q. I was going to ask you questions about PIRC's
21 involvement with the events of 3 May 2015?

22 A. Yes.

23 Q. Can you clear something up for me first of all?

24 A. Yes, indeed.

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1 Q. When I read your Inquiry statement I understood that you
2 were on holiday on 3 May, and you didn't return to work
3 until 5 May.

4 A. That is correct.

5 Q. But Mr Little, when he was giving evidence, thought you
6 were there on 4 May, and I just wondered if you could
7 clear that up?

8 A. No, absolutely I was on holiday on 3 May and did not
9 return until Tuesday, 5 May.

10 Q. Thank you. I have asked you about the Article 2, five
11 principles, and rather than going through your Inquiry
12 statement in order I would like to talk to you about
13 those five principles and ask you questions in that sort
14 of structure. So can we start with independence?

15 A. Yes.

16 Q. And I will ask you some questions about that first of
17 all. I would like to -- keeping independence in mind,
18 I would like to ask you, you have told us about talking
19 to staff, and reinforcing the importance of independence
20 for the investigation for PIRC but if independence was
21 challenged or threatened in some way, how would you have
22 expected your team of investigators to handle that
23 situation?

24 A. If we are talking about a conflict of interest-type

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1 scenario, I would expect them to be upfront and report
2 that that was the case.

3 Q. We have heard some evidence that there was a code of
4 conduct in place, and that there is a requirement for
5 staff to declare interest?

6 A. Yes.

7 Q. Was that something that staff were aware of?

8 A. Yes, indeed, yes.

9 Q. Did you find -- did you experience examples where staff
10 did declare interests?

11 A. Not to my knowledge, no. There was a register of
12 interest, you are absolutely right, if there were
13 invites to certain meetings or certain events et cetera.
14 But I think we were a bit more straightforward within
15 that whole area of investigation, that if
16 an investigator identified that they had had
17 pre-knowledge of an individual who they were going to be
18 asked to participate in an investigation about, there
19 was a duty placed on them to make that known to the
20 senior investigator.

21 Q. Right. Then presumably a decision could be taken about
22 whether they should be involved or not?

23 A. Absolutely, yes.

24 Q. In relation to an officer, a serving officer who they

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1 are being asked to investigate, where does the line get
2 drawn with that decision? We have heard evidence that
3 some people were aware of senior officers, some people
4 had passed them in a corridor, or they had maybe worked
5 with them. Where would that line be drawn?

6 A. You would have to look at every set of circumstances in
7 its own merit, I would suggest. But so far as you could
8 you would not have an investigator involved directly in
9 an investigation which saw them encountering someone
10 that they knew well. The Scottish Police Service is
11 a small organisation in real terms. The greater
12 majority of training is delivered centrally at the
13 Scottish Police College. There is a chance that through
14 a 30-year stay in the police, for want of a better word,
15 that you will come across officers who you would not
16 consider as friends, but merely colleagues for a brief
17 period of time. I would have an expectation that
18 an investigator would identify any such -- any such
19 association and then it is down to the
20 senior investigator or the senior staff members to
21 decide whether or not that it would be appropriate to
22 utilise that investigator on that enquiry or on
23 a particular line of enquiry.

24 Q. Can I ask you what is your view now about someone who

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1 had perhaps -- not necessarily been a friend but had
2 been a line manager of an investigator; would you expect
3 that sort of connection to be declared?

4 A. Yes.

5 Q. If a connection was to be declared, would you consider
6 it sufficient that at some point in the past
7 a declaration had been made or would you expect
8 an investigator to say every time he is being asked to
9 perhaps investigate a matter where the line manager is
10 involved in some role, would you expect them to repeat
11 that declaration?

12 A. I think that would be best practice, yes.

13 Q. Then you would consider with the senior manager what the
14 appropriate course of action was?

15 A. Absolutely, yes.

16 Q. We've heard evidence that that appropriate action may
17 involve saying to the investigator: you're not getting
18 involved with this investigation?

19 A. Yes, indeed.

20 Q. Depending on the connection and the possible conflict?

21 A. Yes.

22 Q. Was one of the factors that you considered how things
23 would look to the public in terms of thinking about
24 independence?

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- 1 A. Yes, perception is very, very important, very important,
2 so it was something that we considered.
- 3 Q. Why do you consider the public perception very
4 important?
- 5 A. Because we rely on the public support during the
6 investigation. So the public need to understand what is
7 happening, that way you will win their trust, and their
8 assistance.
- 9 Q. Thank you. As well as declaring a conflict in relation
10 to maybe a connection with an officer who is involved in
11 an investigation, was there an expectation on PIRC
12 investigators to declare more personal interests that
13 could cause or give rise to a conflict: groups,
14 membership of groups, membership of societies?
- 15 A. Yes, absolutely there would be, yes.
- 16 Q. So even if there wasn't a professional or a work
17 connection you would expect people to declare a personal
18 connection?
- 19 A. If it impinged on their ability to conduct themselves in
20 a manner which would be considered to be independent,
21 absolutely.
- 22 Q. Equally, would best practice be to declare it and have
23 it out in the open and discuss it?
- 24 A. Yes.

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- 1 Q. And for a decision then to be made and recorded?
- 2 A. Yes.
- 3 Q. Can I ask you, you talked earlier about hierarchical
4 connections and institutional connections. Was there
5 ever any consideration given to the institutional
6 connection with Scottish Police Federation? We have
7 heard about the Scottish Police Federation and their
8 involvement with officers who are serving. My
9 understanding is that they also deal with matters, at
10 least initially, in relation to pensions and
11 arranging -- not arranging pensions, corresponding with
12 people who have retired --
- 13 A. Yes.
- 14 Q. -- in connection with their pension; is that right?
- 15 A. I was a member of ASPS when I retired, so the Federation
16 were not part of my life at that time. But they are
17 still serving police officers, they hold the rank of
18 constable.
- 19 Q. Even after they have retired?
- 20 A. No, once they've retired -- sorry, not once they have
21 retired. Sorry, I am speaking about existing Federation
22 members.
- 23 Q. I am thinking about the connection, so obviously
24 independence, and I am thinking about the connection

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1 which may or may not exist for individuals with Scottish
2 Police Federation, who perhaps continue to support
3 former retired police officers and serving officers who
4 may also be receiving support from the Scottish
5 Police Federation. They are obviously both members or
6 involved with the Federation, was that seen as any sort
7 of institutional connection that caused any concern to
8 PIRC?

9 A. Not -- no, not to my knowledge. It's not something
10 I must admit that I considered.

11 Q. So not something that anyone ever declared as part of
12 avoiding a conflict or anything along those lines?

13 A. No.

14 Q. Thank you. We have heard evidence about parallel
15 investigations or a split investigation at the outset.

16 A. Yes.

17 Q. And that, initially at least, PIRC were to deal with the
18 events at Hayfield Road on 3 May and afterwards --

19 A. Yes.

20 Q. -- at the hospital?

21 A. That is correct.

22 Q. And the police continued to be responsible for the
23 investigation for the events leading up to the arrival
24 at Hayfield Road?

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- 1 A. That is correct, yes.
- 2 Q. We have heard evidence from a number of witnesses about
3 that. When you came back to work on 5 May, do you -- we
4 have heard there was a letter of instruction on 5 May
5 but when you arrived back at work that day, do you
6 remember what the position was at that time?
- 7 A. At that time when I arrived in the office that morning
8 it was as you have described, the police still had
9 responsibility under the direction of Crown to continue
10 with their investigation up to the point where the
11 police officers became involved with Mr Bayoh.
- 12 Q. What were your thoughts about that?
- 13 A. I didn't think it was appropriate and I certainly didn't
14 think it was appropriate after the post mortem findings.
15 I thought that for that whole area of perception and
16 reality that we should be dealing with all of those
17 matters. The matters that occurred before, that were
18 relevant to the investigation, and everything
19 afterwards. I believe that is the way that it should be
20 done.
- 21 Q. You mentioned the post mortem. What was it about that
22 that made you think that things should have changed?
- 23 A. Well, I was -- when I came in and learned that there had
24 actually been police officers present at the

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- 1 post mortem, that surprised me.
- 2 Q. Why?
- 3 A. It doesn't gel with me, but having then sat down and
4 thought about it, the post mortem, as we know, is
5 arranged by the Crown. There was a senior
6 Procurator Fiscal present at the post mortem. The
7 police still had a part of the investigation to consider
8 and initially I thought that there were police officers
9 present there because of that. But I still -- it didn't
10 gel with me to be honest.
- 11 Q. When you say it didn't gel with you ...?
- 12 A. I thought it was unusual when we had been directed to
13 investigate circumstances around arrest and Mr Bayoh's
14 death.
- 15 Q. From the perspective of independence and the
16 independence of PIRC in the investigation into his
17 death --
- 18 A. Yes.
- 19 Q. -- what concerns, if any, did you have about the police
20 being present at the post mortem? We have heard that
21 took place on 4 May.
- 22 A. Yes, it took place before I returned. I was surprised.
23 My opinion, and it is my opinion, it would have been
24 much better had the police not been involved in that

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- 1 process.
- 2 Q. If they had not been involved what would the benefits
3 have been from your perspective?
- 4 A. The independence. We would have known what had happened
5 at that post mortem, we would know the outcome at that
6 stage. And that would have maintained our independence
7 within that investigation, in my opinion.
- 8 Q. Thank you. As I say we have heard that a letter,
9 a written letter of instruction came in on 5 May?
- 10 A. Yes.
- 11 Q. That was the first letter of instruction from the Crown
12 to PIRC. Do you remember at what point of day that came
13 in?
- 14 A. I think it was maybe mid-morning, from memory.
- 15 Q. I think it was at that stage that PIRC took over the
16 whole investigation?
- 17 A. Yes.
- 18 Q. So you were in the office on 5 May?
- 19 A. The Tuesday, yes, the Tuesday, yes.
- 20 Q. From what you have said about the post mortem, had you
21 been in the office on 4 May when the post mortem was
22 being carried out, what would your view have been about
23 having the police at the post mortem?
- 24 A. Had I been there, had I known about it, I would have

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- 1 questioned the necessity.
- 2 Q. Had you become aware of information from the
3 post mortem, from the pathologist, what would your view
4 have been about sharing that information with police
5 officers?
- 6 A. I suppose the matter there is that the information all
7 belongs to the Crown at that stage. The pathologist is
8 doing that post mortem on behalf of the Crown. I would
9 not have shared it without express permission of the
10 Crown.
- 11 Q. So without that express permission you simply would not
12 have permitted disclosure?
- 13 A. No.
- 14 Q. We have also heard evidence about the ongoing reliance
15 of PIRC on Police Scotland and their resources.
- 16 A. Yes.
- 17 Q. To summarise a lot of evidence we have heard, we have
18 heard that it's integral to the role of PIRC that
19 in fact they are forced to rely on the resources of
20 Police Scotland?
- 21 A. Yes.
- 22 Q. You agree with that obviously. We have heard that some
23 investigations require a lot of manpower, if I can use
24 that word, which Police Scotland have --

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1 A. Yes.

2 Q. -- a lot of, and PIRC don't.

3 A. Yes.

4 Q. Would you agree with that?

5 A. Yes.

6 Q. When you came into the role -- let's look at your
7 Inquiry statement. Paragraph 176, please. You were
8 asked as part of your statement to consider evidence
9 that we had heard from DS Campbell. He was the SIO on
10 3 May. He commented on resources, and expressed the
11 view he thought PIRC had insufficient resources on
12 3 May. He said that Police Scotland had significant
13 resources pulled from all over the country as well as
14 from the Major Investigation Team to support PIRC, and
15 I think you were asked at 177 to comment on Campbell's
16 evidence. And then if we can look at 179, you say:

17 "It was certainly insufficient to go searching
18 houses and take on that wider area that the police had
19 been left with, but if it was management of Mr Bayoh's
20 remains, the hospitals, and the officers - trying to get
21 statements from them - I think with the numbers that
22 could have been done. The problem with that is around
23 independence and perception of independence. To take
24 that offer, which is almost what Pat Campbell is making

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1 there, to give some of these tasks to police officers,
2 when Crown have directed that we conduct that part of
3 the investigation could be seen to dilute that
4 independence, and you have always got to remember that
5 as an investigator."

6 I am interested in this paragraph. Could you expand
7 on that, please?

8 A. Yes, that is still is my position. We have spoken
9 earlier there about the type of investigation, the five
10 main principles, the absolute requirement for
11 independence, and that independence would have to stand
12 scrutiny. I just do not see a position where police
13 officers serving police officers can be directly
14 involved in an investigation being run by the PIRC under
15 the direction of Crown as an independent investigation
16 and maintain the correct levels of independence. Now,
17 if it is about uniformed officers stopping motor cars on
18 a day when you are returning to the scene and taking no
19 part in interviewing witnesses, that is acceptable.

20 I do not see it being acceptable to be involved directly
21 in conducting elements of the investigation which
22 require to remain independent.

23 Q. Would that be any officers being involved, taking
24 statements of witnesses?

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- 1 A. As soon as that Inquiry becomes ours in all aspects,
2 yes.
- 3 Q. So we've heard evidence that some officers came from
4 other offices in Fife to assist with the investigation?
- 5 A. Yes.
- 6 Q. Does that alleviate the concerns you have just
7 expressed?
- 8 A. No, because there is still that hierarchical association
9 with Police Scotland. They are members of
10 Police Scotland regardless of whatever division they
11 come from.
- 12 Q. You say -- you used the words "directly involved" with
13 the investigation. Could you assist the Chair by giving
14 an example of what you mean when you say "directly
15 involved"?
- 16 A. Well, just that. On the Sunday of the week following
17 Mr Bayoh's death, the investigators returned to the
18 scene in Hayfield Road with a view to identifying
19 whether there were other witnesses available. Now, that
20 meant stopping motorcars, for example, and that needed
21 a uniformed police presence. So assistance at that type
22 of level is appropriate. It can't be done. What you
23 wouldn't have would be those officers engaged in
24 interviewing anyone who you spoke to or noting

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- 1 statements from them.
- 2 Q. Thank you. So looking -- taking a step back and looking
3 at things from the point of view of independence, but
4 also bearing in mind the resources available to PIRC --
5 at that time you said you had 20 investigators and two
6 senior people --
- 7 A. Yes.
- 8 Q. -- yourself and Ms Scullion. How were you balancing the
9 demand for independence and the limited resources on
10 5 May and beyond?
- 11 A. I had to take the decision that that was how it was,
12 that was what was available to us. To maintain
13 independence, we would only use members of PIRC staff to
14 conduct the investigation. Now, we realised that that
15 may prolong an investigation, however I think that is
16 the lesser evil than giving up the degree of
17 independence.
- 18 Q. Thank you. We have heard evidence about how the
19 instructions from Crown were extended, expanded?
- 20 A. Yes.
- 21 Q. So there was the initial terms of reference.
- 22 A. Yes.
- 23 Q. On 5 May the written letter saying: do the whole
24 investigation. But further letters of instruction were

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1 sent?

2 A. Yes.

3 Q. We have gone through a number of those with Mr McSporrán
4 through his policy log. How did PIRC cope as the scope
5 of the investigation and the terms of reference expanded
6 and were extended but resources remained reasonably
7 fixed at that stage?

8 A. Yes, it became more difficult. There was no time. And
9 I think the main outcome there was it prolonged the
10 investigation at that stage because you have finite
11 resources. But again, to reiterate, I think that the
12 independence of that investigation is paramount.

13 Q. We heard evidence from Mr Little that it was all hands
14 on deck bar one. Was that your recollection of events?

15 A. Yes, indeed and we took the unusual step of me having
16 a discussion with the head of review and utilising some
17 of his staff as support for corroboration while
18 undertaking house-to-house enquiries, so that we could
19 bolster our numbers. They were not investigators, it
20 was purely and simply so that we could split the
21 investigators but give them a person who could
22 corroborate information received et cetera. And that
23 was -- that was the extent that we had moved to. But it
24 was still in my view the correct line as against

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1 accepting assistance from the police to supply serving
2 police officers.

3 Q. We have heard from Mr Little that there were around six
4 or perhaps seven case handlers who came on board into
5 the investigation team at that point?

6 A. That was right, yes, I think that was as many as they
7 were at that time. I think that operation in real terms
8 ceased for that short period of time.

9 Q. Do you remember when that happened?

10 A. It was early -- it was early on in the investigation
11 because one of the earliest thrusts was around to
12 house-to-house investigation at the scene, at
13 Hayfield Road. So it was early on.

14 Q. Looking back now do you consider that PIRC had
15 sufficient resources to investigate Mr Bayoh's death?

16 A. I think as I said earlier it would always be better to
17 have more, but the truth of the matter was we had what
18 we had. It therefore then becomes incumbent on the
19 senior investigator, and the senior management for that
20 part, to ensure that lines of investigation are
21 prioritised and that those with the highest priority are
22 dealt with first. You know that it's going to take
23 longer. That is a fact of life. There was no way to
24 increase an independent body in short term.

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1 Q. I was going to ask you, looking back now, do you think
2 there is anything else you could have done at that stage
3 to bring in investigators into your team or people who
4 could support the investigation team?

5 A. No, I don't. And I mentioned earlier you are using
6 equipment systems that are linked to Scottish
7 Government. There would be a process around vetting
8 these individuals and that in itself would take time, so
9 I think it was very, very much a matter of
10 prioritisation and moving forward with what we had at
11 that time, whilst gathering evidence of the lack of
12 staff. And that was ongoing constantly, that was
13 actually one of the commitments that Professor McNeill
14 made on 1 April to Scottish Government, that when we
15 were able to better understand the demand profile, we
16 would be coming back with business cases to increase the
17 establishment.

18 Q. Was that ultimately done?

19 A. Yes, it was, there was at least two business cases in my
20 time, yes. And additional cash did come from Government
21 at that time.

22 Q. Obviously from the perspective of having been retired
23 for a number of years, would you have any suggestions or
24 thoughts about how that situation could be alleviated if

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- 1 it happened again in the future?
- 2 A. I don't, simply because you are relying on people with
3 experience. There would have been absolutely no point
4 in augmenting numbers purely for the numbers sake. It
5 had to be people who had an understanding and were
6 capable of working in that environment.
- 7 Q. You mentioned earlier about the possibility of seconding
8 officers. You obviously indicated that that had not
9 been done.
- 10 A. No.
- 11 Q. Looking back now, is that something that could have been
12 considered or did your reservations and concerns
13 override that?
- 14 A. I didn't consider it as a reasonable and realistic
15 proposition.
- 16 Q. So again looking back now, you still would not second
17 officers?
- 18 A. I can't -- having not been there for six years but
19 I can't imagine a circumstance where I would allow
20 the independent aspect of the inquiry to be compromised
21 by that decision.
- 22 Q. Thank you.
- 23 We have heard evidence that Police Scotland were
24 involved in recovering clothing and PPE from officers.

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1 Uniformed officers were securing the scene, uniformed
2 officers and CID officers were going to houses to seize
3 them, take evidence from the occupiers, clothing, DNA,
4 searching houses, seeking warrants, interviewing people,
5 tracing people, forensic matters. I take it all the
6 comments you have made about your concerns regarding
7 independence would apply to all of these aspects?

8 A. They would do, but my understanding was that that didn't
9 relate to our initial direction from Crown to deal with
10 the matter from the point of contact at Hayfield Road,
11 that that seizing -- with the exception of maybe the
12 officers' uniform, clothing et cetera, the rest of the
13 examples you gave there related to the instruction from
14 Crown to police to investigate matters prior to ...

15 Q. So the concerns you have in relation to PIRC
16 independence really kick in from the point of the 5 May,
17 when you get your remember of instruction?

18 A. Yes.

19 Q. Insofar as it relates to events leading up to --

20 A. Yes.

21 Q. Thank you. You have talked about public perception,
22 public awareness. We have heard about officers
23 remaining at the scene. In light of what you have just
24 said, do you have fewer concerns about that?

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1 A. I have fewer concerns about that because what they are
2 being tasked to do is preserve the scene. They are not
3 being asked to interview witness, they are not being
4 directed to take any action other than to remain there
5 until they are stood down.

6 Q. Something you say in your Inquiry statement, you have
7 some comments about the name of PIRC. It begins with
8 the word "police"?

9 A. Yes. That was always a challenge to me as well. Again
10 it's more to do with perception than reality but if you
11 stick the word "police" on the front of the
12 organisation's name like that, unfortunately people will
13 believe that you are a branch of the police. In my
14 opinion.

15 Q. So would you recommend a change of name?

16 A. I would have loved a change of name, yes.

17 Q. Is that something you discussed when you were in post?

18 A. Yes, but it was enshrined in legislation.

19 Q. You also comment in your statement about PIRC
20 investigators wear jackets that identify that they are
21 members of PIRC?

22 A. Yes.

23 Q. Was there some sort of uniform for PIRC investigators?

24 A. There wasn't a uniform per se but we did go out and

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1 purchase jackets, anorak-type jackets or coveralls which
2 displayed the name PIRC on the back in an attempt to
3 separate our investigators from police officers if they
4 were at the same scene at any given time.

5 Q. Thank you. We've heard some evidence and there is
6 evidence available to the Chair that a number -- you've
7 already spoken of a number of investigators,
8 particularly senior investigators, were ex-police
9 officers?

10 A. Yes.

11 Q. Thinking about independent and public perception, did
12 that become an ongoing concern for you that there were
13 so many former police officers involved?

14 A. This is where the five months timeframe comes in. To be
15 ready and have the capability and the experience to deal
16 with the type of investigations that we thought we might
17 inherit, we needed to have people who had experience in
18 dealing with those. And senior investigators within the
19 police have that experience.

20 Had you had a run-in period of two to three years it
21 would have been a different matter altogether, but to
22 bring someone from no knowledge or little knowledge to
23 a situation where they have the ability and experience
24 to conduct an intricate and challenging investigation is

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1 not possible within five months. So it was a difficult
2 set of circumstances but it was the set of circumstances
3 that we were faced with.

4 Q. I have asked other witnesses from PIRC about their own
5 personal contacts and connections with serving officers
6 at the time. And I think in your Inquiry statement you
7 say that you did know Ruairaidh Nicolson, who was the ACC
8 and the Gold Commander?

9 A. Yes.

10 Q. Garry McEwan?

11 A. Yes.

12 Q. Pat Campbell?

13 A. Yes.

14 Q. Lesley Boal?

15 A. Yes.

16 Q. And I have asked all the other witnesses can they
17 explain their level of connection with the people they
18 knew, and I would like to do the same with you. If we
19 can begin with ACC Nicolson.

20 A. Yes, I worked with Mr Nicolson for a long period of time
21 in the late '80s, early '90s in the Serious Crime Squad
22 within the then Strathclyde. Mr Nicolson rose through
23 the ranks relatively quickly and became head of CID, the
24 role that I finally had when I retired. I was

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1 a detective during that whole process, and clearly had
2 contact with him on many occasions. Ultimately he, as
3 head of CID, had a deputy and I was the deputy for
4 a period of time.

5 Q. Was that something that you felt the need to declare
6 when you became involved in this investigation?

7 A. Oh, absolutely, absolutely.

8 Q. Who did you declare that to?

9 A. Well, I spoke to John McSporran but John McSporran and
10 others knew of that association.

11 Q. The only person higher than you in the hierarchy, as
12 I understand it, is the Commissioner themselves?

13 A. That is correct, yes.

14 Q. We may hear from the Commissioner at that time, who
15 I understand was Kate Frame?

16 A. Yes, it was.

17 Q. Was that something you discussed with her?

18 A. I just made the decision that I wasn't going to be
19 involved with the investigation in a manner that would
20 see me interview Mr Nicolson or anyone else who I knew
21 closely, and indeed I didn't actually take a day-to-day
22 part in the investigation insomuch as I didn't interview
23 people. I didn't do any of that.

24 Q. You then mentioned Garry McEwan?

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- 1 A. Yes.
- 2 Q. Was he someone that you knew?
- 3 A. I knew Garry McEwan simply because at one stage of his
4 career he was a detective superintendent within Fife,
5 and I chaired a heads of CID meeting at the Scottish
6 Police College on a quarterly manner, so I knew
7 Mr McEwan through that.
- 8 Q. Did you also declare that as part of the discussion you
9 had --
- 10 A. I would have done had there been any suggestion that
11 I would need to speak to Mr McEwan, but that never
12 arose.
- 13 Q. Pat Campbell?
- 14 A. Pat Campbell was a detective sergeant and a detective
15 inspector within the Crime Policy Unit when I was
16 a detective superintendent in charge of that department.
- 17 Q. Did you declare your awareness of Pat Campbell?
- 18 A. Again, everybody knew that I was aware. I didn't take
19 any part in any discussion or -- with Pat Campbell
20 during the inquiry whatsoever.
- 21 Q. Lesley Boal?
- 22 A. Lesley Boal I knew as a senior CID officer from the
23 Lothians area when I was holding a similar role within
24 Strathclyde Police. Our paths crossed at occasional

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1 training events but beyond that, no, not really.

2 Q. So in terms of declaring a connection, did you declare
3 that you knew all of the officers mentioned?

4 A. Yes, yes.

5 Q. And was there a decision then taken that that would not
6 prevent you from some involvement at least as the
7 director of investigations in connection with this
8 incident?

9 A. So long as I wasn't dealing directly with them, yes,
10 I think that is fair to say.

11 Q. Thank you. You've mentioned earlier about people's
12 awareness of PIRC?

13 A. Yes.

14 Q. And I am interested in your recollection about police
15 officers' awareness of PIRC. You mention this at
16 paragraph 60 and 61 of your statement. We have heard
17 from some officers that they maybe didn't have a clear
18 picture of who PIRC were and what PIRC would do. Would
19 that accord with your recollection in 2015?

20 A. It is disappointing to hear that. We did travel far and
21 wide doing presentations in all areas of Scotland to
22 police officers, to the Federation, to wider third
23 parties like the ambulance service et cetera. I also
24 believe it is incumbent on serving police officers to

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1 keep up-to-date with change, and the formation of the
2 PIRC was not a secret. It was widely known and widely
3 available within their systems what our roles were. If
4 they didn't know, I am disappointed to hear it. But
5 I am not quite sure what else we could have done to push
6 that knowledge forward.

7 Q. Would you recognise that perhaps there could be some
8 confusion about PIRC's role by May 2015 in the minds of
9 certain officers?

10 A. I would be surprised, and it would have been the
11 responsibility for anyone, any of the PIRC staff, coming
12 in contact with a police officer who was unsure or
13 unaware of the role, to make sure it was explained to
14 them. That would be my expectation. But I have to
15 reiterate the fact that the police have a responsibility
16 on themselves to keep up with change.

17 Q. The other aspect of this I am interested in is the
18 evidence we've heard about a conversation that took
19 place between Mr Little and ACC Nicolson about the scope
20 of the investigation. This took place on 4 May. You
21 weren't back at work that day.

22 A. No.

23 Q. But it was en route for Mr Little, he was going to the
24 post mortem.

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1 A. Okay.

2 Q. And ACC Nicolson was expressing concern about the fact
3 that the police were investigating the events leading up
4 to Hayfield Road and PIRC were dealing with the later
5 events.

6 A. Yes.

7 Q. He was concerned about the perception of the public with
8 effectively split or parallel investigations running.
9 There was a discussion between Mr Little and
10 ACC Nicolson at that time.

11 Separate from the possible confusion I was asking
12 you about a moment ago, do you understand if there was
13 confusion around the scope of each investigation?
14 Because we have heard some evidence from officers that
15 seemed to suggest they thought PIRC were coming in to
16 take the lead on everything, rather than having
17 an understanding that there was a split.

18 Do you have any views about that, about, you know,
19 the possible confusion in the understanding of the
20 police, because PIRC know what they are doing, they are
21 coming in~... but making officers fully aware of
22 the limitations of your investigation?

23 A. Sorry, that would be the responsibility of the
24 senior investigating officers on the police side to

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1 ensure that their staff knew exactly what their role was
2 and the parameters of the investigation as far as they
3 were concerned.

4 Q. So that would be the police responsibility to explain
5 that to officers rather than PIRC?

6 A. I would say so, when they are directed to conduct that
7 investigation by Crown, and I also think maybe
8 Mr Nicolson should have taken his concerns to Crown
9 rather than to William Little.

10 Q. From the point on 5 May where PIRC are given the entire
11 investigation, at that point does the responsibility for
12 informing police staff change or does it continue with
13 Police Scotland?

14 A. I would say that it is -- Police Scotland would then be
15 in the position where they would withdraw their staff
16 and make it quite clear to their staff that they were
17 no longer playing a part in the investigation.

18 Q. Thank you. Can I move on to what was the second of the
19 bullet points under Article 2, which is the
20 investigation should be adequate and effective. I have
21 some questions in relation to that, if I may.

22 Can we look at paragraph 636 of your Inquiry
23 statement, please. I am interested in who -- which
24 individual would be responsible for ensuring the

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- 1 adequacy or effectiveness of the investigation.
- 2 A. Sorry, that would be down to the senior investigating
3 officer.
- 4 Q. I was going to say I think you were asked about this and
5 you have said who at PIRC was ultimately responsible for
6 the effectiveness of the investigation, and you have
7 said John McSporran would be?
- 8 A. Yes.
- 9 Q. We have heard that initially the lead investigator was
10 Mr Harrower on the 3rd and then it became Mr Little, and
11 then ultimately Mr McSporran came back from absence and
12 then his role evolved into effectively lead
13 investigator?
- 14 A. Yes.
- 15 Q. So in terms of the effectiveness and responsibility for
16 that, you don't seem to be in any doubt it was
17 Mr McSporran?
- 18 A. Mr McSporran. By 5 May, when Mr McSporran was back to
19 work, he had the responsibility to lead the
20 investigation.
- 21 Q. Was that your understanding?
- 22 A. That was my understanding.
- 23 Q. We have heard that he may have been initially appointed
24 to have an oversight view but then it evolved into lead

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- 1 investigator. Do you disagree with that?
- 2 A. I recall that he was asked to bring himself up to speed
3 with what had occurred in the days prior to the 3rd and
4 the 4th. It was always my intention that Mr McSporran
5 would become the senior investigator, to support
6 Mr Little and to support one another for continuity
7 purposes, and it was clearly going to be a complicated
8 and protracted inquiry.
- 9 Q. We have heard that as well as being lead investigator,
10 he was actually a senior investigator at that time. Is
11 that correct?
- 12 A. Yes, that is correct.
- 13 Q. Was there some sort of discussion about the situation
14 with Mr McSporran and his appointment, because we have
15 heard that it was effectively three lead investigators
16 over the course of three days?
- 17 A. Well, Mr Harrower was on call and was the initial
18 response. He had been out for a considerable period of
19 time on that day. My understanding is that on the
20 Monday it was Irene Scullion who appointed Mr Little to
21 take on that responsibility, and on the 3rd, the
22 decision was mine to give the inquiry a robustness and
23 a support from an experienced investigator, to work
24 alongside Mr Little.

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- 1 Q. So when you come back to work on 5 May, you take the
2 view it should be a senior investigator, Mr McSporran,
3 who is taking over?
- 4 A. I do.
- 5 Q. We have other evidence available that says the
6 day-to-day responsibility for the investigation lay with
7 Mr McSporran and he was the lead senior investigator.
8 Do you agree with that?
- 9 A. Yes, I do.
- 10 Q. We've also got evidence available that he was under the
11 supervision of you, the director of investigations?
- 12 A. Well, he was at all times.
- 13 Q. Were effectively all staff under your supervision?
- 14 A. Yes.
- 15 Q. Can you explain to the Chair what that role looked like,
16 supervising a large team?
- 17 A. Unfortunately it wasn't a large team.
- 18 Q. Or not a large team?
- 19 A. It was to have an understanding of the day-to-day work
20 and the challenges that the teams were facing. It was
21 to understand what the priority at that time was, and it
22 was much, much easier for me to instruct that
23 investigators be taken from one inquiry to another to
24 augment that inquiry at a time where a priority had to

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1 be met.

2 So that was more my role, it was a kind of support
3 function. I was available to be spoken to by the
4 senior investigator, or anyone for that matter, if they
5 were looking for my assistance or advice. The
6 day-to-day running of the investigation, the lines of
7 enquiry, setting priorities, ensuring that the work was
8 carried out, was the role of the senior investigator.
9 I think it is fair to say that I had an overarching
10 responsibility for the whole investigative area of
11 business.

12 Q. We have heard from Mr McSporran that he prepared
13 a management policy log, setting out decisions --

14 A. Yes.

15 Q. -- during the course of the investigation. And that,
16 having taken those decisions, or moments captured on the
17 log, that actions and tasks would then flow from those?

18 A. Yes, that's correct.

19 Q. Is that correct?

20 A. That is correct, yes.

21 Q. That would all be Mr McSporran's responsibility?

22 A. Absolutely, yes.

23 Q. Would he update you on what he was doing?

24 A. Yes, and if there were particular areas that he believed

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1 that I needed to know, high priority et cetera, where
2 I could maybe assist with. As I have just explained,
3 initially agreeing to take reviewers and support the
4 house-to-house, or an approach to Scottish Government
5 for more cash because we had to have more cars, or to
6 discuss that with the head of corporate around overtime
7 payments, to take that responsibility away from the
8 senior investigator who was leading a complex
9 investigation, that is the type of thing that I would
10 take on, on his behalf. But over and above that, if he
11 wanted advice or sought advice and came to me I would
12 try and help.

13 Q. Oh, so you would also be available to provide advice or
14 guidance based on your experience?

15 A. Yes, absolutely.

16 Q. Did Mr McSporrnan come to you for guidance and advice in
17 this investigation?

18 A. Not very often but there were a couple of occasions
19 where he found himself in a challenging position around
20 certain aspects of the investigation. And yes, we would
21 discuss that through and he sought some advice or quite
22 often a discussion helps oil the wheels and gets things
23 moving.

24 Q. Do you remember any examples of moments where he did

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- 1 seek your guidance or advice?
- 2 A. Around a particular data protection element of the
3 investigation, where Mr McSporran believed that he was
4 not getting the assistance from the police that he would
5 expect, and we talked that through.
- 6 Q. We have heard some evidence from Mr Little about that.
7 We may come back to that --
- 8 A. Okay.
- 9 Q. -- at a later stage.
- 10 A. It's that sort of high level, where there was maybe what
11 could be described as a reluctance or a perceived
12 reluctance on the police to support the investigation,
13 these things would be discussed with me.
- 14 Q. We have heard that sometimes there was attempts to find
15 a way through a difficult situation. Would that be the
16 type of thing?
- 17 A. Yes, quite often discussion, a request, rather than push
18 forward. Try and explain why the course of action you
19 are taking is so important. Try to reach an agreement,
20 rather than prolong the whole matter by going down a far
21 more circuitous route.
- 22 Q. Thank you. We have heard evidence about a briefing
23 note, and I would like to ask you about this. It's
24 dated 3 May.

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- 1 A. Yes.
- 2 Q. PIRC 03694. You were asked about this in your Inquiry
3 statement?
- 4 A. Yes.
- 5 Q. I appreciate it is dated -- we have heard evidence it
6 was prepared by Mr Harrower --
- 7 A. Yes.
- 8 Q. -- on 3 May. But it was used on 4 May and I want to ask
9 you about any involvement you had with it on 5 May, when
10 you came back to work.
- 11 A. Okay.
- 12 Q. So we are looking at it now on the screen. The date is
13 3 May:
- 14 "Briefing note for Director of Investigations."
15 So it's actually a briefing note for you?
- 16 A. That was the process.
- 17 Q. Yes. Relating to the death of Mr Bayoh. And the
18 background information is given. Could we look at
19 page 2, please. We have heard some evidence about the
20 paragraph that starts:
- 21 "It was reported ..."
22 Towards the bottom of the screen.
- 23 A. Yes.
- 24 Q. "It was reported that as the officers drove into

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1 Hayfield Road they saw the now deceased coming toward
2 them as the vehicles came to a halt. They could clearly
3 see he was in possession of a knife and was making his
4 way towards them. Some of the officers, unknown how
5 many at this stage, drew their police issue batons. At
6 least one of the officers also drew their PAVA spray and
7 issued a warning to the now deceased, who continued to
8 come forward."

9 I am interested in whether this briefing note was
10 put before you when you came back on 5 May.

11 A. I saw that briefing note on 5 May, yes.

12 Q. We have heard from various witnesses the line where it
13 says:

14 "They could clearly see he was in possession of
15 a knife and was making his way towards them."

16 And then it goes on to say that he continued to come
17 forward after batons and sprays. What was your
18 impression at that time about the circumstances, based
19 on that briefing note?

20 A. I think, and I am sure by that time that I was aware
21 that Mr Bayoh was not in possession a knife when he
22 encountered the police in Hayfield Road, that indeed
23 a knife was found in close proximity to the point of
24 contact, so that by then in my view is inaccurate.

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1 Q. So we have heard from Mr McSporran that it was at
2 a reasonably early stage where I think a statement from
3 DC Connell, one of the police officers, had been
4 received. He was aware at some early stage that a knife
5 had been found some distance from where the incident
6 occurred?

7 A. Yes.

8 Q. So that gave rise to an inference that Mr Bayoh did not
9 have a knife at the time the police approached him?

10 A. Yes.

11 Q. So that was made clear to you when you arrived --

12 A. Yes, I was aware of that and it was quite clear that
13 that briefing note was prepared before that information
14 was known.

15 Q. At any point are you aware of PIRC investigating how it
16 came to be that this information was initially provided
17 to the police? So it says it was reported that as the
18 officers drove into Hayfield Road they could clearly see
19 he was in possession of a knife. We know at this time
20 PIRC did not have statements, initial accounts, brief
21 facts, anything like that from the officers. Was there
22 ever an investigation into who had reported it or how it
23 had become reported in that way?

24 A. Not that I am aware. Simply because by 5 May we knew

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1 that that was completely inaccurate. By then we knew
2 that Mr Bayoh was not in possession of a knife, no knife
3 was found, and as I have said previously it was found
4 nearby. I am not sure where that initial information
5 came from.

6 Q. So in terms of your awareness of the investigation, is
7 it fair to say from your answers that that didn't have
8 any impact on your understanding of the events --

9 A. No.

10 Q. -- that comment?

11 A. No, it didn't because, as I say, by then I knew that
12 that was inaccurate.

13 Q. Was that something that the other investigators were
14 also aware was inaccurate at that time?

15 A. Yes, they would know because they would be briefed at
16 that point.

17 Q. We have heard evidence about the deployment staff on 3rd
18 and 4 May. I appreciate you only came back to work on
19 the 5th?

20 A. Yes.

21 Q. And initially the letter of instruction hadn't been
22 received from Crown, expanding the whole investigation.

23 A. Yes.

24 Q. But I am interested in any thoughts you have about the

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- 1 numbers deployed on the 3rd to Kirkcaldy Police Office.
2 Now, we have heard evidence that there were around six
3 PIRC officers, investigators, deployed to Kirkcaldy. We
4 have also heard evidence about one of the documents
5 which talks about a minimum deployment of nine to
6 a scene and a PIM suite. I am interested in your
7 reflections about the numbers that were sent on the 3rd.
- 8 A. Would it have been better had there been more there?
9 Yes. It was a public holiday, the May Day weekend,
10 I did question the number, and was told that attempts
11 had been made to contact staff and to increase the
12 numbers but that had been unsuccessful.
- 13 Q. Who was it you questioned?
14 A. I think from memory it was a group discussion, but
15 Ricky Casey springs to mind.
- 16 Q. We've heard that Ricky Casey remained in PIRC's premises
17 that day. Did he tell you who had made the attempts to
18 get more investigators to help?
19 A. Sorry, no, I don't think he went into that depth. It
20 was just that attempts had been made and that they had
21 managed to raise as many as they could at that time.
- 22 Q. Do you have any thoughts now about Mr Casey remaining in
23 the office?
24 A. I would have preferred had he gone to Kirkcaldy.

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1 Q. Right.

2 A. That is the way I work.

3 Q. When you say that is the way you work, what do you mean?

4 A. Well, I have -- due to the pressure on staff around

5 about that time, I also covered the on-call requirement,

6 just to alleviate some of the pressure on them, and

7 during the period around then I was notified of two

8 incidents, one a police shooting and one a fatal road

9 traffic accident, where a police vehicle had been

10 involved in a follow rather than a pursuit with another

11 car, and I attended the scene of both these incidents.

12 That is the way I would prefer it to be done.

13 Q. So even as Director of Investigations you did get

14 involved in doing jobs that were not part of your remit?

15 A. Absolutely, it was around understanding the challenges,

16 the pressures that were being put on staff and standing

17 up to show them that I was prepared, as they were, to do

18 what was needed.

19 MS GRAHAME: Thank you.

20 I am moving on to another aspect now. Would that be

21 an appropriate time to rise?

22 LORD BRACADALE: We will stop for lunch and sit at

23 2 o'clock.

24 (12.59 pm)

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1 (The short adjournment)

2 (2.00 pm)

3 LORD BRACADALE: Ms Grahame.

4 MS GRAHAME: Thank you. Before lunch we were looking at the
5 adequacy or the effectiveness of the investigation.

6 A. Yes.

7 Q. I was asking you about a number of areas that could
8 possibly be gathered under that topic generally of
9 the --

10 A. Yes.

11 Q. I would like to ask you about the taking of some witness
12 statements, and for your comments on that. First of
13 all, I think you mention this at paragraphs -- starting
14 with 380 of your Inquiry statement. You were asked to
15 comment on one statement that had been taken by PIRC
16 investigators from DC Derek Connell. We have heard his
17 name in the Inquiry as to the officer who located the
18 knife --

19 A. Yes.

20 Q. -- at Hayfield Road. A statement was taken on 6 May in
21 the presence of DS Samantha Davidson. And we have also
22 heard Samantha Davidson was in attendance at
23 Hayfield Road on 3 May. PIRC took statements from
24 Davidson, on 29 May and 2 June. And you have been asked

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1 if I was aware that the statement taken by PIRC from
2 Connell was in the presence of Samantha Davidson, and
3 you say:

4 "No, I wasn't. That wasn't best practice. I would
5 like to interview these officers individually, get their
6 accounts in their words without anyone else being
7 present who might be asked similar questions at a later
8 date, because it's their account that we want. Their
9 honestly held belief. Not something that they may have
10 heard from someone else."

11 Can I ask you to expand on that, please?

12 A. Just that: I do not think and I don't see how it could
13 be considered to be best practice to note a statement
14 from any witness, police officer or otherwise, in the
15 presence of someone else who may also be a witness in
16 that investigation. For the reasons that I give there,
17 that it's their recollection, the individual's
18 recollection. You don't want that spoken about in front
19 of someone else who may very well be a witness soon.

20 Q. What are the risks if another witness speaks about their
21 recollection in front of another individual who was
22 a witness?

23 A. Purely and simply that it may very well impact on their
24 recollection of the events, that they repeat what they

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1 hear from that individual or are swayed by what they
2 hear from that individual, rather than relying on their
3 own memory.

4 Q. We've heard that officers involved in the restraint of
5 Mr Bayoh and the interactions with him did not give
6 statements until 4 June.

7 A. Yes.

8 Q. So in early May when statements were being taken from
9 witnesses, was it seen as even more significant or of
10 any more significance that they were to be interviewed
11 separately?

12 A. I just think as a matter of course they should have been
13 interviewed separately. Whether it was more important
14 before or after -- no, quite straightforward as far as
15 I am concerned, it shouldn't have happened in the first
16 place.

17 Q. Do you understand PIRC's approach to these witnesses?
18 We have heard that they both attended at Hayfield Road.

19 A. Okay.

20 Q. They obviously gave statements and were willing to give
21 statements, other officers were not until later. Was
22 there any view taken in PIRC about how these witnesses
23 should be approached, other than the fact you would have
24 interviewed them separately?

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- 1 A. In respect to arranging for the statement to be taken?
- 2 Q. No, in respect of asking them detailed questions about
3 what they saw, who was doing what, if they were aware of
4 any of that; were they seen as important eyewitnesses or
5 potentially important eyewitnesses or not?
- 6 A. I think everyone has to be considered important because
7 you don't know what they are going to tell you, so you
8 need to approach it with the mindset that they may have
9 information which is relevant and important.
- 10 Q. Thank you. Then at 381 you were also asked to comment
11 about PIRC investigators taking a statement from
12 Alan Finlayson, who was a paramedic --
- 13 A. Yes.
- 14 Q. -- involved that day. You say that:
- 15 "I have been informed that, on 26 May~... PIRC
16 investigators took a statement from Alan Finlayson,
17 a paramedic involved in the response to the incident on
18 3 May~... I have been referred to Mr Finlayson's
19 statement to the Inquiry ... in which he states, with
20 reference to PIRC's investigators:
- 21 "'They were really quite snippy and arrogant about
22 the whole thing. It really didn't start off well that
23 meeting. There was a lot of bad feeling. I was under
24 duress to provide evidence from a statement that

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1 technically I shouldn't even have had in my hand at that
2 time'."

3 I am interested in any reflection you have on his
4 comments, Mr Finlayson's comments, about the
5 investigators being snippy, arrogant, and there being
6 a lot of bad feeling?

7 A. Very disappointed if that is how Mr Finlayson felt about
8 the investigators, disappointed.

9 Q. In terms of your expectations of your investigators when
10 they were taking statements, what did you expect
11 investigators to -- how did you expect them to act when
12 they were taking statements?

13 A. Well, I would expect them to tell the witness who they
14 were, what the intention was, and then to be courteous
15 to the individual whilst taking the statement.

16 Q. Thank you. Then look at 382, please. You were:

17 "... informed that, on 27 May ... PIRC investigators
18 took a statement from James Hume, a friend of Mr Bayoh.
19 Within his statement to the Inquiry ... Mr Hume states
20 he was asked by PIRC's investigators if Sheku Bayoh took
21 drugs, drank alcohol or took steroids and if Mr Bayoh
22 was an aggressive person who became involved in fights.
23 I have been referred to Mr Hume's Inquiry statement~...
24 in which he states:

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1 "I just felt really uncomfortable. It was
2 definitely leading questions and it felt like accusatory
3 rather than fact-finding. It was like they had
4 a picture built up and they were just confirming what
5 they already thought with me'."

6 Again, do you have any reflections on that comment?
7 Perhaps we should maybe go down the page slightly
8 actually. Because it goes on:

9 "It built up a wee bit mistrust towards PIRC and the
10 police just because of the way that went."

11 Can we move up. Then it's the next paragraph and
12 you say:

13 "I am disappointed if that is how the witness
14 felt~..."

15 Do you -- looking back now, would you have had
16 higher expectations of your investigators?

17 A. Yes.

18 Q. What would you have been expecting your investigators to
19 do with Mr Hume, a friend of Mr Bayoh?

20 A. I think to get relevant information from Mr Hume,
21 information which may assist the inquiry. Now, I think
22 by that stage we were aware that Mr Bayoh had indeed
23 taken drugs, and I am not so sure that the questions
24 themselves were inappropriate, it appears to me more

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1 that the way that they were put to the witness, he felt
2 was inappropriate.

3 Q. Would you have expected your investigators to provide,
4 as you say there, a better explanation, a fuller --
5 perhaps a fuller explanation?

6 A. I think that could have eased matters, yes, had they
7 better explained why they were asking these questions.

8 Q. Looking at those descriptions from Mr Finlayson
9 and Mr Hume, and Mr Hume's expression that, "It built up
10 a wee bit of mistrust towards PIRC", do you have any
11 concerns about how this would impact on the
12 investigation?

13 A. I think in fairness I would have to know more about what
14 happened that day, what the great concern was. I was
15 unaware of this at the time. If this had been brought
16 to my attention or to a member of staff's attention
17 I would certainly have spoken to the investigators
18 involved and made them aware that I expected better.

19 Q. Was there a process in PIRC at that time that allowed
20 people to raise concerns with you or a senior member of
21 PIRC?

22 A. Yes, people could complain by lifting the telephone,
23 they could complain.

24 Q. Thank you. Can I look at another paragraph in your

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1 Inquiry statement, please. 263. This relates to
2 a DC Andrew Mitchell, and you were referred to
3 a statement obtained by PIRC on 2 June. So this is
4 still prior to the officers giving statements.

5 A. Yes.

6 Q. He was involved in passing the death message to
7 Mr Bayoh's family.

8 A. Yes.

9 Q. You say:

10 "I have been informed that, within that statement
11 DC Mitchell does not appear to have been asked to
12 respond to the allegations made by Mr Bayoh's family in
13 relation to the information that was passed to them on
14 3 May ... and no further statement appears to have been
15 obtained from DC Mitchell after PIRC's terms of
16 reference were expanded on 12 June~..."

17 Just so it's clear, the expansion on 12 June asked
18 PIRC to investigate the family's concerns about
19 misinformation and different versions being given. So
20 that was expanded in terms of the terms of reference on
21 12 June, and it would appear that no one went back to
22 DC Mitchell to ask him about that. He gave a statement
23 on 2 June but not after that.

24 You say:

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1 "I have been asked if I would have considered it
2 best practice for a further statement to have been
3 obtained from DC Mitchell to cover this. I would've
4 thought so, yes."

5 A. Yes.

6 Q. Why do you say you would have thought best practice is
7 that would have been done?

8 A. I think we should have considered what DC Mitchell had
9 said in his first statement, we should have compared it
10 to the complaints that the Bayoh family were making, we
11 would have identified then whether or not DC Mitchell
12 had covered these points and if not, the correct course
13 of action would have been to go back and re-interview
14 them.

15 Q. Can you explain to the Chair how it is that things like
16 this don't fall through, so that things are picked up.
17 How do you go about that and how did you go about that
18 in PIRC?

19 A. Again, that -- a role that the senior investigator will
20 play is to read all of the statements that are relevant
21 to his lines or her lines of enquiry, and I would have
22 expected that to be picked up at that stage.

23 Q. Would you expect the senior investigator to do some sort
24 of comparison to say: here are my terms of reference

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1 from the Crown, here are the actions that are being done
2 in relation to investigating those and is anything more
3 needing to be done?

4 A. Yes, because I think you need to be able to answer the
5 questions that Crown have asked.

6 Q. Is it an expectation that ultimately in the report there
7 will be answers given to each of the lines of
8 investigation?

9 A. Well, I would think that Crown have an expectation that
10 the direction that they had given would be covered in
11 the report.

12 Q. Thank you. Obviously we have heard evidence from
13 DC Andrew Mitchell, he was one of the officers who
14 passed the death message. Would it be obvious that the
15 officers who passed the death message would be key
16 witnesses to that line of investigation?

17 A. To that line of investigation most certainly, yes.

18 Q. I can move on to 264:

19 "I knew that Garry McEwan did meet with the family.
20 My understanding is that Garry McEwan knew the family in
21 some way through some local initiative. He decided, as
22 no FLOs had been there, that he was going to go and give
23 the family an update as to where they stood at that
24 moment in time."

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1 We can move on to the next page. 265:

2 "I have been referred to the statement obtained by
3 PIRC from Ch Supt Garry McEwan on 24 June~..."

4 This is after the officers have given statements:

5 "... after PIRC's terms of reference were expanded
6 on 12 June~... I have been informed that the allegations
7 made by the family about the information passed to them
8 on 3 May ... do not appear to have been put to
9 Ch Supt McEwan within this statement. The allegations
10 only appear to have been put to Ch Supt McEwan in
11 a subsequent statement, obtained in January 2018~..."

12 So not quite three years later, but almost?

13 A. A considerable time later, yes.

14 Q. And that was at the Crown Office direction?

15 A. Yes.

16 Q. We have heard by this stage Crown Office had a report
17 from PIRC?

18 A. Yes.

19 Q. "Again, that's a purely operational decision that would
20 be made by the senior investigator. I didn't read
21 absolutely every document. That is left to the
22 senior investigator to progress the investigation."

23 A. Yes.

24 Q. So is it fair to say this is something you would have

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1 expected the senior investigator to be keeping an eye
2 on?

3 A. Yes, again if clarity was needed I would expect that
4 decision to be made and to be pushed through by the
5 senior investigator.

6 Q. So, given the family's concerns that were raised by the
7 Crown's letter on 12 June about what they were told on
8 3 May: the different versions, the misinformation, and
9 knowing that Chief Superintendent McEwan went to visit
10 the family and was one of the people who was passing
11 information to them on 3 May, would you have expected
12 the senior investigator to go back to
13 Chief Superintendent McEwan after 12 June, after the
14 letter from the Crown Office, and ask further questions?

15 A. Yes.

16 Q. Thank you. I have put a series of issues about
17 statements not having been obtained or further
18 statements not having been obtained in relation to
19 specific matters. In terms of thinking again about
20 adequacy of the investigation, and effectiveness, do you
21 see those as examples of maybe where PIRC have not been
22 adequate or effective in the investigation?

23 A. Examples where things could have been done better.

24 Q. Thank you. We have heard evidence about the police

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1 officers giving statements, so as I understand the
2 position on 2 June contact was made and officers agreed
3 to provide statements.

4 A. Yes.

5 Q. The arrangements were made for them to come to -- the
6 majority to the Scottish Police College?

7 A. Yes.

8 Q. And to give statements on 4 June?

9 A. Yes.

10 Q. And in between that time there was a witness interview
11 strategy prepared. I don't know if you have seen any of
12 the questions I have asked Mr Little and Mr McSporran
13 about that?

14 A. No, no.

15 Q. I think in your statement you say you weren't involved
16 directly with preparing the witness interview strategy?

17 A. No, I certainly wasn't, no.

18 Q. Can we look at paragraph 356 of your Inquiry statement.

19 "I have been asked if, in an interview following
20 an incident, I would consider it important to ask why
21 certain decisions were taken by the officers. Yes.
22 An awful lot is to do with justification, so that would
23 be a natural question under that circumstance. 'Why did
24 you find it necessary to use CS spray? Justify your

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1 actions'. Even without using the term 'justify your
2 actions', 'Tell me why you felt it was appropriate to
3 use a baton. Why did you find it necessary to use
4 handcuffs?' I'm quite sure all these questions were
5 asked. I'd be surprised if they weren't."

6 We have heard evidence that police officers are --
7 in the UK police officers are permitted to use force --

8 A. Yes.

9 Q. -- in their daily work. They have a legal right to use
10 that. But in order for that to be legal they must
11 justify each and every individual use of force?

12 A. Yes.

13 Q. It's justified by the officer explaining why that use of
14 force was necessary, reasonable and proportionate?

15 A. Definitely.

16 Q. And they must use the minimum level of force that they
17 can --

18 A. Yes.

19 Q. -- to achieve their objective. So when you are talking
20 here about asking, "Justify your actions", is it against
21 that background, about the legitimate use of force?

22 A. Absolutely.

23 Q. You have said here you are quite sure all these
24 questions were asked and "I'd be surprised if they

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1 weren't". I don't want take you through the witness
2 interview strategy in detail but we have gone through
3 that with other witnesses, and there aren't any
4 questions where they have specifically written down:
5 justify why you used force, justify that use of the
6 baton or the spray, or whatever use of force it was.
7 There are no questions such as: tell me why you felt it
8 was appropriate to use a baton or a spray? No questions
9 like: why did you find it necessary to use handcuffs?

10 Presumably that surprises you to hear that?

11 A. Yes.

12 Q. Now, if you take from me that that is the evidence that
13 we have heard, do you have concerns that none of those
14 questions were put in a witness interview strategy?

15 A. I think those questions should have been asked.

16 Q. Why?

17 A. Because, as you explain there, we have to understand why
18 force was used, we need to understand that if it was
19 used, that it was minimum required, that it was
20 appropriate and it could be justified.

21 Q. Now, in the interviews of the officers, they were giving
22 their recollections, their version of what happened from
23 their perspective. Would you have expected your
24 investigators to probe into that further, into their

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1 recollection and to ask questions about why did you use
2 force at that point, if the officer is simply explaining
3 the whole circumstances?

4 A. Yes, I would have thought that there should have been
5 challenges or further investigation of the answers that
6 were given. Things like that would have been fair.

7 Q. Are you able to explain what was happening with the PIRC
8 investigation at that time? We have heard that the
9 witness interview strategy was prepared by
10 a Mr Sinclair?

11 A. Okay.

12 Q. He had training, he had experience in preparing witness
13 interview strategies?

14 A. Yes.

15 Q. And obviously we are talking about a period between 2nd
16 and 4 June. We've heard evidence that he may have felt
17 that there was not a lot of time to prepare witness
18 interview strategies during that window, and that --
19 I wonder what your views are about that period of time
20 being given. Obviously you have been waiting for
21 statements but what is your view about expecting all of
22 that to be done and prepared for in a window between 2nd
23 and 4 June?

24 A. Yes, I think that would be a challenge for the interview

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1 adviser. There was by now an urgency to get statements
2 from these officers. Now, that doesn't mean that it's
3 all going to be covered in one interview. What
4 I believe that you are describing here is a situation
5 where they are asked to provide their account without
6 any great challenge to that. That surprises me. And
7 sorry, the two to four days was a short period of time
8 but there was a real urgency to get statements from
9 these officers due to the passage of time.

10 Q. Would you have -- you have talked about a challenge.
11 Would you have expected that probing to have been done
12 on 4 June?

13 A. Without actually reading the whole content of those
14 statements at this stage, or understanding exactly what
15 was being said and what kind of questions were being
16 asked, what I would say is that if it hadn't been asked
17 at that stage, and then statements had been read and it
18 was felt that they hadn't adequately been covered,
19 I would have expected people to be re-interviewed.

20 Q. When you say "adequately covered", if there was, say,
21 an example of an officer describing a use of force --

22 A. Yes.

23 Q. -- where there did not, on the face of it, appear to be
24 a full explanation or justification given, in that --

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1 given that you have agreed they have to justify every
2 single use of force, would you have expected that to be
3 covered --

4 A. Yes.

5 Q. -- on 4 June?

6 A. Yes.

7 Q. In the absence of that explanation, if someone reflected
8 later on the statements, would you have expected
9 investigators to go back to ask those follow-up
10 questions?

11 A. Yes.

12 Q. In relation to the time period between the 2nd and the
13 4th, given what you have said about urgency, would there
14 have been any reason or was there a reason not to delay
15 slightly arranging statements from the officers?

16 A. I think maybe a fear that that offer would be withdrawn.

17 Q. Right. Thank you. You have mentioned the M9?

18 A. Yes.

19 Q. And we have heard evidence that that had -- that was
20 a significant investigation which also came in.

21 A. It did, yes.

22 Q. My understanding is it happened in early July, 5 July.

23 So within a matter of months --

24 A. Yes.

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1 Q. -- two months of the death of Mr Bayoh. Do you remember
2 the specific impact that investigation had on the
3 resources which were working on Mr Bayoh's Inquiry?

4 A. Yes, clearly the resources had to be provided to the
5 investigation into the M9, so clearly that had
6 a detrimental effect on the timing et cetera, of the
7 inquiry into Mr Bayoh's death.

8 Q. Do you remember now the impact on the numbers that were
9 working on Mr Bayoh?

10 A. Again, the way that we tried to manage that was to look
11 at the workload that was ongoing each and every day,
12 look at the priority level for each of those
13 investigations, and then I'm afraid it was a matter of
14 robbing Peter to pay Paul, and moving staff around to
15 best meet the needs of the priorities on that day.
16 Based on the finite resources.

17 Q. So is it fair to say that from the date that happened,
18 that some staff were relocated to the other
19 investigation?

20 A. Yes.

21 Q. From Mr Bayoh's?

22 A. And from other investigations that were ongoing because
23 those weren't the only two investigations that were
24 ongoing at that time.

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1 Q. Do you remember the sort of numbers we are talking about
2 or do you have a sense of --

3 A. It wouldn't be a part of turning around and
4 saying: right, we are going to the half numbers and give
5 equal numbers to each inquiry. It would be what
6 investigations do you intend carrying out today,
7 tomorrow, and how many people would you need to make
8 sure that you can do that. Would that inquiry then get
9 all of the people that were asked for? Well, maybe not,
10 simply because everyone thinks their inquiry is more
11 important than the other, and on occasions I or
12 Irene Scullion would have to step in at that stage and
13 say, "I hear your plea, however this inquiry needs that
14 done as well, so this is what you are getting, come back
15 to me and give me a progress report".

16 Q. So after the period say on 5 July, when the M9 situation
17 arose, was there a sort of daily review undertaken to
18 best allocate the resources that were available?

19 A. There was a daily review in the entire time that I was
20 at the PIRC to ensure that the finite resources were
21 pointed in the right direction to achieve what had to be
22 achieved at that time.

23 Q. When this is ongoing we have heard that just a few days
24 prior to the M9 incident on 2 July -- we've looked with

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1 Mr McSporrán at a letter that the Crown sent to
2 Mr McSporrán, where the Crown said they would confirm
3 that they would take responsibility for instruction of
4 appropriate experts in relation to positional asphyxia,
5 or asphyxiation as the letter said. Was it the normal
6 course of events that Crown would take responsibility
7 for instruction of experts?

8 A. I don't recall in my experience that occurring, but ...
9 if they were aware of a specific specialist, they may
10 very well decide to do that themselves, or direct the
11 PIRC investigator to take on that role.

12 Q. Can we look at paragraph 537 of your Inquiry statement,
13 please. I would like to ask you some questions about
14 instruction of experts.

15 Just to put this into context while we wait for it
16 to be brought up on the screen, officers have given
17 statements on 4 June, there was an interim report sent
18 to Crown on 7 August.

19 A. Yes.

20 Q. And at that point, very shortly after 7 August, the PIRC
21 instructed two experts, Dr Payne-James and Dr Karch.

22 A. Okay.

23 Q. So that is the evidence we have heard.

24 A. Okay.

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1 Q. So 537:

2 "I have been asked what personal involvement I had
3 in the identification, selection and instruction of
4 expert witnesses by PIRC during the investigation. Very
5 little, to be quite honest with you. I've let the
6 others do the research into that, and part of that
7 research was for people who we identified who we thought
8 might be able to help to provide the CVs to support
9 their area of expertise. Details of those identified
10 and their CV were shared with Crown to see if Crown
11 agreed that we were in the right direction and
12 approaching the right people."

13 A. Yes.

14 Q. I am interested in this process that was followed
15 through. We have heard from Mr McSporran that he had
16 much experience of instructing forensic experts, both as
17 a police officer and in relation to other
18 investigations. I am interested in this
19 investigation -- this part of investigation where
20 medical experts were being instructed. It would appear
21 that investigators from PIRC were researching who to
22 instruct. Can you tell me a little about that from your
23 perspective?

24 A. Well, just that. We looked at where we could identify

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1 experts who may have the specific skills to comment on
2 the areas relating to death: the effect of alpha-PVP,
3 the effect of MDMA, the effect of these drugs together
4 on Mr Bayoh, the effect of restraint on Mr Bayoh. It
5 also went further and looked at training in relation to
6 use of force, so ultimately it was a broad look across
7 the area of expertise and there is a library, for better
8 term, held within -- now, I think I said initially the
9 Crown Faculty, I think it was the College of Policing
10 ultimately who held a library of experts who had been
11 used on previous investigations, that is how the library
12 was built up, and who could support their knowledge and
13 expertise through providing CVs and papers et cetera.

14 However, this was me, I didn't think it was
15 appropriate for us just to march ahead and consider that
16 we had identified people that the Crown would consider
17 as the right people, so it was shared with Crown for
18 their opinion as well.

19 Q. So rather than simply instruct once you had identified
20 the experts, you sought the approval of Crown?

21 A. Yes, we sought agreement with Crown, I would say.

22 Q. Was this reliance on the College of Policing because
23 PIRC didn't have its own resources in terms of
24 identifying experts and --

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1 A. We didn't, and that type of information previously has
2 been gathered largely during police investigations.
3 An expert witness library, as I called it, has been held
4 for a number of years, and is added to as more expertise
5 in different areas becomes available.

6 Q. Was this -- there was no opportunity to ask Crown for
7 guidance about the identification of the experts?

8 A. Well, I think in referring our thoughts to Crown, and
9 telling them who we intended to approach, that had they
10 had any ideas, that that would have been the time that
11 they would have volunteered those. That was an ongoing
12 discussion around expert witnesses.

13 Q. Can we look at paragraph 541. You say:

14 "I have been asked if this was the only
15 investigation I'm aware of in which PIRC instructed
16 expert witnesses. Yes, I'm sure it is."

17 A. From my knowledge and the time I was there, I don't
18 recall another set of circumstances. I may be wrong but
19 I do not recall another set of circumstances.

20 Q. So from 1 April 2013 when PIRC were created, you were
21 there, you were director --

22 A. Yes.

23 Q. -- up until 3 May 2015 when the incident happened with
24 Mr Bayoh, you are not aware of ever being instructed by

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- 1 the Crown to instruct expert witnesses?
- 2 A. No, I don't recall.
- 3 Q. So if expert witnesses were required, was it the Crown
4 who took on that responsibility?
- 5 A. No, the senior investigating officer did.
- 6 Q. So had there simply just never been an investigation
7 that required the instruction of experts?
- 8 A. That is my understanding, yes.
- 9 Q. Rather than the Crown would instruct experts but --
- 10 A. No, I had no knowledge of that happening, no.
- 11 Q. After May 2015 were you aware of any other
12 investigations in which PIRC were instructed to instruct
13 expert witnesses -- identify and instruct expert
14 witnesses?
- 15 A. The only one that I can think of at this moment in time
16 would be the M9 incident and that was more around the
17 Health and Safety Executive and their expertise in that
18 area.
- 19 Q. When you say it was more around the Health and Safety
20 Executive, was there an instruction of expert witnesses
21 in connection with health and safety prosecution?
- 22 A. I believe there was, yes.
- 23 Q. Are there any other examples you can think of where
24 medical experts were instructed by PIRC?

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1 A. No.

2 Q. In the time until your retiral were you aware of any
3 other medical experts having been instructed by PIRC?

4 A. No.

5 Q. Can we look at paragraph 548:

6 "I have been asked if any rules, guidance, standard
7 operating procedures or case law was considered by PIRC
8 when identifying selecting and instructing expert
9 witnesses during the investigation. No, there wasn't."

10 Can I ask was that because there were no rules,
11 guidance, standard operating procedures or case law at
12 that time, or because they did not refer to them?

13 A. I am unaware of any rules, guidance or standard
14 operating procedures in relation to instructing expert
15 witnesses.

16 Q. What training had investigators had in relation to
17 instructing medical experts?

18 A. None, I would imagine. Even as an SIO within policing
19 I don't ever remember receiving training on how to
20 identify expert witnesses, but during the training that
21 you receive as a senior investigating officer you are
22 made aware of the type of library, the type of resource
23 that is available through the likes of -- in my time,
24 the Crime Faculty and then ultimately the College of

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- 1 Policing.
- 2 Q. Thank you. Were you aware -- some of your investigators
3 did not come from a police back ever background.
- 4 A. No, absolutely.
- 5 Q. Were you aware if any of them had had training in
6 relation to instructing medical experts?
- 7 A. No, definitely not. They didn't come from that
8 background as far as I am aware.
- 9 Q. I think at paragraph 545 you say you were asked if you
10 were aware of the criteria that were used to select the
11 experts but you weren't aware of the criteria. Is it
12 fair to say that these issues would be the
13 responsibility of Mr McSporran?
- 14 A. Yes, indeed, yes.
- 15 Q. This the sort of level of detail that you would have
16 expected to be brought to your attention or to ask you
17 for guidance in connection with?
- 18 A. No, no, not necessarily because ultimately Mr McSporran
19 had had the same training as I had in relation to
20 a senior investigating officer's training, and in a past
21 life I had always relied heavily on the areas that
22 I have discussed today, to help identify subject matter
23 experts.
- 24 Q. Then at 549:

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1 "I have been asked if [Crown Office] provided PIRC
2 with any guidance in relation to the identification,
3 selection and instruction of expert witnesses during the
4 investigation. No. There are responsibilities for the
5 investigators that Crown would rightly turn around and
6 say, 'Well, we've instructed you to do it. Find what
7 you can and send it to us and we'll determine whether it
8 satisfies our needs'."

9 A. Yes.

10 Q. Do you -- in light of what you have told us today, in
11 relation to the absence of specific training, perhaps
12 the absence of experience, the absence of guidance and
13 SOPs and suchlike, do you feel you had sufficient help
14 from Crown? I appreciate you are running things past
15 them but do you feel you had sufficient support in
16 identifying the right experts and instructing their
17 opinions?

18 A. I don't know that I could say that we were given support
19 from Crown. I don't know if they generally -- I don't
20 recall them generally coming and saying us to: try A, B,
21 C and D. We had an idea of the type of expert opinion
22 that we were looking for, that subject matter experience
23 in relation to drugs and the effect that those drugs
24 might have on an individual around restraint, all of

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1 that. As I said earlier, my concern was that for us to
2 march forward and just assume that we were identifying
3 people who would satisfy Crown's need would have been
4 a folly, it could have held things back enormously
5 and I thought it was a rational decision to share the
6 CVs, the experience of the persons who had supplied
7 those CVs and get agreement or otherwise from Crown that
8 they were prepared to accept expert testimony from these
9 individuals.

10 Q. Thank you. Can I ask you about a letter. We have
11 actually looked at two letters, and I will just give you
12 some context here, if I may begin. We've heard evidence
13 about two letters that were written by Mr Aamer Anwar on
14 31 July 2015. The first letter was sent to the
15 Chief Constable.

16 A. Yes.

17 Q. And the second letter was sent to PIRC. Specifically to
18 Mr McSporran and to Kate Frame.

19 A. Okay.

20 Q. Ultimately at some point the Crown sent the
21 Chief Constable letter to PIRC, so PIRC did have sight
22 of both letters.

23 A. Okay.

24 Q. I wonder if I can ask you to look at COPFS 02768A. You

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1 will see that this is a letter to Kate Frame from
2 Crown Office dated 24 August 2015. There is reference
3 to section 33A and it says:

4 "... I write to ask you to carry out
5 an investigation in relation to the circumstances in
6 relation to attached correspondence from Aamer Anwar."

7 If we move down the page. There is an indication
8 that they have written to the Deputy Chief Constable:

9 "... to advise him that I have instructed you to
10 take forward the investigation~..."

11 And:

12 "... happy to discuss any of the foregoing~..."

13 This is from Mr Brown at the head of Criminal
14 Allegations Against Police Division?

15 A. Yes.

16 Q. If we keep going down that page we will see what is
17 a four-page letter from Mr Anwar to Mr Stephen House,
18 who was then the Chief Constable?

19 A. Yes.

20 Q. I don't need to go through the detail of this with you,
21 but there are a number of -- we can scan through it
22 actually. We can see that some matters are redacted but
23 you can see there are references to a number of issues
24 that they are asking PIRC to investigate.

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- 1 A. Yes.
- 2 Q. I would like to ask you of your view about the way this
3 information came to PIRC. So rather than the actual
4 content, I am interested in the fact that if we can go
5 back to the Crown Office letter, what it appears is they
6 are simply asking you to carry out an investigation in
7 relation to a letter which is attached.
- 8 A. Yes.
- 9 Q. Was that customary for the Crown to simply put
10 a covering letter on correspondence from solicitors when
11 they were asking you to investigate?
- 12 A. I think maybe it was simply a matter of ensuring that
13 the concerns raised by Mr Anwar arrived on our desk
14 exactly as they had been portrayed. Again, that was
15 a decision for Crown, whether they took it and dealt
16 with that way. It came to the Commissioner, I don't
17 think there was a discussion or I am not aware of
18 a discussion beforehand but Crown obviously believed
19 that that was the appropriate manner in which to share
20 that information with the Commissioner.
- 21 Q. We have also heard that this is an example of a letter
22 where the interim report had gone to Crown --
- 23 A. Yes.
- 24 Q. -- on 7 August. It was a substantial document,

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1 351 pages in length. But after that interim report was
2 sent, further letters of instruction continued to come
3 in; is that the case?

4 A. Yes.

5 Q. The further letters of instruction, the expansion, the
6 extension of the terms of reference, that continued over
7 a period of time?

8 A. Yes.

9 Q. And then ultimately I think the final report was sent
10 the following year?

11 A. Okay, yes.

12 Q. Do you remember that?

13 A. I don't remember exactly -- it was sent the following
14 year, yes --

15 Q. Roughly a year later --

16 A. -- I couldn't give you a date but I know that it was
17 about a year later, yes.

18 Q. We heard evidence from Mr McSporrán and he agreed that
19 it was around August the following year, 2016. So
20 roughly a year after the interim report.

21 A. Yes.

22 Q. Did you continue to have a sort of supportive role of
23 the investigation during that period?

24 A. By August 2016 my role had changed --

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1 Q. Can you tell us about that?

2 A. -- considerably. The Commissioner Kate Frame had looked
3 at the set-up of the organisation at that time, having
4 been in place now for a couple of years, and believed
5 that support was needed elsewhere in relation to HR
6 facilities et cetera. Round about the end of the
7 financial year, so that would be around about
8 March/April 2016, the head of Corporate Services left
9 the organisation and there was a slight remodeling
10 undertaken at that time.

11 I then moved from the role of Director of
12 Investigations to a new formed role of Director of
13 Operations, which gave me the responsibility not only
14 for the investigations side of business, but the
15 overarching responsibility for the reviews, the
16 corporate services area of business and also made me the
17 accountable officer in relation to Scottish Government
18 finance. So my role expanded somewhat. Honestly,
19 I could not possibly at that stage have the same level
20 of interaction with the ongoing investigation that I had
21 had previously.

22 Q. So was that from did you say March 2016?

23 A. I believe it was, and I think that was the case because
24 I think one of my first duties was to sign off the audit

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1 around the end of the financial year and the beginning
2 of the new financial year, so it was certainly around
3 about March/April time of 2016.

4 Q. So investigations became a smaller part of your overall
5 responsibilities?

6 A. My time was shared among a wider responsibility, is the
7 way I would put it, yes. And Irene Scullion then
8 remained as head of investigations at that stage.

9 Q. Did her title remain the same?

10 A. It remained the same, yes.

11 Q. But in terms of her role after you took on this director
12 of operations role, how did her role evolve at that
13 time?

14 A. It didn't really change. It was the same role and
15 I think I tried, maybe not particularly eloquently,
16 earlier to describe that my role initially when
17 Professor John McNeill was there was a role that
18 supported him who had little knowledge of criminal
19 investigations. That is why he was keen also to have
20 a deputy to my role, so that when I was supporting him
21 and I attended a lot of meetings with him, that the work
22 was split between myself and Irene Scullion. I think
23 what would be fair to say is that once we moved to me
24 being Director of Operations in general terms that

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1 day-to-day work fell to Irene Scullion and was not
2 shared by us at that stage.

3 Q. Can we just go back to your Inquiry statement, please.
4 Paragraph 39. I just want to be clear in my own mind to
5 I have got dates correct here. Paragraph 39. So
6 I think you were asked about the Director of Operations
7 role. In your Inquiry statement you say some time in
8 2017 --

9 A. Yes, but I have rethought that and I am quite sure now
10 that it was 2016. Because I was in that role for longer
11 than a year before I retired, much longer than a year,
12 and I am now quite sure within my own mind that it was
13 nearer the timeframe that I have now described: March,
14 April, May time, 2016.

15 Q. I think you said earlier that you retired in 2018?

16 A. I did. I retired initially on 31 March, at the end
17 of March.

18 Q. So if you were in that role, Director of Operations, for
19 over a year, it would have been prior to --

20 A. Yes.

21 Q. -- 2017, it would have been 2016?

22 A. It most certainly was. I was mistaken around the 2017
23 here.

24 Q. Thank you. Can I very briefly go back to a matter in

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1 relation to the 4 June. I am conscious of the time but
2 this wouldn't take long. We've heard evidence from
3 Mr McSporran about the arrangements that were made on
4 4 June for the officers to give statements?

5 A. Yes.

6 Q. And he talked about two investigators being allocated to
7 interview each of the officers, there were nine
8 officers.

9 A. Yes.

10 Q. He talked about regular breaks being set up:

11 "Answer: ... because [they] anticipated each
12 officer's account would be slightly different, what you
13 might get is one officer mentioning a particular set of
14 circumstances, a specific issue, and another officer
15 doesn't and that is why you have regular breaks where
16 you discuss these matters. I was there in
17 a co-ordination role. You may then say: well, can you
18 now go back and ask him about this or ask her about
19 that, and the officer might say: oh yes, that is right,
20 I do remember that now. But you want to get their
21 initial sort of accounts and then go and examine that in
22 detail and have those regular breaks and discussion with
23 the investigators."

24 I am interested in your reflections on setting up

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1 that sort of mass interview strategy, if you like, on
2 4 June: nine officers, each requiring two investigators
3 or two members of staff of PIRC to interview them.

4 A. Yes.

5 Q. Were they all investigators who interviewed them?

6 A. Yes.

7 Q. Can I ask for your comments about the idea of having
8 breaks and cross-referencing between an initial point
9 such as we've heard evidence that Mr McSporrان and
10 Mr Little were there in, as Mr McSporrان describes,
11 a co-ordination role, not interviewing individual
12 officers?

13 A. Yes, I am quite sure it was a challenging day around
14 that, but I can see where he's coming from, all the
15 officers were there together, we did have the resources
16 at that time to conduct interviews with all nine, and to
17 the best of his ability I have no doubt Mr McSporrان
18 tried to interpret, to understand the briefs that he was
19 getting from each team and make a decision as to whether
20 certain points would have to be reconsidered, put to
21 other witnesses, and how that worked on that day, as
22 I say, would have been challenging.

23 Q. Did you have any concerns in relation to your knowledge
24 of the arrangements as to whether there would be any

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1 potential for cross-contamination or influencing one
2 witness with references to what another witness had
3 said?

4 A. No, because I would have imagined it would only have
5 been put as a challenge, if there was a specific point
6 made which was completely contradicted by another
7 person. I think moving on -- and I also think that part
8 of the reason, as I said earlier, was that there was now
9 an urgency to get initial accounts at least from these
10 officers on to paper. And it's quite clear that on the
11 4th we had sufficient staff to do that, so I think it
12 has been very much a case of yes, the urgency: let's get
13 that initial interaction with the police, let's get
14 these statements noted, and we happened to have the
15 staff on duty at this present time who can achieve that,
16 because I don't know when that might have happened
17 again.

18 MS GRAHAME: Thank you. I am conscious of the time.

19 LORD BRACADALE: We will take a 15-minute break there.

20 (3.00 pm)

21 (A short break)

22 (3.22 pm)

23 LORD BRACADALE: Ms Grahame.

24 MS GRAHAME: Thank you. Can I ask you some questions --

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1 I was asking you questions about experts.

2 A. Yes.

3 Q. And the instruction of expert witnesses. I am
4 interested in Dr Karch, Steven Karch?

5 A. Yes.

6 Q. Who was instructed, and are you -- I asked Mr McSporrان
7 about this and I wonder if you have any better
8 recollection about how it came to be that Dr Karch was
9 identified as a suitable expert?

10 A. No, I'm sorry, I don't.

11 Q. Do you remember if he was recommended through the
12 contact with College of Policing or some other source?

13 A. I am afraid I don't know.

14 Q. Right. Were you party to any discussions about Dr Karch
15 and his suitability to be able to identify and opine on
16 issues that PIRC were interested in?

17 A. No, I just became aware that he had been selected, and
18 that he was being suggested to Crown as an expert who
19 they may wish to use. I am sorry, I can't ...

20 Q. That is fine. Can we look at your Inquiry statement
21 again, please, paragraphs 574 and then 575. If we look
22 at 574. You were referred to a letter of
23 12 October 2015 from the Commissioner~... Sorry, can we
24 look at 574 first, thank you. So from the Commissioner,

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1 Kate Frame, to the Lord Advocate concerning expert
2 witnesses. You were asked to look at a specific part of
3 that letter where it is stated:

4 "... 'Dr Karch is considered to be one of
5 the world's foremost experts in this field'."

6 You have said:

7 "Expert witnesses tend to tell you that. I doubt
8 that it would be the Commissioner that would find that."

9 Do you know where this information came from?

10 A. From -- about Dr Karch being~...?

11 Q. The part in italics:

12 "... one of the word's foremost experts in this
13 field."

14 A. No, I am afraid I don't.

15 Q. If we can move to 575. You were then referred to
16 a letter of 6 November from Mr Anwar for the attention
17 of Kate Frame, page 8 which stated:

18 "The fact that Dr Carey refutes the claims by
19 a senior PIRC investigator as to the recommendation of
20 Dr Karch, means that the claims made by the investigator
21 are either a complete distortion of the facts and/or
22 a deliberate attempt to steer the investigation in
23 a specific direction."

24 We have heard some evidence about an issue about the

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1 instruction of Dr Karch, and obviously Mr Anwar was
2 raising there a concern about a deliberate attempt to
3 steer the investigation in a specific direction.

4 Dr Karch was instructed and commented on
5 excited delirium at that time.

6 A. Right, okay.

7 Q. So I am interested, you don't remember how his name came
8 to be recommended to the Crown. Do you have any
9 recollection about where the information was from that
10 PIRC seem to have at some point at least considered him
11 to be one of the world's foremost experts?

12 A. I am trying to place Dr Karch. Was he the American?

13 Q. Yes, sorry perhaps I should have had said that. He was
14 the American.

15 A. I think then that there must have been a search in
16 relation to that whole business around excited delirium.
17 Now, I do know that was discussed. I don't know who
18 started that discussion off and whether that then became
19 one of the search criteria that was undertaken. And
20 I think he was identified via the internet, now that
21 I realise who Dr Karch is.

22 Q. Sorry, I should have given you more information. In
23 terms of what was contained within the post mortem
24 report, can I ask you to look at PIRC 01445, and we will

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1 have that on the screen, page 17, please. It reads 16
2 on the actual report, 17 on the pdf. So if we move up,
3 please -- move down, I would like the screen to be
4 brought ... Do you see the number 17 there? It's
5 getting late in the afternoon. I apologise. If you see
6 the 17 there, I want 16. Thank you so much.

7 If we can look at the paragraph which is slightly
8 further down which begins:

9 "Given the circumstances ..."

10 A. Yes.

11 Q. Here we are:

12 "Given the circumstances provided ..."

13 So this is a report written by Dr Shearer and
14 Dr Bouhaidar, who are the pathologists that carried out
15 the post mortem.

16 A. Yes.

17 Q. They say:

18 "Given the circumstances provided, toxicological
19 findings and lack of another cause of death at
20 post mortem, the possibility of excited delirium
21 syndrome has been considered in this case. It is
22 however a psychiatric and not a pathological diagnosis
23 and there is some debate in the forensic community with
24 regard to its application as a cause of death."

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1 I am not going to ask about you about your views on
2 that, we have heard evidence about this aspect:

3 "That said, there is a great deal of literature
4 looking at this syndrome especially with regards to the
5 circumstances described in this case, but it has to be
6 remembered that it should be considered in conjunction
7 with circumstantial information (namely a history of
8 restraint) and toxicological findings."

9 Then there is more -- another paragraph about
10 excited delirium syndrome and the circumstances around
11 that. What Dr Shearer and her colleague are saying here
12 is that they have considered excited delirium syndrome
13 but it is a psychiatric and not a pathological
14 diagnosis.

15 A. Yes.

16 Q. And there is some debate in the forensic community
17 regarding its application to cause of death. We have
18 heard evidence about that debate, and some up-to-date
19 information about views taken by various bodies. What
20 this report appears to say is that this would be
21 a psychiatric matter. Was it your impression that
22 Dr Karch was a psychiatrist? We've heard that he has
23 an interest in cardiac pathology.

24 A. Okay, no, I didn't think that he was a psychiatrist.

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1 But this is the exactly the set of circumstances that
2 I considered when deciding to approach Crown to make
3 sure that they were comfortable with the selection of
4 specialist witnesses. You know, for them to decide
5 whether or not that should have been progressed.

6 Q. So is that something you expected the Crown to have
7 input into, whether Dr Karch was suitable here to
8 express an opinion?

9 A. Yes.

10 Q. From what you are saying is it fair to say that to some
11 extent PIRC were reliant on the approval or views of
12 Crown before they instructed experts?

13 A. Yes, I think that would be right because ultimately
14 Crown being the decision-makers at the end of the day,
15 I would not have considered it appropriate to send them
16 information which did not assist their determinations.

17 Q. So if PIRC, as you did, put forward Dr Karch's name, if
18 Crown had said: we don't think he's suitable to express
19 an opinion, for whatever reason, is that something that
20 PIRC would have taken on board?

21 A. Yes, yes.

22 Q. And simply not instructed him?

23 A. Yes.

24 Q. So without the Crown approval, no one would have been

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- 1 instructed; is that fair to say?
- 2 A. Yes, we would probably have had to start again and look
3 for other expert witnesses. That is absolutely the
4 case, in my opinion.
- 5 Q. Thank you. Did you hear or were you aware of an issue
6 that had arisen with Dr Carey, attributing to Dr Carey
7 some favourable comment regarding Dr Karch?
- 8 A. Yes, I think I was aware of that, yes.
- 9 Q. We've heard evidence from Mr Harrower about that matter.
10 Do you have any recollection about the circumstances of
11 that, that could help us?
- 12 A. Only that -- from memory again that Mr Harrower
13 I believe visited with Dr Carey in relation to expert --
- 14 Q. We have heard evidence that he dropped off samples.
- 15 A. Yes, yes. Histology samples and the likes, as far as
16 I can remember.
- 17 Q. And that there is certain correspondence indicating that
18 Dr Carey made favourable comments about Dr Karch. But
19 that was subsequently disputed by Dr Carey. Can you
20 tell us any recollection about your involvement with
21 resolving that matter?
- 22 A. No, I don't, other than I think at the end of the day
23 the decision was made to discount Mr Karch, I don't
24 remember any more detail than that, I'm afraid.

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1 Q. That is fine. You make a comment in your statement at
2 one point that a report may have been produced but
3 discounted --

4 A. Yes.

5 Q. -- by Dr Karch. What do you mean by discounted?

6 A. Well, I think it may -- I believe that he supplied
7 a document giving some form of expert common which then
8 was shared with the Crown -- because I don't think we
9 could have done anything else with that -- and I think
10 at that stage, from memory again, that the Crown decided
11 not to proceed. That is my memory.

12 Q. At any point were PIRC expressing views on the expert
13 opinions that you had received, or was that a matter for
14 the Crown?

15 A. I think that was a matter for Crown, and again my
16 experience is that if Crown had concerns or questions,
17 the post normally went to precognition of expert
18 witnesses from my experience.

19 Q. So in terms of PIRC's role, you were instructed --
20 identifying experts, sending the names and CVs to the
21 Crown for consideration?

22 A. Yes.

23 Q. If approval was obtained, you would then instruct them?

24 A. Yes.

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1 Q. We've heard evidence that an expert witness package was
2 prepared?

3 A. Yes.

4 Q. I think in your Inquiry statement you say that was the
5 first time an expert witness package had been prepared
6 for that purpose?

7 A. Yes.

8 Q. It was sent to the experts, they would return their
9 opinions as requested?

10 A. Yes.

11 Q. Was any analysis done by PIRC or was that simply then
12 forwarded to the Crown?

13 A. No, I think -- in fact I am sure the SIO would have read
14 those reports, but they would then be passed to Crown.
15 I don't have any experience at all in almost 27 years as
16 a detective of ever having gone and challenged an expert
17 opinion from a witness. That, as I say, tends to be
18 a role that Crown would undertake through the
19 precognition process.

20 Q. So any questions or challenges or even consulting with
21 an expert, would that be for the Crown?

22 A. Yes, I would suggest so.

23 Q. So the PIRC role was about getting the opinions in?

24 A. Yes.

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1 Q. Certainly Mr McSporrان reading them, and then sending
2 them to the Crown for their analysis?

3 A. It formed part of the overall package of evidence
4 gathered.

5 Q. Thank you. We have -- there is some evidence available
6 to the Chair about Dr Karch having been contacted by the
7 press, and I would like to ask you about that. At 581
8 of your Inquiry statement, please. So that is 581. You
9 see it says:

10 "I have been referred to an article in the Scottish
11 Sun on Sunday 1 November 2015 in which Dr Karch was
12 quoted to say, with reference to Mr Bayoh, 'I can tell
13 you that saw evidence of heart disease'~... I think I do
14 remember that, yes. I don't know if we did respond to
15 it."

16 So this was a quote from Dr Karch in the
17 Scottish Sun. And November -- by November the interim
18 report has gone to the Crown, and 582 says:

19 "I have been referred to a letter dated
20 4 November 2015~..."

21 So three days later:

22 "... that I sent to Les Brown ..."

23 He was the head of the crimes against police -- the
24 allegations --

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1 A. Criminal Allegations Against the Police Department
2 within Crown.

3 Q. He refers to this article:

4 "I have been asked if this letter to [Crown Office]
5 drew a line under matters from my perspective. I think
6 it did. It would be wonderful if we could stop
7 newspapers writing things that we don't like but you've
8 got to be surprised that someone like Karch even made
9 any sort of comment, albeit he claims he was taken off
10 guard and stopped immediately."

11 If we can move just back up to the top of that
12 paragraph, I am interested in a couple of things here.
13 First of all, when PIRC instructed experts, was there
14 any part of process or procedure where it was explained
15 to them that they should be keeping matters
16 confidential?

17 A. Yes, I think there was. I believe that was part of it,
18 as anyone who is an expert witness and has experience of
19 that should be aware that speaking to newspapers during
20 an investigation is just not appropriate.

21 Q. Did that also apply to people from America? They have
22 a slightly different relationship with the press in
23 America.

24 A. Okay, that is a point. I don't know whether he was

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1 specifically told that he should not speak with the
2 press. I don't know. That would have been appropriate
3 I think now when you mention the difference in the
4 relationship between expert witnesses here and the press
5 and they know what is expected of them, and that may be
6 a completely different set of circumstances. It is
7 still not the sort of thing I would honestly have
8 expected an expert witness to have mentioned in
9 a newspaper.

10 Q. You certainly say that you were surprised --

11 A. Yes.

12 Q. -- that he had made a remark. In relation to --
13 obviously this came to light in November, what steps did
14 PIRC take to address the family or to draw this to their
15 attention or to alleviate any concerns they had?

16 A. I am not 100% sure but I know by then that Mr Anwar on
17 behalf of the family had corresponded and was
18 corresponding with Crown. I don't know whether we tried
19 to inform the family that this matter should never have
20 appeared like that. I don't know. I am sorry.

21 Q. Certainly from what you have said today this was not
22 something you were comfortable with?

23 A. No, I wasn't comfortable with it at all.

24 Q. After this came to light, and Dr Karch was quoted in the

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- 1 paper, was any action taken by PIRC to either speak
2 publicly about the matter or to deal with the matter
3 with Dr Karch?
- 4 A. I think he was contacted and told that it was
5 inappropriate.
- 6 Q. What about speaking -- PIRC speaking or making
7 a statement in the media themselves about this matter?
- 8 A. No, I don't think they did.
- 9 Q. Was there any reason why that wasn't done?
- 10 A. It was clearly just a decision not to take that line.
- 11 Q. In terms of decisions about what to do, whether to say
12 anything in the media, who would be responsible for
13 taking those decisions?
- 14 A. Ultimately the Commissioner.
- 15 Q. So it may be that Ms Frame can assist us with that?
- 16 A. Yes.
- 17 Q. Finally in relation to the instruction of experts, there
18 was an invitation made to the family and their legal
19 representative to identify additional expert witnesses
20 that may assist PIRC in their investigation?
- 21 A. Yes.
- 22 Q. Was it common for PIRC to invite the families or their
23 lawyers to suggest experts?
- 24 A. I think it was Crown that made that offer.

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1 Q. Let's look at -- I don't know if we will have this on
2 the playlist for today -- PIRC 01835A. No. We can
3 maybe come back to that tomorrow. In general was it
4 customary to -- if there was a lawyer involved, for the
5 family, for example, to invite them to comment on the
6 experts who were instructed?

7 A. I don't have any experience of that whatsoever. To be
8 quite honest with you, the majority of investigations
9 that I was involved in, FLOs spoke with families direct.
10 I think in this set of circumstances Mr Anwar would have
11 a better knowledge of that area of investigation than
12 maybe families in general.

13 Q. When you say "a better knowledge of that area", are you
14 talking about medical experts in cause of death --

15 A. Expert witnesses in general.

16 Q. Expert witnesses in general. Thank you.

17 We are talking about the five principles under
18 Article 2.

19 A. Yes.

20 Q. Sorry, you were going to say something?

21 A. No, no.

22 Q. I was going to -- we had been dealing with adequacy and
23 effectiveness?

24 A. Yes.

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1 Q. Looking back now, from your perspective as director of
2 investigations, were you satisfied personally that the
3 investigation was effective and adequate?

4 A. My knowledge of the investigation at the time was, yes,
5 I was content. Without, as you appreciate, having read
6 every statement or viewed every document, I felt that
7 an adequate investigation had been conducted.

8 Q. In light of things that I have drawn to your attention
9 today, has that confidence been dented in any way?

10 A. In some ways. There are certainly aspects of the
11 investigation which could have been considered again and
12 maybe revisited.

13 Q. Thank you. I would like to move on to the third
14 principle, the third aspect, which was it has to be
15 reasonably prompt?

16 A. Yes.

17 Q. So I would like to ask you some questions about delay,
18 possible delays. We've heard evidence about the timing
19 of arrival of PIRC at Kirkcaldy Police Office?

20 A. Yes.

21 Q. We know that PIRC were initially contacted at 9.35 in
22 the morning by David Green from Crown Office?

23 A. Yes.

24 Q. And they did not arrive in Kirkcaldy Police Office until

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1 1.30. We've heard that after PIRC were instructed, that
2 they the investigators gathered in, I think it was
3 Hamilton at the time, collected cars, some may have
4 collected kit, and they were briefed. I am wondering
5 what your thoughts are in relation to that period of
6 time, that it took between 9.35 and 1.30 on 3 May?

7 A. I would expect that they arrive on scene as quickly as
8 they possibly could. Now, allowing for travel time
9 even, to Kirkcaldy, we are talking about four hours,
10 I think, by ...

11 You know, I do remember asking why it took so long.
12 I do, and I do believe that part of it was calling out
13 others, and getting access to motor vehicles which were
14 parked at the Hamilton office. In an ideal world they
15 would have gone straight from their homes but I don't
16 necessarily know whether that would be practical or
17 otherwise.

18 Q. We've heard a suggestion that it would -- we've heard
19 that the investigators arrived together but we've heard
20 a suggestion in evidence that a lead investigator can
21 turn up at an incident on their own, while they wait for
22 the team arrive. Have you any views on that?

23 A. Yes, why not, would be my point around that. I go back
24 to a point I made earlier in relation to a call-out

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1 I received about a police shooting. I knew that other
2 members of the organisation were making their way there.
3 I went straight there. I live in Ayrshire, the incident
4 occurred in Ayrshire. I was handy. I don't even think
5 I was on call but when I heard about it, I thought it
6 appropriate that I step in and assist. And indeed the
7 on-call senior that day was Ricky Casey, and I told him
8 to attend immediately at the PIM suite along with two
9 other investigators, one to ensure that the PIM was
10 instructed about conferring, and, two, to in-gather
11 whatever productions there were at that time.

12 Again, that is the way I dealt with it. So
13 I suppose what I am saying is that would be my
14 expectation of others.

15 Q. Say, for example, you had an investigator, not
16 necessarily a lead investigator or
17 a senior investigator, but an investigator who lived
18 close to the police office. What about the possibility
19 that they speak to the lead investigator and offer to go
20 themselves; is that something you would hesitate to do?

21 A. Yes, not necessary. I would be far more content with
22 the lead investigator speaking directly with whoever
23 from Police Scotland was there and was assuming
24 responsibility, in charge, to have a conversation about

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1 what the senior investigator's expectations were, and
2 get an agreement and confirmation that that was
3 understood. Because ultimately we are talking about the
4 length and breadth of Scotland here, there are occasions
5 where early arrival would be almost impossible. But
6 then I would expect them to get there as quickly as they
7 could.

8 Q. When you are describing a conversation with, say, the
9 SIO from Police Scotland, if there was to be
10 an agreement are you talking about providing that
11 officer, senior investigating officer with some
12 expectation of when you would arrive --

13 A. Yes.

14 Q. -- as PIRC?

15 A. Yes. So for example: I want the scene of this incident
16 maintained, I want uniformed officers to circle it,
17 I don't want anything moved, I want you to understand
18 that that is my instruction and confirm that you will
19 adhere to that and we will get there as soon as we can.

20 Q. In terms of giving -- sharing that information, "We will
21 get there as soon as we can", would you expect the
22 investigator to say that will be round about a certain
23 time? Either an hour, two hours --

24 A. I think that would be reasonable because I think the

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1 senior officer on the other end of the phone would
2 probably at least ask that question: how long will you
3 be?

4 Q. We've heard comments made that some people have
5 expressed the view that it's more difficult to direct
6 an investigation remotely than if you are at the scene
7 or at the location. Would you agree with those
8 comments?

9 A. Yes, but it doesn't preclude giving instruction before
10 you arrive.

11 Q. Can I ask for your views on -- we've heard that
12 Senior Investigator Casey remained in the PIRC office
13 that day. I have already asked you about this. But was
14 there any reason that you are aware of why he could not
15 have taken on the role of lead investigator?

16 A. None. None.

17 Q. We have heard evidence that another set of hands might
18 have bolstered resources. And I think from what you
19 have said earlier you probably agree with that?

20 A. Yes, definitely. The more people we could have mustered
21 and sent there, the better.

22 Q. Then again thinking about reasonable promptness,
23 can I ask you about the timing of PIRC's arrival at
24 Victoria Hospital. So we've heard evidence that

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1 the investigators did not arrive at Victoria Hospital,
2 where Mr Bayoh was, to attend the body until 19.00 hours
3 that evening. Do you have any concerns about that
4 period of time?

5 A. Again, I think there could have been a quicker response.

6 Q. When you say "quicker", can you help the Chair
7 understand what you mean by quicker?

8 A. To get there as quickly as you possibly could to take
9 control and to remove the police presence there.

10 I would have -- and I believe that is what happened,
11 that a scene manager was sent, and I don't wish to be
12 insensitive here but Mr Bayoh's remains were going to be
13 very, very important in relation to forensic
14 examination, so a scene manager was the right person to
15 send there. Now, whether -- and I don't recall whether
16 there was a challenge in getting a scene manager,
17 I am not sure. But that didn't mean that we couldn't
18 have sent someone else, at the best it would have been
19 a scene manager.

20 Q. So even if there were challenges in obtaining someone
21 who was trained in crime scene management --

22 A. Yes.

23 Q. -- if there was going to be a delay until 19.00 hours in
24 the evening, would your expectations have been that

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1 someone else would have been sent as an interim measure?

2 A. I would have preferred that that was the case.

3 Q. Is that what you would have expected your investigators

4 to arrange?

5 A. Yes.

6 Q. The timing of arrival at Hayfield Road, we have heard

7 evidence that PIRC did not arrive at Hayfield Road,

8 where the incident occurred, until 19.20 hours. Again,

9 thinking about the timescale from the moment of

10 appointment of PIRC, do you have any concerns about that

11 period?

12 A. More concerned about the hospital time than the actual

13 Hayfield Road, because my understanding of Hayfield Road

14 is that by the time we were even involved there had been

15 an ambulance on the scene, Mr Bayoh had clearly been

16 taken to hospital, the things that we would have been

17 interested in, like the knife for example, had already

18 been recovered. So, yes, again, to get an understanding

19 of how the scene looked and maybe to start considering

20 what would be appropriate for house-to-house, but

21 I would have been less concerned about the scene because

22 of the circumstances than I was about the hospital.

23 Q. Thank you. Less concerned yes, but in terms of

24 the actual time it took --

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- 1 A. I would have preferred they had been there sooner.
- 2 Q. Again, can you help the Chair understand what you mean
3 when you say "sooner"?
- 4 A. Again, as quickly as -- without undue delay.
- 5 Q. If there were any issues in having someone with crime
6 scene experience attend Hayfield Road, would you have
7 expected that someone else would be sent there as
8 an interim measure?
- 9 A. Yes, that would be appropriate.
- 10 Q. Can I ask, do you agree that -- you were asked at
11 paragraphs 185 and 186 about evidence that SIO Campbell
12 had given. Am I right in thinking you agree that the
13 death message should be passed to the family as soon as
14 possible?
- 15 A. Absolutely.
- 16 Q. You are asked about this in your Inquiry statement. And
17 do you agree that it should be done by a police
18 officer --
- 19 A. Yes.
- 20 Q. -- and not a FLO?
- 21 A. Yes.
- 22 Q. Can you explain why that is your view?
- 23 A. Well, first and foremost as soon as the police know the
24 identity of Mr Bayoh I believe that the family should

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1 have been informed of his death. Now, it might not
2 always be a FLO that is available, but in any case it
3 doesn't need to be a FLO who delivers the death message.
4 The role of the FLO is to support the family and let the
5 family understand processes, procedures, what is going
6 to happen next, and that is what their special training
7 is about. It's not about being chosen to deliver death
8 messages.

9 Q. We've heard it suggested that sometimes it can be
10 a disadvantage if the FLO does deliver a death message
11 because the family associate receiving bad news --

12 A. Yes, yes, I have -- yes, I am aware that that has been
13 said and I have heard that feedback from FLOs during my
14 time in the police, and indeed it was during that type
15 of feedback that the decision was made that where
16 possible it should not be the FLO that delivers that,
17 just for the reason that you have given there, the bad
18 connotation thereafter.

19 Q. Thank you. So again is this an area where PIRC are
20 reliant on Police Scotland to have delivered that?

21 A. Yes, the police are there. I think there is
22 an importance that the family are told and that there is
23 no undue delay in that matter.

24 Q. So would that be envisaged, that delivery of the death

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1 message, to have occurred perhaps before PIRC have even
2 arrived at the office or where the incident is?

3 A. Yes, I would say that if the identity of the deceased
4 was known, that as soon as that had been established,
5 the family members should be informed of the death.

6 Q. Thank you. Can we look at paragraph 186 of your Inquiry
7 statement:

8 "We have police FLOs initially because they are
9 there and available, and that's one area that I do agree
10 with Pat Campbell in relation to."

11 So we've heard evidence that there are
12 Police Scotland FLOs but there are also PIRC FLOs. We
13 have heard some evidence from Mr Lewis, who I think was
14 a PIRC FLO?

15 A. He was, yes. Or he is, sorry.

16 Q. "They have the staff that are available to them to get
17 FLOs in there to explain the process around
18 identification and to explain to families the
19 circumstances as they are known at that time. Although
20 the police would have taken the initial approach to the
21 family, that in due course, that responsibility would be
22 handed over to the PIRC as investigators who would then
23 appoint FLOs who would continue that liaison with the
24 family."

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1 A. Yes.

2 Q. I would like to ask you for your thoughts on the idea
3 that officers deliver the death message then there are
4 police FLOs and then there is a handover to PIRC FLOs.
5 Is that the most efficient and effective way of
6 supporting the family?

7 A. Yes, I believe so, because I think that it is important
8 that again -- that the family are provided with the
9 information that is known at the earliest juncture. As
10 it stands -- well, as it stood in 2015, I am not quite
11 sure how quickly we could have stood the FLOs up to
12 provide that information. I know that there was a push
13 to have a post mortem conducted. I think it is
14 absolutely appropriate that if there are trained FLOs,
15 police officers or otherwise, available to go and to
16 support the family as early on in those processes as
17 possible, that that is good practice. The reason that
18 you would then change that is again around independence.
19 So you would introduce FLOs from PIRC when they became
20 available.

21 Q. We've heard that in the circumstances on 3 May that
22 there were concerns within the family about the
23 information that was shared by the police during the
24 delivery of death messages.

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1 A. Yes.

2 Q. And there were a number of messages given. There was
3 a view taken that the family's concern was of such -- it
4 was such a great concern that sending Police Scotland
5 FLOs would not have assisted. So Police Scotland
6 decided not to deploy Police Scotland FLOs. Do you have
7 any comments on that? Have you experienced a similar
8 situation yourself, where there has been an issue about
9 Police Scotland FLOs being delivered -- deployed,
10 I should say.

11 A. Again, I think Mr Harrower would be -- who was at the --
12 there.

13 Q. He has given evidence.

14 A. I think that he believed that police FLOs were going to
15 be deployed to the family. I think it came as quite
16 a surprise to him later on in the day when he learned
17 that that hadn't occurred. Now, I don't see why that is
18 a problem unless the family have categorically said that
19 they do not want any further contact with the police at
20 that time because of the way that they felt they had
21 been dealt with. I think I would still have sent FLOs
22 along to offer whatever support they could. The caveat
23 to that is so long as that didn't make the situation
24 worse for the family.

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1 Q. So it would really be what would be in the family's best
2 interests?

3 A. Absolutely. I think I mention that -- and it was a FLO
4 giving an input after a bombing in London, and the point
5 that that very experienced FLO made was that it is very,
6 very difficult at the time of death to make things
7 better for the family but it is very easy, if you get it
8 wrong, to make it worse. So ultimately I think it has
9 to be what the family want.

10 Q. I think in paragraph 188 you explain to the Chair -- and
11 in 189 -- reasons why you think Police Scotland FLOs
12 would have been better deployed and you mentioned speed,
13 availability, possibly experience, possibly religion or
14 gender. Are those the reasons why you think
15 Police Scotland FLOs might be better than PIRC?

16 A. Yes, I think that FLOs are the component parts of what
17 you would be looking at but I just think that they would
18 have been better deployed, unless the family
19 specifically said no, to give the support to the family
20 that they needed at that time. And that was probably
21 particularly in relation to the arrangement of
22 a post mortem.

23 Q. Do you personally have experience of situations where
24 the family have been perhaps concerned about engaging

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1 with FLOs or reluctant, and means by which they could be
2 persuaded or encouraged to engage with FLOs?

3 A. Yes, sometimes there are challenges around that, and
4 homicide investigations, where -- particularly in
5 relation to murders relating to serious and organised
6 crime groups, where they have no interest in the police
7 or speaking to the police at all. However, a FLO also
8 has a very important role as investigator, so yes, you
9 do try to win trust, you try to get the family on board.
10 It is not always easy and it doesn't always work, and
11 again you then have to consider: is this doing more
12 damage than it is good?

13 Q. So there are also benefits to the investigation if a FLO
14 is engaged with the family?

15 A. Most definitely, most definitely.

16 Q. Looking back now from what you know of the situation
17 with the FLOs, you have talked in previous situations
18 about what is best practice. I am interested in your
19 views on what best practice would have been here for
20 deployment of PIRC FLOs.

21 A. Well, I think what would have been best here is that the
22 death message is delivered by a non-FLO police officer,
23 that the police FLOs then move in, support the family
24 and explain the processes around moving towards

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1 post mortem. And also explain to the family that Crown
2 have directed an independent body, PIRC, to investigate
3 the death, and that FLOs from that independent body will
4 in time take over from the police. And then, as soon as
5 practicable, arrange for FLOs to meet the family direct
6 and try and build some sort of understanding and
7 rapport, trust, with the family.

8 Q. We have heard from others that there could be a handover
9 or a meeting between the Police Scotland FLOs
10 effectively introducing the PIRC FLOs; was that
11 something you --

12 A. If that was appropriate under the circumstances. But
13 again, I think you would have to consider every
14 circumstance in its own merit.

15 Q. Now, as well as thinking about individual elements about
16 the arrival at events or incidents, can I ask you
17 overall in relation to the delivery of the -- first of
18 all the interim report. Do you have any thoughts
19 about -- thinking of reasonable promptness still, do you
20 have any views on the initial interim report, which was
21 7 August 2015? That was when it was delivered to Crown.

22 A. Yes, I think that is as soon as it could be delivered
23 because ultimately it had to contain sufficient evidence
24 and information to inform Crown of where the

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1 investigation was at that stage. So I think that was
2 the appropriate time.

3 Q. Can I then ask you about the final report, which --
4 we've heard that the terms of reference were expanded,
5 and extended --

6 A. Yes.

7 Q. -- after delivery of the interim report. And it was
8 around another year before the final report was
9 delivered. You have also explained this was at a time
10 when resources were, can I say stretched --

11 A. Yes.

12 Q. -- in PIRC? What are your views about the delivery of
13 the final report and promptness?

14 A. Well, there was constant contact between the
15 investigators and Crown Office. Again, from memory
16 Crown wanted a report that was full, that covered all of
17 the recent instruction, and I don't think they wanted
18 piecemeal reports. So ultimately, yes, for all the
19 reasons that you have just spoken about there, the
20 increased number of directions from Crown in relation to
21 new lines of investigation, that all took time and you
22 are right in saying that there were other challenges
23 around staffing at that stage.

24 Q. Thank you. Can I ask you about the fourth principle

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- 1 that we are looking at in terms of an Article 2
2 investigation, which was the public scrutiny element.
- 3 A. Yes.
- 4 Q. I wonder if I can begin by asking you, we've heard
5 evidence that the PIRC report, in a Crown-led
6 investigation such as Mr Bayoh's death, is --
7 effectively ownership of the report is with the Crown?
- 8 A. Yes.
- 9 Q. It is their report, and what they do with it is a matter
10 for them?
- 11 A. Yes.
- 12 Q. But obviously with your experience, I am interested in
13 whether you think there might be merit in allowing
14 Police Scotland to see that report, to allow them to
15 learn lessons or have regard to issues that have been
16 flagged up during the PIRC investigation? Do you have
17 any thoughts on that yourself?
- 18 A. Yes, I think that would be worthwhile. But again, that
19 would have to be delivered by Crown, or alternatively
20 Crown would have to give us express permission to do
21 that. And so far as I am aware that was not the case in
22 Mr Bayoh's death.
- 23 Q. We have heard that for a Chief Constable-referred
24 investigation the situation is different?

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1 A. It is different.

2 Q. Am I right in saying we have heard evidence that
3 the PIRC report can be published by PIRC?

4 A. Yes.

5 Q. Or parts of it can be published?

6 A. Yes.

7 Q. Do you see any benefit in terms of public scrutiny of
8 the work of PIRC, but also investigations into the
9 police, in having reports made public?

10 A. Yes, I do. I think it is -- there is that openness,
11 there is that transparency. I don't know whether Crown
12 consider that in Mr Bayoh's death that maybe if that was
13 going to go to a fatal accident inquiry or whether at
14 some stage it may even lead to criminal charges, whether
15 that would be the public scrutiny or here we are now,
16 the public scrutiny.

17 So it is a difficult one but as it stands the
18 position with Crown -- unless it has changed in the
19 six years whilst I have retired -- is that without the
20 express permission of the Crown we would not share the
21 contents of a Crown-directed investigation with anyone
22 else. Now, that -- even if you are going to involve the
23 Health and Safety Executive, or the office of the
24 Surveillance Commissioner or Information Commissioner,

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1 that you would look to get that agreement from Crown
2 that you were expressly permitted to share certain
3 information.

4 Q. We can certainly say with confidence that prior to the
5 commencement of this Inquiry and leading evidence from
6 the first witnesses to this Inquiry, no evidence had
7 ever been led in a courtroom or an Inquiry of any sort?

8 A. No absolutely.

9 Q. There was never an FAI.

10 A. No.

11 Q. So there had not been that opportunity to hear the
12 evidence or to allow the public to consider that?

13 A. No.

14 Q. So in circumstances where the death and the
15 investigation took place in 2015, there has never been
16 any FAI or Inquiry of any sort --

17 A. No.

18 Q. -- until this Inquiry started. Do you think there is
19 benefit in having -- if there had been an opportunity,
20 in having the PIRC report published or made available
21 more publicly?

22 A. I honestly don't know whether I can answer
23 that question. Because I think the way the legislation
24 is framed, that that is a decision wholly for the

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1 Crown Office and Procurator Fiscal Service.

2 MS GRAHAME: Thank you. I am going to move on actually to
3 another aspect of public scrutiny that I would like to
4 speak to you about, but I am conscious it is now nearly
5 quarter past.

6 LORD BRACADALE: We will stop there today, and adjourn until
7 10 o'clock tomorrow morning.

8 (4.13 pm)

9 (The Inquiry adjourned until 10.00 am on Thursday,
10 29 February 2024)

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