

R E P O R T

BY

CRIMINAL ALLEGATIONS AGAINST THE POLICE DIVISION

RE

DEATH OF SHEKU AHMED TEJAN BAYOH



Preamble

Sheku Ahmed Tejan Bayoh (the deceased) died at 09:04 hours on 3 May 2015 within the Accident and Emergency Department of the Victoria hospital in Kirkcaldy. The deceased had been conveyed there after falling ill whilst being restrained by police officers in Hayfield Road, Kirkcaldy earlier that morning.

At approximately 07:20 hours Police officers responded to a number of calls from members of the public reporting the now deceased walking in Hayfield Road and neighbouring areas in possession of a large knife and striking out at passing vehicles.

The purpose of this report is to examine the conduct of officers both during and after the incident and assist Crown Counsel in determining whether any criminal charges should be libelled against any individual officers.

In the aftermath of the incident some factually inaccurate information was disseminated to the family of the now deceased. In addition, the statements provided to PIRC on 4th June 2015 by these subject officers and by other officers of the Police Service of Scotland were considered more generally for evidence of any deliberate attempts to mislead investigators. To that extent all of the police officers who were involved in the incident itself and the investigation process in

the immediate aftermath were potentially subject officers in respect of possible criminality. The following officers are those who took any part in the initial engagement with and restraint of the now deceased on Hayfield Road. Their actions have been considered in respect of potential criminality during that period of restraint.

PC Alan Paton

PC Paton is 55 years of age (born [REDACTED]/1973) and joined the legacy Fife Constabulary in 2004. He therefore has 14 year's police service. His complaints history can be found in section 10 of this report [REDACTED]

[REDACTED] Of note are the following:

- [REDACTED]
[REDACTED]
[REDACTED].
- [REDACTED]
[REDACTED]
[REDACTED]
- A complaint by a Muslim woman [REDACTED] in 2010 about the way he had dealt with in connection with executing a search of her house under warrant. He was found to have failed to follow guidance in the Force Race Relations policy and was given corrective advice.
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[Redacted text block]

[Redacted text block]

[Redacted text block]

Karen Swan also mentioned that Alan Paton used to make racist remarks to an Asian family who lived nearby when they were growing up, and more generally to his use of the term "black bastard". She provides a hearsay account that Alan Paton allegedly told his grandfather (witness William Paton) "That black bastard is making me lose my job. I am a complete racist, I hate all blacks". A comment of this nature is certainly attributed to Alan Paton by witness William Paton, but is uncorroborated.

Barry Swan provided a statement in which he provided hearsay accounts of much of what Karen told the PIRC investigators. He agreed that he gave an interview to a journalist for a BBC programme in which he provided those hearsay accounts. He only witnessed one incident between Karen and her brother Alan Paton, essentially a "shouting match" between them. Other than that he could provide only first-hand evidence of hearing some "paki" jokes from Alan Paton at some time in the past that he thought funny at the time.

William Paton provided a statement to PIRC about meeting his grandson PC Alan Paton in the supermarket sometime after the death of Sheku Bayoh and in the course of the conversation alleges that Alan Paton saying that he hated all blacks and was a total racist. This conversation is uncorroborated.

The information provided to PIRC investigators provides a history of ill feeling between members of the Paton family towards Paton but no new material for consideration of proceedings.

PC Craig Walker

PC Walker is 47 years of age and joined the legacy Fife Constabulary on 30th August 2004, so currently has nearly 14 years' police service. [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[Redacted]

[Redacted]

| [Redacted]

[Redacted]

[Redacted]

[Redacted]

| [Redacted]

[Redacted]

| [Redacted]

[Redacted]

| [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

| [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

PC Nicole Short

Nicole Short is aged 32 years of age, born [Redacted] 1986. She joined the legacy Fife Constabulary on 20 July 2009 and she therefore has almost 9 years police service. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

PC Ashley Tomlinson

PC Ashley Tomlinson is aged 26, born [REDACTED] 1991 and joined Police Service of Scotland on 30th September 2013. [REDACTED]

[REDACTED]

PC Alan Smith

PC Alan Smith is aged 41, born [REDACTED] 1976. He joined the legacy Fife Constabulary on 30 August 2004 and therefore has almost 14 years' police service.

[REDACTED]

[REDACTED]

PC Kayleigh Good

Kayleigh Good is 27 years of age, born [REDACTED] 1990. She joined the Police Service of Scotland on 5 January 2015 and now has three years Police service. At the time of this incident she was a probationer Constable. [REDACTED]

[REDACTED]

PC Daniel Gibson

PC Daniel Gibson is aged 28, born [REDACTED] 1990. He joined the Police Service of Scotland on 20th February 2012 and has 6 years police service. [REDACTED]

[REDACTED]

James McDonough

James McDonough is 24 years of age, born [REDACTED] 1993. He joined the Police Service of Scotland firstly as a Special Constable in October 2013 and then became a full time Constable on 6th October 2014. He was a probationer Constable at the time of this incident. [REDACTED]

[REDACTED]

History of the case

On 3 May 2015 the Police Investigations and Review Commissioner (PIRC) was instructed by the Lord Advocate, in terms of Section 33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006 to investigate the interaction between police officers and the deceased and events thereafter. On 5 May 2015

their terms of reference were expanded to include investigation of the circumstances leading up to the incident.

On 12th June 2015 the terms of reference for PIRC were again extended to include

3. Investigation of allegations by the family that they were provided with misleading and erroneous information
4. Concerns that the initial police investigations and attempts to secure evidence were not thorough so that crucial evidence was lost to the enquiry
5. There was inappropriate conferring between officers

On 2 July 2015 terms of reference were extended yet again to investigate:

6. Allegations of assault made by Zahid Saeed

And

7.
 - a. Issues of race and conduct
 - b. Potential contraventions of the Data Protection Act 1998
 - c. Other miscellaneous matters

PIRC submitted an initial report to the Crown in August 2015 before submitting their final report to Crown Office in August 2016. The four volumes of the final PIRC report can be found at section 8 of this report.

Following submission of the report PIRC have continued to carry out further enquiry and investigation on the instruction of CAAPD.

Further significant enquiry has been undertaken independently by the Crown. A number of experts have provided opinions in relation to the cause of death, the mechanism and timing of the deceased's rib fracture and toxicology.

Separately, on the instruction of CAAPD further analysis and enhancement of the available CCTV footage, police airwave recordings and digitally recorded pieces

of evidence from various other sources were combined in synchronized fashion to provide a chronological visual and audio timeline on one composite disc.

Further enquiries about the nature of the training provided to the subject officers in regard to use of force were also instructed before an Officer Safety Training expert was identified. This expert in Officer Safety Training (OST) was then instructed to provide an opinion on the actions of officers from the point of engagement with the deceased until the deceased was found to be in medical difficulty and whether their actions were reasonable, proportionate and justifiable and in accordance with their training.

Over the course of the investigation a number of meetings have taken place within Crown Office with the deceased's family and legal representatives. This report has also considered some of the concerns and issues raised by the family and their Solicitor and the questions posed in correspondence. These are discussed in more detail at the end of this report.

Background of Deceased

The deceased, Sheku Ahmed Tejan Bayoh was 31 years old at the time of his death having been born on the 30th September 1983 in Sierra Leone. [REDACTED]

[REDACTED] He had indefinite leave to remain in the UK and, at the time of his death, was in the process of obtaining his citizenship.

At the time of his death, the deceased was residing at Collette Bell's address [REDACTED] Kirkcaldy, with his partner, Collette Bell and their 15 week old son [REDACTED]. The deceased also had another three year old son [REDACTED] with his former partner Connie Barcik. This relationship ended amicably in March 2012. [REDACTED]

[REDACTED] Barcik states the deceased was a very good, reliable hands-on father who had regular contact with his son. Also residing in Kirkcaldy at the time of his death was the deceased's sister Kadijatu Bayoh and her husband Adeymi Johnson.

At the time of his death, the deceased was not suffering from any significant medical conditions and appears to have been fit and healthy. He had very minor

and occasional respiratory issues including Hayfever and Sleep Apnoea. Medical and witness evidence would suggest that the deceased was a steroid user and appears to have suffered some side effects as a result of that. A number of his friends also suggest that the deceased had a history of using controlled drugs including Ecstasy, Cannabis, Mephedrone and Amphetamines.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Evidence from those who knew him would suggest that the actions of the deceased on the morning preceding his death were completely out of character for him.

Events Prior to Police Involvement

On the day before his death, Saturday the 2nd of May 2015, the deceased attended his niece's birthday party at his sister's home address having been dropped off there by Collette Bell at around 1750 hours. Bell and their son went on to her mother's address in [REDACTED] where they stayed the night.

While at his sister's home, the deceased was in good spirits and interacting normally with others at the party. He was drinking alcohol at the party and although it is unclear how much or what he was drinking and he did not appear drunk at that time. During the party, his friend, Zahid Saeed came to the house and stayed for a time until he and the deceased left together just before 2200 hours.

Saeed drove the deceased to his home address at Collette Bell's address [REDACTED] Kirkcaldy stopping on the way at an Asda store where the deceased bought a bottle of "Parrot Bay" a flavoured rum based drink.

The two chatted within the property until about 0100 hours when Saeed left to meet an unknown individual. Saeed has since refused to tell the police and PIRC investigators who he was meeting with or what that meeting was about. Saeed returned to the deceased's house at around 0300 hours. During their time together at Arran Crescent, Saeed described the deceased as being happy and

normal. He drank a few glasses of Parrot Bay but wasn't drunk. However, as the night went on the deceased became more inebriated and was not making much sense.

Saeed had arranged for himself and the deceased to attend at their friend Martyn Dick's house at [Redacted: Dick/MacLeod home address] to watch the Mayweather v Pacquiao boxing match showing in the early hours of the morning. Saeed drove them to Dick's house arriving there at around 0400 hours. Dick was in the property with his girlfriend Kirsty MacLeod.

The deceased drank the Parrot Bay that he had brought with him whilst Dick and MacLeod smoked some Cannabis. During this time the witnesses describe the deceased's behaviour changing and to him becoming increasingly paranoid and agitated. The deceased started to say random things and take things the wrong way. MacLeod states that at one point the deceased said, "the MDMA was shit". Both Dick and MacLeod formed the view that the deceased had taken drugs although they or Saeed didn't see him taking any drugs. This behaviour culminated in the deceased getting up and leaving the house. Saeed apologised to Dick and MacLeod and said this was happening too often and left just after the deceased.

Saeed thought the deceased would be waiting at his car but he wasn't there. Unable to find him he returned to Dick's house and he told him the route the deceased would have to take to get home. Saeed then [Redacted] to [Redacted: Collette Bell's address] [Redacted] where he saw the deceased walking up towards the house. Saeed and the deceased entered the property together and Saeed asked him why he had been acting the way he had but the deceased told him to go away. According to Saeed he had to convince the deceased that he and MacLeod had not been taking the 'piss' out of him earlier. Saeed also stated that the deceased didn't seem to know who he was.

The deceased continued to act strangely and produced a money bag from the top of one of his socks. The bag contained a white coloured paste substance and a number of purple tablets which Saeed presumed to be drugs. Saeed states he took the bag off the deceased, told him that he was against this and it was this that was causing his strange behaviour. The deceased accused Saeed of trying to take control of him and of being in the CID.

Saeed left the house via the back door due to the deceased's erratic behaviour. Whilst in the back garden the deceased attacked him striking him once on the back of the head. According to Saeed the deceased was accusing him of being in the CID. Saeed managed to jump over the garden fence and the deceased chased him round to the front of the house into someone else's garden where he took him to the ground and repeatedly punched him. Saeed described the deceased as not being himself and unaware of what he was doing and it was as if he didn't recognise him anymore.

These events were witnessed by Henry Pratt, Naomi Rhodes, Andrew Rhodes, Tegan Morgan and Amy Hutchison and residents in the street who had been disturbed by the noise coming from outside. Another resident Barry Fimister did not see anything but heard shouts of "help" and "get off me".

Eventually Saeed managed to push the deceased off and ran off down an alleyway.

Following the assault on Saeed, it appears the deceased re-entered his home and took a large knife from his kitchen. The deceased was then seen by a number of residents repeatedly strike Saeed's car with the knife. One resident Alan Galloway described what he saw as being 100% out of character for the deceased. The deceased then jumped over some hedges and disappeared. This all took place sometime between 06:30 hours and 07:00 hours.

Neil Morgan another neighbour of the deceased had just returned home from nightshift when his daughter Tegan told him the deceased was fighting in a neighbour's garden. Morgan assumed the deceased had caught someone trying to break into a neighbour's house and went out to assist him. He came across the deceased further down the lane and asked him if there had been a robbery and the deceased said no. The deceased was tapping a kitchen knife off his leg and Morgan warned him that he would get done if he was caught in possession of a knife and someone was going to get hurt. He tried to persuade the deceased to calm down and come into his house for a cup of tea but the deceased refused stating "*No, no. I'm cool*". Morgan noted that the deceased was a bit vague and didn't appear to be himself, however didn't appear to be psychotic or drunk. The deceased kept repeating the words, "*it's nothing, it's nothing*" and walked off in the direction of Crammond Gardens and away from his house.

The deceased, dressed only in a white t-shirt and black trousers began walking through a number of streets in Kirkcaldy in possession of a large kitchen knife. He was witnessed by numerous members of the public travelling in the area at the time. From their accounts it would appear that the deceased walked from [REDACTED] turned right into Crammond Gardens, left on to Templehall Avenue, right on to Hendry Road and then left on to Hayfield Road.

The

Label 1 Composite disc

contains a Tab of photographs of the locus. By hovering the cursor over the photographs on the composite disc an image number can be seen and reference to these images will be made in the course of this narrative.

The route taken by the now deceased can be seen on

Label 1 Composite disc

“Timeline” Tab

In addition the various locations described above are shown on the “map” tab of the same composite disc.

Many of the people who speak to seeing him during this journey were alarmed not only by the fact that he was carrying a large knife but also by what appeared to be bizarre actions on his part. Linda Limbert, Harry Kolberg, Robson Kolberg, Andrew O’Connor, Alan Pearson and David Grey all speak to seeing the deceased either approaching cars with the knife or chasing or attacking cars. Some speak to seeing him standing in the middle of the road. Susan Pearson speaks to seeing the deceased with the knife down at his side and tapping it against his leg, the same gesture described by Neil Morgan who had spoken to him earlier.

The deceased’s actions that morning were sufficiently alarming to prompt several members of the public to contact the police. Between 0709 hours and 0716 hours, the police received calls from 6 members of the public namely, Simon Rowe [REDACTED] travelling in the area at the time, Robson and Harry Kolberg, a father and son who were travelling home, Joyce Joyce who had just been for petrol at the Hub in Hendry Road, Alan Pearson who was driving his

wife to work at nearby Victoria Hospital and Linda Limbert who was also commuting to work at the hospital. All 6 callers informed the Police Scotland that the deceased was in possession of a large knife. These calls were all recorded and transcribed separately. The recorded calls were transcribed by PIRC investigators and these transcriptions are produced as:

PRO 630 Simon Rowe (07:09)

PRO 574 Harry Kolberg (07:10)

PRO 577 Joyce Joyce (07:10)

PRO 575 Harry Kolberg (07:15)

Pro 572 Alan Pearson (07:15)

PRO 576 Linda Limbert (07:16)

Label 1 Composite disc

Timeline tab

Contains a chronology of movements spoken to by witnesses and telephone messages to Police Scotland.

The deceased's journey was captured on a number of CCTV cameras including CCTV from Gallagher's public house which sits on the corner at Hayfield Road and Hendry Road. Photograph number 13 shows a view (from a distance) of the roundabout, looking along Hayfield Road.

He was also captured on a dash cam in Harry Kolberg's vehicle on Templehall Avenue and Hayfield Road and a camera in a Van driven by witness Grey on Hayfield Road. Unfortunately, the quality of the footage is not good enough to be able to clearly see a knife in the deceased's possession. That said, footage from Harry Kolberg's dash-cam at 07:09:27 hours appears to show the deceased holding something and from the audio Robson Kolberg can be heard to say, "he's got a knife in his hands".

On

Label 1 composite Disc

Under the Tab "CCTV Timeline"

Footage and audio from the following sources has been put together in an effort to provide a chronology of events as captured on those devices.

- Witness Kolberg's dash-cam
- Gallagher's pub CCTV
- Airwave messages (Pros 585 and 588 Combined Airwave and call activity Data and Transcript)
- Snapchat clips from Ashley Wyse mobile phone (PRO 240 Joint Report)

The following information about how the time on each device has been synchronized to fit with the others

The Kolberg's dash-cam has a time recorded on the footage which is an hour ahead of the actual time. The footage has been slotted in to fit with the Gallagher's pub CCTV.

Gallagher's pub is situated facing Hayfield Road at the roundabout with Hendry Road. This is shown in images 35, 56 and 57 of the photographs. Views of the position of the pub can be seen in photos 27 and 28 looking over the roundabout. The position of the camera from which the footage was recorded is shown in the Timeline Tab – screen heading "Position of civilian witnesses – Hayfield Road locus – view Gallagher's pub CCTV" This screen shows views on both a map and on satellite view of the span of the camera angle of the CCTV camera from these premises. The clock on the CCTV device is known to have been running 10 minutes and 52 seconds slow. Unless otherwise stated all references to CCTV in this report relate to Gallagher's pub CCTV.

Airwaves recordings: It should be borne in mind that the airwave messages were recorded on a system recording on GMT so the times were an hour behind the actual time (BST). In addition the airwave system is known to be accurate to within a second a month. Enquiry was made about when the airwave system last recalibrated but it has not been possible to establish this information.

The snapchat video clips were saved on the mobile phone of the witness Ashley Wyse, whose view of events was from a nearby first floor window covered by venetian blinds. It is believed that the window from which Ashley Wyse viewed

the events is that shown in photograph 28, where venetian blinds are partly covering the window. Efforts have been made by PIRC investigators to establish the time when the clips were recorded (as opposed to the time when they were saved onto the device) but this has not been possible to determine. In the meantime they have been interposed onto the other CCTV footage at a time when the events and vehicle positions shown appear to coincide. The witness Wyse recorded the footage from a first floor flat at 4 Hayfield Road. The location of her window can be seen on

Label 1 Composite Disc

Under the tab named "Timeline" on the screen named "position of Civilian witnesses –Hayfield Road Locus. The position of Wyse is represented by an orange dot.

A documentary Timeline Table has been prepared by the precognoser and this shows a chronology of events detailing the correct time with a note of the Gallagher's pub CCTV time recorded alongside. This is contained in section 9 of this report.

It is evident that the deceased discarded the knife prior to the arrival of the police. It is not possible to say exactly when he discarded the knife but from Gallagher's CCTV footage (CCTV time shown 07:04:32 – 07:05:50) taken together with witness accounts an inference can be drawn that he discarded it at around 07:15:58 hours. At 07:15:24 hours the deceased can be seen walking west on the south footpath of Hayfield Road making his way towards the roundabout at the junction with Hendry Road. At 07:15:40 hours, clearly unsteady on his feet he makes to cross to the north footpath and suddenly turns and walks towards Linda Limbert's Peugeot 208. She sees him in possession of a large knife. The deceased's actions forced Limbert to drive south down Hendry Road instead of turning left into Hayfield Road. The deceased briefly walked south after her car, staggered in the centre of the roundabout and started walking back east along Hayfield Road, in the direction from which he has just come. Limbert was the last person to see the deceased in possession of the knife and this area is close to where the knife was recovered.

Between 07:17:03 and 07:17:07 hours (CCTV time shown 07:06:11-07:06:15) a silver taxi believed to be driven by [REDACTED] can be seen heading south on Hendry Road. [REDACTED] saw the deceased walking east on Hayfield Road towards the Victoria Hospital and saw nothing in his hands.

The CCTV shows that deceased did not return to this area before the police arrived and none of the police officers who attended speak to seeing him discard it.

Police Response to Incident at Hayfield Road

Following the calls from the members of the public the Police Scotland Control Room at Bilston Glen directed officers to respond to the incident.

At 07:16:31 hours (times taken from the airwave traffic) the Control Room requested PCs Nicole Short and Ashley Tomlinson to attend at Hendry Road following a report of a male there with a knife. The request was as follows:

"I need you to....divert er..... to Hendry Road a disturbance on-going, male armed with a knife....African looking male chasing.....someone.....may be carrying a knife.....described as big with muscles about six foot tall wearing a white t-shirt and dark coloured jeans there's another coming in about it stand by"

Upon receiving this request PC Tomlinson asked if there were any other units who could attend to assist. At this point the control room passed information that they had just received another call and relayed the following at 07:17:34 hours:

"Yeah!! That's another grade one call coming in for the Victoria Road, Kirkcaldy. Male armed with a knife, male in possession of a large knife, a black male wearing white t-shirt and jacket walking along the street with a large knife in his right hand about a nine inch blade"

At 07:17:22 hours the shift supervisor, Acting Police Sergeant Scott Maxwell, having considered officer safety, directed all units to attend the call. He also requested the attendance of an Armed Response Unit (ARV) and dog unit neither of which ultimately attended the incident.

The locus of the engagement of the now deceased by the police and his subsequent restraint occurred on Hayfield Road near to the roundabout junction with Hendry Road, Kirkcaldy.

The following officers attended the incident:

Police vehicle 1 (Real time 07:20:23) [CCTV shows 07:09:31]

PC Craig Walker

PC Alan Paton

Police Vehicle 2 (Real time 07:20:40) [CCTV shows 07:09:48]

PC Nicole Short

PC Ashley Tomlinson

Police vehicle 3 (Real time 07;21:32) [CCTV shows 07:10:40]

PC Alan Smith

PC Kayleigh Good

Police Vehicle 4 (Real time 07:21:47) [CCTV shows 07:10:55]

PC Daniel Gibson

PC James McDonough

Police vehicle 5 (Real time 07:22:27) [CCTV shows 07:11:35]

PS Scott Maxwell

Police vehicle 6 (Real time 07:23:03) [CCTV shows 07:12:11]

DS Samantha Davidson

DC Derek Connell

Police Vehicle 7 (Real time 07:24:09) [CCTV shows 07:13:07]

DI Colin Robson

Following APS Maxwell's request, PC Alan Paton confirmed at 07:17:42 hours that he and PC Craig Walker would attend. At that time they were the only mobile response unit that had left Kirkcaldy Police Station. PC Paton requested the addresses of the witnesses in order to seek clarification on the locus and at 07:18:25 hours the control room responded:

"Roger one is [REDACTED] at Kirkcaldy.....the second caller is from [REDACTED] [REDACTED] so I take it he's passing by.....That's a further call advising the male is in Hayfield Road near to a Gallaghers pub"

Upon receiving that clarification PCs Paton and Walker made their way to Hayfield Road. At 07:19:52 hours PC Paton passed a message on the airwave to state that they were nearing the locus:

07:19:52 hours 'Roger that's us approaching locus'

Both police witnesses made comments in their statements indicating that they were in a heightened state of alarm en route to Hayfield Road.

At 07:20:15 hours their marked police General Purpose Van can be seen on CCTV cutting the roundabout and turning into Hayfield Road from the direction of Hendry Road.

Initial Interaction with the Deceased

07:20:23 Police Vehicle 1 arrives: PC Craig Walker and PC Alan Paton

[CCTV time shown 07:09:31]

The airwave message seems to be slightly premature on the composite disc as the arrival of the first police van is some 23 seconds after PC Paton reports them approaching the locus.

Both officers saw the deceased about 200 feet away, on the northern footpath near to the bus stop. The deceased was walking normally in their direction (west) with his hands by his sides. The officers saw nothing in his hands at this time.

According to PC Walker he accelerated the van in 2nd gear towards the deceased stopping just in front of him at 07:20:23 hours. The deceased did not react to the police van and continued walking west.

Meanwhile, witness Nelson was watching events from his living-room window of his house at Kevin Nelson's address at Hay field Road a ground floor flat in a block of four. He lives downstairs from Ashley Wyse in the "four in a block" house shown in photograph 28. On

Label 1 Composite Disc

Nelson's position is shown as the green dot in the screen "position of Civilian witnesses –Hayfield Road Locus"

He saw PC Walker and Paton's van stop near the bus stop. From this position he watched one of the officers, described as "tall and cuddly" officer with a baton in their right hand, spray in his left hand and pointing with that hand, shouting at someone and pointing to the ground. Although he could not hear what was being said, he thought that the hand gestures showed the officer telling someone to get down on the ground. Nelson then saw the now deceased walking normally west to east in the direction of Hendry Road. The deceased appeared to be ignoring the officers and it looked to him as if he did not know that the police were there. He walked towards one of the officers who sprayed him but the spray blew back onto the officer due to the wind.

PC Paton got out the van first, just before it stopped. He states that he had CS spray in his right hand and shouted at the deceased to get down on the ground. His reasoning for having the CS spray was that although he could not see a knife he was not taking any risks. The deceased completely ignored him and continued to walk towards him with his palms out, looking like he was "on a mission". PC Paton was directly in front of the deceased who was ignoring him and walking straight for him, with PC Paton working to maintain a gap (presumably backing away). PC Paton states that at this point he was in fear for his life and that the deceased looked "crazy". PC Paton activated his emergency button on his radio at 07:20:42 hours, 27 seconds after they had first arrived on the scene. PC Paton sprayed CS towards the deceased's face from a distance of

10ft. The CS spray had no effect on the deceased and blew back and incapacitated PC Paton forcing him to retreat behind the van.

PC Walker, the driver, states that he also got out the van with his PAVA spray in hand, shouted at the deceased to stay where he was and to drop his weapon. The deceased ignored his command and PC Walker immediately discharged his PAVA spray on the deceased's face from about 8 feet. PC Walker did not issue a warning to the deceased but stated it would have been obvious to him that he was going to be sprayed if he did not comply. PC Walker's spray also had no effect on the deceased who smiled and wiped it away. PC Walker was also incapacitated by his own spray and also had to retreat behind the van.

The initial engagement of the police with now deceased cannot be clearly seen on the CCTV footage. This is partly because of the distance from the camera and partly because the police van obscured the view.

Initial engagement by PCs Short and Tomlinson

07:20:40 hours Police Vehicle 2 arrives with PC Nicole Short and PC Ashley Tomlinson [CCTV time shown 07:09:48]

The next two officers at the scene were PC Nicole Short and PC Ashley Tomlinson. Their police van can be seen on CCTV heading north on Hendry Road, turning right into Hayfield Road and stopping behind Police Vehicle 1 at 07:20:40 hours. This was prior to PC Paton pushing his emergency button and only 17 seconds after PCs Paton and Walker had arrived.

Witness Mullen recalled driving west on Hayfield Road when a police car came at speed from the direction of Hendry Road and cut across his path. Mullen was driving his friend Danny Robinson and another unidentified male home after watching the boxing at a friend's house. All were under the influence of alcohol.

The vehicle driven by witness Mullen can be seen in the CCTV footage stopping at four different positions at the locus during the relevant period. Positions 1, 2 and 3 are all within the first minute and a half of the incident. Position 4 comes later in the restraint period. These are shown in

Label 1 Composite Disc

Under the Tab "Timeline" – screen "position of civilian witnesses – Hayfield Road" as the blue car on the map.

CCTV shows Mullen stopped his vehicle at 07:20:32 [CCTV time shows 07:09:35] at the junction of Hayfield Road and Hendry Road where he watched events unfold from there until 07:21:03 (this is position 1). He saw two officers a male and female jump out of the car (PCs Tomlinson and Short), both with batons and CS spray in their hands. He heard the police shouting "stop" or "drop." He saw the now deceased walk towards the female officer (PC Short) and push her to the ground with both hands before he aimed a single kick at the officer that failed to connect. Mullen states he watched PC Short get to her feet and struggle over to the police van. The male officer armed with his baton went for the deceased and used his spray on him. The man wiped off the spray as if it was water.

Robinson states that he saw one male and one female officer get out a police van and run towards the deceased. He states that the male officer had his hand at his belt as if he was going for his baton or gas and shouted "halt" or "stop". He then saw the police officers and the deceased shouting at each other. He states that the deceased turned back towards the police, "as if to give them a fright" and then turn around and walk away at which point the officers started chasing him again. He states that there was a scuffle between them all which went into the middle of the road where the deceased picked up the police woman and "slammed her on to the ground" at which time more police officers came striking him with batons more than once and overpowered him, getting him to the ground. He spoke of the police "piling on top" of the man.

Witness Nelson states that another police vehicle arrived and he noticed a female officer (PC Short). He described seeing two male officers (this is likely to be Tomlinson and Walker) and a female officer and he states that, "it was like something triggered a switch in the guy" and he ran into the middle of the road and swung a punch at the female police officer which connected and caused her to stumble. In his statement of 5th May he states that he saw the now deceased lunge at the female police officer and deliver three punches to her face or head of which at least one connected and he heard her scream. At this point he left

the window to go outside and he did not see what happened immediately after the assault on PC Short.

PC Short states that when they arrived she saw the deceased standing side on to their vehicle with his hands clenched purposely. She never saw anything in his hands. The now deceased looked towards her in a manner she described as 'wanting to fight'.

When she and PC Tomlinson got out their vehicle neither of them had their CS/PAVA sprays drawn [contrary to Nelson's account]. The deceased refused commands given by PCs Paton and Walker and he moved towards them aggressively with his hands clenched at either side. The deceased did not say anything. It was at this point after being warned by both officers that one of them discharged their spray into his face. [This is contrary to PCs Paton and Walker's position that they did not issue warnings]. The deceased wiped the spray off, laughed, turned around and continued to walk west along the path leading from the bus stop to Hendry Road. At this point PCs Walker and Paton were incapacitated by spray and she recalled PC Tomlinson shouting "stop where you are". The deceased ignored his command and continued to walk along the path, away from the police.

PC Short states that she and PC Tomlinson followed the deceased and walked alongside him in an effort to try and contain him. PC Short states she was terrified at this point as nothing seemed to be working. She told him to stop where he was but he ignored her. PC Tomlinson then sprayed him with CS spray which had no effect and he started to walk away again.

According to PC Short, she and PC Tomlinson were joined by PC Walker who was now on her left side having come up from behind. PC Walker shouted for a baton which prompted her to take out her own baton and present it at the deceased.

Although the deceased had his back to her, PC Short, in a bid to get him to stop, shouted at him to stop, get down on his knees and put his hands behind his back or he would be struck. According to PC Short the deceased turned and said 'what?' Looking at both PCs Walker and Tomlinson, he said 'fucking come on then', adopted a boxer's pose and skipped towards her. She turned and ran but was hit on the back of her head near her right ear and knocked to the ground.

She curled up waiting for more blows, thinking the now deceased was going to kill her but was aware that someone else was there. Notably, PC Short does not state that she was stamped on. She remembered someone trying to help her up and eventually got herself back on to her feet. On 4th June 2015 she also provided to PIRC a copy of a statement noted on 13th May 2015 by John Sallens (a former police officer now employed as a precognition agent by Professor Peter Watson). This statement (PRO 472) contains a similar account to that given to PIRC.

PC Tomlinson only saw PC Walker engage with the deceased. He saw PC Walker put his hands to his face and saw the now deceased walk away with a bouncy walk. He thought that Walker had been stabbed. He too speaks to the now deceased walking along the path that is parallel to the pavement running from the bus-stop towards Hendry Road.

[The path can be seen in Images 25 – 27 on the Photographs tab on

Label 1 Composite disc]

He kept on the pavement, keeping the now deceased parallel and then when he got no response to commands to stop, sprayed the full contents of his CS spray canister from a distance of between 4 and 5 feet away. This had no effect. He saw the male turn and look at them as if he was sizing both of them up, before the deceased chased PC Short across the road and punched her on the back of her head causing her to fall to the ground face down. PC Tomlinson ran over to assist PC Short who was trying to protect her head and get up at the same time. Before he was able to get there PC Tomlinson states that the deceased stomped on her back with his foot with a great deal of force. He says the now deceased put his full bodyweight into the stomp using his arms to gain leverage. PC Short stayed on the ground and never moved after that and PC Tomlinson thought the now deceased had killed her. PC Tomlinson states that when the deceased stomped on her back a second time with the same force he drew his baton to the carry high position.

PC Walker states that having recovered enough from the effects of the spray he looked up and saw the deceased chasing PC Short. He saw PC Short fall face down on the ground and thought the deceased had pushed her over. PC Walker

started to run towards them with PC Paton's baton and saw the deceased with his right leg in a raised position, arms raised, bring his foot down in a full force stamp on PC Short's lower back.

PC Tomlinson states that after PC Short was assaulted he ran at the deceased and struck him with his baton once on the head and two or three times on his arms. PC Walker, who had recovered sufficiently from the effects of the spray and then shoulder-charged the deceased to the ground.

CCTV

These events are very difficult to make out on the CCTV footage as it is very blurred. After the arrival of the second police van the figure of PC Tomlinson can be seen emerging from the driver side door and making his way around the front of the vehicle. The now deceased was on the pavement side and it is possible to see the figure of a person wearing a white top walking away from the police figures. Three figures can be made out. A scuffle occurs in view at 07:21:03 [shown on CCTV at 07:10:11]. Within five seconds two figures can be seen bringing the white topped figure to the ground on the pavement on the opposite side of the road from where the police vans stopped, at 07:21:08 hours.

PROs 585 and 588 Transcripts of airwave messages

show that PC Paton used his emergency button on his police radio at 07:20:42 and again at 07:20:49 PC Paton's Emergency button on his airwave terminal was activated and the following message could be heard "*Officer down...PC Short...male.*"

[NB initially it was thought that the person sending that message was PC Smith. This was because he used his airwave terminal at the same moment to ask about the locus. He was still en route to the scene at the time. The simultaneous airwave messages are shown on PRO 585 with the error in identifying PC Smith as the speaker]

It is the view of Martin Graves (OST expert) that the initial timing of the emergency button by PC Paton was in response to seeing PC Short being assaulted. This was then followed up by his message. This would certainly make

sense in terms of timing of the events as described by the witnesses, including the “stomping” on PC Short’s back.

The PIRC investigators were adamant that the figures seen on the blurred CCTV at 07:21:03 [shown on CCTV at 07:10:11] represented PC Short being assaulted. However, this makes no sense of the timings of the airwave messages, nor does it allow for the baton strikes by PC Tomlinson before PC Walker brought the now deceased to the ground.

Interaction with Deceased while on the ground

As stated above CCTV shows the deceased being brought to the ground by police officers at 07:21:08 hours and this is the time the restraint process started. The CCTV Timeline on the

Label 1 Composite Disc

Shows a stop-clock in the right hand side of the screen that starts at the moment the now deceased was taken to the ground and stops at 4 minutes 2 seconds when PC Alan Smith called for an ambulance.

By the end of this period the now deceased had been handcuffed to the front and a set of two fast straps had been applied to his legs; one at his ankles and the other either just below or just above his knees depending on whose account is accepted;(the paramedics only speak about leg restraints in place but not where).

After the deceased was brought to the ground the officers initially involved in his restraint were PCs Walker and Tomlinson followed shortly afterwards by PC Paton (15 seconds after restraint had commenced).

Civilian accounts are from witnesses Mullen, Robinson, Nelson, Ali, Wyse and Fenton. A further civilian witness Guessoum may have witnessed part of the incident but it has been impossible to identify his car on CCTV.

The police accounts of the restraint are from PCs Walker, Paton, Tomlinson, Smith, McDonough, Gibson, Good (all of whom took part in the restraint to some extent); from PC Short (who viewed an early part of the restraint after she got

up) and from PS Maxwell, DS Davidson, DC Connell and DI Robson, (all of whom arrived in the course of the restraint and provide their recollections).

CCTV shows Nelson emerging from his property at 07:21:22 hours and getting to his garden gate at 07:21:25 hours which is 17 seconds after the restraint started. His position at the gate is best seen in the panorama views on the composite disc. By selecting the red flashing dot 5th to the right of the roundabout and panning round, the gate can be seen immediately between the dark green car and dark blue car.

In his initial statement Nelson speaks to the deceased lying face down on the pavement to the left of his house. Five or six male officers were around the deceased trying to restrain him. One officer he recalled was kneeling on the ground using their upper body weight on the deceased's shoulder and neck area. The other officers were lying across the deceased trying to keep him on the ground. Nelson heard shouts of 'calm down' and 'get his legs'. He saw the deceased kicking his legs and one officer was holding cable ties. He went back outside later when the police were doing CPR and he commented in his statement that the male had gone from throwing punches in the street and kicking and thrashing about to having CPR performed on him in a very short space of time.

At precognition in October 2016 Nelson described the deceased 'like a toddler having a tantrum', face down with legs turned up at the knees, swinging his arms and legs and trying to lift his head up. Two officers were lying across his top half, one over his top and one over his middle. Another officer was trying to tie cable ties around his legs as he was kicking out. Other officers were there but not on the deceased. Nelson clarified at precognition that he only ever saw two officers on top of the deceased.

Sean Mullen watched the scene for the first 59 seconds of the restraint period from his car's position 2 on the roundabout and then from position 3 on Hendry Road. At the point when he stopped the car on Hendry Road he states that the deceased was on the ground face down not moving or struggling. There were four or five officers holding him down. He states that it looked like they were restraining him. He did not see any of the police jumping or being on top of the

man, but did comment that it seemed an excessive number of officers to arrest one man.

At precognition Mullen could not say if the now deceased was struggling but could say that there were at least four, possibly five police officers on his back putting pressure on him. He then clarified his remarks, discounting officers being on top of the now deceased in "pile -up" scenario but stating that at least four officers were holding him down. He was sure one officer had his knee on the now deceased's back. He thought that the now deceased was handcuffed to the back (which is incorrect) and was positive that he was face down.

Danny Robinson, in his initial statement to the police did not see police on top of the now deceased. However by the time he was precognosed in October 2016 he had up to 8 police officers on the scene overpower the now deceased and "three or four pile on top of him on the ground". He described the now deceased face down and the police pinning him to the ground. Some of the police were on top of him with their knees on his back and some were grabbing his arms and legs.

Ashley Wyse lives in a first floor flat at Ashley Wyse's address at Hay field Road She is the upstairs neighbour of witness Kevin Nelson. She watched events from her bedroom window which has venetian blinds.

This location can be seen in
Label 1 Composite disc

Under the tab named "Timeline", on the screen named "Position of Civilian witnesses – Hayfield Road Locus", the position of Ashley Wyse is represented by the orange dot.

Wyse did not begin watching events until after PC Short had been assaulted by the deceased. Her account given in her first statement is of seeing a man going to the ground with about six officers around him. The man was making roaring noises, shouting something like "get off me". Police officers were struggling with him and they were tying up his legs with yellow tape. She could not say if the man was lying on his front or back as she could not see his head.

In a fuller statement given on 5th May 2015 she stated that the man was lying on his back with at least six police officers lying on top of him, crossing over him from both sides, pretty much covering his whole body. She was not sure if the man moved while on the ground. In another part of her statement she states that there were at least six police officers around him at all times. She felt that the police were being rough with the man, the way the police were "pouncing" on him.

She saw wrists restrained with his hands/arms in front of him, with police officers lying on top of him. It looked like one of officers was using a baton to hold the man down. It was on his upper chest towards his throat.

At precognition on 4 October 2016 she spoke to seeing batons strewn on the ground but did not see anyone using a baton ("it looked to me like they had used a baton on him but I'd be lying if I said I saw that"). She maintained that she had seen six officers tackle him to the ground and that they had batons. She stated that the male was lying on his back, putting up a fight. The police were holding him down and lying on him so that he could not move; one at the top, one at his side, one at his feet and they taped his feet, legs and hands. At precognition she changed her position in that she said that there were a lot of officers around him but she could not remember if all of the officers were lying on the man. She recorded on her mobile phone three snapchat video recordings of what could be seen on the street outside her house. The details of what these clips shown are narrated in chronological order later in this narrative.

She saw the deceased struggling with the officers. It was only when they moved that she was able to see that it was a black male on the ground. It looked like one of the officers was using a baton to hold the man down and it was on his upper chest towards his throat. She was unable to say how long the baton was being used to hold him down. Wyse also recalled officers tying the deceased's legs with yellow tape.

After charging the deceased to the ground PC Walker states that the male fell backwards onto the ground (in his initial self-written statement, PRO 456). Walker fell also, landing beside him. Walker states that he immediately reached over the male in an attempt to gain control of him, at which point the male threw several punches. Walker admits to punching the male on the left side of

his head at which time the male raised his right hand to strike him and Walker grabbed it, pulled the right arm over the body, turning his torso onto his left side, pinning his left arm underneath him. Walker states that he placed his weight over the male to stop him breaking free whilst continuing to hold his right arm. In his second statement noted by PIRC investigators his account is much the same but he describes his own position as on his knees and then, having grabbed the now deceased's right hand, putting pressure from his chest onto the deceased's right shoulder, pushing him onto his left side. He stated the deceased was struggling and lashing out with his arms and tried to punch him several times and he punched the deceased twice on his left cheek.

Walker became aware of PC Paton arriving to his left and placing a baton over the male's left bicep and Tomlinson on his right also trying to restrain the male. He recalled the arrival of PC Smith arriving on the opposite side of the male at his head. He saw Smith take out his CS Spray and immediately knocked it out of his and telling him it was ineffective. Walker took out his handcuffs and got one cuff on the right wrist of the now deceased, at which point the now deceased freed his right hand. He states that control was quickly regained and he applied the second cuff to his left wrist.

PC Tomlinson states that once PC Walker took the deceased to the ground he (Walker) was trying to control his arms so he tried to get control of his legs which were kicking out in the air. PC Tomlinson states he struck the deceased a few times on the legs near his Achilles but it didn't stop him kicking out. As a result he threw his baton down and jumped on to his upper thighs. At this time contrary to PC Walker's recollection the deceased was on his front, face down. Both he and PC Walker were trying to control the deceased. PC Walker was on his back and he himself was straddled over his legs trying to control him.

After PC Paton had sufficiently recovered from the effects of CS spray and helped PC Short to her feet he became aware of PCs Walker and Tomlinson struggling with the deceased on the ground on the opposite carriageway and made his way over to assist. He states he got down on the ground to help restrain the deceased who was still struggling and they were having difficulty keeping him on the ground. PC Walker was lying on his left hand side across the deceased's chest facing the deceased's feet. According to PC Paton the deceased

was lying on his back and face up throughout the restraint. PC Paton stated that when PC Walker was still at the top end (chest) of the guy he saw PC Walker who weighs about 25 stone being lifted up by the deceased. "I cannot emphasise the strength of this guy." He heard the other officers talk about leg restraints but did not (or could not) see them being applied, because PC Walker's back was in his line of sight. Paton states that he was at the left shoulder of the deceased, trying to hold the left area of his body. He saw a baton lying on the ground and picked it up and held it across the deceased's left bicep, trying to keep him under control for handcuffs to be put on.

PC Short speaks to seeing three colleagues, PCs Walker, Paton and Tomlinson at the deceased who was on the ground; one on each side and one at his feet. They were being thrown off by the deceased who was kicking them with his legs and thrashing out with his arms. She referred to him as being very cold towards the police, to his intense stare, to him being out of control.

07:21:34 hours Police Vehicle 3 Arrives PC Alan Smith and PC Kayleigh Good

CCTV shows the third police vehicle, containing PCs Alan Smith and Kayleigh Good arrived at the scene at 07:21:32 hours, 24 seconds after the restraint started.

Both officers initially spoke to PC Short who was, at this time, standing on the opposite side of the road from the deceased. She had no obvious injuries. PC Short told them the deceased had hit her on the back of the head and PC Smith told PC Good to stay with her before running up the road to assist his colleagues with the deceased.

At 07:21:37 hours, 29 seconds after the restraint (ie 5 seconds after his arrival on the scene) started PC Smith updated Force Control with the following airwave message:

'Control Bravo one officer's been punched to the back of the head no obvious serious injuries, male secure on the ground.'

On the

Label 1 Composite disc

The airwave message relayed by PC Smith seems to be delivered as the figure of PC Smith can be made out running up to join his three colleagues restraining the now deceased, at 29 seconds after the restraint had commenced.

[This radio update seems remarkably quick but it is probably just possible that Smith could have obtained that information to deliver that message as he ran up towards his colleagues who were restraining the now deceased]

As he approached the locus PC Smith saw PCs Walker, Paton and Tomlinson with the deceased who was on his left side facing towards Hendry Road. All officers were in a kneeling position at the deceased's back. PC Paton was closest to his head leaning across his shoulders trying to control his arms by leaning over his shoulder. PC Walker was in the middle of the three officers leaning face down over the torso of the male trying to get control of his arms, going between a kneeling and a flat position. PC Tomlinson was further down the deceased's body at his thighs trying to control his legs. The deceased was struggling by moving his arms about pulling them away from the officers.

PC Smith's initial assessment was officers had a level of restraint but were having serious difficulties and there was a possibility that the deceased might break free. PC Smith threatened to spray the deceased if he didn't stop struggling but PC Walker told him it would be ineffective. PC Smith moved round facing the now deceased (a figure presumed to be Smith can be made out on CCTV between 30- 40 seconds after restraint started), knelt at his chest level and he, Paton and Walker together managed to handcuff the deceased palm to palm at the front. The male continued to struggle and Smith states that he then moved down to the male's legs, where Tomlinson was lying across the legs trying to restrain him.

At 07:21:38 hours a white van driven by Akhtar Ali comes into view on CCTV heading south on Hendry Road. This is 30 seconds after the restraint started. He stopped directly behind Mullen's vehicle at 07:21:49 hours, and remained there until he got past Mullen's vehicle at 07:21:55 hours, 47 seconds after the restraint started. Ali therefore viewed the incident for approximately 17 seconds. [CCTV times shown 07:10:57 – 07:11:03] He saw 2 male officers holding someone down on the ground. The person on ground was moving and the officers were putting pressure on the person to keep him on the ground. He

could see that the person's head was towards houses and feet towards the road but was otherwise unable to say what position he was in on the ground. Ali has an officer on either side of the body, with each officer using two hands and one knee on the person and putting him pressure on him. His impression was that the police were pinning him down. He was not shocked and thought it was an arrest. He formed the impression that the man was trying to get up and that the officers were using force to keep him down.

At precognition Ali stated that as he headed south on Hendry Road he observed two police officers pinning down a man who was face down on the ground. The officers had him pinned down with their knees on him and the male was not struggling or offering any resistance. This is in contrast to the police accounts.

At 07:21:45 [CCTV time 07:10:35] a black saloon car can be seen to stop briefly behind witness Ali's van. PIRC investigators believed this to be witness Amy Dunn. However, on scrutiny of the CCTV footage against her account, it is believed that the car being driven by Amy Dunn actually passed the scene driving south on Hendry Road much later (07:26:35) and returned northbound a minute later at 07:27:05). This timing would fit with her account of turning around and returning to the scene immediately and to seeing a plain clothed officer (Connel) with a brown evidence bag. The driver of the black saloon car that stopped behind witness Ali's van therefore remains unidentified.

07:21:47 Police Vehicle 4 arrives: PC Daniel Gibson and PC James McDonough.[CCTV time 07:10:55]

While witness Ali was watching, the fourth police vehicle carrying PC Daniel Gibson and PC James McDonough arrived at 07:21:47 hours, 39 seconds after the restraint started.

PC Gibson recalled only two officers, PCs Walker and Tomlinson on the ground with the deceased. There may have been other officers present but he could not remember them. The deceased was on his left side facing towards him (Hendry Road). He states that PC Tomlinson was at the deceased's legs but he was unsure if he was standing up or lying on the ground. PC Walker was having difficulty controlling the deceased. He was at the rear of the male, leaning over

him and trying to grab his arms but the deceased was preventing him from doing so by kicking his legs, and swaying back and forward with his arms and shoulders. PC Gibson laid the right side of his own body across the deceased's legs so that he was now facing across Hayfield Road and was unable to see what was happening behind him at the deceased's upper body. Gibson commented that even this did not stop the male kicking off and that he was a "strong dude".

According to PC McDonough, when they arrived, the deceased was lying on his stomach, face down. PCs Smith, Walker Paton and Tomlinson were all dealing with the deceased, who had one handcuff on his left wrist. PC Smith was on his knees trying to control the deceased's legs. PC Walker was also on his knees at the deceased's waist area but he did not recall what he was doing. PC Paton was on his knees next to the deceased's head trying to control his left arm whilst PC Tomlinson was kneeling at the deceased's head trying to control his right arm. The male was struggling violently as if attempting to escape. He too commented on his strength. He states that he and PC Gibson went to assist the four officers already struggling with the deceased. He got down on his knees to try to assist PC Smith in trying to control the deceased's legs. He states that he saw PC Gibson trying to control the deceased's upper body. He and Smith put leg restraints on firstly above the knees and then at the ankles. He states that this stopped the male from kicking out as violently as he had been.

Wyse took three 10 second 'Snapchat' Clips from her bedroom window. It has not been possible to ascertain the time when the clips were taken as the mobile phone does not record the timing of the snapchat App. However, it has been possible to identify timings from the position of police vehicles and comparison with the CCTV footage from Gallagher's pub.

07:22:09 Snapchat Clip 1 Duration: 10 seconds

The first 'Snapchat' clip taken by Wyse commenced at 07:22:09 hours, 1 minute and 1 second after the start of the restraint and finished at 07:22:19 hours, 1 minute and 11 seconds after the restraint started.

The footage shows Police Vehicles 1-4 in attendance. It is clear from this footage that the cars containing PS Maxwell, DS Davidson and DC Connell and DI Robson had not yet arrived.

The footage contains a brief glimpse of the methods of restraint being used at that time. Six officers are in various positions on/around the now deceased. The deceased can be seen lying on the southern pavement on Hayfield Road, surrounded by five officers (thought to be PCs Smith, Tomlinson, Paton, Gibson and McDonough). A sixth officer appears to be lying lengthwise on top of or beside the deceased, his high visibility clothing visible momentarily. It was the view of PIRC investigators (and indeed the precognosers) that this was likely to be PC Walker as almost every police witness (including himself in his own statement) speaks to him in some kind of position over the now deceased's body.

However, the witness Graves casts some doubt on that identification as in his view it looked like the position described by Tomlinson. He states that the officer lying over the body of the now deceased is likely to be PC Tomlinson as Tomlinson described in his own statement that he was lying over the deceased's legs. In the view of witness Graves, the officer in view over the body of the deceased is lying diagonally over the lower part of the body of the now deceased.

Towards the end of the clip at 07:22:17 hours as the camera pans across the road, a further officer, thought to be PC Good can be seen making her way over to assist her colleagues.

PC Walker states that he told PC Smith not to use CS spray. He managed after a struggle to handcuff the deceased to the front. At one point he managed to secure one cuff on the now deceased's right wrist but the deceased pulled his hand up. Once the cuffs were on they had control of the deceased and he looked to his right and saw that leg restraints had been placed around his knees and ankles. He raised himself up from the deceased but kept his knees on the ground. PC Smith took control of the handcuffs, PC Paton still had his baton lodged through his arm and PC Tomlinson was restraining the deceased to some unknown degree.

PC Tomlinson recalled that the deceased was face down; PC Walker was on the deceased's back and he himself was straddled over his upper thighs trying to control his legs. Despite this, the deceased managed to lift both of them up in a 'bench press' type motion. PC Tomlinson tried unsuccessfully to handcuff the

deceased as other officers started to arrive. Everything was happening very quickly and he didn't see who applied handcuffs or leg restraints.

At 07:22:22 (1 minute 14 seconds after the restraint started) PC Walker passed the following airwave message:

'Update male in cuffs still struggling'

PC Paton recalled hearing PCs Tomlinson and Smith talking about leg restraints but never saw them being applied. He was holding both ends of a baton down on the deceased's bicep trying to get him under control and in handcuffs. He did not see the deceased being placed in handcuffs nor does he have any memory of seeing him in handcuffs.

PC Smith states that between them they managed to handcuff the deceased to the front. The deceased continued to struggle with his legs as he curled up his legs and tried to prevent them being straightened. With PC McDonough he (Smith) managed to apply leg restraints around his ankles and then a second set just above his knees. He estimates that the male was effectively under control in handcuffs and with leg restraints applied within 3 – 4 minutes (of his arrival). At that time there was nothing that gave him any concerns for the male.

PC Good was the last officer to become directly involved in the restraint process. As stated earlier she is captured on Snapchat Clip 1 hours making her way over to assist her colleagues at 07:22:17 hours, 1 minute and 9 seconds after the restraint started. When she approached she saw the deceased lying face down on the pavement. His feet were facing towards her, his chest was on the ground and his head was up off the ground turned to the right towards Gallagher's public house.

At this time the deceased's arms and legs were 'still flying (kicking out, arms flaying') and he was trying to force himself up using his arms in a press up type movement. Several of her colleagues were trying to restrain him by pushing him to the ground. PC Paton was at the deceased's head, trying to restrain him with a baton, whereby a baton is placed between his arm and his body, in an effort to take the arm around his back but this was not working due to the deceased's force against it. PC Walker using the top half of his body was lying across the top of the deceased's back, towards the upper half, in an effort to stop him forcing

himself to his feet. This was effectively to assist in pushing him to the ground. PCs Smith and Tomlinson were at his legs; PC Tomlinson kneeling on his legs trying to stop him kicking out. PC McDonough was kneeling next the deceased's left side removing leg restraints from his utility belt.

She described how she went round his head to the right side of the now deceased and assisted PCs McDonough, Smith and Tomlinson getting leg restraints on the deceased who was lying face down on the ground. With smaller hands than her male colleagues she managed to feed the strap under his legs and PC Smith fastened them on the top. She states that Tomlinson had one knee of the deceased's leg, trying to pin it down. The deceased was struggling violently and there was a lot of shouting. As soon as PC Smith fastened the straps she heard Alan Paton telling them to roll him onto his side.

07:22:27 Police Vehicle 5 arrives APS Scott Maxwell

In his first statement (provided by himself, apparently written by him at home on Monday 4th May 2015) Maxwell states that on his arrival the now deceased was still actively resisting officers who were still trying to gain control. He was aware of a civilian coming to watch (Nelson). He recalls seeing PCs Smith, Walker, McDonough, Good, Paton and Gibson who were trying to restrain him and still trying to gain control. In that first statement he could not recall the respective positions of each police officer in the restraint. He described their method of restraint as asserting their body weight onto the male at various points on the legs, buttocks and shoulder area: a recognised method of gaining control. He estimates that the male was restrained in handcuffs and leg restraints about a minute after he arrived and all of the officers, who according to him were aware of the dangers of positional asphyxia, then moved off the male who was then put into the recovery position, awaiting further instruction. He also made enquiry about the knife and was told by someone (he does not know who) that it was on the grass across on the other side of the road.

When he gave a statement on 4th June, PS Maxwell states that he saw the now deceased lying on the ground on south footpath. His head was towards the houses and feet were towards the road. He was lying on his left side facing

towards the roundabout. This witness has PCs Paton, Walker and Good all on their feet at that time. He stated that on his arrival the now deceased was handcuffed to the front and one set of leg restraints had been applied to legs close to ankles. When he first saw him there was movement - struggling with his full body moving although the police had full control in his opinion. He thought that PCs Tomlinson and Smith were facing him, leaning over the now deceased's right hip and buttock. Gibson and McDonough were on their knees at the feet of the male. The officers were still applying force to restrain the now deceased. He is sure that nobody was lying on top of him. They were applying pressure to restrain male but not full body pressure as they were anchored from the knees and "It might look like they were lying across him to untrained eye, but this is recognised training hold". He also stated that from what he could see the level of resistance was reducing quite quickly and maybe as soon as 20 seconds (after Maxwell's arrival) the male was fully compliant.

At 07:22:41 hours Christopher Fenton is captured on CCTV turning right from Hendry Road in his black Honda Civic onto Hayfield Road. His car can be seen passing the scene during a period of about 14 seconds between 1 minute and 33 seconds and 1 minute 47 seconds after the restraint had commenced. His was an "extended glance" at the scene while he was driving and negotiating a number of police vehicles that had stopped in the road there.

Fenton is a psychiatric nurse and he regularly has to physically restrain patients. He used the terms "pile up" in his statement and precognition and also the term "scrummage" at precognition. He thought that there were more than six police officers and it looked in that glance that they had just gained control of a large male whom they were restraining in a prone position. Having used those terms however, he saw nothing overly excessive about the methods he observed.

At 07:23:10 Police Vehicle 6 arrives: DS Samantha Davidson and DC Derek Connell

This is 2 minutes 2 seconds after the start of the restraint.

DC Connell did not give a detailed account of what the officers were doing when he arrived with DS Davidson, simply stating officers were struggling with the deceased.

DS Davidson is captured on CCTV making her way to her colleagues and whilst doing so at 07:23:12 hours she passed the following airwave message:

“Roger, the male’s on the ground at the moment, we’ve got several officers taken a big restraint....erm....we’ll get back to you however we’re gonna need more control with leg restraints etc but he’s down on the ground so there’s no risk at the moment”

This transmission is 2 minutes and 4 seconds after the restraint began.

In her first statement dated 4 May 2015 DS Davidson stated, on arrival she saw the deceased lying on his front, physically moving his legs about as officers were applying leg restraints. Officers were on either side of the deceased controlling him but she was unable to recall the exact restraining actions of individual officers. She asked PC Walker where PC Short was and for the keys to the van in order to move it closer.

DS Davidson provided a statement to PIRC on 2 June 2015 almost a month after the incident in which she was able to provide more detail. In this statement she said that as DC Connell parked she saw a black male lying face down on the ground. His head, body and upper legs were on the path and his feet were stretched out on the road. The only movement she recalled was the deceased moving his legs.

As she got out her vehicle she saw PC Walker lying on the deceased’s left side at his upper shoulder facing away from the deceased. PC Paton was on the deceased’s right hand side, controlling him but she was unable to say how. PC Tomlinson was at the deceased’s feet holding the deceased’s legs which were still moving. PC Gibson was also at the deceased’s feet although she did not recall what he was doing.

In this statement DS Davidson said leg restraints had not been applied at the time she arrived. Someone mentioned ‘leg restraints’ and she believed someone

was going to put leg restraints on but she did not actually see leg restraints being put on the deceased.

After PC Walker gave her the location of the van keys and PC Short she went off and found PC Short crying and in shock in a police van 30/40 yards away. PC Short told her she had been struck to the back of the head and ended up on the ground. She thought she was going to be further assaulted but other officers protected her.

PC Walker became aware of DS Samantha Davidson in the roadway asking if the knife had been recovered (DS Davidson arrived at 07:23:03 hours, so this must have been at least 2 minutes plus into the restraint period) PC Walker told her it had not been recovered and asked PC Tomlinson to check his pockets for a knife. He and PC Paton rolled the deceased from his left side onto his back to facilitate the search. PC Paton also pulled the baton from his arm at this point. The deceased was fairly compliant at this time. PC Walker told DS Davidson the direction the deceased had come from and saw PC McDonough in the roadway indicating there was a large knife in the grass. This was the first Walker realised that PC McDonough was in attendance. He found out later from PC McDonough that he had put the leg restraints on.

Tomlinson states that PC Smith was trying to fast strap the deceased but grabbed his leg by mistake. The deceased was still face down and struggling. PC Walker asked him to check the deceased for a knife at which point the deceased was rolled onto his side. He noted the deceased was handcuffed to the front and in leg restraints. Tomlinson states that when the now deceased was rolled over onto his side he had calmed down and wasn't moving or struggling.

McDonough states that he became aware of DS Davidson and DC Connell getting out of their car and one of them asking if the knife had been recovered. As the deceased was in leg restraints he got up and went to look for the knife. He noticed something shiny on the grass on the other side of the road and advised CID. He states that when he went back to assist his colleagues nothing had changed and the deceased was still struggling with his upper body and was still handcuffed on one wrist only. He initially stood back so as not to hinder his colleagues, however, then knelt down and took hold of his feet, even though he couldn't kick out due to the leg restraints. [In fact CCTV shows that McDonough

did not get up to look for the knife until 07:25:43 – after the airwave message that the deceased was in medical difficulty]

PC Gibson became aware of CID officers and recalled DS Davidson asking if a knife had been recovered and someone saying it was lying in the grass. Whilst still on the deceased's legs he watched DC Connell cross the road to the grass and search for the knife. (He makes no mention of PC McDonough looking for the knife or of rolling the deceased onto his side to carry out the search)

At 07:23:31 hours Mullen's car is again captured on CCTV this time travelling north on Hendry Road and stopping at the roundabout at 07:23:36 hours. This is position 4. [CCTV times shown 07:12:44 – 07:13:25] This is 2 minutes and 28 seconds after the restraint started. He sat and watched events until 3 minutes and 9 seconds after restraint commenced. In his statement to PIRC he said "*I looked over and saw the same black man on the pavement opposite the bus stop just on Hayfield Road before the roundabout. His head was facing towards the house and he was face down. He wasn't moving or struggling and there were about 4 or 5 officers holding him down. It looked like they were restraining him but I didn't see the officers jumping or being on top of the man*".

At 07:23:33 hours APS Maxwell passed an airwave message to TPI Kay advising him PC Short had been struck to the head and although she had no visible injuries an ambulance was required to have her checked over. At 07:23:48 hours TPI Kay passed an airwave message advising officers to use all necessary restraints and requested an ambulance for PC Short.

At 07:23:48 witness Nelson can be seen on CCTV leaving his garden gate and returning to his house. According to Nelson, the now deceased was still struggling when he returned to his house, 2 minutes 41 seconds after the restraint had begun. At this time he thought that it was all over and the man would be put in the van and taken away.

Police Vehicle 7 arrives 07:23:59 hours: DI Colin Robson

DI Colin Robson arrived at the locus at 07:23:59 hours in an unmarked grey Vauxhall Astra; 2 minutes 51 seconds after the restraint had started. DI Robson

had no direct contact with the deceased and submitted an operational statement the day after the incident.

In his initial statement he said on arrival he saw approximately 6 officers including PCs Paton, Walker and Smith around a black male who was handcuffed to the rear and in leg restraints. The officers were in control of the deceased who had been placed on his side.

In a subsequent statement dated 2 June 2015 DI Robson could not recall whether the deceased was handcuffed or not but recalled being told by DS Davidson either personally or via airwave that the deceased had been handcuffed to the rear (this is wrong, the deceased was handcuffed to the front).

As he watched events DI Robson was briefed by DS Davidson. According to DI Robson, DS Davidson told him *inter alia* that when police arrived at the locus, the deceased had been in possession of a knife and immediately engaged with officers. Following an altercation, PC Short had been assaulted, the deceased dispossessed of the knife and restrained. [DS Davidson is adamant she did not tell DI Robson the deceased had a knife when he engaged with police officers].

DI Robson was satisfied the situation was under control and that PC Smith was in control of the deceased's welfare. He instructed DC Connell to locate the knife (which was subsequently recovered from the grassy area on the north side of Hayfield Road by DC Connell at 07:28:54 hours.)

After checking on PC Short at 07:24:26 hours APS Maxwell passed an airwave message to Control confirming she had no visible injuries. He requested an ambulance for her given she had been "stomped" on the body a few times and struck to the head. APS Maxwell then made his way back to the area of restraint. [Maxwell states that he obtained information about PC Short's assault from her and from PC Paton, neither of whom make any reference to the deceased kicking or stomping on her in their own statements.]

CCTV footage during the latter part of the restraint period shows some figures on their feet and moving in the vicinity of the restraint area but it is too blurry to make out who they are or how many are moving around.

Deceased in medical difficulty

PC Smith states that he cut his right hand in the process of applying the legs restraints and stood up to check his hand as he felt the deceased was under control and no risk of him breaking free. The deceased was now tilted over to his front, not completely prone and he recalled PC Walker saying that the deceased would need to be moved onto his side. PCs Walker, Tomlinson and Paton then moved the deceased onto his side and the male was moaning. Smith states that although he had no immediate concerns he ran through the aftercare procedure because the deceased was in leg restraints and had failed to respond to CS and PAVA. He states that the very aggressive behaviour shown by the male and the fact that he failed to respond to PAVA and CS spray were indicators of possible excited delirium, usually associated with drug use/mental health problems and can lead to deterioration in medical condition and sudden death.

At that stage he went down to check the male and saw that his eyes were closed. He asked if the male could hear him but got no response. He put his knuckles on the top of his chest but again no response. He then checked his breathing by putting his face towards his mouth. He felt breath and could see his chest move consistent with normal breathing. He said "he's breathing" and Paton agreed. At this time he passed a message by radio that the male was unconscious but breathing and asking for an ambulance.

The next thing PC Gibson heard was someone, he believed to be PC Smith shouting 'Get off him'. He got off the deceased's legs and saw PCs Walker, Paton and Smith all crouched at but not touching the deceased. The deceased was on his front with the left hand side of his face on the pavement facing towards Hendry Road. It was just after this, that PC Smith moved him onto his side to check his breathing.

Walker states that just after speaking to DS Davidson about the knife and after the now deceased had been rolled onto his back to facilitate the search he looked down and thought the deceased appeared to be unresponsive. The deceased was on his back, eyes closed and phlegm coming from his nose. It was at this point that PC Smith checked the deceased and thereafter requested an ambulance He heard PC Paton ask PC Smith to check the now deceased.

Whilst holding down the deceased's bicep PC Paton realised the deceased was offering no resistance. He was only concentrating on the deceased's arm and could not see the rest of the deceased's torso because of PC Walker's back. He heard PC Smith asking "is he still breathing?" and saw Smith standing at the deceased's head checking and then confirming he was still breathing. At this point PC Paton stated that he was still on the ground with the deceased and PC Walker 'was still lying on top of the guy'. PC Smith then said that he did not think the deceased was breathing and it was at this point that everybody "backed off" the deceased.

Tomlinson states that he recalls PC Walker asking him to check the deceased for a knife at which point the deceased was rolled onto his side. He noted the deceased was handcuffed to the front and in leg restraints. He has PC Walker to his left controlling the upper body of the deceased. PCs Smith and Paton were at his head area. The deceased had calmed down and wasn't moving or struggling. PC Smith bent down and put his ear to the man's mouth and confirmed he was breathing. He was not responding so PC Smith called for an ambulance.

Good states that after leg restraints were applied PC Paton instructed that the deceased be rolled onto his side and at this time she noted that the deceased's eyes were closed and he had stopped struggling. She thought the deceased was 'faking it' and recalled PC Paton confirming he was breathing. She was then instructed by DS Davidson to commence traffic duty at which time the deceased was showing no signs of distress.

McDonough's recollection is that he momentarily got up from the restraint after he and Smith had put on leg restraints and went over to help look for the knife, which he saw over on the grass. He returned to his colleagues and nothing had changed. He got back down and held the legs again and could feel the muscles tense. Then he recalled legs not moving and at the same time someone shouted that the deceased was motionless and everybody stood back. The deceased was still only handcuffed on one wrist at this point. PCs Smith and Paton then confirmed the deceased was still breathing and heard somebody shout for an ambulance.

PS Maxwell was involved in speaking to DS Davidson and DC Connell about scene preservation and arranging for an ambulance for PC Short. He then

returned to the male and at that point noted that his eyes were closed and he was not responding to officers. Pc Smith, an OST trainer and first aider monitored his breathing

DI Robson did not seem to acknowledge the deceased in any medical difficulty at all, although he heard Smith attending to his welfare saying the man should be in the recovery position and "his airway is open".

Ashley Wyse saw a police officer on the man's right hand side lean down to check if the man was still breathing as the man had just gone quiet and was not shouting. He also looked like he was checking for a pulse.

At 07:25:11 hours PC Smith made the first airwave call to alert the deceased was in medical difficulty and an ambulance was requested. This was 4 minutes and 3 seconds after the restraint began and the time the period of restraint ended.

07:25:11 PC Smith: *'Control four one Bravo'*

07:25:14 Control 1: *'Go ahead'*

07:25:16 PC Smith *'Roger this male now certainly appears to be unconscious, breathing, not responsive get an ambulance for him'*

DS Davidson is captured on CCTV at 07:25:32 hours driving PC Walker's van Police Vehicle 1 closer to the incident area stopping at 07:26:29 hours.

Around this time PC Tomlinson expressed concern to APS Maxwell about striking the deceased on the head with his baton and as a result at 07:26:38 hours APS Maxwell passed the following airwave message:

"I'm just looking to clarify has an ambulance been contacted for this accused also"

At 07:26:46 hours Control 1 confirmed to APS Maxwell that two ambulances were on route to the locus, one for PC Short and one for the deceased.

At 07:26:51 hours following confirmation from control that a second ambulance had been contacted APS Maxwell passed a further transmission:

"Just for the log the initial on attendance, this male's attacked PC Short quite violently...er...as a result he was sprayed with CS and PAVA and batoned. There may be a suggestion that he has been batoned to the head area. Four one over."

07:27:31 Snapchat Clip 2 Duration: 10 seconds

The second 'Snapchat' clip taken by Wyse is thought to have commenced at 07:27:31 hours, 2 minutes and 20 seconds after PC Smith requested an ambulance.

In addition to the 4 police vehicles present in the first clip Police vehicle 5 (APS Maxwell) Police vehicle 6 (DS Davidson and DC Connell) and Police vehicle 7 (DI Robson) can be seen on the footage.

Police Vehicle 1 (PCs Walker and Paton) is now in the middle of the roadway facing west, near the incident area having been moved by DS Davidson.

There are now eleven officers visible on the footage. PCs Paton, Tomlinson and Gibson are kneeling or crouched down at the deceased. APS Maxwell, DS Davidson, PCs McDonough, Good and PC Smith are standing over him. PC Walker is walking back towards the deceased from the direction of his police vehicle and passes DI Robson who is walking in the opposite direction on his mobile telephone. DC Connell is at the roundabout interacting with the driver of an unidentified vehicle. The identity of the officers in Snapchat 2 has been provided by DS Davidson who was shown a still photograph.

Towards the end of the clip witness Hilary Smart can be seen walking east on Hayfield Road. When Smart passed the area of restraint shortly before, she saw about eight police officers crouched down around someone on the ground. There was no movement from the officers and she didn't hear anything being said.

At 07:28:13 hours DI Robson left Hayfield Road to convey PC Short to A & E at the Victoria hospital. At 07:28:45 hours he passed the following airwave message:

'Control from Papa Whisky four hundred eh just giving you a!!! ambulance attend for the male on the ground..em. I'm going to convey PC Short down to 'A'

and 'E' a short distance.. they just complained of a injury to the back of her head so I'll get her checked out'

07:28:18 Snapchat Clip 3 Duration: 7.22 seconds

The third 'Snapchat' clip taken by Wyse commenced at 07:28:18 hours, 3 minutes and 7 seconds after PC Smith requested an ambulance.

No additional police vehicles can be seen on the footage. DI Robson's unmarked police car is no longer visible as he has just left to take PC Short to Victoria Hospital.

The now deceased is still lying on the pavement with PCs Paton, Walker, Gibson, Tomlinson and Smith kneeling around him. DS Davidson is standing by the deceased and APS Maxwell can be seen walking over towards the officers. PCs Good and McDonough are now carrying out traffic duties.

At 07:28:54 hours, DC Connell recovered the knife discarded by the deceased earlier.

Label 1 Composite Disc

Pro 185 Photograph of Knife in situ

PC Smith continued to monitor the deceased and after about 3 minutes became concerned that he was no longer breathing properly. After being moved onto his back, and not obviously breathing, PC Smith instructed CPR to be started.

At 07:29:29 APS Maxwell passed the following airwave message:

'Control can you get a move on with the ambulance this accused is now not breathing CPR is commencing over'

At precognition the witness Hazel Sinclair, who was staying overnight with Wyse, saw the now deceased lying on his back with hands clasped together and feet tied up. No officers were on him but a number around. She saw what looked like "blind panic" and then CPR started. She saw a big, bald PC doing chest compressions and she thought he was doing it properly.

Walker began chest compressions and he and a number of officers performed CPR in turns. In a statement provided to PIRC on 4 June 2015 PC Walker made

reference to hearing the deceased's rib fracture whilst performing CPR. PCs Paton and Tomlinson also made reference in their statements to being aware PC Walker had fractured the deceased's rib during CPR.

Attempts to fix a face mask to the deceased to allow PC Smith to administer breaths were unsuccessful as the mask could not be properly sealed. By this time PC Smith, contaminated by CS sprayed at the deceased earlier, stopped trying to administer breaths and instructed PC Walker to continue with chest compressions. PC Smith then approached Nelson who had returned to his front gate and asked him for a glass of water to wash out his mouth.

Ambulance Arrival

Airwave messages to and from control between Police Scotland and the Scottish Ambulance Service indicate there was a mix up over the locus address as the operator thought APS Maxwell had said 'Seafield Road' but it was quickly corrected to Hayfield Road and, according to the paramedics, did not cause any delay.

At 07:33:34 hours Police Vehicle 1 can be seen being moved across the carriageway to allow the ambulance access to the deceased. The ambulance arrived at 07:33:46 hours, 8 minutes, 35 seconds after PC Smith's initial message indicating the deceased was unconscious.

The ambulance was crewed by driver Alan Finlayson and his partner David Taylor. Upon arrival and on bending down to deal with the deceased, Finlayson recalled an officer telling him the deceased had been restrained and a number of officers had been lying on him. As a result, Finlayson thought that the deceased might have suffered a chest injury.

The deceased was ventilated whilst officers continued with CPR. The deceased was placed the back of the ambulance still handcuffed and in leg restraints. The ambulance left Hayfield Road at 07:41:18 hours, driven by PC Smith. DC Connell travelled in the back to assist the paramedics. On route, Taylor recalled being told by DC Connell that the deceased had brandished a knife at police, been restrained and may have been struck to the head with a baton.

PRO 257 Ambulance records refer.

The deceased arrived at Victoria hospital at 07:45 hours but despite extensive intervention by medical staff the deceased was pronounced life extinct at 09:04 hours.

TPI Stephen Kay passed an airwave message indicating his arrival at the locus at 07:40:53 hours. He was briefed by APS Maxwell who told him officers had been trying to restrain the deceased which involved officers holding him down and asserting body weight onto him. The deceased ran at the officers after being commanded to stop and get back. After refusing another command to stop officers deployed PAVA and CS sprays which had no effect. The deceased kicked PC Short to the ground by swiping her legs and thereafter kicked her to the head. The deceased had then been restrained with handcuffs and leg restraints.

APS Maxwell spoke to all his officers individually at the locus and instructed them to return to Kirkcaldy Police Office. He was instructed by TPI Kay not to allow the officers to discuss the case. Prior to leaving the locus APS Maxwell asked PCs Paton and Walker what had happened but was told they would not be speaking to anyone until they had spoken to a Federation Representative.

Accident and Emergency Department, Victoria Hospital

Medics at A & E at the Victoria hospital were awaiting the deceased's arrival having received a message at 07:40 hours from Paramedics. He had been reported to be in cardiac arrest but on arrival was found to be in respiratory arrest.

The deceased was admitted to Resus 1 at 07:45 hours, still in handcuffs and leg restraints. The deceased was immediately given 'Naloxone' to reverse any opioid he may have taken. Medics were provided with limited details of events.

PRO 258 A & E medical records completed at 09:00 hours that morning state:

PC 'found by police with knife aggressive attacked police officer. Pepper gas used and unco-operative, hit on back of head. Then was in respiratory arrest. With ambulance crew ⇒ cardiac output no respiratory effort'

The deceased had no visible injuries other than a superficial abrasion on his left forehead which both officers present attributed to being struck with a baton.

The injury to the deceased's forehead that is referred to in the PM report can be seen in images on

Label 2 Disc of Photographs of the deceased at Victoria hospital (image 12)

Medics located a pulse, but after about two minutes it disappeared and he went into cardiac arrest. CPR commenced in 2 minute cycles. Medics tried to utilise a 'thumper' machine to provide CPR mechanically but discontinued this due to difficulties positioning it correctly. After one, two minute check the deceased was found to be in ventricular fibrillation (heart flickering) and was shocked by defibrillator. The deceased was shocked a further two times.

An ultrasound demonstrated activity in the deceased's heart known as pulseless electrical activity (PEA) and as a result CPR was continued.

Aggressive CPR continued for 75 minutes and only stopped when the ultrasound no longer showed any PEA in the deceased's heart. The deceased was eventually pronounced life extinct at 09:04 hours.

According to witness DC Balsillie, who attended the hospital at this time, he too was informed by DS Samantha Davidson that the deceased had brandished a knife at the police during the incident.

Post Incident – Police Scotland

Kirkcaldy Police Office

APS Maxwell and PCs Walker, Paton, Tomlinson and Gibson returned to Kirkcaldy Police Office at approximately 07:40 hours. On their return PCs Paton and Walker sought out Local Federation Rep PC Austin Barrett and asked him to contact the Federation immediately as they had been to an incident where 'a guy had died.' PC Walker made it clear that he would not be saying anything until he had obtained the advice of the Police Federation rep. PC Barrett telephoned Federation Rep Amanda Givan and informed her man had died following contact with the police. PC Barrett told the officers not to say anything at this time. According to witness Barrett, when PC Walker recounted events to him just before 8am he described how the deceased had wiped his face and smiled despite having been CS and PAVA sprayed.

After speaking to PC Barrett both officers congregated in the writing room with, PCs Tomlinson and Gibson. Officers' recollections on whether the incident was discussed at this time differ.

APS Maxwell instructed the officers to move to the station canteen where at 08:00 hours API Stephen Kay warned them against discussing the incident. API Kay informed them their equipment was to be seized for evidential purposes and gave them an assurance they were not under suspicion for any offence.

DI Robson attended at the canteen at approximately 09:00 hours by which time PCs Smith, Good and McDonough had also returned to the station. DI Robson states he told the officers it was inevitable there would be an investigation and asked them not to actively discuss the incident.

Post Incident Management Function (PIMF)

Meanwhile at 09:30 hours the incident was discussed at a service wide tele-conference chaired by ACC Nicholson which overviewed operational activity in the previous 24 hours. It was agreed that Post Incident Management Function should be implemented and CI Trickett was instructed to travel from Dundee to Kirkcaldy police Office to commence the role of Post Incident Manager (PIM).

PIMF procedures have traditionally only applied in police firearms incidents, but increasingly are being utilised by forces throughout the UK where death or serious injury occurs following contact with police.

The procedures to be followed are outlined in a

PRO 325 'Association of Chief of Police Officers Authorised Professional Practice Armed Policing 2013' (APP)

The APP sets out 4 stages to be followed in the PIMF process to establish the facts:

Stage 1: Situation Report- Information provided should be sufficient to provide a situational report which will enable the tactical firearms commander to manage the ongoing incident and assist them to discharge their post incident responsibilities

Stage 2: PIM Basic Facts- It is the PIM's responsibility to establish the basic facts of what happened.

Stage 3: Personal Initial Accounts from principal officers prior to going off duty.

Stage 4: Detailed Accounts, Statements and Interviews. These are normally provided after 48 hours and would include, if relevant, why an individual considered the use of force and the discharge of firearms absolutely necessary.

Section 8 of the APP provides guidance on conferring post incident. As a matter of general practice officers should not confer with others before giving their accounts. Guidance is also provided on whether officers should be separated. Any decision to separate officers will be made by the PIM and it should be considered where it is necessary to prevent officers from conferring.

CI Trickett arrived at Kirkcaldy Police Office at 11:00 hours, 3 and half hours after the incident. In that time senior officers did not take any steps to exhibit control over the principal officers when they returned to Kirkcaldy Police Office.

On arrival CI Trickett met PC Givan from the Federation and PI Jane Combe who had been tasked to assist him. CI Trickett briefed them on his role and the process.

As PIM it was CI Trickett's responsibility to facilitate, manage and ensure the integrity of the post incident procedure.

CI Trickett commenced a

PRO 277 PIM log

at 11:24 hours. Under section heading 'Details of Incident' 'Stage 1 Sit Rep as known to the PIM' he wrote:

'Reports male machete in street. Police attend, male strikes one with Machete, other officers use CS no effect. Use batons restrain. Collapses. CPR commenced by officers- Ambulance- hospital. PLE 0906 Declared Critical Incident'

According to CI Trickett this entry incorrectly stating the deceased struck a police officer with a machete was based on information provided by Ch. Supt McEwan during the tele-conference earlier that morning. Although he spoke to a number of senior officers on arrival at Kirkcaldy Police Office CI Trickett said he did not receive any additional information.

CI Trickett states he didn't speak to officers individually and at no time did he ask any of them to provide details of the incident. He did not obtain PM basic facts as there was already a good understanding of events. CI Trickett states he did not obtain statements from the officers following a discussion with Det. Supt Campbell who made it clear accounts were not be required from the officers that day as the incident would be the subject of a PIRC inquiry.

Senior management at Police Scotland put nothing in place to exhibit control over the principal officers from 0740 hours, the time they returned to Kirkcaldy Police Office until at least 1130 hours the time they were addressed by CI Trickett. According to the guidance in PRO 325, Police Scotland should have immediately appointed an independent officer of the rank of Inspector or above to take control of Kirkcaldy Police Office. This would have ensured officers were supported from a welfare perspective and ensured the integrity of post incident procedures.

At 11:30 hours and now approximately 4 hours after the incident CI Trickett addressed the officers in the canteen which had been designated the PIM suite. According to CI Trickett he told them their integrity and professionalism would

stand scrutiny during his investigation and the legal process if they did not discuss the incident with each other or anyone else.

Officers are at odds on whether the incident was discussed in the canteen. There is also some doubt whether senior officers advised officers not to confer. Again reference has to be made to the position of each individual officer.

PC Walker states that DI Robson did not give any instruction not to discuss the incident and indeed the incident was discussed. Officers were discussing what drugs the deceased had been on and why the sprays had not worked.

PC Good also recalled going back to the canteen and discussing the incident. She particularly recalled someone saying the deceased had chased PC Short down the street and stamped on her.

PC Tomlinson also said everyone was talking about what happened. He also says that CI Trickett said nothing about not conferring.

DS Davidson recalls attending the canteen for welfare de-brief and states there was no mention of officers not being able to confer or discuss matters.

PC McDonough states that everybody was in shock and nobody was discussing the incident. However, he contradicts himself by then saying he asked PC Short what happened when she returned from hospital. He states she told him that the deceased had hit her on the back of the neck, that she had fallen onto the ground and he had repeatedly stamped on her back.

For her part PC Short states that when she returned from the hospital she asked her team what had happened after she had been punched and PC Tomlinson said ' he was stamping and kicking at you every time you tried to get up'

PC Smith does not recall being told specifically not to discuss the incident but says the incident was not discussed in the canteen.

CCTV Kirkcaldy Police Office

As there were no measures in place to exhibit control over the principal officers they were not prevented from leaving the canteen. CCTV footage was seized by

PIRC from Kirkcaldy Police Office. In total there are 16 CCTV cameras covering Kirkcaldy Police Office / Custody Facility, one of which covers the Public Desk and front door entrance to the office and a further covers the custody entrance in to and out of the custody yard. There is a further side / back door that is for the use of police staff only, however, there is no camera covering this door. Footage from all 16 cameras was secured and is held by PIRC (and has not been viewed by COPFS precognosers). Transcripts were compiled of the footage of five cameras by PIRC investigator Kareen Pattenden. The decision by PIRC to restrict it to these five cameras was based on whether the recording picked up anything thought to be connected to the incident. The camera positions can be seen on

PRO 663 Kirkcaldy Police Office CCTV camera Layout

The following excerpts of the transcripts of CCTV footage would tend to suggest that some information about the incident was discussed by officers in the cell area during 3 May 2015.

Pro 652 CCTV Audio and Visual Timeline Camera 12 Kirkcaldy Police Office shows APS Maxwell and PCs Walker and Tomlinson left the canteen and visited the cell area at various points in the day.

At 08:27:45 hours APS Maxwell can be seen in the cell corridor asking PC Brian Geddes for his airwave terminal.

At 10:37:57 hours PC Walker is seen entering the store cupboard in the cell corridor to get plastic cups and PC Tomlinson also enters the store cupboard at 16:25:27 hours to obtain paper cups.

The Footage also shows a number of officers based in the cell area discussing the incident a short time after most of the principal officers returned to the office.

PC Geddes can be heard talking about the incident in such detail that might suggest the information has come from officers present at the scene. At 08:07:11 hours he is captured telling his colleagues PC Harris and PC Lamb:

'Battened to the head by a cop. They'd reckoned he'd had a big machete type blade. He's been coming at the cops, They'd CSd and PAVA'd him. Apparently he just went ha ha (gestures with his left hand wiping something from his face) and kept coming wi the knife eh. Straight for the wee-ist lassie Nicole Short is about this height (gestures her height) went straight for her. She'd been knocked to the grund, he's been stamping on her and Ash has then battened him to the head'

[Note: This description of events chimes with what Walker said about the incident and also with Short's version. As Short was still at the hospital at that time it might be inferred that Walker or one of the other officers involved imparted this information to PC Geddes or another officer on their return.]

PC Harris states *'Unlucky, he's used lethal force'* and further added *'.. he's got a machete fuck him'*

At 08:56:30 hours PC Geddes tells PCs Cockburn and Lamb *'The only good thing is he didnae hae the knife in his hand when he attacked Nicole. He goes on to say 'Nut, he just walked up and hooked him up.. standing on his back and then the other cop, he's about my size, a little bigger eh, he was just trying to run at him and knock him out the way, he was bouncing aff him. Apparently the boy seemed like...'*

PC Geddes added *'Never heard of him we've got a name, think who it might be, but dinnae ken yet, never heard...'*

In his initial statement given on 14 July 2015 PC Geddes advised PIRC that he became aware of information about the incident from either Lorraine Dewar in the enquiry office or from the airwave terminal. He also accessed STORM as the incident was still ongoing. He recalled being told by DI Robson that the canteen was to be used to debrief the officers and that no one was to go near there.

At 08:58:28 evidence of speculation - PC Harris can be heard talking to PC Cockburn: *"they've just got a phone call about em, I think it's basically just the fact that he's left with the knife and apparently there's some assault allegation in there as well. So it sounds like he's either been assaulted and he's gone out to get retribution or he's been assaulting people".*

Pc Cockburn *"has this been another call?"*

PC Harris: *"Well yeah he's been seen in the street there is an initial call but he had obviously come from somewhere to have got in that mood where he is carrying a machete, something's happened."*

At 09:00:43 PC Harris to Pc Cockburn "...apparently he's just gone whoosh (gestures with his right hand in throwing motion)

PC Cockburn *"dropped the knife?"*

PC Harris *"he dropped the knife earlier"*

Pc Harris *"I don't know, if some guy and this cop he was six foot four and twenty two stone on top of this guy and he just shrugs him off. So he's on something and if he can do that you've still got reasonable cause to baton somebody. You've only got to do (gestures with right hand imitating baton strike) and he bends down and you've hit his head."*

At 10:42:26 hours PC Geddes and PC Cockburn are in conversation and PC Geddes states almost all the officers there had hit the deceased with their batons:

"His Mrs and baby are out front. And eh it seems like it's almost everybody that was there hit him wi their baton not just one person but in ways I says it's going to be better eh nobody's going to ken who struck the blow at the same point could be worse cause all of them hit him, know what I mean. Craig, the boy that come for the cups he's the one that was just bouncing off him..."

Geddes went on to speculate about the CID interviewing the officers rather than operational statement and the involvement of PIRC.

'Nicole's back from the hospital, apparently she's got a good cracking punch to the back of her head. He's put her doon and the boy just jump on her, stamped on her... Then they couldnae get him aff oh her, didnae matter what they did they just couldnae get the boy moving eh, and then they've had ta that's when they got the batons oot'

On 23 July 2015 PC Geddes was asked about the source of his information in the above conversation. He stated this had been provided to him directly beforehand

by PC Walker whom he had met leaving the cell area as he was entering. As noted above PC Walker is captured on CCTV in the cell corridor in conversation with PC Cockburn shortly before this conversation takes place at 10:37:57 hours. However, if there was any discussion between PC Walker and PC Geddes at that time it was not captured on CCTV. This may be because it was out-with camera and microphone range. Alternatively it could be in camera range but at a time when they were standing still in which case the motion sensor on the camera would not trigger video /audio recording (per witness David MacGregor).

PRO 661 CCTV audio and visual timeline camera 15 Kirkcaldy Police Office

At 13:46:14 onwards Pc Geddes again can be heard giving an account to two CID officers. *"..battered at the locus".* The male CID officer is heard to tell Geddes that there are now four loci and went on *" bashed a man in the head they killed him restraining him so there's four..."*

PC Geddes again refers to information he attributes to Walker: *"He's fucked, aye. Ash seems alright but they're no theirselves, eh, even Craig was saying that you know the size of Craig, he's a big strapping boy, he couldnae get him off oh her Nicole ehm she's only short tae but they came from the other side and as soon as they got there the boy never had a knife in his hand whether he drapped it "on the grassy bit but he's been coming at them. I don't know how he ended up but they CSd and PAVAd him and he just went like that eh (gestures with left hand in wiping motion across his face)..and laughed and kept coming straight for Nicole, he's flung a punch and it connected to the back of her head. I'm no sure if she was on her back or her stomach but he's then went like that stamping on her (gesturing stamping motion with his right foot)...just laughing...on her stomach so he's stamping on er back... whatsoever but then Craig said... he was just..."*

Male CID : *"Then they hit him?"*

PC Geddes *" then he hit him wi the baton because it didnae matter what they did were daeing they just couldnae control him, he was just being an arsehole to everyone....couldnae get him off, couldnae restrain him, couldnae do nothing....(PC Geddes imitating baton strikes during this description of events)*

Male CID: *It's your worst nightmare because they're just doing their job but this happens in everyeven though you're doing your job..."*

PC Geddes: *"We've aw hit...."*

Male CID: *"Doesnae matter yeah it was wrong and they shouldnae have, he deserved fucken..."*

PC Geddes: *"cause, cause initially we thought Ashley hit him over the head and it was only Ash that hit him we thought for fuck sake and then apparently it's been them aw that have been in about him..."*

The discussion then went on about operational statements or whether the CID or policing standards will speak to them on tape and get statements under caution.

Between 16:15:18 and 16:15:53 PC Ashley Tomlinson entered the custody suite, and left carrying a sleeve of white polystyrene cups.

PRO 662 - CCTV audio and visual timeline camera 13 Kirkcaldy Police office

Relevant footage from this camera concerns the interaction between police officers and witness Zahid Saeed. He can be seen to try to leave the police officer at 17:29 and is called back by DCI Houston. Other CID officer can be heard saying *"We're trying to talk to you"*, to which Saeed replies: *"I've answered your fucking questions"*. In the foyer Saeed is heard crying and DCI Houston is heard to offer to chat with him as he knows him. Saeed asked for some fresh air. At 17:31 a male CID officer exits the door and hands what looks like a mobile phone to Saeed before he and DCI Houston left the building for a brief time. They re-enter the building at 17:40 and the following conversation between them is recorded:

Houston: *"You gotta go through this Zahid, you know that right. See if you wanna come and speak to me again, tell them you wanna come and speak to me..."*

And moments later

Saeed: *I think... they said he kicked an officer. Was she injured?"*

DCI Houston *"Yeah, a wee bit yeah, which is not good."*

Saeed *"Was it, I thought officers...?"*

Houston *"yeah, eventually"*

Saeed: *"She was on her own?"*

Houston *"Eh I think initially yeah, I think so...."*

Transcripts of cameras 14 and 16 have no relevant content and are not included with this report.

Involvement of Police Federation

Amanda Givan arrived at Kirkcaldy Police Office at approximately 09:10 hours to provide welfare and advice to officers. She stayed with the officers in the canteen for the rest of the day leaving only for a short time to go to KFC to buy them lunch. According to Givan she steered conversation away from the incident and did not question any of the officers on their individual roles at the incident.

Givan states she was provided with the following brief summary of events by APS Maxwell: Units had responded to a call about a black man with a knife. PC Short had been assaulted by the deceased who had been CS sprayed, hit with a baton, restrained to the ground, handcuffed, and leg restrained. The deceased subsequently stopped breathing and CPR had been carried out by officers until an ambulance crew had taken over. The deceased had remained unresponsive. Officers had thereafter been instructed to return to Kirkcaldy Police Office.

None of the principal officers filled in their notebooks, provided operational statements or completed Use of Force Forms after the incident.

The advice provided by Givan in relation to providing statements, filling in notebooks etc. is a matter of dispute between Givan and a number of the officers. Moreover police officers' recollections of what advice Givan provided are also at odds with each other.

According to Givan she provided generic advice regarding the provision of statements. She told officers to establish their status as a suspect or a witness

and made it clear to them, they could not be compelled to provide a statement if they were being treated as a suspect. She went over this a number of times with officers over the course of the day. Givan gave PC Short the same advice when she returned from hospital at approximately 10:30 hours. Givan states at no time did she tell any officer not to provide a statement. Givan also states there was no discussion with officers about whether or not to complete notebooks and she recalled no discussion about filling in Use of Force Forms.

The notebooks of the PCs Walker, Paton, Short, Good, Tomlinson, Gibson and Maxwell contained no notes about the events of 3rd May 2015.

PRO 358 PC Alan Smith's notebook

has a note of the name and details of the witnesses David Taylor and Brian Finlayson who were the paramedics in the ambulance that arrived at the locus and took the now deceased to hospital. Otherwise his notebook contains no notes about the incident.

PRO 361 PC James McDonough's notebook

This contains

- A note at 07:30 of the details of the witness Andrew O'Connor with a brief note of that he saw a tall black male walking across the road (indecipherable) he attempted to kick at the car (description of male provided)
- A note at 07:40 with details of the witness Simon Rowe and a brief note that he was coming along Templehall Ave when he saw a large black male walking along Templehall Ave holding a large 4 or 5 inch silver kitchen knife blade walking towards the bus stop at the end of Templehall Ave
- At 08:30 the details of Joyce Patricia Joyce who saw a male walking down Hayfield from the hub (or could be pub?) with a knife in his hand

PRO 445 DS Samantha Davidson

This notebook has a full note of events including the following relevant section:
"On turning right into Hayfield Road observed police vehicles and uniformed officers on south side of road. Officers were restraining a black African male on

the pavement. I approached and could see they officers were struggling with the make and applying leg restraints.”

[This accords with her first statement to PIRC]

PC Walker recalls the advice from Givan was to say nothing to anyone at that time. PC Walker appears to have been exerting influence over his colleagues as to what information they should be providing to the investigation. He admits making it known he was not completing his notebook and suggesting to colleagues to do the same.

PC Tomlinson states he made the decision not to provide a statement or fill in a Use of Force Form and notebook on the instructions of Givan.

PC Gibson recalls Givan suggesting it would be better if they did not make notes in their notebooks.

APS Maxwell did not update his notebook on the advice of Givan. (APS Maxwell did however type up a version of events on his home computer which he passed to PIRC on 4 June 2015) APS Maxwell also states he spoke to Givan privately and asked her to clarify the position with regard to providing a statement and her advice to him was not to provide a statement.

PC Smith did not consider updating his notebook but states he was not given any advice about not doing so.

Similarly, PC Short does not recall anyone telling her not to fill in her notebook. PC Paton's states he received no instruction to fill his notebook in.

PC Good recalled Givan providing advice but did not wish to discuss the terms of this advice with PIRC. She did say, she was not advised or instructed not to make entries in her notebook, she just didn't think of completing it.

PC McDonough does not recall anyone telling him not to fill in his notebook but did not do so as he was unsure as to his status.

PIRC made it clear to senior officers on a number of occasions that they considered the position of the principal officers to be that of witnesses and requested via Police Scotland for officers to provide operational statements.

Detective Superintendent Campbell SIO addressed the officers to explain the status of the investigation which was an investigation into the death of Sheku Bayoh. He also advised them that in consultation with PIRC their status was that of witnesses and it was his intention to obtain statements from them and seize their clothing and equipment. Det Sup Campbell states that prior to this meeting he spoke to Givan and told her to reassure the officers that they were being treated as witnesses. According to Det Supt Campbell Givan told him officers would not be providing statements and referred to recent guidance about officers not having to provide statements with regards to on duty criminal allegations. They appear to be referring to the Memo of 26th March 2015 (PRO 595) from DCC Neil Richardson to Divisional Commanders Heads of Department that the practice of obtaining operational statements from officers subject to on duty criminal allegations was to cease.

PIM Trickett also recalled Givan stating from a Federation perspective officers should not provide statements at that time.

The principal officers declined to provide statements on 3 May 2015 and PIRC made a number of further requests thereafter. On 7 May 2015 Police Scotland advised PIRC that they had contacted the principal officers, (except PCs Short and Paton who were on sick leave) confirmed with them their status as witnesses but all had declined to provide statements on the advice of their solicitor.

The nine officers attended the locus during the incident did not provide statements to PIRC until 4 June 2015.

None of the officers who used any force or used handcuffs, batons, leg restraints or sprays completed "Use of Force" forms.

The officers who discharged CS and PAVA spray did not complete the forms about their discharge of the sprays.

Recovery of Clothing and Equipment

The PIMF process included the forensic recovery of clothing and equipment from the principal officers.

On returning to Kirkcaldy Police Office PC Short states she took off her body armour and noticed black footprint marks on the right part of her yellow vest, the same side as she was feeling pain. She states she showed the marks to both PC Tomlinson and PI Jane Combe.

PC Tomlinson recalled PC Short putting her kit down and seeing a dirty footprint on the back of her body armour, below the police badge. According to PC Tomlinson, he told her to tell someone and thought she told both Givan and CI Trickett.

The seizure of uniforms and personal safety equipment commenced at 1600 hours. Clothing was not photographed whilst worn by the officers or when it was removed.

PC Short's uniform and equipment was seized by PI Combe and DC Jennifer McAulay. Neither officer speaks to PC Short highlighting any markings on her clothing for examination. Givan and CI Trickett also make no reference to PC Short highlighting any markings on her clothing.

PC Short's stab proof vest was submitted to the SPA on 14 May 2015 for fingerprint examination and the presence of blood. This was done following a Forensic Strategy Meeting on 12 May 2015 and not as a result of any specific request.

One fingerprint impression was found near the 'Police' badge on the rear of the vest which was insufficient for identification. The test for blood proved negative.

PC Short's vest was also examined for foot impressions for comparison with the deceased's footwear. Although a number of areas of discolouration were found there was insufficient detail for any meaningful comparison.

PRO 710 SPA Forensic Services Forensic Examination Articles Operation Quoich

FME Examinations

The nine principal officers were all medically examined by FME Dr Gillian Norrie. Prior to carrying out the examinations Dr Norrie states PI Jane Combe provided her with the following history:

'Inspector Jane Combe informed me that at 0715 hours in the morning of 03/05/15 on a street in Kirkcaldy, police were called to an incident following a disturbance and were confronted with a man brandishing a knife. Officers approached the individual and tried to reason with him and were unsuccessful. Incapacitant spray was used and was unsuccessful. The individual then chased the female police officer who tried to run to safety and was assaulted. At that point the police officers involved proceeded to use batons and restrain the individual. This individual became unwell and appeared to have a cardiac arrest. The officers assisted with CPR and emergency services were called to the scene. Resuscitation was unsuccessful and the individual died.'

Although the history provided to Dr Norrie is broadly accurate there are two significant inaccuracies. Firstly, police officers were not confronted by a male brandishing a knife and secondly, there is little evidence to suggest that the officers tried to reason with the deceased when they first approached him.

PIRC obtained a further statement from PI Combe on 8 March 2018 where she said she could not categorically say that she told Dr Norrie the deceased had been in possession of a knife at the time of police contact but that it was her belief even before she got to Kirkcaldy Police Office that he had been in possession of a knife when confronted by officers. In any event she attended the Gold Group meeting earlier that day and would have received information to that effect from DI Robson.

The FME examinations revealed that all the principal officers incurred only minor cuts, scratches and abrasions. PC Short subsequently requested and received further medical treatment.

PC Short medical evidence

The medical evidence about PC Short's injuries are as follows:

The nurse in A & E noted that PC Short's observations were found to be normal, with a GCS of 15. She had no cuts to her head or any other injuries and was referred to minors.

Dr Katherine Mitchell in minors found a number of superficial abrasions on her elbows and knees, swelling and abrasion on her left hand and redness on her

right ear. There was no slurring of speech or stammering. Dr Mitchell concluded that whilst PC Short had sustained a head injury there was nothing to indicate that further investigation or observation was necessary and she was discharged. Dr Mitchell discounted any loss of consciousness due to PC Short's ability to recall events both pre and post event.

Dr Norrie who conducted the FME later that day concluded that PC Short presented as being very tender in her head and neck area there was no bruising at the time of examination. Dr Norrie reported that bruising may evolve over the next few days. There was evidence of scrapes and abrasion type injuries consistent with being knocked to the ground.

On 4 May 2015 she telephoned NHS 24 at 13:00 hours who referred her back to A & E at the Victoria Hospital. Dr Zoe Smeed examined PC Short at 1540 hours.

[REDACTED]
[REDACTED]
[REDACTED]. PC Short said she was having mild headaches, intermittently light headed but had no vomiting or nausea. On examination PC Short's vital statistics were again found to be normal, her heart, chest and abdomen were all normal. Again, her GCS was 15 and she had a full range of eye movement. Soft tissue swelling was noted on the right side of her face but there was no bony tenderness. There was also mild muscle tenderness to her neck. Dr Smeed concluded that PC Short had sustained a mild head injury, post-concussion syndrome, soft tissue injuries [REDACTED]. She identified nothing to suggest a need for a CT scan. PC Short was discharged with a prescription for Ibuprofen and Co-codamo [REDACTED]
[REDACTED]

At 0850 hours on 5 May 2015 the day after being discharged from A & E for a second time, PC Short visited her GP Dr Erica Ellison. She told her GP that her neck was very painful. On examination Dr Ellison noted PC Short had limited range of movement in her neck, bruising to her knees and slight loss of train of thought when speaking. Dr Ellison felt there was likely concussion, [REDACTED]
[REDACTED]
[REDACTED]

On 10 May 2015 PC Short again attended at A & E at the Victoria hospital following a call to NHS 24. She was examined by Dr Christopher Speakman who reviewed her Community Health Folder and noted her Fife Early Warning System score was 0 on scale of 0-12, the lower the number indicating the better the health of the patient.

PC Short told Dr Speakman that she had been violently assaulted during the arrest of a suspect whereby she was punched to the back of her head and fell to the ground. This time PC Short said she was stamped on the head. PC Short said she had attended at A & E where she was diagnosed with concussion and discharged with painkillers. This is incorrect. When PC Short first attended A & E Dr Mitchell specifically ruled out concussion due to her being able to recall events both pre and post the incident.

PC Short also said she had attended her GP where concussion was further diagnosed. Prior to attending that evening she had been told by friends that her face was drooping on the right side. PC Short described a week's worth of concussive symptoms: vertigo, nausea, blurred vision and said she had problems finding her words. Additionally she felt a sensation and drooping on her right side of her face. She also felt the right side of her body was weak and was having problems remembering things since the incident. PC Short also said she had some neck stiffness which had resolved.

Dr Speakman noted PC Short looked well but a little anxious. All her vital statistics were normal. PC Short had a subjective reduction in right side of her face. He noted a very subtle right facial droop, a down turning in the corner of her right lip. Dr Speakman felt there was a very slight reduction in the power in her right arm but wondered if this was effort related.

As PC Short had now presented a number of times with a head injury a CT scan was carried out, the result of which was normal. She was discharged the following morning with no follow up required.

PC Short visited her GP Dr Ellison on 15 May and reported she was still having pain in her neck and altered sensations on the right side of her face. [REDACTED]

[REDACTED]

[REDACTED]

Although she was discharged from the Victoria hospital on 11 May with no follow up required PC Short states she told her GP that the hospital had suggested she had possible nerve damage in her face and following this GP referred her to Maxillo Facial Surgeons in Dunfermline. Dr Ellison states she contacted Acute Receiving at the Victoria Hospital on 15 May who were not aware of any facial droop or follow up. [REDACTED]

On 21 May 2015, 18 days after the incident PC Short was examined by Consultant Ian Anderson acting in a private capacity. This was at the request of PC Short and the Scottish Police Federation Solicitor Peter Watson.

In his report Mr Anderson provides an opinion that PC Short suffered a blunt head injury and contusions to her head; an associated neck sprain injury; contusions to the right side of her torso consistent with blunt injury; and abrasions and soft tissue injuries consistent with falling on the ground after being struck on the head.

Mr Anderson states that PC Short was suffering from [REDACTED] post concessional symptoms. She also had a right sided facial weakness which he considered on a balance of probabilities had been a result of local injury to the main nerve supply to the muscles over the right side of her face. He noted she was continuing to suffer from concussional symptoms, a slowly resolving right sided facial weakness and resolving focal neurological signs of weakness affecting her right upper limb. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Police Scotland Interaction with Deceased's Family

Following the incident the deceased's family expressed concern that Police Scotland failed to timeously communicate all known facts to them.

After receiving Saeed's telephone call Bell returned to her home at approximately 08:10 hours. The deceased was not in and the house showed signs of a disturbance. At 08:36 hours she telephoned Police Scotland and reported the deceased missing. She described him as 'black, with a shaven head, brown eyes, quite muscly and just under six foot'

Call operator Lorna Brown had earlier taken the call from Linda Limbert and recognised the two incidents were connected and informed her supervisors.

At 09:00 hours DCs Callum Clayton, Andrew Walker and Wayne Parker attended at Bell's home. Initially nobody was in but Bell returned with her baby son and mother Lorraine Bell at 09:20 hours. Bell explained to the officers she had telephoned them because her partner was missing, there were signs of disturbance in her home and Saeed's earlier telephone call.

The officers asked Bell if her partner had a gold mobile telephone and she confirmed he did.

At 10:30 hours DS Graeme Dursley informed the officers the property was to be secured and protected as a crime scene. Bell was informed there had been an incident earlier that morning which might be related to the disturbance within her home and she was asked to attend at Kirkcaldy Police Office for interview.

At 11:00 hours DS Davidson attended at Victoria Hospital and confirmed the deceased's identity from a number of Facebook images she accessed via her mobile telephone. She advised DS Dursley who in turn instructed DC Parker to advise Bell of the deceased's death.

Very shortly afterwards within Kirkcaldy Police Office DC Parker informed Bell there had been a critical incident that morning, whereby a black male believed to be her partner had died. Despite having just been informed of the death of her partner Bell was asked to provide a statement detailing the deceased's background and her own actions that morning.

At the first Gold Group Meeting at 11:30 hours DI Robson advised the meeting Bell was being informed a male believed to be her partner had died, subject to formal identification. DI Robson also advised the meeting that Bell had named his sister Kadijatu Johnston, who she was not in contact with, as his next of kin.

Immediately after the meeting D Supt Campbell appointed DS Houlison to carry out the role of Family Liaison Officer but it was later established he was not on duty.

A further Gold Group Meeting took place at 14:10 hours at which time it was confirmed Bell was aware of her partner's death and had provided a statement. As suitably trained FLO's were not yet in place at 14:30 hours D Supt Campbell, instructed officers to attend Kadijatu Johnson's home to deliver a death message.

At 15:20 hours DCs Parker and Mitchell delivered the same death message given to Bell to Adeymi and Kadijatu Johnson other family members. This was almost six and a half hours after the deceased had been pronounced dead. The message passed was to the effect a black male suspected to be Sheku had been found dead. No further information was given to the family. Despite being fully aware, officers did not inform the family the deceased had died in police custody. The family had a number of questions which were not answered by the officers.

There is a suggestion Adeymi Johnson may already have been aware of the deceased's death before the message was passed by police. Whilst at Kirkcaldy

Police Office Saeed states he received two telephones call from Adeymi at around 15:00 hours during which he told him the deceased had died.

Meanwhile after leaving the property the officers were contacted by DS Dursley and instructed to return to the house to find out if the family would be willing to receive a visit from Police Scotland Senior Management. On returning to the property officers noted the family had now been joined by Bell and her mother Lorraine.

D Supt Campbell provided DS Dursley with a further death message which he had prepared in conjunction with Ch Supt Lesley Boal. DS Dursley contacted DC Mitchell whilst he was at the house and asked him to provide a more comprehensive statement to the family:

'Following an incident this morning in the Hayfield Road area of Kirkcaldy, officers from Police Scotland have been attempting to arrest Sheku Bayou, during which time he became unconscious, conveyed to hospital by Scottish Ambulance Service and despite best efforts by medical staff died shortly after 9am this morning'

On returning to Kirkcaldy Police Office DCs Mitchell and Parker advised Ch. Supt McEwan the Johnson family were demanding to speak to him.

At 18:10 hours Ch. Supt McEwan and CI Shepherd attended at the Johnson's home and met them along with Collette, Lorraine Bell and other family members. This was a highly charged environment and it is clear Ch. Supt McEwan and CI Shepherd and other senior officers were not in possession of the full facts at this time and were still of the view that the deceased had been in possession of the knife when he was engaged by officers.

According to Ch. Supt McEwan he told the family a number of calls had been received by the police just after 07:00 hours that morning reporting Sheku in possession of a knife in the area of Hendry and Hayfield Road. Police officers attended and whilst attempting to arrest Sheku had discharged CS spray and drew batons. During this period Sheku lost consciousness and officers administered CPR until ambulance personnel took over. Sheku passed away at Victoria hospital at 09:04 hours. Ch. Supt McEwan explained how PIRC had ownership of the investigation and would undertake an independent enquiry.

The family had a number of questions for Ch. Supt McEwan: why was this the first time they were being told Sheku had died during contact with police? Why had police officers not disarmed him? Ch. Supt McEwan was unable to answer either question. The family also wanted to know why they had been told it took fifteen police officers to control Sheku. Ch. Supt McEwan was only able to confirm a minimum of six officers had attended the incident. The family also wanted to know why Collette Bell's address been retained as a crime scene and Ch. Supt McEwan explained this was due to Bell reporting a disturbance within her property.

Adeymi Johnson has a different account of what they were told by Ch. Supt McEwan. According to Mr Johnson, Ch. Supt McEwan started by saying he shouldn't be telling them this but police received calls from a resident, a taxi driver and a passer-by reporting an African man wielding a machete in the middle of the road. There had been a changeover in shifts and six officers had been dispatched to the scene. Officers spoke to Sheku but he was pepper sprayed when he refused to drop the machete. Sheku kicked a female officer and stamped on her head. The police officers used their batons and later realised he was no longer breathing. Officers started CPR and called an ambulance but Sheku died before he got to the hospital at 09:04 hours. It is of note that the account that Adeymi Johnson recalls being given by Ch. Supt McEwan accords with the understanding of events of the senior officers as recorded in the PIM log by (Pro 277)

At approximately 22:10 hours Keith Harrower and Alex McGuire from PIRC attended at the Johnsons property where they outlined PIRC's role and advised PIRC would be undertaking an independent investigation. During this meeting the family made it clear they were extremely upset by the way information had been communicated to them by Police Scotland and indicated their intention to make a complaint in this regard.

Police Scotland role in death report to COPFS

DS Davidson was responsible for compiling

PRO 442 – synopsis of events created for sudden death report

In which the events in Hayfield Road were condensed to a few brief lines: *“The police engaged with the officers and a physical confrontation ensued. This resulted in the deceased being restrained to the ground, handcuffed and leg restraints were applied. During the restraint to the ground the deceased became unresponsive. ...”*

On the face of it this seems to be a very restricted description of events. There is no mention here of any allegation that the deceased brandished a knife at the police. Nor indeed is there any mention of the use of CS, PAVA or batons.

This synopsis seems to have been the basis of the content of the

PRO 220 Report of a sudden death

to COPFS about the death of Sheku Bayoh. This report was submitted electronically to COPFS by witness More on the morning of 5th May 2015. More claims that he knew nothing personally of the circumstances of the death of Sheku Bayoh and relied on a synopsis provided by (he thinks) DS Davidson.

Post Mortem and Cause of Death further enquiries

A post mortem examination was carried out on 4 May 2015 after which and following direction from the Lord Advocate PIRC sought opinion from a number of medical experts on the cause of death, potential contributory factors and on the use of force and restraint by police officers.

On 28 March 2017 Dr William Lawler a former Home Office Pathologist was instructed by the Crown to comment on the pathological aspects of the case including the methodology, approach and conclusions and findings. In addition Dr Lawler was also asked to review and comment on the findings and conclusions of the various experts instructed by PIRC and a further expert instructed by the family's representatives.

Dr Lawler's comments and opinions are detailed after each report.

Post Mortem Examination 4 May 2015

A post mortem examination was carried out at the City Mortuary, Edinburgh on 4 May 2015 by Dr Kerryanne Shearer and Dr Ralph BouHaidar.

PRO 634 Final Post Mortem Report

External Findings

The deceased was found to be approximately 178cm (5ft 10in) in height and weighed 81kg (12st 10lb)

The deceased had a small number of petechial haemorrhages.

The deceased had sustained a number of minor blunt force injuries, namely bruises, lacerations and abrasions to his head, face, trunk and limbs.

Internal Findings

The scalp and skull were intact. Several areas of bruising was noted in the head and face.

The cervical spine was also intact.

The deceased's ribs appeared to be intact at post mortem; however a fracture to his left first rib was confirmed after a subsequent examination by pathologists on 29 May 2015.

Radiology

Following the post mortem examination a skeletal survey was undertaken. No bony abnormality was demonstrated but the lateral spine could not be visualised due to the nature of the body.

On 27th May 2015 the body was re x-rayed but due to decomposition change it was still not possible to get meaningful images of the lateral spine and a CT examination was undertaken on 28th May 2015. Following the result of the CT scan on 29 May 2015 the pathologists decided to re-examine the deceased's ribs and confirmed a fracture to the deceased's left first rib. There was no evidence of injury to the deceased's left second rib.

Toxicological Analysis

Toxicology established that the deceased had traces of Alpha-PVP and MDMA (Ecstasy) in his body. Two peripheral post mortem blood samples and two post mortem urine samples were received and analysed for alcohol and prescription and illicit drugs including anabolic steroids. Four hospital blood samples were also submitted.

The results for Alpha -pvp ranged between 0.31 and 0.39 mg/L in the samples taken at post mortem, while those from the blood samples taken during resuscitation were 0.07 mg/L. For MDMA a post mortem sample level of 0.66 mg/L was measured whilst levels from samples taken during resuscitation were 0.48 and 0.65 mg/L. The MDMA metabolite MDA was measured at 0.2 mg/L. Samples taken during resuscitation contained levels of 0.23 mg/L and 0.2 mg/L.

Independent analysis of urine revealed the presence of Nandrolone and metabolites which are found in the anabolic steroid Nandrolone.

Neuropathology

Neuropathological examination demonstrated changes consistent with evolving global ischaemic brain injury. There was no evidence of any significant traumatic injury to the brain and no infectious disease. No natural disease was noted to account for death. The changes all appeared to be secondary to cardiac arrest with resuscitation and a short survival period.

Pathologist Summary

There was no evidence of natural disease that would have played any role in the death.

Externally, there were a number of minor blunt force injuries, namely bruises, lacerations and abrasions to his head, face, trunk and limbs.

Internally there was a fracture to the left first rib, just beside his spine. This may have been sustained whilst the deceased was being restrained although they could not exclude the possibility it occurred during resuscitation.

In keeping with the history of the deceased being restrained there was an injury to the left wrist (injury 16) with corresponding bruising into the subcutaneous tissue. The areas of bruising in the deceased's head and face were in keeping with blunt force impacts to these areas. They could be in keeping with being sustained as a consequence of baton use, but there was no evidence of fracturing of the skull or facial bones.

Neuropathology showed changes consistent with evolving global ischaemic brain injury secondary to cardiac arrest with resuscitation and short survival period, but no other significant abnormality, including no traumatic injury.

Toxicology revealed in hospital blood, post mortem blood and post mortem urine the presence of MDMA (ecstasy), and alpha-PVP. It also revealed in urine nandrolone and metabolites, consistent with the recent administration of the anabolic steroid nandrolone. Given there was no evidence of heart disease this drug was unlikely to have played a role in his death.

The pathologists noted CS and PAVA appeared to have had had no immediate effect on the deceased and their use did not contribute to death. From the literature, specific side effects include bronchospasm and laryngospasm and patients with pre-existing respiratory disease (which did not appear to be the case here) are more at risk from severe effects. Pre-existing cardiac problems can be worsened, but there was no post mortem findings to suggest the deceased had a pre-existing heart abnormality. The pathologists found no information in the literature of cases especially when there was no pre-existing cardiac or lung problems, where these sprays played a direct role in death.

Given the circumstances provided, toxicological findings and lack of another cause of death at post mortem, the pathologists considered the possibility of excited delirium syndrome a psychiatric rather than a pathological diagnosis.

The pathologists state excited delirium syndrome is described as a life threatening condition which has a variety of causes but is largely associated with drug intoxication particularly stimulant drugs of which MDMA and alpha-PVP are both examples.

It can include paranoid and aggressive behaviour and has no pathognomonic findings at post mortem. Individuals suffering from this condition often come to the attention of the police due to their behaviour and often die during or shortly after restraint. The pathologists stated it was not completely understood why such individuals die. The condition is associated with a range of clinical findings and typically in such cases a high temperature is documented but they noted this was not the case here, with the deceased's temperature in hospital being noted as 35.8°C.

In terms of the history of restraint in this case the pathologists noted that the deceased was reportedly face down with his hands cuffed in front of him, his legs were tied around the knees and ankles and at least four officers were restraining him. The petechial haemorrhages within his eyes were not specific could be seen in someone who has been resuscitated and could indicate a degree of asphyxia. In this case, given the reported circumstances the

pathologists noted possible causes of asphyxia would include positional (where the position of the body interferes with breathing) and mechanical (where something impeding the body's ability to use muscles for breathing).

Taking everything into consideration the pathologists noted his death was sudden in nature. In summary, there was no evidence of gross or histological natural disease that would account for death. Toxicology revealed MDMA and alpha-PVP and these drugs could potentially have caused sudden death at any time due to a fatal cardiac arrhythmia. That said, it is recognised that restraint in itself can be a cause or contributing factor in some deaths and given the circumstances, in that this man was restrained at the time of his respiratory arrest and post mortem examination showed petechial haemorrhages which may represent a degree of asphyxia, it could not be completely excluded that restraint also played a role in the deceased's death

Overall it was not possible to be sure what was the most significant factor in the death and as such the cause of death was best regarded as:

- 1a Sudden death in a man intoxicated by MDMA (ecstasy) and alpha-PVP, whilst being restrained

Dr Lawler

PRO 879 Expert Report Dr William Lawler 22 May 2017

Dr Lawler made no criticism of the methodology or the approach adopted by Drs Shearer and BouHaidar. With regard to the autopsy he made the following points:

He may have chosen to submit the deceased's heart, intact and in its entirety to a specialist cardiac pathologist but acknowledged that they had sampled it very widely for histological examination and those who reviewed it subsequently were not disadvantaged in any way.

Given the deceased was of West African descent, for completeness, it would have been worth checking for any haemoglobinopathies, specifically sickle cell disease. Dr Lawler noted however there was nothing in his medical history to suggest such a diagnosis. Following Dr Lawler's report Dr Shearer carried out genetic testing on the deceased which confirmed the deceased had sickle cell trait, meaning he was a carrier but did not have the disease.

Pro 885 Supplementary Post Mortem Report.

Dr Lawler noted that the fracture of the left 1st rib was not suspected during post mortem examination, despite evisceration of the thoracic contents and subcutaneous dissections of the chest. Dr Lawler concludes that there must not have been any significant associated local bruising to attract the pathologists to this area. He also noted there was 'no bony abnormality' on the radiological skeletal survey carried out after the post mortem. It was only after abnormalities were seen on a CT scan on 28 May 2015 that attention was drawn to the left 1st rib and the fracture was discovered after further dissection of the area. This delay made it difficult for Professor Freemont to interpret the microscopic sections due to the degree of post mortem decomposition. (This is discussed further below) Dr Lawler states that no criticisms could or should be levelled at the pathologists for this delay.

The Crown consulted with Dr Lawler on 30 January 2018 at which time he provided further comment on the likely causes and significance of the deceased's external and internal injuries.

At the outset Dr Lawler emphasised that the injuries in general could have occurred prior to the incident and could have occurred 2 hours prior to contact with police officers.

Deceased Injuries

External

Left side of forehead

These injuries are not consistent with a punch but are consistent with contact with the roadway.

Mouth-several small bruises, lacerations and abrasions

An injury here is usually as a result of local blunt force. Such injuries could occur through resuscitation but the injuries here were slightly more than he would expect if this was the case. Again the injuries may have occurred before the incident with the police and could be consistent with a punch. In relation to their position there was nothing in the findings such as gravel rash to indicate the deceased was face down on the roadway. It is possible that the injury is consistent with his head being pushed down.

Front of Lower Chest an irregular, interrupted abrasion

Dr Lawler concluded this injury could have been caused by anything and could have occurred when an officer was lying on his back.

Back of right hand- a small flapped laceration

Dr Lawler thought this injury could have been caused by the deceased catching his hand on something. It could have been caused by striking out at moving cars.

Back of left upper arm- abrasion with focal deep bruising on dissection

Dr Lawler stated this injury could have been caused by baton or punches. If it was suggested to him that it could have been caused by a baton to immobilise he would say that he did not think you could generate enough force in the movement to cause this injury. Dr Lawler was specifically asked whether there was anything in the injury to his left arm that could equate with a baton being used to immobilise a person against the ground. He stated there was nothing here to suggest to him that as a likely explanation-but one never says no. It was more likely in his view to have been caused by a conventional baton strike-or something else earlier or striking out at a car.

Back of left elbow-abrasion

Dr Lawler stated this injury was consistent with contact with the ground.

Left forearm linear abrasions and a band of discolouration around the lower forearm; associated deep bruising on dissection.

Dr Lawler thought it unlikely that this injury was caused by a baton and thought it more likely to have been caused by a pair of handcuffs.

Back of left index finger- small flapped laceration

Like the flapped laceration on his right hand Dr Lawler thought this could have been caused by the deceased catching his hand on something.

Left leg- abrasions at the front of the knee and upper part of lower leg

This is a tiny abrasion most likely caused whilst deceased was on the ground.

Dr Lawler was specifically asked whether someone being shoulder charged would cause visible injury. Dr Lawler stated you might not necessarily see bruising if the point of contact was a large area. Rugby players for example do not bruise every time they make contact with opponents.

Internal Injuries

Scalp-deep bruising below the forehead abrasions noted externally, small bruise in the left temporalis muscle

Dr Lawler pointed out this was a small injury which could have been caused by anything.

Face- bruising within tissue of right cheek, over left zygoma anteriorly and above both orbits

This large bruise was consistent with one or two punches.

Neck

No bruising was found on the neck, front or back and the cervical spine was intact. Dr Lawler states this is an important negative finding. If it was suggested that a baton had been held at an individual's neck who was struggling then he wouldn't necessarily expect to find evidence of injury-although there might be. The absence of evidence is not evidence of absence. In the hyoid bone of a 31

year old one would expect it to be relatively elastic and to bend rather than break. The fact that there is no bruising means it was unlikely that a baton had been held across the neck and pushed. The absence of bruising is not consistent with a significant use of force. In general the more significant the force the more likely it is to leave a sign.

Lungs-congested and oedematous

This does not assist in establishing what occurred as it was a terminal event.

Ribs- fracture of the 1st left rib posteriorly, fracture identified by dissection following CT scan and showed 'focal possible soft tissue haemorrhage measuring 0.5 cm in diameter overlying the 1st rib.

Dr Lawler's opinion on the rib fracture is detailed below in conjunction with Professor Freemont's evidence

Abdomen-no injuries to any intra-abdominal or retroperitoneal organs.

Dr Lawler considered this to be another important negative finding. The situation was fluid and the deceased appeared to be struggling extensively. If someone had knelt on his stomach then this could have caused damage to his internal organs. The absence of injury was in his opinion more consistent with reasonable force rather than excessive force.

Subcutaneous Tissues. Deep bruising present

This injury over the left upper back was not consistent with forceful kneeling. The injury noted to his left upper arm could have been caused by anything and the injury to the right thigh was non-specific. The injuries to his right lower leg and left thigh are consistent with the use of a baton but also with other uses of force. These two injuries along with the injury to his left lower leg could all be injuries associated with the application of leg restraints, but there are a range of alternative explanations.

In general terms Dr Lawler noted nothing in the Post Mortem Report which was consistent with significant force. In restraint cases where significant force had been used one would expect to see more obvious injuries. He noted the

deceased was well-built, worked out and would take considerable effort to restrain.

If this had been a violent restraint, Dr Lawler would have expected to see bruising on the face, injuries from falling against objects, bruising on the surface of the brain so some evidence of brain shaking, a broken nose and blood inhalation. Dr Lawler noted such injuries in a recent case where a deceased had taken drugs and been restrained by his friends in an unprofessional manner.

Neuropathology

Dr Lawler states the important point here is the absence of injury. If this had been a big restraint it is likely there would have been a bang to the head and the fact there was no head injury is significant. In this case there was no injury inside the head and little on the outside.

Toxicology

In Dr Lawler's view the results are significant because if he had not taken them he would not have become psychotic. Having taken this significant amount of drugs he would have become frustrated and stressed. In relation to the detection of nandrolone and metabolites in the deceased's urine Dr Lawler notes that levels in urine are generally not helpful as they depend on levels of hydration. That being said, the deceased had levels which were detectable.

PIRC Medical Experts

Dr John Parkes

Pro 744 Expert Report Dr John Parkes 22 January 2016

Dr Parkes is a senior lecturer at the Faculty of Health and Life Sciences at Coventry University. He was asked to provide an opinion on

- a) The physiological effect of the restraint of the deceased in the circumstances of his arrest and the impact that had if any upon the cause of death
- b) Whether the restraint was appropriate

- c) Whether the officers who arrested and restrained the deceased adhered to Police SOPs on restraint and use of force, including whether the measures they took were concomitant with the threat presented or perceived to be presented by the deceased.

Dr Parkes commented that the presence of illicit drugs was a significant risk increasing factor. With regard to the petechial haemorrhages noted at post mortem he noted

'Where a person has been restrained on the ground with officers holding them down to the ground, petechial bleeds would most likely result from compression of the deceased, but do not necessarily prove that the compression was of a nature and duration sufficient to cause asphyxia. Due to the presence of petechial bleeds it is more likely than not that Sheku Bayoh was subject to compression during restraint'

Dr Parkes noted that the deceased was restrained in 3 positions:

- 1 Face down, held on the ground by one officer
- 2 On his side, held down on the ground, initially by one officer. Subsequently restrained by more than one officer and handcuffed in front of his body.
- 3 On his back, face upwards handcuffed in front of his body.

Dr Parkes states positions 1 and 2 would reduce a person's ability to breathe but even where a person's breathing is severely restricted by restraint and compression, the length of time for which they are unable to breathe must be long enough to cause harm before it could be seen to be directly causing death. He stated a relatively short period of restraint such as this made it much less likely that death could occur due to restraint asphyxia alone.

In conclusion the precise contribution of restraint to the death could not be determined with certainty. It is unlikely that the nature and duration of the restraint was directly and solely causal of death. It is unlikely that death occurred immediately following this level of restraint nor at any other time and that the restraint made no contribution to the death. On balance of probabilities, the most likely impact of restraint is that the restraint contributed to the death

of a man who was also at risk of sudden death due to the consumption of illicit drugs.

Dr Lawler

Dr Lawler acknowledged that he was not an expert in Dr Parke's area of expertise but agreed with his description of the restraint and was similarly impressed by the short period of restraint (less than 4 minutes) before collapse.

Dr Lawler states that although there is no doubt that the deceased must have been subjected to significant compression on one or more occasion during restraint he did not think it could be concluded, even on a balance of probabilities, that the petechial haemorrhages were likely to have resulted from that compression, although he accepted some of them could have done.

At consultation Dr Lawler stated there were cases where people had been subjected to intense pulmonary resus who get petichae. It is standard teaching that with intense resus a person can get petechial haemorrhage due to an increase in venous pressure.

Dr Lawler noted the deceased had relatively few petichae which were confined to his eyes. In a classical crushing case where the chest had been compressed you would expect to see a lot of them. From the number and distribution of the petichae it cannot be concluded that they must have been caused by compression and restraint. Dr Lawler had previously noted petichae in the eyes in non-suspicious cases because the person had arrhythmia like the deceased here.

If the compression had been significant Dr Lawler would have expected to see more petichae. Although, unable to put a time on the duration of compression to cause more petichae, the compression would have to be continuous. Dr Lawler states there was nothing in the materials to suggest a police officer had been continuously sitting on the deceased. The deceased's position was not continuous and continuous is of fundamental importance. If it is not continuous one can recover, and one is almost starting from scratch again. In this case stresses and strains increased the deceased's need for oxygen and the odds suggest there was not a great deal of mechanical asphyxia.

If the deceased was on his side during the process then it would be unlikely there would be enough compression and stress and anxiety would have been more of a factor. In cases where there is a good chest compression there are more petichae than can be seen here.

Dr Lawler does not think asphyxia played a significant role in the deceased's death because the signs are not strong and one has to accept that limited petichae can occur in other contexts. Dr Lawler cannot exclude asphyxia as a minor contribution to the cause of death, but if it was more than minor there would be more in the way of positive findings.

Dr Lawler did not agree with Dr Parkes's conclusion that the presence of petichae bleeds meant it was more likely than not that the deceased was subject to compression during restraint.

Dr Lawler is in agreement with Dr Parkes when he stated that 'even where a person's breathing is severely restricted by restraint and compression, the length of time for which they are unable to breathe must be long enough to cause harm before this could be seen as directly causing death. Dr Lawler states the relatively short period of restraint in this case meant it did not contribute significantly to the cause of death.

Dr Parkes view that it was unlikely that the restraint made no contribution to the death had to be read in the context of the totality of the incident. Dr Lawler states it was important to separate the physical from the physiological in this case and states the restraint induced the deceased to struggle. The susceptibility of his heart has been precipitated by the ingestion of drugs and thereafter exacerbated by the struggle. It was the stress reaction that increased the susceptibility of his heart. The relatively short time period of the restraint meant his heart was already susceptible.

Dr Maurice Lipsedge

Pro 743 Expert Report Dr Maurice Lipsedge 18 January 2016

Dr Lipsedge is Emeritus Consultant at the South London and Maudsley NHS Foundation Trust who was asked to provide opinion on the psychological and behavioural effects of the drugs taken by the deceased.

He concluded that the deceased was suffering from 'psychostimulant psychosis' due to 'psychostimulant intoxication' He prefers this terminology to 'excited delirium' where there is evidence of the use of amphetamines, cocaine or cathinones. The deceased's previous use of stimulants may have sensitized him to the psychosis-inducing potential of these drugs. The anabolic androgenic steroids were unlikely to have contributed significantly to his paranoid and violent behaviour which was due to a combination of psychostimulants and alcohol. The deceased's acute psychosis was directly related to the drugs he had taken.

Dr Lawler

Dr Lawler noted that Dr Lipsedge confirmed what he himself had concluded-the deceased had suffered from some form of severe acute behavioural disturbance prior to engagement with police officers.

Dr Anthony Bleetman

Pro 742 Expert Report Dr Anthony Bleetman 12 May 2016

Dr Bleetman is a Consultant in Emergency Medicine and an Honorary Clinical Associate Professor at the University of Warwick. He was the first doctor in the UK to qualify as a police instructor for unarmed defensive tactics, safe prisoner restraint, handcuffing, tactical communication skills, incapacitant sprays and knife defence. He has been involved in developing strategies to protect health workers against aggression and violence in the Health Service and completed studies for the Department of Health in England on identifying ways of improving subject and staff safety. He is engaged in developing safe physical interventions and effective training strategies across a number of agencies.

Dr Bleetman noted there was nothing in the deceased's previous medical history to suggest that he would have been particularly susceptible to collapse or sudden death. The post mortem examination also excluded any pre-incident pathology or natural illness as a cause of death.

Dr Bleetman referred to the deceased's psychiatric problem prior to engagement with police officers as 'Excited Delirium' although he acknowledged it was known under a number of different terms such as 'Cocaine-Induced Psychosis' and

'Acute Behavioural Disorder' The condition involves people, often with a history of mental illness, on the background of recreational drug abuse, displaying paranoid, agitated and violent behaviour. Sufferers often disrobe as a result of hypothermia and attack random objects or people. He states their behaviour is often described as bizarre and subjects are often drawn towards shiny objects such as glass or metal. They are said to display superhuman strength and are impervious to pain, often fighting to the point of physical exhaustion and collapse. He states it is thought that physiologically they are hyperthermic, acidotic and hypoxic.

Dr Bleetman states it is very important to stop episodes as quickly as possible. In a hospital setting, drugs will be administered to stop the ongoing medical struggle and medics will replace fluids, correct electrolyte abnormalities, and address lactic acidosis through oxygenation. Failure to terminate the physiological derangements in an individual who does not feel pain or fatigue allows them to continue to accrue an oxygen debt, worsen the acidosis and continue to overheat and dehydrate. This increases the risk of individuals developing potentially life-threatening cardiac arrhythmias.

Due to subjects displaying bizarre behaviour and violence police are often involved. Police often have difficulty restraining such individuals as they are non-compliant, violent and impervious to pain, baton strikes, and incapacitant sprays.

Without the availability of a Taser or medical staff to administer rapid tranquilisation, police officers will have to physically restrain individuals with manual force or body weight.

The use of force and eventual restraint will result in a degree of immobilisation. Before any restraint, an individual will have already accrued a significant oxygen debt and any immobilisation will carry the risk of restricting chest and diaphragmatic movement. This, even if modest, may compromise an individual's ability to restore adequate oxygenation and address the oxygen debt. A prolonged struggle on the ground will compound an individual's physiological derangements and increase the risk of death. He states that a restraint which compromises breathing efforts may exacerbate an already grave situation.

Dr Bleetman noted that 'Excited Delirium' was explained in the Police SOP provided to him as part of the Expert Witness Package. Police officers are taught about this condition in training and are generally familiar with the challenges and dangers of managing individuals in this state.

Dr Bleetman also states that in an individual already in severe oxygen debt due to excited delirium, further compromise of breathing efforts through either prone restraint (possibly) or restriction of chest wall movement by putting weight across the torso (certainly) will put the restrained individual at more risk of asphyxia and will hinder recovery from hypoxia and acidosis. This may reach a critical point at which cardiac arrest occurs. He states that given the poor physiological state of these individuals at the onset of cardiac arrest, recovery is rare in spite of adequate resuscitation attempts.

Dr Bleetman noted the period of restraint was relatively short and concluded that on first contact with the police, the deceased was already at very high risk of cardiovascular collapse due to fatigue, the effects of excited delirium and powerful potentiating drugs, even if there had been no restraint. It is reasonable to assume that the actions of police officers are likely to have had a contributory role in the evolution of the deceased's collapse and subsequent cardiac arrest by adding one more factor to an already lethal brew. In effect he states the restraint precipitated the cardiovascular collapse that was already likely to have occurred.

Dr Bleetman was also of the opinion that the pneumatic device known as a 'thumper' was the most likely explanation for the deceased's isolated first rib fracture. Petechial haemorrhages in his eyes were also consistent with CPR attempts and the use of the thumper although they were also consistent with straining during restraint or the effects of pressure being applied to the upper body during restraint.

Dr Bleetman's view is, after the initial prone restraint and after handcuffs and leg restraints had been applied the deceased was turned onto his side at the earliest practicable opportunity. He points to APS Maxwell reporting that as the deceased became more compliant, officers de-escalated the restraint and suggests this was a reasonable response. The police recognised the deceased had collapsed early and telephoned for an ambulance.

Dr Lawler

Dr Lawler states Dr Bleetman provided a good review of what he termed 'excited delirium' and in particular addressed the sequence of events which occur with or without restraint, and how the restraint, however appropriate may well have made matters worse. He has, in Dr Lawler's view attempted to put the restraint in the context of the deceased's pre-existing abnormal physiological state caused by his psychosis. Dr Lawler considers this to be very important.

At consultation Dr Lawler stated he was in agreement with Dr Bleetman's view that the actions of the officers were one more factor added to an already lethal brew. Dr Lawler also agreed with Dr Bleetman, in that the restraint in totality precipitated the cardiovascular collapse that was already likely to have occurred.

Dr Lawler is also in agreement with Dr Bleetman's conclusions regarding the thumper pneumatic chest compression device and possible causes of the deceased's petechial haemorrhages.

Dr Jason Payne-James

Pro 740 Expert Report Dr Jason Payne-James 24 September 2015

Dr James is a Forensic Physician and Specialist in Forensic and Legal Medicine who reviewed 'Excited Delirium Syndrome', the effects of the drugs taken by the deceased and the incapacitant sprays used by the officers.

Dr James states the drugs taken by the deceased, alone or in combination can be associated with behavioural disorder as exhibited. Dr James did not however consider the deceased's behaviour represented excited delirium.

Dr James states fractures of the ribs can be sustained during cardio-pulmonary resuscitation but a first rib fracture was not a recognised complication. Such a fracture was more likely to be caused by severe direct blunt force trauma such as a heavy police officer landing on his upper torso.

The petechial haemorrhages could be associated with mechanical asphyxia or chest compression. Although they may represent chest compression he also acknowledged they could be incidental post mortem findings. The accounts

provided, together with the petechial haemorrhages would be consistent with a mechanical asphyxia.

Dr Lawler

Dr Lawler did not disagree with any of Dr James's conclusions however emphasised the fact petechial haemorrhages can be an incidental post mortem finding and that, if so, they need not reflect mechanical asphyxia or more generally chest compression.

Dr Mary Sheppard

Pro 741 Expert Report Dr Mary Sheppard 1 December 2015

Professor Mary Sheppard is an expert cardiopulmonary pathologist and head of the Cardiovascular Pathology Unit at St George's Medical School.

Dr Sheppard examined microscope sections from the deceased's heart tissue and identified changes associated with cardiac arrest and resuscitation but no other abnormalities. She found no damage from drug usage or natural disease. She added her findings did not rule out sudden cardiac death due to an electronic abnormality such as the cardiac channelopathies.

Dr Lawler

Dr Lawler takes no issue with Dr Sheppard's opinion that the heart was morphologically normal.

Dr Elizabeth Soilleux

Pro 745 Expert Report Dr Elizabeth Soilleux 14 February 2016

Dr Soilleux is a Consultant Pathologist and Histopathologist at the John Radcliffe Hospital, Oxford. She noted MDMA and Alpha-PVP both increased heart rate and blood pressure and increased the risk of rhythm abnormalities. The risk of rhythm abnormality was greatest when there were initial stresses on the cardiorespiratory system.

The restraint may have had two impacts, the potential for asphyxia and the fact it may have induced the deceased to struggle, e.g. lifting his body off the ground and 'bench pressing' a 25 stone officer. This would have put considerable strain

on the deceased's heart as it would likely have increased blood pressure and heart rate. Asphyxia may have been positional or mechanical and in such cases asphyxia is possible as a cause for, or contributing factor to death and this would fit with the mode of death and the autopsy findings of conjunctival petechial haemorrhages. She was however unable to say definitively whether or not asphyxia occurred. If there had been an element of positional or mechanical asphyxia, the resulting reduction in oxygen gaining access to the blood, whilst oxygen requirements were increasing due to struggling, possible effects of stimulant drugs could have led to cerebral ischaemia and loss of consciousness and or myocardial ischaemia and an increased predisposition to rhythm abnormalities.

The struggle would have put considerable strain on the deceased's heart as it was likely to have caused an increase in his blood pressure and heart rate. As he had taken MDMA and alpha-PVP struggling against the restraint would very significantly have increased the risk of developing rhythm abnormality, which may well be what happened in this case.

The deceased had no pre-existing heart condition therefore pre-existing cardiac pathology is unlikely to have contributed to his death. She did point out that there were rare conditions which can lead to fatal abnormal cardiac rhythms channelopathies where the heart is macroscopically and microscopically normal.

Dr Soilleux also raised the possibility of sickle cell disease and suggested it should be further investigated as it could have contributed to his death if shown to be present. During her examination of the post mortem histological material she wondered whether there were some red blood cells with abnormal, perhaps sickling morphology, on some of the histological slides. Sickle cell anaemia or its less severe form sickle cell trait is recognised causes of sudden cardiac death. Furthermore she noted that sickle cell crisis can occur under conditions of lowered blood oxygen concentration. Under such conditions, the red blood cells stick together in the circulation and blood becomes very difficult to move around the body. Whilst she was not suggesting sickle cell disease alone was responsible for the death but it certainly would have contributed if present.

If the rib fracture did not occur during the post mortem she considered the most likely explanation to be either direct blunt force trauma or stressing under force

(e.g. by weight on the back). However, she noted blunt force trauma would be associated with local soft tissue bruising and none was found.

Following a Consultation with Dr Soilleux she was asked to produce a

PRO 895 Supplementary report by Dr Elizabeth Soilleux

In which she states that sickle cell trait was of significance in the cause and mechanism of death and she provides a rationale for this opinion.

Further expert evidence on this point is being sought.

Dr Lawler

Dr Lawler did not take any issue with Dr Soilleux's conclusions. He was of the view that dividing the effects of restraint into the potential for asphyxia and the consequences of the struggle as she did was very important.

Dr Lawler agreed it would be worthwhile to check the deceased for sickle cell disease, even though there was nothing in his medical history to suggest such a diagnosis.

Professor Jack Crane

Pro 752 Expert Report Professor Jack Crane (undated)

Professor Crane is the Acting State Pathologist for Northern Ireland and professor of Forensic Medicine at Queen's University, Belfast.

Professor Crane said the incapacitant sprays played no part in the deceased's death.

If respiration was not impeded during restraint cases, it is not the restraint per se which may predispose to cardiac arrest but its association with the effects of stimulant drugs, along with aggressive and violent behaviour, excitability and physical and emotional stress. It is a combination of factors which may be considered albeit the effects of the drugs must be regarded as the principal contributory factor in the fatal course.

Restraint which restricts or impedes respiration is potentially life threatening and if not alleviated may cause sudden death. Restraint in situations where the position or posture of an individual is inappropriate may also pose a risk to life.

The induction of asphyxia in circumstances of restraint may be associated with the development of haemorrhages in the skin and lining of the eyelids and over the eyeballs. These petechial haemorrhages, whilst possibly indicative of asphyxia and the interference with venous return to the heart can also occur in sudden natural deaths and as a result of cardiopulmonary resuscitation.

It is frequently not possible to determine from the post mortem findings alone if positional/ postural asphyxia caused or contributed to the fatal outcome. In such cases consideration of the circumstances of the death are often crucial in determining which role if any restraint played in the death.

The combined effects of MDMA and Alpha-PVP would have predisposed the development of a sudden upset in the heart rhythm including a fatal dysrhythmia such as ventricular fibrillation.

The role of restraint is problematic and cannot be determined solely from autopsy findings. If the deceased was being restrained at the time he suffered cardiac arrest, and if that restraint was such as to have impeded respiration, then it would be reasonable to conclude that restraint played a part in the fatal outcome;

After examining the microscope sections prepared by the Forensic Pathologists he concluded that there was no underlying heart disease and no cardiac abnormality which caused or contributed to the death;

He considered that the first rib fracture was caused by localised pressure having been applied to the deceased's upper back whilst he was being restrained, such as by a person kneeling on the deceased's upper back whilst he was lying face downwards on the ground. He also pointed out the application of pressure sufficient to fracture a rib would also be likely to have been sufficient, if sustained, to impede breathing.

Dr Lawler

Dr Lawler did not disagree with any of Professor Crane's comments and opinions. He strongly agreed with his view that it is often not possible to determine from post mortem findings alone if positional/postural asphyxia caused or contributed to the fatal outcome and it is the circumstances of the death that are of crucial importance.

Dr Steven Karch

Pro 739 Two Expert Reports Dr Steven B Karch 10 September 2015

Dr Karch is a retired Assistant Medical examiner in San Francisco and a fellow of Forensic and Legal Medicine of the Royal college of Physicians.

Dr Karch states his review disclosed histological abnormalities which were apparently overlooked at the original autopsy. Due to their presence he concluded that the deceased suffered from pre-existing heart disease which could have been fatal in its own right. These microscopic cardiac abnormalities were mostly of a chronic nature and known consequences of both long term stimulant and steroid abuse. They could have caused sudden death at any time, even in the absence of all drugs.

The detected drugs cause acute and chronic cardiotoxicity. Any or all of the drugs could have been a cause of death but it would be impossible to determine which one actually did.

He suggested the drugs consumed by the deceased would have caused him to suffer not only from excited delirium but also from serotonin and hyperadrenergic syndromes.

He says it was reasonable to conclude that nandrolone contributed to the histological changes as did all the stimulant drugs. There was also evidence that nandrolone facilitates the occurrence of myocardial arrhythmias, the apparent cause of the deceased's demise.

Incapacitant sprays did not contribute to the death.

The effect of physical restraint would have been *de minimis*. The physiological effect of restraint was irrelevant as there was no proof that such a disease entity existed. He described positional asphyxia as nothing more than junk science and

unproven. In this particular case, even if one accepted it existed, it could not be applied with any confidence. This was because nobody was able to speak to how much weight, if any, was exerted on the deceased's back, or how long it was applied for, or how much respiratory function was diminished. There was no way to establish it actually occurred.

As there was no truncal bruising at post mortem and the rib fracture was not noted during the examination he concluded that the fracture must have occurred during attempts at resuscitation.

Dr Lawler

Dr Lawler noted Dr Karch was the only pathologist who examined the microscope sections of the deceased's heart who considered them to show significant morphological abnormalities. All the others, Dr Shearer, Dr BouHaider, Professor Sheppard, Dr Soilleux, Professor Crane and Dr Cary either attribute minor changes seen to cardiac arrest and resuscitation or interpret the appearances as being within normal limits. Dr Karch was the only one to argue that the deceased must have had significant pre-existing heart disease which could have predisposed him to sudden and relatively unexpected cardiac arrest. As a non specialist in this area Dr Lawler did not feel able to comment or arbitrate.

Dr Nathaniel Cary- Instructed by Family's representatives

Pro 893 Expert Report Dr Nat Cary 23 October 2015

Dr Cary is a Consultant Forensic Pathologist at Forensic Pathology Services. He was instructed by the deceased's family's solicitor to provide an expert opinion in the form of a commentary on the final post mortem report. Dr Cary noted the history provided in the post mortem report and also the detailed history from police and civilian witnesses contained in the PIRC report. He also made an independent assessment of the statements.

In his opinion the present case had all the ingredients of a case where restraint and struggling had the potential to have caused or contributed to the deceased's death. He noted there was a prolonged period of restraint, the deceased was

significantly outnumbered and on most accounts restraint was in the prone position

Following examination of the microscope sections Dr Cary found no abnormalities of the heart and found no evidence of any underlying natural disease that caused or contributed to the death. There was no direct role for the involvement of CS and PAVA in the death. The petechial haemorrhages in the eyes may indicate a degree of asphyxia, in this case most likely having originated from compression of the trunk in a face down position rather than any compression of the neck.

Dr Cary states it was not possible to separate the role of any restraint from struggling. As is common in these cases of acute behavioural disturbances the deceased displayed remarkable strength and stamina. Ongoing restraint and struggling in these circumstances is very likely to lead to significant metabolic disturbances, with early breakdown of muscle, releasing potassium which can precipitate cardiac dysrhythmias and the development of metabolic acidosis.

Dr Cary states that given the presence of potent stimulant drugs the present case cannot be viewed simply as an example of a case of sudden death during restraint. He entirely supports the pathologists' cause of death: 'Sudden death in a man intoxicated by MDMA and alpha-PVP, whilst being restrained' but suggests substituting the phrase 'whilst being restrained' with 'in association with struggling and restraint'

Dr Lawler

Dr Lawler agreed almost entirely with Dr Cary's interpretations, comments and opinions. Whilst he could not disagree about his comments on petechial haemorrhages he personally thought it was important to appreciate that they can occur in contexts other than asphyxia and need not reflect asphyxia at all.

He also strongly supports Dr Cary's suggested modification of the death certificate believing the struggling must have been a very important factor in causing the deceased to die when he did.

Dr Lawler Overview

The deceased was suffering from a severe form of acute behavioural disturbance. He was in agreement with all the experts that the deceased's acute behavioural disturbance was precipitated by illicit stimulant drugs he had taken. Dr Lawler did accept this was not within his particular field of expertise.

From the evidence it appeared CS and PAVA sprays deployed had no effect on the deceased.

Dr Lawler considered the deceased's injuries to have been minor and consistent with restraint and struggling. The injuries did not cause or contribute to his death.

Dr Lawler was unable to comment on whether police officers' decision to restrain the deceased was correct or whether the techniques used were appropriate. Once on the ground it was clear the deceased struggled very forcefully and showed considerable strength. At one point at least one of the officers was lying on his chest in order to effect some restraint. Dr Lawler was unclear how long deceased's chest was compressed and whether or not it was continuous or intermittent;

It was important that less than four minutes had elapsed from the deceased being described as 'secure on the ground' and becoming unresponsive and unconscious. This was because any significant chest compression whilst lying on the ground could not have lasted very long;

In broad terms the deceased collapsed and died having developed some form of cardiac arrhythmia.

All the drugs taken by the deceased are to a greater or lesser extent cardiotoxic and it was widely accepted that each could cause death individually or in combination with one or more of the others. These drugs probably increased his susceptibility to developing an arrhythmia when other factors were introduced.

Various well recognised psychological and physiological stresses must have been abundant both before and during the struggle, almost all of which would have had a stimulating effect upon his heart and increased his susceptibility to developing an arrhythmia.

The struggle in its totality was very important per se and must have contributed substantially to the various metabolic disturbances associated with the psychological and physiological stresses;

If it is accepted that the struggle per se contributed significantly to the deceased's death, then it must mean that the act of restraint (whether necessary or not, and whether performed appropriately or not) also contributed significantly to his death- if only because it was a significant, albeit indirect, contributor to the total stress burden affecting the deceased in general and his heart in particular.

Given the relatively small number of petichae on his eyes and the absence of haemorrhages elsewhere on his face it was not the case that they must reflect some form of asphyxia.

Dr Lawler was impressed by the relatively short time period between the onset of the restraint and the deceased's collapse. He concluded that it was never going to be possible to exclude completely the possibility that this aspect of the restraint may have had a minimal contribution to collapse and death, but he thought it was very unlikely;

Dr Lawler noted the obvious differences of opinion between Dr Karch and all the other pathologists as to whether deceased had some significant pre-existing cardiac disease. He said he did not have the expertise to arbitrate but if Dr Karch was correct then the abnormalities he described could have been a predisposing factor for the cardiac arrhythmia which he thinks caused the deceased's death;

Dr Lawler states that if he was to offer a formal cause of death in this case it would be a narrative one and he would very strongly support Dr Cary's modification of that initially provided by Drs Shearer and BouHaidar. His opinion as to the cause of death would therefore be:

'Sudden death in a man intoxicated by MDMA (ecstasy) and alpha-PVP in association with struggling and restraint'

Professor Anthony Freemont

Professor Freemont produced two reports

Pro 882 Expert Report Professor Anthony Freemont 3 May 2017

Pro 883 Expert Report Professor Anthony Freemont 3 July 2017

Although the deceased's left first rib fracture did not lead to his death, its very existence may have illustrated the force and mechanism of restraint used by officers. To that end on 15 February 2017 the Crown instructed Professor Anthony Freemont, an osteo-articular pathologist at the University of Manchester to examine microscope slides made from bone taken at the post mortem examination. He was specifically asked to consider:

- a) The mechanism of the fracture and whether it was more likely to have been caused by the process of restraint or the use of an external 'thumper' for CPR
- b) The force required to cause a fracture of this type
- c) If the fracture could have been caused during CPR and the likelihood the fracturing would have been audible

On 27 April 2017 Professor Freemont examined microscopic slides made from a bone taken at the post-mortem examination. The slides contained several pieces of bone. The two largest pieces of bone showed obvious evidence of fracture even when viewed with the naked eye. Histologically the most striking feature, other than the fracture, was the degree of decomposition in the tissue with widespread evidence of gas formation and subsequent compression of some soft tissues. He noted many of the landmarks used to age fractures were missing as a consequence of tissue decomposition.

From his experience of many cases in which there is tissue decomposition, established osseous vital reactions in response to the fracture tend to remain visible, particularly early osteoid formation. There was no evidence here.

Where bone shafts fracture they usually heal in a predictive way. The process has certain landmarks that can be recognised under the microscope. These are features of progression of the healing process that can be used to recognise a fracture has occurred and age the fractures.

Professor Freemont concluded the deceased appeared to have sustained an isolated fracture of the left 1st rib. Further interpretation proved difficult by the degree of post mortem decomposition. However, on balance, he concluded that the residual histological features indicated the fracture occurred in life, certainly within 12 hours of death and probably within 6.

Professor Freemont states that isolated fractures of first ribs are very rare. First rib fractures may be isolated or occur in association with other rib fractures. They have been reported to occur as a result of direct external trauma e.g. a kick directly to the rib, indirect trauma e.g. falling on an outstretched arm, hyper abduction of the arm or a blow to the shoulder and violent muscular contraction.

Professor Freemont points out that although he frequently saw fractures caused by CPR he had no recollection of seeing an isolated 1st rib fracture as a result of CPR. From the available literature he established that CPR causing a 1st rib fracture was very rare and he could not find a specific reference to CPR having caused an isolated 1st rib fracture.

Professor Freemont concluded in his draft report dated 3 May 2017 that there appeared to be evidence of an isolated fracture of the left first rib that occurred during life, probably as a consequence of a fall onto an outstretched arm. He was reluctant to fully commit himself due to a level of complexity not usually encountered in cases such as this. In particular he referred to a very significant degree of decomposition which was masking many of the features normally needed to address the questions he had been asked to answer by the Crown.

Professor Freemont sought further information in relation to the post mortem and wished to examine the tissue block which would allow him to make a more useful interpretation of the tissue.

Working through the Crown Professor Freemont had 2 questions to ask of the Pathologists at Post Mortem. The questions and responses were as follows:

1 Why was there tissue decomposition?

The post mortem examination was extremely thorough and new data emerged over time. In particular the rib fracture required very specialist imaging studies

to identify it, and only once these were completed was the fracture identified and removed. This delay inevitably resulted in tissue decomposition

2 Was there soft tissue haemorrhage at the site of the fracture?

There was soft tissue haemorrhage at the site of the fracture but when the fracture was eventually identified and visualised the visible haemorrhage was relatively small in quantity.

Professor Freemont also requested the tissue block in order to perform special stains in Manchester. He also requested to re-review the stained slides he had viewed previously.

His re-review of the sections confirmed the presence of a fracture, decomposition with gas formation and osteocyte necrosis.

Osteocyte necrosis is a counterintuitive finding in that it occurs in life and not in death even with decomposition. He states the full reasons for this are unknown.

Professor Freemont says it is well recognised by forensic Osteoarticular pathologists that osteocyte necrosis at the edges of fractures only occurs in association with antemortem fractures and the experimental literature suggests that it is a vital reaction in which apoptosis occurs in response to micro-ischaemia (i.e. the cells kill themselves as they recognise that their oxygen and nutrient supply is failing). He states the timing of this process is not clear but the available evidence and his own experience indicates that the process can be visualised, possibly as early as 2 hours after onset, probably 6 hours and definitely by 24 hours. Its presence at the edge of a fracture indicated that the fracture occurred in life and at least 2 hours before death.

Review of Special Stains

These stains allowed the nature of the necrotic tissue to be probed. They were specifically deployed to allow the amorphous red material to be analysed.

Professor Freemont states they showed the material had no integral structure, was not caused as a by-product of fungal infestation and had features seen in a blood clot.

Glycophorin A recognises a molecule on red blood cell walls. Normally in tissue (even necrotic tissue) red cells are restricted to the inside of blood vessels. If there has been haemorrhage into the tissues, even after the red cells have broken down it was Professor Freemont's limited experience that glycophorin A may be detected sticking to the tissues in the areas of soft tissue haemorrhage (including fracture sites) Glycophorin A was seen in marrow (red blood cells are manufactured in the marrow and this was therefore an expected finding) and also in large quantities at the fracture site.

Although haemorrhage can occur in fractures after death (e.g. fractures caused by CPR), the bleeding, if it happens at all, is minimal. The amount and distribution of glycophorin staining was therefore much more in keeping with antemortem haemorrhage.

Professor Freemont states that despite very real problems involved in interpreting any material with this level of decomposition he was able to conclude that:

- a) All the evidence points to the deceased having sustained an isolated left 1st rib fracture in life. In terms of aging relative to the time of death, it occurred definitely within 24 hours of, probably within 6 hours of, and almost certainly no less than 2 hours before death.
- b) It was improbable that the fracture was caused by CPR.
- c) Because of the anatomical relationships of the 1st rib, whilst a direct blow could have caused the injury, it was unlikely in the absence of fractures of other adjacent bones. The most plausible cause of the fracture was an indirect injury such as falling on an outstretched arm or a blow to or fall onto the shoulder.
- d) Professor Freemont was unable to explain the sound reported by officers during CPR but does not believe it was caused by the 1st left rib fracturing.

Dr Lawler

Dr Lawler first commented on Professor Freemont's findings prior to the latter's request for additional specific histopathological and immunochemical stains of the retained tissues from the fracture site. In his initial report

Pro 879 Expert Report Dr William Lawler 22 May 2017

Dr Lawler noted that there was very little bruising localised bruising around the rib fracture which would explain why it was not discovered at post mortem on 4 May 2015. Whilst noting Professor Freemont's opinion that 'on balance' the fracture occurred in life and probably within 6 hours of death it suggested to him that the fracture was very likely to have occurred after the deceased's circulation had ceased i.e. during resuscitation attempts or even at some later stage.

From the literature provided by Professor Freemont he noted that isolated first rib fractures are rarely the result of direct external violence, because unlike all the other ribs, the first is deeply placed and protected on all sides by the shoulder girdle and regional musculature. Consequently, localised direct blunt force was likely to be associated with other fractures e.g. clavicle, scapula and other ribs. He therefore understood why Professor Freemont reached the conclusion that the most plausible cause for the fracture was an indirect injury such as falling on an outstretched arm or a blow or fall onto the shoulder away from the bone. In Dr Lawler's opinion the deceased's first rib fracture was very unlikely to be relevant when considering the direct forces applied by one or more of the police officers to the back of the deceased's chest during his restraint.

Following Professor Freemont's further examinations Dr Lawler provided a second report dated 13 August 2017.

Pro 880 Expert Report Dr William Lawler 13 August 2017

Having compared both his reports Dr Lawler noted that Professor Freemont having assessed the further special stains had reinforced his opinion that the deceased's rib fracture was sustained during life. Moreover, he had modified his views on the timing of the fracture i.e. it occurred definitely within 24 hours of, probably within 6 hours of, and almost certainly no less than 2 hours before death.

Having considered Professor Freemont's additional work Dr Lawler made the following points:

The macroscopic photograph provided to Professor Freemont (Appendix Figure 1) and which Dr Lawler had not seen before, appeared to show some bruising associated with the fracture. The scale however could not be determined as there was no scale on the image;

The special stains requested by Professor Freemont and particularly that for glycophorin A pointed very strongly to there being genuine ante mortem haemorrhage at the fracture site;

The image of the loss of osteocytes adjacent to the fracture line (Appendix Figure 3) was 'very persuasive' He noted the comments in the report that 'osteocyte necrosis is a counterintuitive finding in that it occurs in life and not in death, even with decomposition' and that this necrosis 'can be visualised possibly as early as 2 hours after onset, probably 6 hours and definitely by 24 hours'

Dr Lawler stated that Professor Freemont had now provided good evidence to show not only that the deceased's rib fracture was sustained during life, but also that it must have occurred at least two hours (and probably longer) before his death. Dr Lawler rightly points out that the fracture must have been present prior to the deceased's initial contact with police officers, it could not have been caused at any stage of the restraint and it was not a resuscitation artefact. In light of Professor Freemont's further examinations Dr Lawler concluded that the rib fracture is irrelevant.

At Consultation Dr Lawler did not consider that the deceased had a viable heartbeat at the scene. Therefore the 2 hour period would run back from the time of collapse as he had no viable circulation. In his opinion the most likely cause of the injury was a fall. He said the argument for a fall is a good one in that this is an extraordinarily well protected area. It was unlikely to have been caused by a knee in the back. Normally, where there are fractures they involve more than the 1st rib and Dr Lawler having never before seen an isolated fracture of the rib had not previously given it much consideration. In his view Professor Freemont's reasoning regarding cause made sense.

Professor Michael Eddleston, Professor of Clinical Toxicology, University of Edinburgh.

On 26 April 2017 the Crown instructed Michael Eddleston, Professor of Clinical Toxicology, University of Edinburgh to establish the behavioural impact of the drugs taken by the deceased. In particular he was asked to provide an opinion on the individual and any synergistic effects of MDMA and Alpha PVP on the brain. More particularly the Crown sought to establish what effects the levels and combination of these two drugs may have had on the deceased's mood, cognitive ability and behaviour.

Professor Eddleston produced

Pro 884 Expert Report Professor Michael Eddleston 2 June 2017

After reviewing witness statements and expert reports Professor Eddleston concurred with Dr Lipsedge's diagnosis of 'psychostimulant psychosis'. As a Clinical Toxicologist he would use the term 'drug -induced psychosis' which in this particular case could be refined to 'stimulant or sympathomimetic drug-induced psychosis. This is similar to a diagnosis of 'excited delirium' that is used in the USA.

Alpha-PVP

Professor Eddleston describes Alpha-PVP as a relatively new synthetic cathinone stimulant drug, which has similar effects to other stimulant drugs such as cocaine, amphetamine and metamphetamine. Alpha-PVP intoxication can cause disorganisation, delusional thinking, hallucinations and in some patients intense paranoia associated with violent aggression.

Professor Eddleston confirms death is recognised to occur after Alpha-PVP exposure and cited a 28 year old male who died in the community after cardiac arrest where his post mortem Alpha-PVP blood concentration was 0.174 mg/L considerably lower than the deceased in this case 0.29 0.31 mcg/L.

Death following restraint has also been documented. A man in his mid-20s who developed psychosis died from sudden cardiac death after prolonged restraint

from his roommates. His Alpha-PVP blood concentration was found to be 411 mcg/L. Another male, arrested in an agitated and delirious state and following restraint had a cardiac arrest in a police vehicle and died. His Alpha-PVP blood concentration was 62.6 mcg/L 36 hours after hospital presentation.

MDMA

Professor Eddleston describes MDMA as a widely used entactogenic phenethylamine drug which causes hyper-stimulation of the central and autonomic nervous systems. Severe toxicity is rare and psychosis is relatively uncommon after MDMA use. MDMA was associated with psychosis in only 4.3% of cases.

Professor Eddleston concluded Alpha-PVP was primarily responsible for the deceased's drug induced psychosis. It was possible his exposure to MDMA increased his risk of drug induced psychosis but studies have shown no clear increase in the incidence of psychosis in patients taking other recreational drugs as well as Alpha-PVP, compared to those taking Alpha-PVP alone. This evidence made it unlikely that MDMA was a primary or secondary cause of the psychosis.

Professor Eddleston notes there can be differences between psychosis due to stimulant drugs and psychosis due to schizophrenia. The sympathomimetic effect of stimulant drugs such as amphetamines, cathinones, and cocaine can cause transient increased energy, strength and stamina directed into struggling and violence. As patients cannot understand what is happening, they will struggle forcefully for as long as they have the strength and are unlikely to understand that they cannot win and calm down voluntarily. During restraint, stimulant drug users are at risk of dysrhythmias such as ventricular fibrillation.

Professor Eddleston also makes the point that psychotic patients from either cause are often confused, deluded and/ or paranoid about the circumstances, and unable to understand instructions.

Professor Eddleston also describes how medics deal with patients with acute psychosis in emergency departments in the UK. Doctors will firstly try to speak to a psychotic patient to try and reassure them and calm them down. If they respond positively they will be encouraged to take oral medicines or an anti-psychotic injection might be given with the patient's consent to bring the

situation under control. If an individual is unable to understand the situation and calm down they will require to be physically restrained to allow the rapid and safe administration of intravenous or intramuscular sedative drugs, such as diazepam or ketamine. The duration of physical restraint must be kept to an absolute minimum to reduce the risk of complications. As soon as the patient is sufficiently sedated with medicines, physical restraint is withdrawn. The process of physical restraint followed by sedation should not be started until sufficient skilled staff and drugs are in place.

Professor Eddleston acknowledged the present incident was a stressful situation for officers. They believed it might be a terrorist attack, the deceased had earlier been in a fight and he had been seen in possession of a large knife attacking cars.

However, Professor Eddleston noted the deceased was not reported to have been aggressive towards or attacked any officer until he had been sprayed 3 times. Faced by three officers the deceased seemed to believe he was being threatened and attacked PC Short.

Professor Eddleston concludes there may have been a different outcome if officers had realised that the deceased was psychotic, consistent with their observations that he was ignoring them and looking crazy.

If they had recognised he was psychotic, and followed the advice on dealing with psychotic patients in the SOPs it may have calmed the situation. Open empathic questioning, whilst offering him space to keep walking, may have calmed the deceased. This Professor Eddleston states may have prevented the attack on PC Short and removed the need to restrain him. In the meantime an ambulance could have been called to take the deceased to hospital.

If this conservative approach had been ineffective a combined physical and chemical restraint approach would have been necessary. Professor Eddleston states that at the very least an ambulance and paramedics should have been present when physical restraint was initiated. This would have allowed paramedics to rapidly gain intravenous access to administer sedative diazepam and haloperidol under guidance if necessary from the local emergency

department. At best, restraint could have been delayed until a doctor had come urgently from the emergency department to assist in controlling the situation.

Professor Eddleston concludes that the deceased's psychosis prevented him from understanding the situation or instructions and paranoid thoughts caused him to attack the police. This resulted in a physical restraint until submission. This was all without medical staff and medicines to induce sedation. Professor Eddleston is of the opinion at the point physical restraint started the deceased's prognosis was poor.

Psychosis is a well-recognised complication of stimulant drug use with a poor prognosis when public safety requires physical restraint without medical support. Professor Eddleston suggests revision of the Use of Force SOPs to present psychosis from schizophrenia and stimulant drugs together, as well as additional training in the assessment and management of such patients, which he says may reduce the risk of further deaths from stimulant drug toxicity while under restraint.

Police Training

Police SCOPE records show that PCs Good and McDonough were fairly new recruits to the force. McDonough had been a Special constable and had received his OST while in that role and had a one day refresher course in November 2014 when he joined the force as a probationer Constable. PC Good had received only her probationer training before the incident.

The other subject officers had been trained in Officer Safety Training during their induction when they joined the legacy Fife Constabulary and were then provided with refresher training on a biannual basis (prior to 2013) and then annually post 2013 when police forces amalgamated in Police Service of Scotland (PSOS). Police records about when the subject officers attended training courses are poor but the following has been ascertained from their SCOPE records:

Nicole SHORT

- Induction at Fife Constabulary and at Tulliallan between 20/07/09 and 6/11/09
- OST recertification on 20/10/10; 13/11/12; 19/12/13; 25/02/15

Kayleigh GOOD

- Probationer training of which the OST part was between 2/2/15 – 6/2/15

Ashley TOMLINSON

- Probationer training between 30/09/13 and 20/12/13
- OST recertification 23/11/14

Daniel GIBSON

- Probationer training 2012 – Fife Constabulary various courses between 20/02/12 and 7/9/12
- OST recertification 17/07/13; 23/03/14; 04/03/15

Alan SMITH

- Probationer OST course 24/12/04
- OST refreshers 22/03/07; 08/05/08; 15/09/10; 24/10/12; 11/11/13

- Initial Trainer OST - 02/12/13 – 13/12/13

Craig WALKER

- Probationer OST course -24/12/04
- OST recertification courses 12/03/06; 12/06/08; 28/09/10; 20/11/12; 03/11/13; 05/11/14

Alan PATON

- OST training (induction) 14/09/01 – 21/09/01
- OST -24/01/02
- Recertification 04/03/04; 17/05/06; 13/03/08; 08/09/10; 30/04/14; 04/01/15

James MCDONOUGH

- OST training as a Special Constable – various modules between 10/11/13 and 01/12/13
- PROs 875/876 Recertification in OST during conversion course at Tulliallan 11/11/14

In terms of the content of Officer Safety Training, it has been established that

PRO 329 PSOS use of Force SOP

was not used in training. This is a policy document that was available to officers on the Intranet and sets out general principles of policy regarding Police Officer Safety Training.

However, evidence shows that all the subject officers received their last Officer Safety Training before the events of 3rd May 2015 in line with the content of

PRO 675 Training manual version 2 (created September 2013)

This manual was in force at time of the incident and the basis for the content of training at the time each of the subject officers had their last OST training before the date of this incident.

In addition, it has been established that the

PRO 859 Power-point presentation (historic)

was used during induction for all probationers and also for police OST trainers from 2004 onwards. The only officer who would not have seen the Power-point presentation was PC Paton, who joined the force in 2001. It has not been possible to establish what, if anything, was provided to probationers in 2001 by way of a presentation on OST.

PRO 859 Power-point presentations (historic)

contains on pages 26 - 28 guidance on preventing positional asphyxia:

Positional asphyxia is likely to occur when a subject of in a position that interferes with inhalation and or exhalation and cannot escape that position.

Death can occur rapidly

Restraints can increase the risk.

Risk factors which contribute to the condition include: body position, alcohol/drug intoxication, inability to escape position, subject is prone/pinned against a surface/slumped forward; obesity; restraint; stress; respiratory muscle fatigue

Signs and symptoms: active to passive/loud to quiet; gurgling/gasping sounds/cyanosis, verbals

Pages 29 – 30 on excited delirium are also relevant. The notes provide the following identifying signs: as a person exhibits violent behaviour in a bizarre and manic way; constant, purposeless, often violent activity; meaningless speech and hallucinations with paranoid delusions; abnormal strength and pain tolerance, CS may not work.

Causes: - Drug and or alcohol intoxication; psychiatric illness or a combination of all three

(The condition is a) Medical emergency: expect a sudden collapse; acute exhaustive mania can be fatal

In terms of the recertification course, the trainers who delivered the courses to the subject officers state that they referred to the issues of positional asphyxia and excited delirium during the one day course and this is reflected in the inclusion of these topics in the

(either) PROs 676 or 677 Checklists

Used at the time.

Within

PRO 675 Training manual version 2 (created September 2013)

The following content of the training manual is of relevance to in the analysis of evidence:

Module 1

General principles about the use of force.

Discusses right to life under Article 2 of the Human Rights Act but that deprivation of life is not in contravention of Article 2 when it results from use of force which is absolutely necessary.

It states that Use of Force has to be Proportionate, Legal, Accountable and Necessary.

When deciding if necessary, officers had to consider

Justification – is the force appropriate to the degree of resistance?

And

Preclusion – have other methods have been considered and ruled out as inappropriate or already tried and failed?

Page 23 contains full guidance on the risks of and how to avoid positional asphyxia. It refers to the fact that the process of restraining often requires the upper body to be held down, sometimes by an officer's own weight and this chain of events may trigger positional asphyxia. Officers are encouraged to remove the subject from the prone position as soon as possible following restraint. The subject can then breathe without restriction.

On page 24 there is guidance on how to recognise and deal with excited delirium. Advice includes placing the subject on their side or into a kneeling /seated position as soon as possible, visually and verbally monitor closely and officers should be prepared to administer first aid if the subject's condition deteriorates. A subject showing signs of excited delirium should be treated as a medical emergency.

On Page 26, reference to dealing with a person with a knife and keeping safe outside the "fighting arc"

On page 39 - contact and cover – advises if a subject poses a threat one officer draw CS spray and the other a baton.

Module 2 - empty hand techniques part C - Section 9

This module deals with holds and restraints and in particular, two methods are of relevance to this incident:

Prone Ground Pin (Page 83)

Describes how an officer would land over and on top of the shoulder of the subject using body pressure and how to get up on knees and control arm by pinning to the ground.

Kneeling ground pin (page 104)

Discusses how to search a subject while prone and contain and warning about keeping a subject in the Prone position for no longer than is necessary due to the potential for positional/ restraint related asphyxia (Pictures demonstrate)

Module 3 – rigid handcuffs

On page 89 – rule 8 – an officer shall not attempt to handcuff a resisting subject until they are under control is of significance as it took the efforts of up to 6 police officers to gain enough control to handcuff the now deceased.

This chapter also contains the warning that the officer should remove the handcuffed subject from a prone position as soon as possible to prevent positional/ restraint related asphyxia.

Module 4 on fast straps discusses and demonstrates how to apply leg straps, after handcuffing. The pictures show one officer lying over lower legs to restrain while the other applies to above knees. Again this module refers to medical issues.

Module 6 deals with the use of the straight baton and demonstrates its use both for tactical communications and various methods of use in restraint and strikes.

Module 7 deals with Incapacitant sprays, both CS and PAVA.

The manual does not outline specific situations in which deployment is recommended or not. The basic principles in relation to use of force apply and the officer must be able to justify its use. On page 173, guidance is given on how to use against a single aggressor either in warning or to spray.

Again on page 164 a further warning is given that officers should ensure that restraint methods used and the position subject is placed in does not adversely affect breathing.

The guidance states that being sprayed with PAVA can lead to high stress, panic, anxiety, aggression. An aftercare regime for both CS and PAVA is provided whereby breathing is monitored.

Martin Graves, OST expert provided a lengthy report (PRO 894)

in which he addressed the robust approach initially adopted by the first responding officers, the use of force by way of CS and PAVA sprays, baton, handcuffs and leg restraints as well as the use of their own body weight in the course of the restraint. In general terms he was supportive of the assertive approach of the first officers on the scene in light of the high risk situation they faced. Where officers used strikes to the head, these could be justifiable given the perceived threat and the degree of violence shown to the police. He considered that the description of restraint from witnesses and images of the restraint shown in the snapchat were of a standard restraint process with which he took no issue. Although Mr Bayoh was displaying some of the signs of someone who could have been suffering from excited delirium (ABD) the fact that some officers did not consider this did not unduly delay medical help being summoned. His findings are more fully discussed in the analysis of evidence.

Forensic Investigations

Aside from the investigations already outlined in this report, a number of forensic examinations took place, the results of which can be summarised as follows:

- The knife recovered at Hayfield Road had two fingerprints on the blade but the impressions were insufficient for identification.
- The knife was examined for traces of blood with negative result. The tip of the blade was broken off and missing. A small fragment of white material was noted on the surface of the blade.
- The forensic scientists were of the opinion that the knife recovered at the locus was similar in general appearance and markings to three other knives seized from the home of the deceased, such that all four knives could have come from the same set or any other set with similar appearance or markings.
- An examination of the white motor car owned by witness Saeed was carried out and areas of damage were noted externally. There was no forensic link between the damage to the car and the knife recovered by the police at the locus at Hayfield Road.
- The deceased's boots were examined for the presence of blood with negative result.
- The deceased's socks were examined and found to have a small amount of off white powder in each but this proved negative when tested for the presence of controlled drugs. Further analysis was carried out at a specialist laboratory but it was not possible to identify any drug substances in the samples. It was possible however, to exclude the presence of Alpha- PVP.
- A number of bottles and packages of medicinal products found at the deceased's home in Arran Drive were examined for the presence of controlled drugs and in particular for the presence of Alpha – PVP and MDMA with negative result. Minimal levels of caffeine were found in 16 loose tablets. Otherwise the products seem to be either dietary or hormone supplements to increase muscle mass or to improve sexual function. A box of Omeprazole tablets for gastric reflux was also found.

- Some herbal matter two grinders were found at the house of witness Dick and traces of cannabis was found on each of these but no trace of either Alpha- PVP or MDMA.
- The personal radio recovered from PC Walker was examined and contact bloodstaining was noted on the screen and keypad, matching the DNA profile of the deceased.

- Airwaves and telephony

Witness Colin Gill provided a very helpful overview of police airwave and telephony systems and capabilities (Pro 869).

As shown in the

Pro 862 Airwave Point to Point analysis

None of the officers involved in the incident had any point to point calls with any other officers before they engaged with the now deceased on Hayfield Road. There were a number of point to point calls in the period after the ambulance arrived at the scene. The content of the point to point calls is not recorded but the timings and caller/recipient ID numbers of police airwave devices are recorded.

- Mobile Phone of Ashley Wyse

In relation to Ashley Wyse's mobile phone a full download was carried out. Principally this was to determine, if possible, the timing of the video files recorded by Wyse on the Snapchat App. It was not possible to determine this information from the download. [REDACTED]

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Further investigations - PIRC terms of reference 6 and 7

Allegation of assault of Zahid Saeed – PIRC terms of reference 6

Witness Saeed complained to Aamer Anwar, Solicitor, that he had been assaulted in Kirkcaldy Police office when he decided to leave during the interview on 3 May 2015. This was investigated by PIRC and it was found that there was no evidence to corroborate Saeed's allegation. CCTV footage of the front foyer of Kirkcaldy PO did not provide any evidence to support the assault allegation. The findings of the PIRC investigation are more fully set out in Volume 3 of the PIRC report (pages 209 – 218)

Issues of race and conduct - PIRC terms of reference 7 a

These were examined by PIRC and the results of the investigation are contained in Volume III of the PIRC report (pages 219 – 328).

In essence PIRC found the following:

1. That in connection with PC Paton there was one recorded historic (complaint against him by a Muslim lady ██████████ that PC Paton had failed to recognise the need for an interpreter when dealing with her in relation to the execution of a search warrant for her home. He was given corrective advice.
2. That there were general allegations against PC Paton that he was a racist and had been heard to make racist remarks historically. More significantly there was an allegation made by William Paton, the grandfather of PC Paton that in a conversation in a supermarket sometime after the death of Sheku Bayoh, Alan Paton told his grandfather that he was "a total racist and hated all blacks". This specific incident spoken to by William Paton was uncorroborated. Despite the lack of corroboration it featured in a BBC news programme broadcast in October 2015.

3. ██████████
██████████
██████████

[REDACTED]

4. That on review of published statistics from the Police Complaints Commissioner between 2007 and 2015 there was no evidence to suggest that racist incidents or racially discriminatory conduct by officers of PSOS in Fife were any more widespread than other areas of the Force.
5. In 2014 Misconduct proceedings were taken against three officers of Fife Division for engaging in sending each other text messages on their mobile phones of an offensive and racist nature. They were required to resign or be dismissed. PIRC established that none of the mobile phone numbers of the subject officers in this current report featured in the contacts lists of the mobile phones of those officers who were required to resign in 2014.

Allegations of potential breach of the Data Protection Act 1998 - PIRC terms of reference 7 b

On 18th August 2015 Mr Aamer Anwar alleged that the subject officers who had been at the locus at Hayfield Road had unlawfully undertaken checks on police computer systems in breach of the DPA.

Full audits were carried out on the Crimefile PNC, CHS, and SID computer systems, all with negative result as shown in

Pro 738 BRIEFING PAPER RE RESULTS OF DPA AUDITS

Mr Anwar further alleged that unnamed staff of Police Scotland may have unlawfully undertaken checks on police computer systems on a list of persons, all of whom were friends and/or relatives of the deceased. The list also included Mr Anwar's own name. The outcome of extensive audits showed that none of the potential subject officers accessed any of the police computer systems in relation

to the deceased or any of the named family or friends of the deceased or of Mr Anwar. Those officers or members of staff who had accessed police systems about those other named individuals were interviewed by PIRC. The PIRC were dissatisfied that the officers were often unable to explain their reasons for accessing certain police records and criticised the lack of recording of reasons for their accessed. However their expectation that each officer/member of police staff would record a reason for every occasion they accessed a police electronic record is unrealistic. The position is set out in

Pro 749 LETTER FROM SUPT AUDREY MCLEOD to PIRC

In which she asserts that the officers who had accessed the police systems did have a policing purpose.

However, of concern is that in the course of carrying out the audits it became apparent that PSOS held intelligence on the Scottish Intelligence Database about Mr Anwar under the heading of "refract" - "counter terrorism." It appeared that the information about Mr Anwar's activities and associates related to Human Rights campaigns and there appeared to be no justifiable reason for logging the information as police intelligence. As a result of PIRC's enquiry into this matter, PSOS were carrying out a review of intelligence relating to legal representatives and in the course of that review the material relating to Mr Anwar's lawful business practice was removed as it was incorrectly recorded as intelligence. The enquiries undertaken by PIRC into these various allegations are more fully set out in Volume 3 of the PIRC report (pages 239 – 256).

The investigations by PIRC into potential breaches of the Data Protection Act by individual officers indicated that Police Scotland were recording information in relation to both Aamer Anwar and solicitors inappropriately and in breach of data protection principles. The matter was referred by PIRC to the Information Commissioners Office for consideration of enforcement action in relation to Police Scotland. The Information Commissioner has advised the Crown in an email to Lindsey Miller, of 3 May 2018, that the information provided by PIRC did not demonstrate that the required criteria had been met for an offence under section 55 (1) to have been committed, as the access incidents did not appear to have

been made without the consent of the data controller, that is, Police Scotland. The other matters of recording the reasoning for access and the collection and storage of personal data of a solicitor, again, from the information provided by PIRC did not appear to meet the bar for formal enforcement action to be taken by the ICO.

Audits of STORM system

In February 2018 a full audit of the STORM system was undertaken by officers of Professional Standards to establish if any of the nine principal officers had accessed the STORM incidents about the incident on Hayfield Road on 3 May 2015. It was established that PS Scott Maxwell accessed

PRO 317 STORM incident PS-20150503 - 0743

on 12th May 2015 and that PC Craig Walker accessed the same STORM incident and printed the same on 1 May 2016 (almost a year afterwards). This STORM incident is the written record of some of the calls made by members of the public to the police on the morning of 3 May 2015 and it contains some personal information about Harry Kolberg (recorded as Kolverg) and Linda Limbert (recorded as Limbart).

PIRC investigator Little sought clarification by way of email with the senior officers Trickett, Campbell and McEwan about what, if any, instructions were given to the officers involved on 3 May 2015 about accessing police systems about the incident. None of them recalled providing specific guidance to the officers about accessing police systems.