

ANALYSIS OF EVIDENCE

The question of causation of death has been a difficult one to determine. The experts have varying opinions on the extent to which the restraint by the police had any bearing on the death. Dr Lawler's view was that the role of restraint was likely to have been a minor one, given the role of the drugs ingested. The emerging information about how a person who carries the trait but does not have sickle cell disease adds further to the complication in determining cause of death. [REDACTED]

In assessing potential criminality of the police this analysis will have regard firstly to the evidence showing the actus reus of each officer. Thereafter the evidence pointing to their mens rea will be discussed, in light of their knowledge or assumed knowledge at the time they acted and bearing in mind their police training. [REDACTED]

Culpable Homicide – mens Rea:

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[REDACTED]

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[REDACTED]

In considering the question of mens rea, the content of the training provided to police officers about the extent to which they can and should apply force to achieve their lawful means is very important. The general principles found in chapter 1 of the

PRO 675 Training manual

espouse the balance between the right to life with the duty of the police to go about their business in such a way as to use force that is no more than absolutely necessary to achieve their lawful aims. The evidence about the methods of restraint used and the length of time and degree of force used in restraining the deceased are examined in detail.

In this case, also the question of whether the officers ought to have recognised some of the signs of excited delirium is considered.

On paper at least, the training seems to cover the necessary information about recognising the signs of someone exhibiting the symptoms of excited delirium and trainers interviewed assert that the topic was covered in both probationer and refresher training. The question in this case is whether the officers involved followed their training and identified the signs, or if they did so, quickly enough.

GENERAL CONSIDERATIONS

There is no evidence to suggest that any of the subject officers had encountered the now deceased earlier that day. Nor indeed is there any evidence to show that any of the subject officers had any previous dealings with the now deceased that would lead to a conclusion that they were acting in bad faith towards him.

[PC Nicole Short stated that she knew the deceased as a customer in [REDACTED] in which she was employed in about 2003/04 but had no dealings with him.]

The statements provided by the police officers involved at the scene all seem quite defensive and written in a way to justify their actions. However, their Officer Safety Training (OST) includes training on how to include in their statements justification for the force they have used. Their accounts should be understood in that light.

In the hours after the death of Sheku Bayoh the nine principal officers all refused to provide Police Scotland with operational statements. This appears to have followed advice firstly from the Scottish Police Federation (although the witness Amanda Given of the Police Federation denies advising the officers not to provide operational statements). Witness Maxwell and other subject officers state that they were provided with legal advice not to complete any Use of Force forms or otherwise make any commitment to paper unless and until their status as witnesses was confirmed.

The subject officers eventually provided statements to PIRC on 4 June 2015, over a month after the incident. It is known that they were all afforded legal advice by the police federation in the interim period. As outlined in the narrative, there is some evidence that conferring took place amongst officers. At the very least, it can be said that they were not separated, so that there was the opportunity to confer. A lapse of time of four weeks or more must have led to some dilution of memory and the opportunity to consider their own positions. They will have mulled over their own recollections and there is no doubt that they discussed matters between themselves. It is possible that in giving their statements after such a time-gap that they inadvertently provided information about the incident that they learned after the event.

There are obvious questions about the credibility and reliability of some of the evidence from the police officers involved in the restraint and those in attendance at the scene in light of this. However, the statements provided by them, along with the few civilians who witnessed events, together with the limited CCTV and mobile phone footage provide the main available evidence.

That said, the variation in accounts from one witness to another can in part be explained or understood because of their respective roles and their own lines of sight. For those watching and not involved, much will depend on the parts of the events on which they were focussed and this could differ for very genuine reasons of perspective and focus. There were a number of police officers involved and there was a lot going on. Further, had there been collusion between the police officers, one might expect a more uniform description of events and relative positions. For those actively engaged in the struggle with the deceased it has to be borne in mind that this was a highly charged and fluid situation in which their positions and that of the now deceased seem to have been evolving. Each officer involved in that struggle was only partially aware of the actions of all of their colleagues present. [REDACTED]

[REDACTED] It is also important to note that PIRC investigators who interviewed the police officers on 4th June asked them in detail about their own actions (which evidence is not admissible against them) but were less focussed in their questioning about what others around them were doing.

The police officers only provided their statements to PIRC investigators following assurances given by PIRC that they were considered to be witnesses and not suspected of having committed any crime. This was at a time when PIRC investigators had already obtained statements from witnesses such as Wyse, Ali, Nelson, Robinson and Mullen. By that time PIRC investigators had obtained some accounts of police officers bringing the deceased to the ground and pinning him down by lying on top of him. In light of their assurances that the officers were being treated as witnesses it is considered that their own statements could be inadmissible in evidence against themselves on the grounds of fairness. However, the accounts given include descriptions of their colleagues' actions and to this extent their statements can be considered as evidence for or against their colleagues.

In addition, where an officer has provided in their own statement an explanation or justification for their own or others' actions this may be relevant in considering whether such justification has merit and should be considered in relation to the question of mens rea.

INITIAL ENGAGEMENT BY THE POLICE

The Police Service of Scotland has a statutory duty to protect life and property (section 20 of the Police and Fire Reform (S) Act 2012). There is ample evidence that the subject officers were acting in line with their duty when they drove to the scene in response to airwave messages following on from the calls to the police from members of the public about the report of a black male wielding a knife on Hayfield Road that morning.

The evidence of those who saw the deceased leaving his home in Arran Crescent and walking in the local streets in the hour before the police confront him is of a man who was acting in an alarming and disturbing way, in a violent manner towards his friend, towards his neighbours who challenged him about his possession of the knife and towards the vehicles which passed him on Hayfield Road. He was carrying a lethal weapon shortly before the police arrived on the scene.

The witnesses who describe the demeanour of the deceased in the hours beforehand provide useful background information and this sets the scene. In the context of the actions of the police it is relevant only to the extent of showing that the police were engaged in a lawful activity and in showing the menacing demeanour of the now deceased prior to their arrival at the locus.

However it is important in relation to the question of mens rea to appreciate that the police officers under investigation would not have had this information to hand at the time they engaged with the deceased. They did not know about the bizarre behaviour, nor of any possible drug ingestion at that time. They had only the airwave messages and their own observations to go on. This is particularly important in the context of the remarks made by Professor Eddleston that had the police adopted a different approach there may have been a different outcome for the deceased. These remarks suggest a level of knowledge of the deceased's condition that simply was not available to the police officers at the time they engaged with the deceased. The extent to which the signs of the now

deceased suffering from some form of excited delirium ought to have become obvious to those officers is discussed in the course of this analysis.

The first two police officers on scene, PCs Craig Walker and Alan Paton would have heard the airwave messages were of an ongoing disturbance, of an African looking large, muscular build male chasing someone may be carrying a large knife with a 9 inch blade.

In this context it should be noted that PC Walker states that additional information was provided by airwave messages that the weapon had been “described as a sword and the male appeared to be under the influence of a substance and attacking passing cars, running out in the street at the vehicles”, yet there is no evidence to show that he had any further information at that time by way of calls or point to point communications [REDACTED]

[REDACTED] in asserting that he had been informed that the male was under the influence of a substance he attributes to himself more knowledge than he actually had at that time. Had he been aware that the male was in fact under the influence of a substance it is arguable that he should have been more aware of the possibility of him suffering from excited delirium.

Walker’s and Paton’s position that neither of them saw a knife in possession of the now deceased, but both were aware and risk assessed that he could still have had the knife in his possession out of their sight is entirely reasonable and in line with officer safety training . This view is endorsed by Martin Graves, OST expert (para i. of his conclusions on page 39 of his report).

In the

PRO 675 Training Manual

General principles (page 10) officers are advised to assume threat level is high or unknown. There is no such thing as a low threat.

The evidence from witness Nelson that he saw one of the officers presenting a baton in one hand and spray in the other, pointing and shouting is

uncorroborated. Neither officer refers to presenting their baton initially, although such a tactic would be a reasonable option in the view of witness Graves (para c., page 21 of his report)

PC PATON DEPLOYS CS SPRAY:

Evidence to prove that PC Paton deployed CS spray towards the now deceased comes from the accounts of the civilian witness Nelson and from his colleague PC Walker:

Walker states that PC Paton engaged with the deceased Bayoh first by presenting his CS spray and issuing an instruction to the now deceased to get down, which was ignored.

Nelson saw one of the officers presenting his baton in his right hand and using his left hand, containing pepper spray to gesture/point to the ground. The male ignored him. This account could be enough to corroborate the actus reus of Paton deploying the CS spray.

Forensic evidence (PRO 632) that Paton's CS spray canister weighed 39.28 grams after the incident instead of the recorded 55g on issue points to its deployment also supports the evidence that he deployed CS spray.

It is not possible to see this initial deployment of spray on CCTV as this must have occurred behind the police van which obscured this part of the incident from camera view.

Paton's statement provides his rationale for deploying. He cites his perception that he was going to be attacked, having twice shouted loudly to the male to get down on the ground and getting no response. He did not know if the now deceased still had possession of the knife and the male kept walking towards him. In his statement he asserts that the male kept coming towards him. In fact, given that the deceased was walking in his direction when the van stopped, Paton must have placed himself in the path of the deceased, who kept walking while Paton states that he tried to maintain a safe gap (presumably by walking backwards). In selecting to use the spray he obviously hoped to incapacitate the

now deceased from a distance rather than engage with him at close quarters. He asserts that he was not taking any risks [REDACTED]

In his report, Martin Graves, OST expert, states that PC Paton could have used a more communicative style to initially make contact but he did not think that his approach was the cause or catalyst for Mr Bayoh's response or behaviour.

He considered that while some of the signs that Mr Bayoh was perhaps under the influence of something were becoming evident, the officers' initial thoughts were solely on the risk and on getting the subject under control.

In the absence of other tools such as taser or a dog or officers with protective equipment (shields etc) Mr Graves considered that the use of an incapacitant spray when faced with someone believed to be in possession of a knife was a sound tactical option.

PC CRAIG WALKER DEPLOYS PAVA SPRAY

The evidence that PC Walker deployed PAVA comes primarily from the witness Paton, saw Walker discharge the PAVA spray towards the male and heard his colleague shout "it's no fucking working".

There is also forensic evidence (PRO 632) from the examination of the PAVA spray canister issued to Walker and later seized from him after the incident that canister weighed 67.43g whereas it had been weighed on 3 April 2015 and issued on 15th April, weighing 88g at that time from which an inference can be drawn that the spray was deployed.

Again, the CCTV footage does not assist.

Nelson was the only civilian who saw these events and his description of the tall and cuddly police officer discharging spray could perhaps apply to Walker rather than to Paton. Walker is understood to be very well built. The difficulty in using Nelson as a witness is that he only speaks to one police officer deploying spray

and in the absence of a formal ID of that officer his evidence does not sufficiently identify which of the two police officers he is describing. As both are tall and well-built and both deployed spray within a very short time of each other, there is little prospect of differentiating them.

However, it is submitted that the direct evidence from Paton combined with the forensic evidence would be sufficient to establish the actus reus for Walker's use of PAVA.

Walker's explanation and justification for deploying PAVA cites the following factors, all of which have some merit:

- His colleague, Paton had deployed CS spray to no effect and was now incapacitated with blowback from that spray;
- When warnings issued by him to the now deceased to "stop" and "drop any weapons" were ignored
- As far as he was aware no other police officers were on scene by then (although he could be wrong about that as Short and Tomlinson arrived only 9 seconds after he and Paton)
- He still thought that the now deceased Bayoh may have had a weapon concealed on him.

Both of these officers were aware of the dangers of confronting a man who reportedly had a large knife in his possession. [REDACTED]

[REDACTED]

In his conclusions, para c. (page 38) Mr Graves in his report (PRO 894) also provides support for the assertive approach adopted by these first two officers, rather than a 'softer' approach, given the concerns by the police officers that they might be dealing with a terrorist incident, the knife and the lack of compliance with them. He assesses that this was a high risk incident and he is not convinced that a 'softer' approach would have altered Mr Bayoh's response to the police officers.

It is pertinent to consider the views of Professor Eddleston at this juncture. In paragraph 22 of his report of 2nd June 2017 (PRO 884) he considers that had these first police officers realised that the deceased was psychotic, consistent with their observations that he was ignoring them and looking crazy and had followed PSOS advice for dealing with psychotic patients the outcome might have been different. Professor Eddleston considered that ideally open, empathetic questioning, while giving him space to keep walking might have calmed the situation. In the meantime an ambulance could have been called to help take him to hospital. Had such a conservative approach been ineffective, then a combined physical and chemical restraint approach would have been necessary.

On one view the now deceased was walking along the road in a normal manner, without a knife and seeming not to present a danger to the public. However, bearing in mind that he fitted the description of the male who had been seen carrying a large knife, chasing someone and involved in a disturbance the police officers were duty bound to stop and try to disarm him. It is clear from the statements of Walker and Paton that, on the basis of the information to hand, they had decided to take a robust, confrontational approach, even before they got out of the van. Walker even admits to having considered driving the police van at him. While Eddleston's view is that they were given signs in the initial behaviour observed, the officers did not at that time know about his drug ingestion, nor had they experienced his incredible strength. Professor Eddleston's opinion is given as an expert in the field and it is not at all clear that the police officers had the skill and knowledge to recognise the signs at that early part of the incident to act as he suggested.

██████████ the officers were unaware of any drug ingestion. They were unaware that of the bizarre and "out of character" behaviour earlier that morning. It is clear from their own accounts that they thought they were dealing with a potentially violent incident, and indeed their discussions en route about a possible terrorist attack gives an indication of their thought processes.

Further they do not appear to have continued to assess the situation after seeing his unusual lack of response to their arrival and stance. Further clues were now

evident: He was wearing only a t-shirt. He had not responded to either CS or PAVA sprays and seemed almost oblivious to their presence. Professor Eddleston `s view is that the police ought to have considered the possibility that he may have been suffering from excited delirium.

Martin Graves, OST expert highlights in para x. at pages 33 and 34 of his report that some tell-tale signs were there for the officers during the incident. Of those signs that he cites, the factors that are relevant for the first two officers are the impaired thinking (lack of response and "crazy" look) at the outset, followed by the apparent ineffectiveness of the incapacitant sprays. They had no information about the apparently bizarre behaviour earlier, other than the reports that he had been chasing someone with a knife. At precognition he stated that although the signs for ABD (or excited delirium) ought to have started to become evident as officers engaged with the now deceased and noted his complete lack of response, they were probably still focussed on the report of a knife and would have been anxious to stop him (and search him) for this.

[REDACTED]

In relation to the use of PAVA and CS spray Police training about the use of irritant sprays allows officers wide discretion to use them where they consider necessary with the caveat that they must be able to justify that use. They chose to produce these sprays. As stated above, Mr Graves, OST expert considered that in relation to the use of incapacitant spray, that this was a sound tactical option in the circumstances. He also commented that it was not always necessary for an officer to shout a warning prior to discharging such a spray in circumstances where there is a threat of a weapon, time was at a premium and it seemed that Mr Bayoh was already closing the gap and approaching the officers.

Initial engagement by PCs Short and Tomlinson

Evidence for this part of the incident comes from witnesses Mullen and Robinson, both of whom had been up all night watching the boxing match and had consumed alcohol. Robinson admits he was drunk. Further, Mullen proved evasive and despite a number of attempts, only finally attended for precognition in December 2017. A third male in the car has not been identified by these witnesses.

In order to understand their lines of sight, it is helpful to look at the initial position (position 1 as shown on the composite disc Timeline tab). From this vantage point they would have had to look out of the back window of the car or (for Mullen, the rear view mirror). The car then moved to position 2 on the roundabout facing down Hayfield Road towards the locus between the start of the restraint until 23 seconds had elapsed.

Both Mullen and Robinson claim to have witnessed the female officer deploying spray towards the man near the bus-stop, but to no effect. However, PC Short in her own account states that she did not discharge CS spray and this is borne out as her canister weighed 54.82 grams of CS spray afterwards. This calls into question the credibility and reliability of these two civilian witnesses.

Nelson makes no mention of seeing the female officer use her spray, but does speak to seeing the now deceased deliver blows to the female officer's head, causing her to scream.

Short herself claims that her actions were confined to drawing her spray and baton and using them in tactical communication with the now deceased, ordering him to stop. At one point she used her baton to "double strike" towards the male's torso but did not strike him. She justifies taking this stance because Sheku Bayoh was "out of control" and "too aggressive" as he was walking away from them. He was "not the type of person whom you like to allow to walk the streets" and that she felt he was "hell bent on hurting somebody, anybody who came into contact with him". There is no evidence to suggest that PCs Walker or Paton were in a position to, or indeed did, provide any new information to PCs Short and Tomlinson when they first arrived so they had to make their own assessment.

She was apprehensive and concerned at the nature of the calls about the male with a knife. She found the now deceased to be an “intimidating figure” of very muscular male about 6’ tall with hands clenched as if he wanted to fight. She was unable to gauge if the reported knife was in his left hand. She witnessed her colleagues PCs Walker and Paton spray the now deceased to no effect. She was aware her colleagues were “taken out” by the spray discharge as both had hands to their faces and that it was just she and PC Ashley Tomlinson left to deal with the male. Her assessment of the demeanour of the now deceased [REDACTED] fits with the impressions of other witnesses, particularly those who had reported him to the police that morning. It also assists in understanding the nature of the perceived threat to these officers.

Ashley Tomlinson:

Deployment of CS Spray:

There is [REDACTED] evidence of the actus reus of Tomlinson deploying CS spray, albeit there are [REDACTED] differences in accounts. Witness Mullen speaks to seeing the male PC use his CS spray and baton on the male after the female PC had been assaulted, whereas PC Short describes PC Tomlinson deploying his CS spray before the male assaulted her. Tomlinson’s CS spray canister weighed 43.05 grams after the incident, indicating that it had been deployed. Tomlinson himself admits to his deployment of his full canister of CS spray that had no impact, but this is not evidence that can be used against him.

In terms of mens rea, PC Tomlinson provides [REDACTED] reasons why he chose that particular tool to deal with the now deceased. He assumed Walker had been slashed in the face. He based that assumption on a combination of information provided by airwave messages about the black man in possession of a knife and the confrontation he had witnessed on arrival, between Walker and Bayoh, following which Walker had put his hands to his face and Bayoh had walked off in a “bouncy” style walk which Tomlinson thought implied he had been victorious in the encounter. [REDACTED]

[REDACTED] PC Short’s assessment of the demeanour of the now deceased fits with the impressions of other

witnesses, particularly those who had reported him to the police that morning and this too provides some support and justification for Tomlinson's actions.

In his report (page 28 of PRO 894) Mr Graves considers that PC Tomlinson made a sound choice to deploy CS spray as an initial tactical option when faced with someone who may be armed with a knife, when at that time he was unaware that it had been deployed to no effect by PCs Walker and Paton. He also endorsed as 'sound' the tactical decision to draw his baton in light of the lack of any response by the deceased to the spray.

Tomlinson's use of baton:

Mullen refers to the male officer armed with his baton going for the now deceased just after he had assaulted the female officer. He does not specifically mention what the officer did with the baton. Robinson refers to police officers (plural) striking the male with batons but gives no further detail. Nelson had just left the window so unfortunately did not see this part of the incident. PC Walker made no reference to Tomlinson using his baton in his statement. Paton was still suffering the effects of blowback from CS spray and did not see this. Tomlinson's own statement, containing all the detail of his use of the baton is not evidence against him.

[REDACTED]

[REDACTED] The injuries to the deceased's forehead that was visible in the photographs taken at Victoria Hospital and recorded at the PM were abrasions consistent with blunt force impacts and could be in keeping with baton use. But there was no fracture to the skull or facial bones and no traumatic brain injury. Dr Lawler considered that two injuries noted to the right lower leg and left thigh were consistent with use of a baton but they were also consistent with other uses of force. The deceased was known to have been in a fight with his friend in the early hours of that morning so the PM findings in this regard are not conclusive.

The CCTV footage from Gallagher's pub is blurry and from too great a distance to accurately identify the figures involved and the identity of the figures can only be assumed from the information about which vehicles had arrived at that time

and who was in them. There is some movement of figures, some of whom were wearing high viz clothing, an altercation can be seen. The figure of the now deceased, wearing a white t-shirt can just be made out but it is not obvious who he is until he is brought to the ground by the two police officers. The footage seems to accord with the versions given by the witnesses in that there is obvious contact between the male wearing a white t-shirt and figures of police officers in the roadway.

A figure can be seen going to the ground, but this does not seem to tie in with the airwave message about an "officer down". That airwave message is now thought to relate to the attack on PC Short and if that is the case, the assault on PC Short takes place out of camera view. Although the footage shows some movement from a figure possibly consistent with a person delivering baton blows, it is simply not clear enough to identify either the persons involved or what was actually happening. The movement that can be seen is of fairly short compass before the now deceased can be seen being brought to the ground by two figures.

Two witnesses provide ID of Tomlinson [REDACTED]
PS Maxwell, who speaks to Tomlinson candidly telling him that he had batted the now deceased on the head. This information was the source of Maxwell's radio message at 07:26:51 that "there may be a suggestion that he has been batted to the head."

PC Walker saw Tomlinson back at Kirkcaldy PO when he Tomlinson became quite emotional and started crying, saying "I've struck him to the head with a baton"

To establish criminality it would have to be shown that Tomlinson went far beyond the limit of the force which a police officer is entitled to apply in apprehending the suspect.

Police training on the use of force in general in module 1 discusses the need for the officer to take into account the 'profiled offender behaviour' and the impact factors that may apply. PC Tomlinson provides justification for his actions because of the assault on Short and his own perception that he was about to be assaulted. He saw the now deceased chase PC Short, punch her on the back of

the head, and stomp on her back with his foot more than once with a “great deal of force”, PC Tomlinson thought that PC Short was dead and that the male was going to kill him. He provides this as justification for striking the now deceased on the left side of his head 2 or 3 times and 2 or 3 times to his arms and around the Achilles heel area a few times. [REDACTED]

[REDACTED] PC Tomlinson, who told PC Short that she had been stamped on, recalled seeing a mark on the back of her body armour, and that body armour was seized and examined for the presence of any footprint on it. The findings of the scientists were inconclusive. There was a mark on it but it was not possible to attribute it to the event described.

His description of the assault on PC Short, if accepted, would amount to serious/aggravated resistance (per page 14 of the Manual). Under the heading of ‘reasonable officer response options’ the levels of force are discussed on page 15 of the training manual. Level 5, the highest form of force may have the potential to cause serious injury or death. Certainly striking someone on the head with a baton has at least the potential to cause serious injury or death, although it is known that in this case it caused neither and may have been responsible for some bruising only. On page 16 the confrontational continuum table provides some guidance as to the extent to which an officer could use force to deal with such an offender. In the case of serious /aggravated resistance, then deadly or lethal force including the use of PPE (police protection equipment) may be justified.

Martin Graves considered blows by PC Tomlinson (baton blows to heels) are a standard tactical option when faced with a subject kicking out. He noted that when PC Tomlinson found them ineffective, he used his weight to lie across the legs of the now deceased. He also considered that PC Tomlinson could be justified in striking the now deceased on the head with a baton, when faced with a potentially armed subject who was showing a high level of violence towards PC Short who lay helpless and unprotected on the ground. He highlights that head strikes with a baton carry a high risk of serious injury and possible death and as such, the justification of such a strike must be balanced against a perceived or actual risk of serious injury to the officer or another. Based on

Tomlinson's own account of his perception that the now deceased had possibly killed his colleague when he punched her on the head and then stamped on her while she was on the ground he thought the baton strike to the head could be justified (Page 29 of his report).

At page 17 of his report Mr Graves in more general terms highlights that strikes with a baton must be justified by the officer concerned and that each individual strike must be justified and consideration given to its effectiveness against another possible tactical option. [PC Tomlinson was not asked to and has not provided in his statement justification for each blow.] He clarified at precognition that he thought that PC Tomlinson, a relatively inexperienced police officer was likely to be stressed in this encounter and when he got no response to the first baton blow to the head, repeated that same action as if 'locked in' to that action. He did however change tactic and delivered blows to the arms before PC Walker interjected and brought the now deceased to the ground.

In terms of whether there is evidence to support the assertion by Tomlinson that he thought the now deceased had killed PC Short, mens rea, it can be said with some degree of certainty that PC Short was assaulted by the now deceased. However, there are varying accounts of the severity of that assault. According to the witness Nelson, who is considered to be a reliable witness, the female PC was punched up to three times to the head. Unfortunately he left his window at that moment so does not speak to the aftermath. Mullen has the female officer being pushed to the ground, and Robinson describes a scuffle before she was "slammed" to the ground. There is evidence from PC Tomlinson himself and from Walker that when on the ground the now deceased "stomped on her back", with a great deal of force, whereas Mullen recalled that the deceased tried to kick her when she was on the ground but he did not think that the kick connected. PC Paton's statement does not include any description of an assault on PC Short, yet he seems to have told PS Maxwell (according to Maxwell) that she had been kicked and punched.

The two police witnesses describe a serious attack on their colleague when she was on the ground and the degree of force used involved the deceased lifting

both arms as he stamped down on her. This is quite different from an attempted kick. Some doubt has been cast on the severity of the assault for two reasons:

1. Lack of medical evidence supporting:

She had no injury on her back or elsewhere on her torso to suggest such a forceful blow but she recalls seeing a mark on her body armour where she was sore.

2. . PC Short's failure to mention being hit in this way in her initial accounts to DI Robson, the A & E staff. Robson recalled PC Short complaining of a sore head only, although he heard he state that she remembered seeing a foot coming towards her head. However, PS Maxwell, in his airwave message at 07:24:26, mentioned that PC Short had been "stomped" on the body. Maxwell states that he obtained information from PC Paton, and from PC Short herself, that she had been kicked and punched to the ground yet according to PC Short, she first learned of being stamped on her back from her colleagues back at Kirkcaldy police office later that morning. PC Short did not mention this when she was taken to the hospital at first. The A & E records do not contain any reference to her giving a history of being struck on her back.

CCTV footage is confusing, especially when viewed on the composite disc with the airwave messages synchronised, as described more fully in the narrative. The reality is that CCTV footage is too blurred to make anything out. If PC Short was assaulted in camera view then the assault occurred very quickly and there seems little time for the exaggerated stamping motion described by both Walker and Tomlinson. It also leaves little time for Walker and Tomlinson to run over and for the baton blows that Tomlinson describes, before the now deceased was brought to the ground in a matter of 5 seconds or so.

If, as now seems more likely, and is the view of witness Graves, the assault on PC Short took place out of view and at a time corresponding to the airwave message "officer down...", then the figures seen in the CCTV in physical contact with each other in the five second period before the now deceased was brought

to the ground are likely to those of Tomlinson and the deceased just before he was brought to the ground.

PC Short had no injury to speak of, although she made a number of visits to both A & E and to her GP in the weeks that followed in which she seemed to embellish the description of the assault. She was also examined by an expert instructed by the legal team acting for the Police Federation on 21 May by Dr Anderson who noted in his examination that she had no residual bruising on either side of her ribcage but had localised tenderness on the outer aspect of the right side of the lower ribcage. Despite this lack of physical findings Dr Anderson concluded that she had suffered contusions to the right side of her torso.

On the other hand there is no evidence available to gainsay the accounts of Walker and Tomlinson that she was the subject of an assault when on the ground, other than witness Mullen who (at precognition) speaks to seeing an attempted kick only. The airwave message by PS Maxwell some minutes later that PC Short had been “stomped” on would tend to suggest that there was no post-incident collusion by Walker and Tomlinson to “beef up” the severity of the assault on PC Short.

If their account is accepted, and in light of the heightened tension among all of the officers about a possible terrorist threat, Tomlinson’s actions may be considered justified. The baton blows did not in any way contribute to the death of the deceased

he has provided a cogent argument of his perception at the time, justifying his use of force.

Sheku Bayoh is taken to the ground

Robinson refers to more police officers coming over and overpowering him. The witness Ashley Wyse, too, claims to have seen the now deceased going to the ground with about six police officers around him.

The composite CCTV footage shows blurry figures from a distance and is of limited assistance. It can be shown that in fact one or two police officers were involved in bringing the now deceased Bayoh to the ground (and this accords with the versions provided by Walker and Tomlinson), so whilst Robinson may be correct about Bayoh being overpowered in that moment, it seems he is mistaken to say that more officers were involved in this act. Similarly Wyse cannot be relied on in her account of six police officers bringing the now deceased to the ground. There were in fact only four police officers present, two of whom were at that time incapacitated.

Tomlinson speaks to seeing PC Walker "shoulder charge" the now deceased to the ground. Walker's statement in which he similarly describes doing this is not evidence against him.

The CCTV shows the male being brought to the ground. It would be possible to have Walker identified by Paton and Short who could rule themselves out of being involved in this. Therefore it is assessed that there is sufficient evidence to establish that Walker brought the now deceased to the ground, albeit, not in the way the civilian witnesses described.

However, this movement of bringing the now deceased to the ground would appear to be entirely justified in light of what had just taken place.

Martin Graves considered (pages 30/31 of his report) that the decision to take a violent or resistive subject to the ground is often the safest option. He states that whilst it can appear "over the top" to the onlooker, it puts the officer in a position of advantage where they can disengage if the threat and resistance prevents them from controlling the subject. The ground provides a stable platform. He seems to endorse the use of a 'bear-hug' by PC Walker as a reasonable method to bring him down, albeit not one taught in training.

Restraint on the ground

The restraint on the ground led to the death of the now deceased, although, as has been set out in great detail in the narrative, the extent to which the role of restraint contributed to the death of Sheku Bayoh is not known but cannot be excluded completely.

[REDACTED]

[REDACTED]

In this case the evidence of the position of the now deceased on the ground comes from a variety of sources. Some witnesses describe him on his back (Paton, Wyse), some on his left side (Smith, Gibson) and others have him face down but not motionless. Tomlinson has him face down but bench-pressing, lifting PC Walker. Good also talked of him using his arms in a press-up motion. Her description is of the deceased with his chest to the ground but his head up and turned right, arms and legs kicking out.

Walker's account provides the most detailed description of how the deceased was actually brought to the ground. He has the deceased coming to the ground on his back. The deceased was punching with his right arm. Walker had come down onto the ground at the side of the deceased. He grabbed the deceased's right arm and either rolled over or got on his knees and laid his upper body over the deceased, effectively pinning the left arm underneath his body.

The position of the left arm is quite important. If, as suggested by Walker, the left arm was pinned underneath him, this would explain how it was then possible to get him handcuffed palm to palm after having put pressure on his right shoulder so that he was now turned on his left side. It is difficult to envisage how it was physically possible to handcuff the two palms together to the front unless the now deceased was for some of the time either on his back or on his side. It would be impossible to handcuff him in that manner had he been fully prone, face and stomach down, as some witnesses suggest he was.

In the various accounts of the witnesses there is some evidence that the now deceased moved not only his limbs, but his body position also during the course of the restraint.

Label 5 Body Positions multi media disc

In order to understand the various descriptions and to try to visualise what that looked like to the various witnesses who were present, the SPA multi-media unit were asked to portray the various positions described by the witnesses.

Following a consultation with the Forensic Multi Media unit of the SPA during which the various witness accounts were considered they produced a

Label 5 Disc – Body Images.

These are provided for the assistance of Crown Counsel as an aid to understanding the body position of the now deceased and how that might have looked to witnesses from their various positions. Each image can be viewed around 360 degrees:

1. This position accords with Walker's description when he first brought the now deceased to the ground. He described him on his back, punching Walker who grabbed his right arm. The witnesses Paton and Wyse also recalled him on his back.

3. This position is probably the best view of the way Walker describes taking hold of the deceased's right arm and bringing over his body so that he was on his left side. Walker's account was corroborated by the witness Nelson who was in a position to see from a position standing at his gate where Walker's back was to him.

4, 5 and 6 all show the deceased pivoting on his left side from an almost supine position (6) position to his side (3) and (5) or towards a face down position (4). The legs are up at the knees as described by witness Nelson and PCs Tomlinson. It is possible to understand the description of the witnesses Smith and Gibson also from this image. The witness Maxwell also had the deceased on his left side.

2. This position is face down but head up and facing to the right. The witnesses Tomlinson and Good both refer to the now deceased trying to bench press the officer on top of him and by putting pressure on the left elbow he could have raised himself up as described by these witnesses.

7. This image perhaps shows the deceased in the most forward position so that it looks like he is face down, as many of the witnesses suggest. By looking at the image revolving around a 360 degree view it is possible to understand how witnesses described him as face down when he was not completely flat on the ground.

8. This image shows the likely position when handcuffs were finally applied. The deceased was handcuffed to the front with palms facing together.

As discussed elsewhere in this analysis, it is difficult to envisage how the deceased could have been handcuffed in this manner had he been fully prone. The position of the left arm underneath the body meant that he was not fully

prone, but to observers such as Ali, Fenton and Robinson may be described as 'face down' in this position. All of these positions are possible if the male was pivoting on his left side. Had he been on his back the whole time as Paton and Wyse suggest then all of the witnesses who thought he was on his front must have been mistaken. These images show that the deceased could have moved into any of the positions shown by pivoting on his left side only [REDACTED]

The body positions are of importance as Dr Lawler made clear that asphyxia was a risk when the body of the restrained person was fully prone or supine and the compression was of a prolonged nature. If the person being restrained moved from a prone position then that stopped the mechanism. There had to be a continuous pressure put on the chest/torso to achieve the conditions in which asphyxia would take place.

Dr Lawler reviewed the disc of body images and in a supplementary report of 13th March 2018 (PRO 881) he confirmed that with the exception of position 1, all positions show the now deceased on his left side. "In such a position at least some chest and diaphragm movements will still be possible and therefore breathing is less likely to be significantly adversely affected". If, for most of the time the now deceased was being restrained by officers he was lying on his left side, that reinforces his opinion previously stated that it was very unlikely that the deceased's position during restraint *per se* contributed significantly to his collapse and death.

Although not a medical expert, Martin Graves too considered that in his experience, this case was not a typical case of positional asphyxia. Although it had some of the hallmarks of such a case, in light of the relatively short period of restraint (four minutes) and the constant movement of Mr Bayoh (and therefore his opportunity to take breaths during the restraint process) he doubted whether this was a major factor in the cause of death.

The methods used by the officers as described not only by them but also by the various civilian witnesses involved trying to pin the deceased to the ground.

Some tried to pin him down by asserting their body weight over parts of the body of the now deceased (Walker on the right shoulder; Paton on the left bicep; Tomlinson first and later Gibson on the legs). They handcuffed him and then put on leg restraints. It was only after both of these methods of mechanical restraint had been deployed that the deceased was effectively under control.

It took up to six police officers up to one minute and 14 seconds of restraint before the now deceased was in handcuffs according to Walker's airwave message to this effect. The PM findings of minor bruising to his left wrist were consistent with handcuffing. However the evidence of officers using their knees to restrain the deceased during this and the later part of the restraint is not reflected in the PM findings. The back injury found at PM was thought to be inconsistent with kneeling on the deceased's back. It has now been established by expert opinion from Dr Freemont (whose view has been endorsed by Dr Lawler) that the fractured rib must have occurred before police intervention.

Evidence against each officer involved in the first part of the restraint until the deceased was handcuffed is as follows:

Against Walker:

Paton speaks to the now deceased being on his back and Walker lying across his chest.

Tomlinson speaks to Walker being on the deceased's back trying to control him.

Short has Walker on the ground at the side of or at the feet of the deceased for the brief time she observed the early part of the restraint.

Smith has Walker kneeling at the back of the deceased around the middle of his torso and leaning over him by "going from leaning to lying flat". He states that handcuffing was achieved by Walker, Paton and himself.

Good speaks to seeing the top half of PC Walker lying across the top of the deceased's back in an effort to push him to the ground and to stop the deceased pushing himself up.

Against Paton:

Walker speaks to him using his baton under the deceased's left armpit and over left forearm to restrain the movement of the left arm.

Short has Paton on the ground at the side of or at the feet of the deceased for the brief time she observed the early part of the restraint.

Smith speaks to seeing Paton nearest the head of the deceased, kneeling at the deceased's back, leaning over his right shoulder and trying to control his arms.

Good saw Paton at the deceased's head trying to restrain him with a baton, by placing the baton between his arm and body.

Against Tomlinson:

Short has Tomlinson on the ground at the side of or at the feet of the deceased for the brief time she observed the early part of the restraint.

Smith speaks to seeing Tomlinson kneeling at the now deceased's back, and trying to control his thighs/hips/legs.

Against Smith:

Tomlinson speaks to Smith putting fast straps on the deceased and in the process, pulling his leg instead of the deceased's.

Against Gibson: None of the police officers commented on Gibson's role.

Against McDonough:

Smith states that he and McDonough together applied a set of straps to the deceased's ankles and a second set above the knees.

Good saw McDonough kneel down, getting the leg restraints out of their holder on his belt.

The civilian evidence about this initial period comes from the witnesses Nelson, Mullen, Robinson, Ali and Wyse. Nelson, Mullen and Ali describe officers around the now deceased but not on top of him.

Kevin Nelson arrived at his garden gate to watch at 07:21:25, which was 15 seconds into the restraint period. He made it his business to go outside and watch what was happening had a clear view from his gate and he remained there until 2 minutes 39 seconds into the restraint so was outside watching for 2 minutes 24 seconds of the restraint on the ground. He is an important witness as he was so close to the action for a sustained period of time in contrast to others who had a more fleeting view or moved position. He is an entirely independent witness and at precognition was assessed as both credible and reliable. Nothing in what he says is contradicted by the CCTV footage. Much of what he says accords with the police witness accounts.

Sean Mullen's view was up to the first 59 seconds of the restraint from position 2 and then position 3 as shown in the Timeline tab on the composite disc. He too has deceased face down with about 4 or 5 officers holding him down. He states that it looked like they were restraining him. He did not see any of the police jumping or on top of the man. His credibility and reliability is questionable given that he had taken alcohol that night. He has also refused to provide details of the third person in his car that night and he was initially uncooperative with the precognition process. Taking his evidence as a whole, however, his account is not inconsistent with the accounts of Walker and Tomlinson.

Aktar Ali's van can be seen arriving on the roundabout on the CCTV footage 30 seconds after restraint started. He pulled in and stopped on Hendry Road, behind Mullen's car, for a period of 17 seconds until 48 seconds had elapsed from the start of the restraint period. His recollection of only two police officers involved in that part of the restraint could relate to Walker and Tomlinson's involvement but he does not recall the additional presence of Paton and Smith. McDonough and Gibson were just arriving as he drove off.

Wyse and Robinson describe some police officers on top of the now deceased but their accounts are considered less reliable for the following reasons:

Robinson conceded that he was "pretty drunk" and had a view of the incident out of the back of Mullen's car. He initially stated that at no time did he see any police officers on top of the now deceased but at precognition changed his story

to having seen eight officers overpowering him and piling on top of him. Some (about three or four of them) were on top of him with their knees on his back and some were grabbing his arm and legs. This later account is contradicted by CCTV footage in that the officers can be seen to join the restraint incrementally and at no time during the period when he watched events were there as many as eight police officers present. The car in which Robinson was a passenger left the scene 59 seconds after restraint commenced.

The evidence of Ashley Wyse is varied. This witness had been out socialising the night before and she refers to leaving her window and going to tell her friend Hazel Sinclair about what was happening, so she was not maintaining a continuous view of events. Indeed in her messages to friends on her mobile phone later that day she mentions watching 90/ (thought to mean 90%).

In one statement she claims to have seen at least six police officers bringing the deceased to the ground. This can be shown to be unreliable in the face of CCTV footage showing otherwise. She then has the six officers lying on top of the deceased, "crossing over him from both sides, pretty much covering his whole body, while the man was lying on his back on the ground". In another part of her statement she states that there were at least six police officers around him at all times and certainly at precognition she would only go as far as to say that officers were around him 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, but she could not be certain that any were on top of him.

PIRC were instructed to have her mobile phone examined to try to establish the timing of the recording of the snapchat footage. In doing so, they obtained a download of all the data on the mobile phone and it became apparent that it contained some images that were deleted between the time when she was first interviewed by police officers (Cox and Stark at 19:45 hours on 3 May 2015) and 21:55 that same evening when it was handed over to the police. Some of the deleted images could be recovered and they are shown on pages 131 – 143 of the report (Pro 890). These are of the locus at a time after the police tape had been put in place to secure the locus. Her evidence must be viewed then with some caution. Her 'selfie' image with the caption about "looking braw, watchin the crime seen" (sic) does her no credit.

Wyse's account seems not to follow any sort of chronology but to be an amalgam of everything that she recalled, all jumbled together. There are parts of her evidence that do fit with the accounts of other witnesses and that of the police. For example, her description of one of the officers using a baton to hold the man down on his upper chest towards his throat could accord with the way Paton was pinning the male's left bicep.

On review of the phone messages of Wyse to her friends in the hours and days afterwards (shown in Pro 890), it is notable that she makes no reference to any police officers lying on top of him or of a "pile up" and she refers to the deceased being "pinned down" and "about 6 police officers around" him.

CCTV footage of the restraint for the first minute shows that initially there were two police officers (this would accord with Walker and Tomlinson) restraining the now deceased, who were joined by a third (thought to be Paton) after 15 seconds, by a fourth (thought to be Smith) after 29 seconds, and by a fifth and sixth (PCs McDonough and Gibson) after 43 seconds. Indeed it looks from CCTV footage that the figures of McDonough and Gibson did not actually get to a position beside the deceased until after 50 seconds into the restraint period.

The footage shown on Snapchat 1 on the
Label 1 Composite Disc

At one minute and one second after restraint had commenced, shows the figure of only one police officer lying in a position stretching lengthways alongside or on top of the body of the now deceased. There is only slight movement obvious from a leg that could be that of the deceased during this short clip. It is impossible to say how much body weight he was asserting onto that of the now deceased. The other officers are on their knees around him or on their feet moving into position. From the accounts provided by the police witnesses there is an inference that the police officer lying down is PC Walker.

This is also the conclusion of PIRC investigator, witness Rooney, who has compared the figures shown in snapchat 1 with those identified by witness Davidson in the later snapchats. According to PIRC investigator Rooney in his

report (PRO 850), the officer lying down in the snapchat 1 is PC Walker. Indeed from the accounts of his colleagues, Walker is the only officer who is described by his colleagues in any way lying over the deceased. Rooney's report also provides his guess (and that is all it really can be) of the identities of the other five police officers surrounding Bayoh in Snapchat 1 and identifies PC Good as the PC about to cross the road towards the scene.

However, another interpretation of this snapchat is provided in the precognition of Martin Graves, OST expert. His analysis of the evidence and view of the composite footage was that the officer who was lying over the now deceased in snapchat 1 was Pc Tomlinson. Tomlinson, in his own account, describes how he was on the upper thighs of the now deceased, straddled over him, trying to control his legs, and facing his head. In the view of Mr Graves, this is the way he believes the officer lying down in snapchat 1 was positioned.

There are two policemen on their feet in this footage. One of these officers is thought to be McDonough, as he can be seen on the snapchat footage unravelling something that looks like leg restraints.

The other officers in the footage all seem to be on their knees either at the deceased's back or his head. Again, this would accord with the accounts given by the subject officers and civilian witnesses, particularly Nelson, who was watching events unfold from his garden gate.

In any event, whether the officer lying down in snapchat 1 was PC Walker or PC Tomlinson, it is clear from Martin Graves that he saw nothing in that snapchat to give him concern. It looked like the officers were in classic restraint positions.

The evidence from statements of the other officers present who can identify PC Walker is that at some point in the course of the first minute of the restraint PC Walker was in a position over the top of the deceased, putting some body weight from the top part of his own body on top of the now deceased. At the point when the deceased was handcuffed, a measure of control had been established. However, as indicated in the airwave message from PC Walker and from the other witnesses, both police and civilians, the now deceased continued to

struggle. In these circumstances the now deceased was not under control and this would only be achieved if he stopped struggling, or until leg restraints were applied so that he could not get up and make off.

Martin Graves makes the valid point that although there is not much evidence of movement in the snapchat footage, PC Walker can be heard making the breathless airwave message about the male in cuffs, still struggling. He commented that the view of the restraint contained in the snapchat footage was of a classic restraint, with officers at positions all around and one asserting some body weight on the now deceased. He stated that it was impossible to restrain without using some body weight at times.

Mr Graves took the view that it was a sound and reasonable option to handcuff the now deceased and although it would have been safer and tactically better to handcuff him to the rear, this was not possible due to the degree of resistance shown by Mr Bayoh. In fact, the handcuffing to the front, was in his view, one of the factors reducing the risk of positional asphyxia.

PC Paton's use of a baton to pin down the left bicep is not a technique taught in Scottish Forces, so far as he is aware, but he takes no issue with the use of the baton in this way, unless used for a prolonged period of time.

RESTRAINT FOLLOWING HANDCUFFS

Following handcuffing it is clear from the evidence that the deceased continued to be restrained during which time leg restraints were applied. There is evidence from both civilian and police sources about the application of leg restraints and the paramedics speak to two sets on Mr Bayoh on their arrival.

According to Module 4 of the training manual, fast straps are a limb restraint system designed to restrict the range of movement of the legs. Application should prevent a subject from kicking and allow for safe transportation of the subject in a vehicle. They come in sets of two and are made of black Velcro with high visibility yellow tabs at each end to aid location in bad visibility. They are 120 cm long and 5 cm wide. They are intended as a supplement to handcuffs and for use when a subject has been taken to the ground. It is recommended

that they are applied in two places – above the knee joints and at the ankles and that their application should follow rather than precede handcuffs. Again, this training module of the Manual reminds officers of the need to move the subject from the prone position and on to their side as soon as practicable and to maintain a high level of awareness regarding positional asphyxia and excited delirium.

There is no evidence to suggest that they were applied other than in accordance with the training provided. According to witness Graves they were a viable and sensible option and once applied, negated the need for officers to hold the legs of the subject. Graves also endorsed the use of baton blows to the legs (spoken to by Tomlinson alone) as a standard tactical option.

In the absence of any airwave message to say when that occurred there is nothing an accurate indication of the time taken for leg restraints to be applied. There is evidence from four witnesses about how long it took for leg restraints to be applied and these vary from 1 minute 23 seconds after the restraint started (Maxwell) to between 3 and 4 minutes before full control gained (Smith).

1. PS Maxwell in his initial (self-written) statement, thought that the male had been handcuffed and in leg restraints within one minute after his arrival, whereas in his second statement to PIRC, his recollection was that the male was handcuffed with ankle restraints in place. His arrival was at 1 minute and 23 seconds after restraint had commenced. However, it is of note that, according to the CCTV and airwave evidence, PS Maxwell appears to move from the place where Mr Bayoh was being restrained over to speak to PC Short within a very short time of his arrival at the scene and he can be heard on the airwaves asking for an ambulance for her. It might be suggested that he was at that time more concerned with her welfare than that of the now deceased.

2. DS Davidson who arrived just after 2 minutes into the restraint period initially said that leg restraints were being applied by the officers, whereas in her second statement she states that they were talking about it but she did not see leg restraints on. She too moved quite quickly from the scene to move the police van.

3. PI Robson, who arrived 2 minutes and 51 seconds after the restraint had commenced speaks to the deceased already in handcuffs and leg restraints on his arrival. It is not clear if he actually came over to view the restraint at close quarters or obtained his information second hand.

4. PC Alan Smith estimates that it took between 3 – 4 minutes in total for handcuffs and leg restraints to be applied. He was actively involved throughout the restraint.

No other police witness (or indeed civilian witness) provides information about the length of time it took the police to apply leg restraints.

PC Walker's account is brief and the impression from the brevity of description is that it all happened quite quickly. He is the only witness who asserts that leg restraints had been applied already when the handcuffs were finally secured on both wrists. However, that flies in the face of other evidence suggesting that leg restraints were applied after handcuffing. Walker in his airwave message after 1 minute 14 seconds confirmed that handcuffs had been applied but the deceased was still struggling. It is questionable how could he still be struggling to the extent that Walker was clearly still out of breath if leg restraints had been applied by then.

Witness Good described how McDonough (who supplied the leg restraints) and Tomlinson were having difficulty in applying the leg restraints and that the now deceased was still struggling after being handcuffed. Witnesses Tomlinson and Nelson described the deceased flicking his legs, or in Nelson's words, kicking like a toddler having a tantrum.

The application of leg restraints on a strong person struggling against that was not an easy task. Gibson tried to help by lying across his legs to stop the struggle. The position he adopted is shown in the training manual in picture 3 on page 115. He remarked on how strong the deceased was and how, even so, the deceased was kicking off.

The civilian witnesses Nelson and Wyse included references to the police using tape or leg ties. They do not say how long this took. The description of how and where the leg restraints were applied by the police from the officers' own accounts is mixed as well.

Dr Lawler thought that a number of leg injuries found at PM could be associated with the application of leg restraints, but there are a range of alternative explanations.

According to witness Graves, the deceased could only be said to be fully under control when leg restraints had been applied.

The following sources of evidence are available in considering the methods of restraint and application of force used after handcuffs were applied until full control of Mr Bayoh was achieved with the application of the leg straps:-

Against PC Walker:

Tomlinson: At first describes how Walker is partially on top of the deceased but in the course of the restraint he heard Walker shout for someone to check for the knife and by this time the male had been rolled over onto his side and it was only then he applied fast straps to control his legs.

Paton: "Craig (Walker) was lying across the chest of the guy" and he saw him being lifted by him. Paton is the only witness who states that PC Walker was still in top of the deceased when Smith was checking if he was breathing. It is odd that Smith does not mention that. Paton is the only witness who speaks to PC Walker lying across the deceased's chest. This does not accord with any other police officer's account as every other officer has the now deceased being moved (from a prone or near prone position) over onto his side, either for the purposes of a search, or simply to move him into a better position before there was any suggestion of medical difficulty . Nor would such a position allow for the type of toddler tantrum knee kicking described by the eye witness Nelson. Paton makes no reference to the application of leg restraints. It is considered that Paton's evidence may be fairly blinkered. He was focussing on one aspect – controlling

the bicep of the now deceased. It is worth remembering that PC Paton had also been impaired with CS spray.

Smith: states that Walker was in the middle of the three officers at the back of the male, leaning over him and going from kneeling position to lying flat. "What I observed during restraint from other officers was justified, necessary and appropriate and in line with training". Smith heard Walker say that they should get the now deceased on his side and he watched Walker, Paton, and Tomlinson move him onto his side. He had no concerns at this time but followed his training in carrying out close observations on the male. His efforts to elicit a response were in vain and he then radioed for an ambulance.

Gibson has PC Walker leaning over the male. Once he (Gibson) got down and laid on the male's legs he did not see what Walker was doing as he had his back to him. Gibson does not mention the male being rolled over, for a search or any other reason.

McDonough: has Walker on his knees facing him when he arrives. He does not mention the position of or actions of Walker thereafter.

Good provided a fairly detailed description of PC Walker actions. She saw Walker using the top half of his body, lying across the top of the upper half of the deceased's back, in an effort to push him down. After she had assisted in applying leg restraints, and while the deceased was still face down, she heard PC Paton instruct all the officers involved to roll him onto his side, at which point he had stopped struggling and his eyes were shut. She thought the male was "faking it."

DS Davidson on arrival (at two minutes and four seconds after restraint had commenced) has PC Walker lying over part of the deceased's upper body as he lay face down while leg restraints were being applied or at least being discussed. Confusingly Davidson thought that the male had not yet been handcuffed at this time as both Walker and Paton were holding or securing his left and right hand to the ground. However, if she is correct in describing this position, it is suggested that Walker (from his position at the back of the deceased) would

have to be stretched over or lying over the body of the deceased to manage to hold the deceased's hands to the ground. That would be consistent with other witnesses. However, elsewhere in the same statement she has Walker lying on his right side facing away from the deceased. These are entirely contradictory positions which cannot be reconciled.

Against Paton:

Walker states that after the male was handcuffed PC Paton continued to use the baton to restrain the deceased's left arm. His assertion that the male was in leg restraints when he looked down after handcuffing the male, is at odds with all the other police accounts and it is thought that he is mistaken about this. Other police witnesses describe a fairly difficult struggle to get the leg restraints on.

Davidson speaks to seeing PC Paton and Walker hold the deceased's hands together to the ground on her arrival.

There is no evidence to suggest that PC Paton was using his body weight on top of the deceased, other than asserting his weight on the deceased's left arm.

Against Tomlinson:

Smith has Tomlinson at the deceased's back, down at the male's hips/thighs trying to control that part of his body but he does not elaborate on his method. Smith later moved down to the feet of the deceased and got hold of Tomlinson's boot in error thinking it was the deceased. It is not clear what position Tomlinson was in when this occurred.

PC Good has Tomlinson on his knees beside the deceased, but using one knee on the deceased's leg attempting to pin it down

Maxwell has Tomlinson at the back of the deceased, on his knees, leaning over the male's right hip and buttock area.

Davidson saw Tomlinson holding the male's legs but not on top of him.

McDonough has Tomlinson at the male's head area, trying to control his right arm, which in no way fits with any of the other accounts.

There is evidence against Tomlinson that he used one knee to try to pin the deceased's hips/legs to the ground but such a position would not impact on the deceased's ability to breathe. There is nothing to suggest that Tomlinson was acting other than in accordance with training in doing this.

Against Smith:

Tomlinson speaks to Smith trying to put on fast straps and to Smith pulling Tomlinson's leg in error.

Good also speaks to Smith holding the deceased's legs and to the combined efforts of McDonough, Tomlinson, Smith and herself to apply fast straps.

Gibson too was aware that Smith was at the deceased's legs and mentioning fast straps.

Maxwell speaks to seeing Smith and Tomlinson leaning over the deceased's hips.

Against Gibson: None of the police officers commented on Gibson's role in the restraint at all.

Against McDonough:

PC Smith speaks to he and McDonough applying fast straps to the deceased's legs

Good also speaks to this also as she helped them.

Against Good: No other police officer speaks of PC Good having any involvement in the restraint.

From this evidence then there is sufficient evidence to show that PC Walker (and only Walker) was for at least some part of the restraint period on top of the torso of the now deceased and therefore potentially in such a position to affect his ability to breathe. This is obviously significant in terms of the PM findings and

expert opinion about the potential for asphyxiation. The method of restraint in itself is one that is recognised and referred to in the training manual.

Positional Asphyxia

Module 1 of the training Manual states (page 23) that Positional Asphyxia (restraint related asphyxia) can occur when a subject is placed in a position which interferes with the ability to breathe. In this case the deceased's position has been discussed at length and the body images on the

Label 2 Disc of Body positions

demonstrate the possible positions from witness accounts. Death can occur rapidly and may be the case that a police officer can be found to be liable.

The risk factors which contribute to the condition are:

- Subject's body position results in partial or complete airway obstruction
- Alcohol or drug intoxication
- Inability to escape position
- The subject is prone
- Obesity
- Age
- Stress
- Respiratory muscle fatigue related to prior violent muscular activity, such as fighting with police officers.

Officers should recognise the following symptoms and be prepared to administer emergency first aid:

- Body position restricted to prone, faced down
- Cyanosis (bluish discolouration of extremities)
- Gurgling or gasping sounds
- An active subject changing to a passive or loud and violent to quiet and tranquil
- Panic
- Verbalising that they cannot breathe.

It is clear from the evidence that of the signs listed the deceased only displayed one obvious sign: he went quiet having been engaged in a significant struggle. Although there is some evidence suggesting he was prone, this is not conclusive

and if anything the evidence suggests that he was partially prone rather than fully prone.

The same section of the OST manual (Page 23 of Pro 675 – Module 1 section 11 dealing with positional asphyxia) 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 evidence from all of the police witnesses (with the exception of Paton) suggests that this is what happened.

It is suggested that Walker's own account seeks to minimize the time he was on top of the deceased. Walker's own account, [REDACTED], suggests he only held the male pinned on the pavement when pressure was being applied to his left (does he mean right?) shoulder for a period of 30 seconds. However that cannot be true. He must have been pinned down for a longer time than that as he explained how he only managed to handcuff the now deceased, having pinned his left arm underneath him as he grabbed the right arm over the top of the body. The timing of the message that handcuffs had been applied is at 1 minute and 14 seconds after the deceased had been brought to the ground.

Walker associates the questioning by Davidson about the location of the knife with him rolling the deceased over at which point he noticed he was unresponsive. Samantha Davidson arrived a minute later at 07:23:14 (2 minutes after restraint had commenced). His account does not really fit with others.

If it could be shown that Walker was asserting body weight to put pressure on the deceased for the period of time after leg restraints had been applied and the deceased was under control then there may be an argument that this was an excessive use of force. However, there is an absence of evidence for this assertion. We simply cannot say by what time in the restraint full control was achieved.

In looking for any independent evidence supporting the assertion that body pressure was used continuously in the restraint so as to impede the now

deceased's breathing, Dr Lawler's views were sought. He stated at Consultation that he would have expected to see many more petechial haemorrhages than were evident at PM. *"In a classical crushing case where the chest is compressed you will see a lot"*. The injuries found and documented at PM were not those that Dr Lawler would expect to see in a classic compression case. Although he could not completely exclude mechanical asphyxia he thought it unlikely to have played a significant role in death.

Martin Graves, OST expert also remarked that this case did not appear to be a typical case of positional asphyxia, given the range of movement of the now deceased throughout the period. Graves thought that the evidence pointed to the now deceased moving body position a number of times, including lying on his front at times, during which for some of that PC Walker was lying across the upper body of Mr Bayoh and putting a degree of pressure on him. However, he did not think that this could have been prolonged or sustained, given the accounts from witnesses such as PC Tomlinson of a bench-pressing movement by him. He also lists a number of reasons why the risk factors for positional asphyxia were reduced: handcuffed to front so not impeding breathing; at times lying on his side taking pressure off abdomen; once fully restrained was held on his side – the recognised position of control to assist breathing.

In summary then there are several witnesses who speak to PC Walker lying on top of or at least asserting the top half of his body over the now deceased for some period of the restraint. All of these witnesses, with the exception of PC Paton, describe how the deceased was moved onto his side after leg restraints were applied. Some say that the reason for moving him was in order to carry out a search for the knife but others simply heard the order to move him onto his side. The only witness that speaks to Walker still on top of the deceased at the time when he was seen to be in medical difficulty is PC Paton.

In light of the lack of corroborated evidence showing that PC Walker remained on top of Mr Bayoh constantly and continuing to a point when he was fully under control there is insufficient evidence from which it can be inferred that PC Walker acted in a way that showed gross or wicked recklessness. It is also clear from the evidence that in the absence of injuries indicative of compression, the

evidence of his moving body positions, and the neutrality of the finding of petechial haemorrhages at PM, there is a lack of evidence to show that positional asphyxia did in fact occur from the method of restraint used by PC Walker.

Is there any evidence of a "pile up"? Criminality of other officers?

The account given by Wyse on 5th May 2015 provides [REDACTED] evidence of a "pile up" scenario in that she described six police officers lying crossed over the body of the now deceased. Aside from the practicalities of how that could actually be achieved, the witness then diluted this at precognition to one at the top, one at the side and one at his feet. She then further conceded at precognition that officers were around the deceased and she could not say how many were on top of him. [REDACTED] although she sent a number of messages to friends using her mobile phone that day there is an absence of any mention of police officers lying on top of the man in the street.

Christopher Fenton, who viewed the incident between 1 minute and 33 seconds and 1 minute 47 seconds after the restraint had commenced has the now deceased with his head nearest the pavement and feet nearer the houses. He has the body of the now deceased the wrong way around. He used the terms "pile up" in his statement and precognition and also the terms "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 untoward about the methods he observed and as a psychiatric nurse who regularly has to physically restrain patients, his lack of concern is reassuring. By his own admission, his was an extended glance only while he was driving and negotiating a number of police vehicles that had stopped in the road there.

Although, as discussed in this analysis, PS Maxwell has provided contradictory evidence about what he saw when he arrived at the scene , he does say officers were still applying force to restrain the now deceased but he is sure that nobody was lying on top of him. He states that they were anchored from the knees. "It

might look like they were lying across him to untrained eye, but this is recognised training hold". His comment has to be considered in analysing the evidence of civilian witnesses about a possible "pile up".

Nelson, perhaps the most reliable civilian in terms of static and close position to events saw no more than two police officers lying across the deceased at any time.

Composite CCTV and in particular Snapchat 1 (taken at between 1 minute 1 second and 1 minute 11 seconds of the restraint) shows only one police officer in a position lying either beside or on top of the now deceased (possibly Walker, but could be Tomlinson) . The other police officers are not on top of him and this is not a picture of a "pile up".

There is no evidence that any of the other officers used their body weight across the upper torso of the now deceased for any period. There is evidence that PC Tomlinson used his body weight at times over the lower part of the body or the legs. The evidence, taken as a whole, would tend to suggest that there was not a "pile up" despite comments by Wyse and Fenton suggesting that this was the case.

EXCITED DELIRIUM (or Acute Behavioural Disorder – ABD)

[REDACTED]

■ The period of time during which the restraint took place was short. The period of 4 minutes and 2 seconds also takes account of the time taken by Smith and Paton to check the now deceased for a response and to ensure he was still breathing just before the call was made by Smith for an ambulance.

Martin Graves was clear that the period of four minutes is in no way a prolonged period of time to establish full restraint of a strong, violent, resistive subject who was under the influence of various drugs. He cited longer periods of restraint in a training environment.

PC Smith, an experienced Officer Safety Trainer claims he was unconcerned about the now deceased when he stood up to check his hand after the restraints had been applied. He states that the reason for bending down to carry out the checks for a routine check given that PAVA and CS spray had been deployed and not out of concern at that time. It was at this time that he put the clues together and considered that the very aggressive behaviour could point to someone suffering from excited delirium. The male was at that time in "almost the recovery position."

In paragraphs x., y. and z. on pages 33 – 34 of his report Martin Graves outlines the tell-tale signs that were present for the officers to have made the connection and considered that Mr Bayoh was suffering from excited delirium or Acute Behavioural Disorder (ABD). None of the officers present knew about the earlier drug ingestion. However for PCs Paton, Walker and PC Tomlinson, some of these signs were evident before the now deceased was brought to the ground. Paton saw the "crazy" look on his face; Walker mentions that he looked as if he was "on a mission". Both speak to his lack of response to the arrival of the police and to the incapacitant sprays. Tomlinson also would have seen the lack of response to his CS spray and to the baton blows. None of this was "normal". However they would have had to make that assessment very quickly. Both Paton and Walker were affected by the spray and momentarily incapacitated. Events moved on very quickly with the arrival of PCs Tomlinson and Short and the assault on PC Short that led to Mr Bayoh being brought to the ground. It is difficult to know at what point the officers could have altered their course of action and summoned an ambulance prior to bringing him to the ground. Witness Graves endorses this view.

For PC Tomlinson and PC Short, they were caught up in the events on their immediate arrival. It is clear from PC Short's statement that there were signs of bizarre behaviour, however, they had to deal there and then with a man who

was walking away and whom they believed had a large knife. Their immediate concern was to contain him.

Once brought to the ground another sign of excited delirium was the exceptional strength being exhibited by the now deceased. The officers present ought to have been alive to the possibility of excited delirium yet their focus was on controlling Mr Bayoh. Martin Graves considers that there was a delay in recognising those signs and distinguishing the conduct of Mr Bayoh as someone who was more than just violent. However he considers that the period of restraint until the ambulance was summoned was of a short duration. At precognition he was clear that before the deceased was brought to the ground by PC Walker, there was little opportunity to call for an ambulance for Mr Bayoh as they were engaged in dealing with him. The signs were there, especially for Walker and Tomlinson.

In the opinion of Graves, PC Smith the OST trainer ought to have recognised the signs of ABD from what he learned on his arrival and from what he saw during the course of the restraint, such that when it occurred to him (as he admits in his statement) he should have immediately called for an ambulance at that point. He did not do so until a short time later when he checked him for the after-effects of the sprays and found him unresponsive. It was for this period of delay that Graves was critical of PC Smith.

For PCs Good, McDonough and Gibson, they did not have the benefit of seeing the behaviour of the now deceased on initial police engagement.

In the cold light of day it is easy to see how there were signs that could have been identified by the officers at various stages. However, the delay in calling for medical assistance was short and no criminality can attach to any officer for perceived shortcomings in this regard, although these may be wider training issues.

ADDRESSING CONCERNS RAISED BY THE FAMILY:

1. IN LETTER TO LORD ADVOCATE OF 7TH FEBRUARY 2017

The precognosers have sought to set out in comprehensive detail the admissible available evidence on which a decision about criminality can be made. In doing so, many of the questions asked by the family through their agent, Aamer Anwar have been addressed. In particular, the analysis has considered the evidence about the manner of restraint and whether the officers had sufficient regard to whether the now deceased was able to breathe, his initial lack of response to the police and the description of him ignoring their arrival and walking away as if “on a mission.”

Mr Anwar was repeatedly invited to suggest an expert in police restraint but did not respond. He expressed concern (point 4 of his letter) that experts had been provided with the statements of police officers that were given some 32 days after the death. However, the expert witness package prepared by PIRC contained the statements of civilians as well as police officers and the package simply reflected the available evidence.

He cites also the finding of petechial haemorrhages as consistent with having suffered from a degree of asphyxia. This has been explored with medical experts and is discussed in detail in the chapter on medical evidence in the narrative. The significance of the fractured rib has also been clarified and Dr Lawler’s opinion is that the injury to the deceased’s back was not consistent with someone kneeling on him.

Mr Anwar’s assertion at point 11 that there is powerful evidence to support the assertion that Mr Bayoh died because of the method of restraint is simply not borne out by the medical evidence to date. There are multi factorial causes of death of which restraint is likely to have played only a minor part, if at all.

Mr Anwar cites the work of the pressure group, ‘Inquest’ who pressed for an inquest into the death of Roger Sylvester in police custody in 1999. In that case the jury’s verdict of unlawful killing found that death was caused when more

force was applied than was reasonably necessary causing a significant contribution to the adverse consequences of restraint. The length of time of the restraint and the fact that no attempt had been made to alter his position were factors in the jury's verdict, neither of which, it is submitted, are obvious from the circumstances of Mr Bayoh's death.

Mr Anwar also referred to the FAI into the death of Stuart Sandeman, before Sheriff Tait in 2015. In that Inquiry the evidence of retired OST trainer Danny Smith was quoted, in which he expressed surprise that the officers kept the deceased Sandeman in a prone position for a prolonged period of time. In that case death followed the execution of a search warrant for drugs. The deceased was obese, had tried to swallow drugs and was restrained in a prone position with his hands handcuffed to the rear and knee pressure put on his lower back and thighs. There was also a delay by the police in summoning medical assistance as they tried to get the deceased to spit out the package of drugs he was trying to swallow. Although there are some similarities in that death with that of Mr Bayoh there are also marked differences. The question about the extent of the knowledge of the police officers about the deceased's drug use before they arrived at the scene was explored in great detail, the body position was fully prone, the deceased was obese and the restraint lasted for a lengthy period. It should be noted that the family's submission included reference to the deceased being held in the prone position to an inappropriate time and showed a complete lack of understanding of the risks of positional asphyxia on the part of the police. Professor Eddleston, a witness in that case (also), thought it was possible that the deceased would have died without the restraint because of the cocaine ingestion and his stress. He did not know the precise role of the police restraint, whereas two pathologists considered that the restraint had made some contribution to death. The adverse effects of restraint therefore remained part of the cause of death in the Sheriff's findings.

Sheriff Tait highlighted that the purpose of an FAI was to apply the wisdom of hindsight to identify reasonable precautions whereby the death might have been avoided and the questions considered do not relate to the foreseeability of risk at the time of death. That is an entirely different test to the one being considered in this report, where the test is both in terms of actus reus and mens rea, whether there is sufficient credible and reliable evidence on which to

proceed in a criminal court and whether it is in the public interest any police officer should be prosecuted for their conduct on 3rd May 2015.

MISINFORMATION IN THE AFTERMATH OF THE INCIDENT- ATTEMPT TO PERVERT THE COURSE OF JUSTICE?

The concerns raised by the family about the integrity of the investigation, the potential for conferring and the erroneous information provided to them in the immediate aftermath of the death of Sheku Bayoh have some substance. They were investigated by PIRC and the results contained in PIRC report Volume II. Some serious shortcomings about the way the Police Service of Scotland dealt with the family and some other witnesses in the aftermath of the death have been identified in the PIRC report. These concerns should be aired in the course of any FAI or other Inquiry into the death of Sheku Bayoh.

One concern raised was that the initial investigations and attempts to secure evidence were not thorough so that crucial evidence was lost to the enquiry. It is assumed that this is a specific reference to the refusal (on legal advice) of the potential subject officers to provide statements. As set out in this report, the result of such a refusal has led to a very frustrating experience for PIRC investigators (and ultimately Crown precognosers). Had the subject officers provided initial accounts some of the criticism of their inconsistencies and inaccuracies could have been avoided. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

For the purposes of this report, the question of the source of any misinformation provided to the family has been considered in the narrative of this report in some detail to examine whether there is any basis to propose criminal charges against any police officer for attempting to pervert the course of justice.

Beyond doubt the officers did confer in the aftermath of this event. While this might be an entirely natural thing to do, officers ought to have been separated and a debriefing exercise carried out so that their initial positions were captured

at the earliest opportunity. This was frustrated at the outset by the position of PC Walker who immediately on his return to Kirkcaldy PO sought out the Police Federation Rep and insisted that he would not be providing any statements. His lead on this seems to have been followed by the others and the PIM process was not put in place as it should have been.

It is clear from the accounts of witness Barrett and the CCTV transcript from Kirkcaldy police office involving PC Geddes in particular that the incident was being discussed and that officers who were present at the scene must have imparted some account to some colleagues on their return.

Pc Geddes can be heard to discuss the incident on a number of occasions that day. There is no CCTV evidence showing any of the subject officers in discussion with colleagues after their return to the Police office. Although Geddes claimed to have obtained the information about the incident from PC Walker, there is no CCTV footage of that conversation between Walker and Geddes. Geddes is heard to talk about "aw of them" using batons. There is no evidence to support such an account and it can only be assessed as office gossip.

According to DC Balsillie and DI Robson, DS Davidson told them that the deceased had brandished a knife at the police. However in the face of a denial by DS Davidson that she told DI Robson that information, and in the absence of any evidence that any of the subject officers imparted such information to their colleagues that morning, there is no more than mere suspicion that any such conversations took place. It is also entirely possible that DS Davidson did tell her colleagues that information but that she assumed that to be the case rather than having been told for a fact. Davidson mentioned in her statement of 2nd June that she thought Pc Short had been stabbed when she heard the airwave message about "officer down..."

[REDACTED]

[REDACTED]

In relation to DS Davidson’s synopsis prepared for the death report, [REDACTED]

[REDACTED] She provided a very brief account including only information about the incident to which she had first-hand knowledge (a physical encounter, restraint, handcuffs and leg straps). She made no reference to the use of batons, CS or PAVA, nor indeed is there any reference to the deceased having brandished the knife at the police. Had the principal officers been asked to provide basic facts in terms of the PIM process, such omissions in the Death Report to COPFS would not have occurred. [REDACTED]

PC Walker’s accounts

PC Walker’s assertion in his statement that he heard radio messages about a male wielding a sword and under the influence of some substance are incorrect and not borne out by the evidence from examination of the airwave messages. Further enquiry was carried out to establish if there were any other channels of communication used to or from the subject officers by which such additional information could have been provided. This proved negative. It can only be

assumed that PC Walker learned after the incident from others about the calls to emergency services and when providing his statement, attributes to himself greater knowledge about the calls made than he actually had. This is an example of how the evidence of a witness is open to contamination from other sources when there is the opportunity for conferring, coupled with a lengthy delay in providing the statement. [REDACTED]
[REDACTED]

The rib fracture

In the statement of PC Walker provided on 4th June 2015, he mentions hearing the sound of what he thought was a crack of a rib during CPR. Notably there is no reference to hearing a crack when carrying out CPR in his self-prepared statement that he handed over to PIRC. It is odd that information only made known to PIRC by the Head of CAAPD on 29th May 2015 about the discovery of the fractured rib was somehow potentially explained away by not only Walker but also PCs Paton and Tomlinson when they came to provide statements on 4th June 2015.

That said there is insufficient evidence to make any more of it than to say that it is suspicious, and potentially calls into question the integrity of the PIRC investigation at that point.

Intelligence about a terrorist attack

PCs Walker, Paton and Good all mentioned having concerns about intelligence about a potential attack on the police. Good and Paton thought it referred to female officers. Walker wondered if this incident was part of a plot draw police officers there to carry out an attack on the police. PC Geddes also made reference in his statement to a briefing about a threatened ISIS attack on the police.

There was nothing in the information provided to officers en route to support the assertion that this was a deliberate attack on the police or an act of terrorism but it has been ascertained that in January 2015 a warning that a terror threat

specific to police personnel was issued by DCC Iain Livingstone (PRO 642). This was classed as a severe threat (an attack on police is highly likely). There was a further "stay safe" Memo from ACC Ruairaidh Nicolson on 19th February 2015 alerting officer to the threat level remaining severe and talks about Islamic extremist groups or individuals. (Pro 641) This could be what the subject officers are referring to when they talk about their anxiety over a potential attack on the police.

On 6 December 2016 PC April Rodden researched Police intelligence and electronic briefing systems for the period 1 August 2014 to 3 May 2015 and could find no specific intelligence relating to any intention to cause harm to a female police officer or any information to support PC Paton's assertion that checks were carried out at identified locations in Kirkcaldy due to an increased terrorist risk. The research on Police intelligence is not conclusive as intelligence is regularly weeded from the Scottish Intelligence Database.

RE DATA PROTECTION ACT

There was no evidence to support Mr Anwar's suggestion that police officers involved in the incident had researched police records of a list of persons who were friends or family of the now deceased. None of the subject officers had done so, according to audits carried out and referred to in Pro 738 (briefing paper)

Otherwise the only evidence for a potential breach of the Data Protection Act is found in the later audits of the STORM system carried out by officers of Professional Standards in February 2018. It is not known why PS Maxwell accessed the STORM report about some of the calls made to the police on 3 May 2015 on 12 May (some nine days later), nor why PC Walker accessed the same STORM report and printed it on 1 May 2016 (almost a year later). However it would be for the Crown to prove that neither officer had a policing purpose to obtain the personal data contained in the report. As both officers were called to the locus and were involved in the incident about which this STORM report

refers, it would be very difficult, if not impossible, for the Crown to establish this essential fact.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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16 May 2018

