



The Sheku Bayoh Public Inquiry

Witness Statement

John Mitchell

Taken by [REDACTED] at Capital House, Edinburgh and via Microsoft Teams on Tuesday 10 October, Thursday 12 October and Wednesday 18 October 2023

Witness details

1. My full name is John Mitchell. My date of birth is in 1958. My contact details are known to the Inquiry. I am now retired.
2. I have been asked if I have been contacted by any member of staff at PIRC before providing this statement. No.

Professional background

3. I served with Strathclyde Police for 34 years, retiring in July 2012. During that time, I spent the majority of my career in the Criminal Investigation Department (CID). Approximately 25/26 years of that 34 years was spent involved in investigations. I served in every rank in CID, and when I retired in

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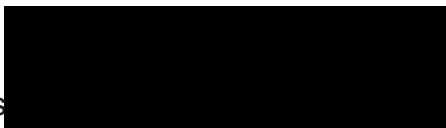
2012, I was a Detective Chief Superintendent in charge of CID operations for Strathclyde Police.

4. I have been referred to the fact that I achieved the rank of Detective Chief Superintendent and, during my time at PIRC, I may have been required to liaise with and direct police officers of a rank senior to that which I achieved. I have been asked if this had an impact on my ability to lead a PIRC investigation and provide direction to officers from Police Scotland. Not that was brought to my attention, no. I don't recall anyone coming and saying they point-blank refused to do this that I am asking them to do. In these incidents there was a senior police officer who would be involved at the outset. The senior investigator from PIRC would be in contact to lay out the ground rules, and it then became that senior officer's responsibility within policing to ensure that their staff understood that and assisted as requested.

Role in establishing PIRC

5. I retired from the police in July 2012, around about the time when Scotland were moving to the single force. I was contacted and asked if I would be able and willing to assist the Scottish Government in finalising an investigative team, which would be attached to the existing Police Complaints Commissioner for Scotland (PCCS). There was no investigative side to the PCCS at that time. At that time the PCCS reviewed the way that the police had dealt with complaints about the police. It was an office-based, paper-driven role, but no investigation as such. The complaints aspect remained, and bolted onto that was the investigative side and the organisation changed its name at that stage to the Police Investigations & Review Commissioner.

Signature of Witness



6. In the past, if there was a set of circumstances, a death in custody, it wouldn't have been unusual for – say it occurred in Lothians police area – for Lothians to approach Fife and to ask for them to take on that investigation.
7. There was a bit of urgency because, although that was July 2012, the Scottish single force was due to go live on 1 April 2013 and the whole process around building that investigative team had stalled somewhat. We had to have something in place that could react on day one to matters requiring investigation of Police Scotland.
8. There had been early discussion in relation to how it should look. There were problems, I believe, in trying to ascertain the level of resource required. It was unclear just how much work there would be for an investigative team at that time. The group dealing with that included Scottish Government, it included Crown Office, it included Police Scotland, and it included members of the PCCS, at that time. I was asked and did go along in July to have a look at what they had in place and to try and pull together a structure which would be fit for purpose to take on investigations from 1 April 2013.
9. I attended a number of meetings. I also looked at the budget that was available and the budget was finite, and much of that was down to the fact that it was very difficult to gather sufficient evidence from the eight Scottish forces and Crown Office to determine just what demand would be placed on a unit like that. What was agreed was money to allow us to build a small unit, and it was a small unit, of 20 investigators and some senior managers.
10. It was very difficult to get a number of incidents that might be referred for investigation simply because these things I don't think were counted and certainly weren't counted in the same way across the eight forces. Crown were even unsure in relation to how many criminal allegations they would be

Signature of Witness 

passing to us to investigate. It was very difficult to sit down and work out exactly what the demand was going to be. The structure that was put in place numbers-wise probably mirrored, as closely it could do, one police major inquiry team. I don't know how many Police Scotland have now, and remembering that we did have a responsibility to provide a 24-hour coverage the length and breadth of this country.

11. It was difficult. Resources are finite. You have to, on a daily basis, consider what is the priority for that day. If we take, for example, the investigation into Sheku Bayoh's death, within a couple of months of that we had another major inquiry in relation to an incident on the M9, and that certainly stretched us at that time.
12. I have been asked if the assigned number of investigators was sufficient. No, but it was what I was getting at that time. Although, near the end of that whole process and as we were moving towards finalising the unit as was, we were also handed another area of business that hadn't previously been discussed, and that was the investigation of complaints into officers of the rank of assistant chief constable and above.
13. During my time we managed to get more money, which allowed it to just increase slightly, but it was much, much busier than we had ever realised and we were stretched at times.
14. I think the legislation made it quite clear that there would be investigations directed by the Crown, so that would be matters of a criminal nature, deaths in police custody most definitely, things like police shootings. There would be other areas like death following police contact. That was a difficult one because that was direct or indirect contact. If someone had, for example, phoned the police looking for assistance or the police had dealt with the

Signature of Witness



person previously, and following that police contact the person who had been the subject of that contact had died, the Chief Constable would refer the matter or the Commissioner could instruct an investigation at that stage and report back to the Chief Constable with findings and recommendations.

15. I have been asked if the existing staff from the PCCS transferred over to PIRC. The staff performing the review function remained in their posts. They had the opportunity, like everyone else, to apply for the jobs but they did not have an investigative background. It was a completely different function. It was a desk-based review of documentation, so no, we didn't get any applications for roles within the investigations team from that side at all.
16. In that period between July 2012 and 1 April 2013, I visited the Police Ombudsman for Northern Ireland (PONI), the Garda Síochána ombudsman in Southern Ireland, and the Independent Police Complaints Commission (IPCC), to try and avoid the problems and pitfalls that they had encountered at first. A lot of the challenges that they faced at first were around getting out who you were and what they did. It was to get the message out about who you are and what you can and can't do, to dispel myth.
17. I tried to look at things to do and things not to do. I learned from them their experiences in dealing with the police and how the police react. Looked at what worked for them, what didn't work for them. Looked at the setup of their organisation. They were all bigger organisations than we were going to be and facing different challenges.
18. They were all in a position where negative comment had been made in relation to their makeup and their reliance on ex-police officers to perform certain roles, but I make no excuse for that, for what we did based on the time frames and in the knowledge that our vision was always to build from the

Signature of Witness 

inside, remove the reliance on ex-officers. Not entirely, because they bring a specialism with them, they bring a knowledge of policing with them, but to reduce the percentage. That was always going to take time. I don't think it was doable between 1 April 2013 and 2015/16. It wasn't doable in that time frame because there was a constant turn of investigation upon investigation. To stop everything, to bring in recruits who knew nothing about that world and try and teach them and prepare them to deal with the type of investigations that they would deal with would have meant stopping our core role of conducting investigations.

Recruitment of staff

- 19. I was appointed as the Director of Investigations on 1 November 2012. I retired in March 2018.

- 20. When I was appointed as Director of Investigations, it was really the first time that I was in a position to start thinking about advertising for roles, etc. We're now at 1 November 2012, and I can see 1 April 2013 coming over the horizon very quickly.

- 21. It was purely and simply a structure around an investigation team and then starting a whole process of recruitment, arranging to have motor vehicles, arranging to have accommodation. It was a lot of work in a very tight time frame.

- 22. I have been asked if PIRC was in a position to meet its statutory obligations on 1 April 2013. Yes, I think we were. Because of that short time frame and the ability to stand up on 1 April and conduct investigations, we had to recruit people who had those skills. We had to recruit people who had skills in interview technique, who had crime scene management background, who

Signature of Witness 

had a previous tried and tested investigative ability and that meant that a number of retired police officers were involved in that recruitment process in the first stage of things.

23. It was a decision that was made after discussions with the Commissioner at the time, and it was a means to an end. The plan for the future, when time allowed and where more money became available, was to introduce a trainee scheme, and that did start, the idea behind that being that you would bring people in who had no background in that type of work at all, and you would teach them. The older members of staff would be there, probably, for a certain time frame. They would leave. New blood with no background in policing would come in, and through time you would hope to rely far less on police officers or ex-police officers to perform these roles and functions.

24. As well as police officers, my deputy, Irene Scullion, for example, came from the care inspectorate. That was a different perspective altogether. We got people from fire service who had been investigators, someone from the fiscal service, people from the military, borders agency, so there was a mix. Would it have been better if there had been fewer police officers? Public perception would probably say yes. How we would have coped on 1 April would have been a different story altogether.

25. I have been asked if anything further could have been done to recruit an investigations team with more individuals without backgrounds in the police. If we had had the situation where we were planning for an event in two years' time, possibly. We were marching on towards 1 April. There was going to be no delay in the formation of Police Scotland. Therefore, we had to be ready for 1 April.

Signature of Witness



26. The advantages were definitely that they brought skills with them that had been honed over a long period of time. There were ex-detectives who had worked in operational side of business, i.e., investigating crimes. There were ex-officers who had experience in traffic collisions, etc., which, again, may very well have come our way had there been an accident involving a police vehicle and a member of the public. It was really about a knowledge of policing, a knowledge of how the police worked, an array of quite different skills from family liaison, scene management and intelligence gathering right across the board.

27. Public perception, we always knew that that would be a problem. It was a challenge. It was a balancing act but that was the start. The intention for the organisation, given time, was hopefully to be able to reduce the requirement for ex-officers and build from inside, but that's going to take time.

28. We had to ensure that, for 1 April, we had a certain skill set within the organisation. Family liaison officers (FLOs), for example: you don't get them anywhere else. They are purely and simply a policing function, and it's a difficult role. It's a role for experienced investigators. Providing support is only one part of their responsibility. First and foremost, a FLO is an investigator. They are there to support the family, but not in a social services type of way.

29. Scene managers: again, you don't find scene managers beyond policing. So, yes, it was difficult, but we had to go with what we had at that stage.

Director of Investigations role

30. I was to support the Commissioner, to ensure the smooth-running and oversight of all investigations. It was to ensure that there was a sufficiency of

Signature of Witness



resource to deal with ongoing matters, and it was to offer support. It was also to look at financial aspects of the running of the organisation. It was to work closely with other partner agencies.

31. It was at that sort of strategic level, but we also briefed every day. We had to brief every day because, with finite resources, it is very, very important that you realise what the priorities of that day are and to ensure that the right resource is made available.

32. Every morning everyone who was present would sit and discuss: investigations that were ongoing; the progress of those operations; hear from the investigators about what support they required; what they were going to be doing over the next few days and who they needed, whether that be someone to gather CCTV for them just to ensure that the smooth-running of the operation was ongoing. So, you had to be aware of what was happening, not to the nth degree, but certainly the broader picture that would allow you to make the decision about where and when people were needed.

33. The Commissioner would come once/twice a week. That was my role: for the most challenging and demanding and high-profile investigations, to ensure that the Commissioner was briefed.

34. I have been asked if the Sheku Bayoh investigation was one of those investigations. Absolutely.

35. I have been asked to whom I reported. The Commissioner.

36. I have been asked which staff reported to me. Well, I suppose, in real terms, everyone below me. Most contact would be with the likes of Irene Scullion, my deputy, and the three senior investigators: John McSporran, Markus

Signature of Witness



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Mitterer and Ricky Casey. I'd have responsibility to line manage Irene Scullion. Irene Scullion had the responsibility to manage the three seniors and I would have signed off on that, but we worked closely as a team.

37. We all worked closely together. We were co-located in an open plan office in Hamilton. I had my own office for reasons of confidentiality, and the senior investigators also had their own offices.

38. I have been asked if consideration was ever given to having an additional office, beyond Hamilton. No, because the funding wasn't there for that. In an ideal world, you would have satellite offices. It would have benefit in relation to proximity to incidents as you could maybe get there quicker, but the expense was the big thing. If I go back to the fact that being unsure around what the demand profile for the organisation would look like, that would have been a hard, hard sell to Scottish Government to have satellite offices.

Director of Operations role

39. Sometime in 2017 I believe the change was made and I became Director of Operations. It was a broader responsibility for the whole organisation and the Accountable Officer responsibility around financing the whole organisation. At that stage, the review process, which is separate from the investigation process, generally came under my overarching remit, as did corporate services.

40. There was a realignment of the roles then. The Commissioner believed at that stage there was a necessity to remodel the organisation a bit and the role of director of investigations fell and the top role became head of investigations, which I believe was John McSporran.

Signature of Witness



41. I was kept up to date with the progress of the Sheku Bayoh investigation. Clearly, I had an interest in getting the investigation to a point where we could satisfy the Crown's needs and, probably equally importantly, satisfy the family's needs.

Oversight

42. I have been asked how I maintained oversight of investigations as they were ongoing. By briefing and, in the most demanding areas, briefing papers would be produced around specific areas of business, at my request.
43. Investigators are very adept at identifying what needed to be known by senior management. I liked, on occasions, to pass that responsibility on. Therefore, it was in their interest to produce briefing papers to ensure that the senior management knew if there were challenges.
44. You'll see the sort of emails that were shared with me. Not every minute detail, but probably more so if it related to someone in Crown at a different level from the SI was dealing with on a day-to-day – someone of a higher rank within Police Scotland, if they felt that me becoming involved directly with them might progress a matter that wasn't being progressed as quickly as they would have liked. It wasn't a case of every time they took a statement from anyone or raised an action or put a document or production and they came and told me about it. We would still be investigating it just now if that were the case.
45. A senior investigator with experience in the investigation and major inquiries is, in general terms, allowed to go on a day-to-day basis formulating the strategy and the delivery of that.

Signature of Witness



46. I always kept abreast of how investigations were ongoing. My door was always open to provide guidance and support when that guidance and support was required, and quite often, at a more strategic level, to allow the senior investigator to get on with their day-to-day running of an investigation, I would take responsibility for liaising with the Crown Office; senior people within the lab; if appropriate, the police. Say, for example, information wasn't coming back as quickly as it could, rather than having a senior investigator who was running a complex investigation starting to get tied up in the minutiae for the time frame for delivery, I would make phone calls, ask that that be expedited to take that bit of pressure off them. I suppose it's a bit about dealing at an equivalent level with your counterparts.
47. I have asked who the senior investigator was within the Sheku Bayoh investigation. John McSporran.
48. I have been asked how much responsibility John McSporran had for the progress of the Sheku Bayoh investigation. It was John McSporran's responsibility.

Commissioner's oversight

49. The Commissioner was very interested. She was kept up to date; she needed to know what was happening. There was a strong quality assurance process around reports. Ultimately, those reports were going either to the Chief Constable or to Crown Office in her name, and she had final sign-off in all reports going out of the organisation and clearly needed to understand and did understand the progress of investigations.
50. She had regular updates about how the investigation was running. The Commissioner would be aware of significant changes in terms of reference.

Signature of Witness



She came to briefings on occasions as well, and she would see updates going to Crown. These sort of things.

51. She would have sight of the majority of letters. Maybe she didn't see all of the letters that I wrote, but the likelihood is that I would tell her about them.

52. I have been asked if the Commissioner would be involved on an operational level in the direction of investigations. No, not really. Ultimately, the system is that you're relying on the experience of investigators. So, a number of these investigators have lots and lots of experience in investigating the most serious incidents. One of my roles was to appoint a senior investigator to a particular investigation; the day-to-day running of that investigation was then down to that investigator. It would have been totally impossible for me to be leading each and every strand of every investigation that was ongoing. Therefore, the role and responsibility were with the senior investigator.

PIRC as an organisation

53. I have been asked how PIRC had changed as an organisation by May 2015. Numbers-wise, not very much. The investigators had gained experience in their new roles in dealing with the police, getting their head round the legislation of what they could and couldn't do. When you are investigating under direction of the Crown Office and you were aware that you had the same powers of a constable, that came automatically to those who had been police officers. Those who had come from different areas of business were gaining that experience of working with those powers.

54. The biggest thing was the demand started becoming more obvious in that on occasions, I'm not saying we were overwhelmed, but certainly it put additional pressure on all the staff. You manage, but part of that is clearly

Signature of Witness



identifying the priority at that time and pointing the resources at it. What it does have is an effect that less demanding investigations may have taken longer than they should have done because the more high-profile and demanding investigations were sucking the resources towards them.

55. I have been asked if there were ever conversations with the Scottish Government in terms of PIRC's level of resources. Constantly, because we had access to the Police Division of the criminal justice department within Scottish Government because that's where our budget came from. We had a sponsor within that department. We would brief them on a monthly basis not about ongoing investigations, but more about the number, the complexity, the hours being used, the cost of these investigations, because before [REDACTED] [REDACTED] the former Commissioner, agreed to take on the investigation of senior officers within police, he made it clear to Scottish Government that he would immediately have to consistently review the resources that we had and that there would be business cases submitted requesting resource uplift if we found that there was a shortfall.

56. We could always have been doing with more staff and more resources. Things got done, but maybe not as quickly, on occasions, as they could have been done. Resources continued to be focused on Sheku Bayoh and the deaths resulting from the M9 incident. They were big investigations which took lots of resources. You have to be realistic and realise that you're working in a world which has finite resources, but we did ask for more cash, and we did get more cash at times from the Scottish Government, which allowed us to increase the establishment. It's very, very difficult to know whether you ever have enough resources because no two investigations are the same. It would have made things more manageable if the resources had been more.

Signature of Witness

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57. It was a challenge. We had to have staff working longer hours, but we managed. I don't think that it affected the quality of the investigation at the end of the day. It may have lengthened it. Could things have been done quicker? I'm not sure. You work a way through following the evidence and you're never quite sure what you're going to find when you turn the next corner, or what further instruction you're going to get from Crown Office. There is absolutely no doubt that if you had twice as many people things would get done more quickly. I don't know whether they would get done any better, but they'd get done more quickly.

Police officers' awareness of PIRC

58. We attended events; spoke to the Scottish Police Federation (SPF); presented to courses at Tulliallan, newly appointed probationers; we spoke to family liaison courses; spoke to senior investigating officers' courses. We took a roadshow around Aberdeen, the Lothians, all of these areas to present to senior officers, to less senior officers to make them aware of our role. That also bites into your delivery of operational matters and, therefore, you have to prioritise that as well, but there was a great push. There was also a responsibility, however, on the police to ensure that their staff knew who the PIRC were and the responsibility that the Commissioner and her staff had.

59. When we went along to interview people within policing, they knew who we were. There was an awareness of the PIRC and what the PIRC did, at every level.

60. I have been referred to the fact that the Inquiry has heard evidence from police officers involved in the investigation following the incident involving Mr Bayoh that they did not know at that time who the PIRC were. That would be disappointing, but it wasn't due to a lack of effort. I'm afraid it says much

Signature of Witness 

about the officers concerned. I am disappointed, but I don't take all the blame for that. They have a responsibility within policing to keep abreast of what's happening.

61. I would suggest everyone has a responsibility: the senior officers to cascade it down, but I also think that the police officers can't walk around with blinkers on. They need to know what's happening in their world and understand that there is a change. We did not restrict our inputs to senior management. We worked, at the beginning, with the Federation to ensure that they knew what we were about. You have to hope that Federation would have cascaded that to their members.
62. It was actually a plan that we spoke about with the Commissioner, and she, in fact, pushed us towards that wider communication strategy around who we were. It was an agreement within the senior management team.
63. I have been asked what impact a lack of awareness amongst police officers would have on PIRC and its role in the Bayoh investigation. I think it would be incumbent on the investigator to explain quite clearly to a police officer who had no knowledge what the role of the PIRC was and what powers the PIRC had, and I would hope then that you would get that assistance that you required from the officer. There were challenges when it came to more specific detail, but that was more about the legislation.
64. I have been asked if there was anything else that PIRC as an organisation could have done to publicise its role. No. Honestly, I don't. There is absolutely no doubt that every senior officer within Police Scotland knew who we were and what our role was and, as well as us trying to get that message out there, I would have to suggest strongly that Police Scotland should have been informing their staff as well. It can't be a one-way street.

Signature of Witness 

65. I also spoke to ambulance staff, hospital staff, prison staff, because ultimately we wanted them to be aware of our role. For a small organisation, I'm not sure that we could have done a great deal more in relation to getting that message out there.

Public awareness and perception of PIRC

66. I have been asked what level of awareness and understanding there was within the public and press in relation to the PIRC and its role in 2015. There had been coverage at the outset, and I actually was interviewed by the Herald, where I was explaining what our role was. Our media team put the feelers out. There was an interest. Much of it was negative around the establishment and who was in it. However, it still got the message out.

67. During the Sheku Bayoh inquiry, the press attitude was more around who was in the PIRC and the fact that there was a percentage of police officers, and some of it was quite negative. I think the truth of the matter is that there are still a very, very small percentage of the general public have dealings with the police in their life at any level and there are fewer have dealings with the PIRC, so what the general public knowledge of the PIRC is, I'm not sure.

68. PIRC investigators who had contact with the general public during investigations would have a responsibility to explain who they were and what their role is. More specifically, where an investigation saw the deployment of FLOs it would fall to them to explain the role of the PIRC and their role as FLO. The arrangement that we had with Police Scotland was if it's an incident involving the police, the police are already there and involved. If, unfortunately, the incident related to a death, the expectation around that would be that the police would deliver a death message as soon as; that the

Signature of Witness



police would actually put in FLOs to support the family through the initial aspect of that inquiry. They should be able to inform the family that in the near future this role will be handed over to a PIRC FLO, give them some idea of who we are, and then when our FLOs took over, they would explain exactly our responsibility and role.

69. I don't like the name "Police Investigations and Review Commissioner", never have, because to stick the word "police" in front of it, unfortunately, had some people, I have no doubts, believing that we were a wing of the police service. I don't know if, once you sat down with people and explained to them, whether it had a long-term effect, but I have no doubts that there must have been some people thinking, "This is the police investigating the police, because it's the Police Investigations & Review Commissioner."

PIRC independence

70. I have been asked if, prior to 3 May 2015, I had any contact with, or knowledge of, the officers involved in the arrest of Mr Bayoh. No.
71. I have been asked if, prior to 3 May 2015, I had any contact with, or knowledge of, the officers involved in the Sheku Bayoh investigation. Ruairaidh Nicolson, yes, but not in relation to Sheku Bayoh. I was on leave when that happened. He was my line manager at one stage.
72. I didn't know Conrad Trickett.
73. I knew Garry McEwan because Garry had been a detective superintendent in Fife, and I used to chair a senior CID meeting for Scotland in a previous role as head of CID for Strathclyde.

Signature of Witness 

74. I have been asked if I had any contact with Garry McEwan during the Bayoh investigation. No, I did not.

75. I knew Pat Campbell from a previous life. Pat was a detective inspector in crime policy, which was my area of business within Strathclyde, but I didn't have any contact with Pat at all during the investigation into the death of Sheku Bayoh.

76. I know Lesley Boal, again, because she was a detective superintendent at the time, but I had no contact with Lesley in relation to Sheku Bayoh.

77. If an investigation came in in the morning in relation to a particular officer within, say, the Strathclyde area, and it was given to me to investigate and I knew that officer, there's a duty of candour in relation to showing that that was the case and recusing yourself from that investigation. We would not have friends investigating friends. I don't see how else we could do that, rather than stopping the investigation at the beginning, cross-examining every case, every course, every meeting that they had been at, to determine whether there was a concern that there might be a conflict of interest. We had to rely on the professionalism of the individual.

78. There was a complaint made about a senior officer. [REDACTED]
[REDACTED]
[REDACTED] Not to do with the Bayoh investigation. [REDACTED]
[REDACTED] I knew the officer very well. I immediately put my hands up. I identified that and Irene Scullion conducted that investigation.

79. I have been asked how I would recuse myself from an investigation in those circumstances. I take no part in the discussions around the briefings. I

Signature of Witness [REDACTED]

absent myself from any matter in relation to it, and I know that's difficult within a small organisation. I didn't offer any assistance; I didn't offer any advice. Indeed, that investigation was conducted by a small team who worked together closely, and it wasn't even part of general discussion in the morning because it seemed to be an officer who was known by a number of the employees of PIRC.

80. You wouldn't let that person be directly involved in that investigation. You certainly wouldn't have them interviewing that officer.

81. I have been asked if I was ever aware of a conflict of interest between a PIRC staff member and a police officer who was the subject of a PIRC investigation not being identified. No, I wasn't.

82. We had a fair idea of where these people had worked previously and the majority of that would've had to have been within Strathclyde, as you can appreciate, because that's where the majority of ex-officers came from. We would know, "Well, don't give that to-- because that person worked in that division." Now, whether he actually worked with that person or not is irrelevant. Let's not allow it to become a conflict of interest.

83. I have been referred to the fact that PIRC's investigation was expanded to include allegations from Mr Bayoh's family that they were provided with misleading and erroneous information concerning Mr Bayoh's death and that one of the officers who provided information to the family on 3 May 2015 was Garry McEwan, who I knew. I have been asked if I would consider there was any conflict of interest in this respect. No, I don't, because John McSporrان was leading that investigation. John McSporrان conducted an in-depth investigation, and I had absolutely no problem with that whatsoever.

Signature of Witness



84. Considering that training for police officers in Scotland has been delivered centrally for a number of years now, you will have been in courses with people. You might only have ever met them for that fortnight. You might never meet them again. You had been acquainted with them during that course, but I think you'd have to be realistic, remembering the numbers that we were working with here. You would have to look at the circumstances around that acquaintance; the circumstances around that investigation.
85. That investigation was specific in relation to the way that the family were dealt with. Let's say someone had an association with Garry McEwan. Well, don't let them become involved in the investigation that relates to Garry McEwan. There's plenty of house-to-house enquiries to be done at the scene. There's plenty of specialist expert witnesses to be interviewed and work taken on there. That didn't occur in this on this occasion anyway, but keep them separate.
86. Whilst this huge investigation was ongoing into the death of Sheku Bayoh, there were lots of other investigations live at that time. If somebody had to be taken out because of a conflict of interest, we'd just have had to manage that and get on with it.
87. The Inquiry has heard evidence from Chief Superintendent Garry McEwan, in which he stated that, in 2015, he didn't think that "*the majority of the public would have noted a difference between the two organisations*", referring to Police Scotland and PIRC (day 64, page 115, line 19). I have been asked if I would agree with this view. Our investigators, if they were speaking to the public directly, would say who they were and what their role was. People looking out their windows, that might have been difficult, although I know on the morning that they did the stop process, the Sunday morning, we ensured that they wore jackets clearly identifying that they were PIRC and not police.

Signature of Witness 

88. I have been asked if members of the public did not note a difference between police officers and PIRC investigators, what impact that might have on a PIRC investigation. I don't know if I can answer that question. That's down to the individual. If you're approaching people directly to interview them and take statements from them, it's incumbent on you as an investigator to tell them who you are and why you're there and what powers you have. I was unaware of anyone then refusing to speak to any of the investigators within PIRC, so I don't think it was a problem in relation to getting buy-in from individuals who were witnesses.

Police officers and PIRC investigators

89. I have been asked in what ways I regard the role of a police officer and the role of a PIRC investigator to be similar or different. They were similar in relation to the type of investigation that they would be carrying out, so criminal investigations, if directed to do so by the Crown, that related to a criminal complaint about a police officer on duty. It could be anything that the Crown decide requires that degree of independence and then directs the Commissioner to conduct an investigation into that incident.

90. It differs in one main area that a PIRC investigator has the same powers as a police constable while performing their role as an investigator. Police officers are always police officers. If they are serving and they're out in the street and they are off duty, they are still a police officer and still have those same powers as if they are an on duty police officer. When a PIRC investigator walked out of the office at night, having completed their tour of duty, they left those powers behind in the office. They are investigators, and their powers are limited.

Signature of Witness 

91. There is no uniform presence within the PIRC. The PIRC would need to rely on order being maintained by a police officer. In the Sheku Bayoh inquiry for example, a week after the event, on the Sunday morning, PIRC investigators went back to the scene around the relevant time in a bid to trace persons who may have been passing and may have been witnesses who could provide statements. A uniformed police presence is required to stop vehicles; PIRC investigators do not have that power.
92. I have been asked if this has an impact on public perception of the PIRC as independent from the police. I'm sure it must have, but it's the way the legislation's framed. I don't see an alternative to that, other than introducing a wing within PIRC which is a uniformed, and I don't see how that could be, because it would be purely and simply for the purpose of resourcing cordons and the likes. I don't think it would be cost effective. I take the point about the police being present at or near to and public perception, and I really, really don't know how we overcome that.

PIRC powers

93. An investigation directed by Crown sees PIRC investigators having the same powers as a police constable around interviewing people, seizing productions, that whole gambit of what any investigation would merit.
94. I have been asked how PIRC's powers differ within Crown-directed investigations from those requested by Police Scotland or the Scottish Police Authority. The legislation actually gives more power than we have whilst conducting a direction from Crown, it gives the Commissioner the right to

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require the Chief Constable to provide information in a format identified and asked for by the Commissioner.

95. I have been asked if this difference in powers ever had an impact on a Crown-directed investigation. As an investigator, I would often have liked more power, but the law is what the law is. Did it make a difference? Yes, because the example I give is that the Commissioner in a Commissioner-led investigation under section 33A(c) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (the 2006 Act), where an investigation has been requested by Police Scotland or the Scottish Police Authority (SPA), can require operational statements, for example, from police officers. You can't require or compel witnesses to provide evidence during a criminal investigation or an investigation into a death.
96. I have been asked if PIRC required the provision of a statement in a Commissioner-led investigation, what powers PIRC would have to enforce that requirement. I believe that there is a part of the legislation. I think it's maybe a civil remedy around not adhering to the law as prescribed within the relevant legislation. I'm sure it is only a civil response to that. I don't remember it occurring within, or being brought to my attention during, an investigation under the auspice of the Commissioner rather than Crown.
97. Sometimes it took longer than we would have liked, but I don't remember it not being provided. On each occasion, a central point of contact was made with police, and we would funnel requests or requirements through that person. There could be a number of reasons that things took longer. Officers on leave, officers at court, there could be legitimate reason for stuff not coming as quickly.

Signature of Witness 

98. I don't think it's a matter of what we lacked. There was a realism that in a Crown investigation, you had to adhere and abide by the law of Scotland. In any investigation, the ability to compel people to speak would be magnificent, but it flies in the face of, "You're not obliged to say anything, but anything you do say..."
99. There would need to be a fundamental change to the way that police officers were viewed if the decision was made to allow a requirement made of them that wouldn't be made of any other member of the public during an investigation into a death.
100. I do remember discussions around a duty of candour and police officers being expected to be more open because of the powers that they were given. But I do not recall, in my time, it ever being put on paper and given to the government to consider it.

Morning briefings

101. I have been referred to PIRC's morning briefing minutes (PIRC-04156). I have been asked if I always attended the morning briefings. When I was available in the office, I always attended. For my benefit, to get an understanding of what the day's work was, how investigations were progressing, where resources needed to be allocated. It was to keep me up to date and up to speed with the progress of investigations, and if there were matters that might have needed to be dealt with at a more strategic level, to take those away from the investigators to free them up to continue with their role of the investigation.

Signature of Witness



102. I have been asked who would lead the briefings. Occasionally I would or maybe Irene Scullion would or maybe one of the senior investigators would, but generally, if I was there, I would play a lead part.

103. I have been referred to the minutes for a morning briefing on 11 June 2015 (PIRC-04156, page 49), which note that I *“provided an update on the press and TV yesterday. There was a lot of discussion surrounding PIRC powers.”* I have been asked if I recall what those discussions were in the press. I honestly don't recall.

104. The minutes for a morning briefing on 12 June 2015 (PIRC-04156, page 52), within an update that I provided, note that *“There have been quite a few discussions surrounding Scottish Government contact and legislation issues.”* I know that there was criticism in the press about the time that it was taking for the officers to provide statements and what we were doing about it, but it was a direction by Crown, the investigation. We were not in a position to require statements from officers because they were protected by law in relation self-incrimination etc., and I know that there was generally reporting in relation to our inability to have these officers provide statements to us.

105. I think it was a level of everyone else knowing better about what we should have been doing. I don't think that the police in themselves gained a lot of public support in relation to not giving statements. They certainly weren't getting a lot of support in the press. I think there was a belief that there should be more candour involved when police are involved and have particular powers, that those powers should come with responsibilities.

106. I know that the family and the family solicitor were maybe of the impression that these officers should have been arrested at one stage, but then that's an

Signature of Witness



investigative matter and you'd only get to that point where there was evidence that would allow you to do that.

107. I have been asked if I consider that that point was ever reached. Not at that stage it wasn't, no. There was no definitive cause of death. If cause of death had been caused by a baton strike, things may have changed, but it wasn't as clean and tidy as that. These officers were still witnesses as far as we were concerned.

108. I have been asked if the cause of death ever became clearer during the PIRC investigation. Not in the time whilst I was still in place in PIRC.

109. I have been asked if concerns were ever raised by the Scottish Government about the progress of the investigation or the way it was being carried out. They may have been, but not directly to me.

Diversity

110. I have been asked how diverse PIRC was as an organisation in 2015. Gender? Yes, I think there was a reasonable diversity. Race? No, there wasn't. Quite clearly there you could see that there was no diversity within the investigation unit in relation to ethnicity.

111. I have been asked if I felt this had any impact on PIRC's investigations. No, I didn't.

112. I have been asked any steps were taken to try to improve the diversity of PIRC as an organisation. PIRC was an equal opportunities employer. There were absolutely no doubts about that. We were as open as we possibly could have been to the point of employing the best candidate for the role, so

Signature of Witness 

flexible working; all of that was available to investigators but, ultimately, it was the best person for the role that was picked.

113. I don't know why people choose to apply or not to apply for a role, but had the best person been from an underrepresented area of society, they would have been employed, and that would have been better for everyone. The truth was that, during the process, that clearly didn't happen.

114. I have been asked if any proactive steps were taken to try to employ people from those "underrepresented groups". Probably not, no.

115. We cannot forget about the time frames at the beginning, and then to flip from where we were on 1 April 2013 to a completely different workforce by May 2015 just wasn't doable. It's not as if we were presented with a pot of wealth that would have allowed us to take on lots of new people where time might then have allowed to get messages out to more diverse communities. That opportunity didn't arise.

116. I have been asked if PIRC had become more diverse by the point I left in March 2018. Because there was very, very little change in personnel during that time, no, it hadn't.

117. I have been asked how many trainee investigators had been brought in during that period. Definitely four. There was a process ongoing just as I retired, and I'm not sure what the outcome of that was, but definitely four to add to the twenty existing investigators.

118. I have been asked if any of the trainees had police backgrounds. No.

Standard Operating Procedures

Signature of Witness 

119. If we go back to what the legislation says, it provides a PIRC investigator with the same powers as a constable whilst conducting investigations. It's fair to say a lot of SOPs that were in place with Police Scotland were transferable because they dealt with the same sort of things, and they had been tried and tested. We did adopt a number of standard operating procedures from different forces and re-badged them, and where they needed tweaked simply because of the differences in our roles we would do that.

120. After 1 November 2012, the race was on, first, to recruit more senior staff there and we worked together to try and make sure that we had the equipment that we needed and, in the equipment, I would consider some of those SOPs would be necessary to set.

121. I have been asked if the discussions I had with the IPCC and PONI had an impact on PIRC's standard operating procedures. The legislation was quite different in each area, so at that stage, probably not. As we moved on, there was a group established with representatives from each of those organisations, but that didn't last long because demand was prohibitive and it kind of fell by the wayside. Joint training wasn't appropriate because the legislation was so different.

122. The difference in all of these bodies is the presence of the Crown Office and Procurator Fiscal Service (COPFS) in Scotland where the Lord Advocate has the responsibility for making the decision in all prosecutions and also the investigation of unexplained deaths and non-natural deaths. That's different from down south where you have a coroner and you have the Crown Prosecution Service. There were similarities, but there were also great differences in relation to the legal structure or the legal framework in each of the areas, so not everything could be copied across.

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123. I have been asked how the content of SOPs was communicated to PIRC staff. The SOPs were put onto an intranet site. Irene Scullion did a lot of work around SOPs, the progression of SOPs and standard operating methods. We need to be careful with SOPs. SOPs are all very good and well, and they're a broad brush around expectations, but no two investigations are the same. No two families are the same when it comes to dealing with them as FLOs.


124. I certainly wasn't doing it all myself. It was delegation. It was particular tasks put out there for people to do. Off the top of my head, I don't know who would be responsible for the individual SOPs.

Initial involvement in the investigation

125. I have been asked when I first became aware of the incident involving Mr Bayoh. Monday morning, 4 May by telephone. Irene Scullion phoned me. I think it was maybe about nine thirty/ten o'clock, from memory. Unfortunately, I was in an area with very, very poor reception. I was in the Lake District, on leave. I came home that day and came back to work the following day. That was planned. It was a public holiday weekend.

126. It was just to let me know that it occurred. I didn't want to learn of the death by seeing it reported on the news or read in a newspaper because that would have been less than appreciated. I didn't have any further contact at that time. I knew that Irene Scullion was there, the other experienced investigators were there and they were dealing with the matter.

127. There had been a death in Kirkcaldy of a gentleman by the name of Sheku Bayoh. She told me that he was a black man and that they were now dealing with the post-mortem side of matters and taking control of an investigation.

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128. I have been asked if I provided any instruction or direction to Irene Scullion at this time. I didn't, no. It would be very, very difficult for me to give any instruction or direction without having a full brief about what was ongoing. I knew that a post-mortem was being arranged, but that was the extent of my knowledge at that time.

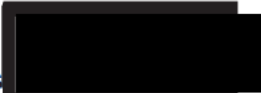
129. Really, where I was wasn't really an appropriate place to start going into depth around it. But I was aware that there were experienced people there, and I believe that they had the ability to deal with what was ongoing.

130. I have been asked if I was made aware by Irene Scullion on 4 May 2015 of any issue with the provision of the officers' operational statements. No, that wasn't discussed at that time.

131. I have been asked if I would have expected to have been informed on 3 May 2015. I think attempts were made by both the PIRC and the Crown Office to contact me, but I was clearly outwith telecoms. I'm not quite sure what I'd have done about it, having said that.

132. I have been asked if the inability to contact me on 3 May 2015 had any impact on PIRC's investigation. No, I don't. I think that the people who were there at that time did what they could do. My understanding now is that it was hours after much of the event had occurred before the PIRC received notification of Mr Bayoh's death. I don't think there was really much input that they could have at the scene in relation to scene management, for example. I think that was dealt with by the police at the early, early stages.

133. That wasn't a first investigation in relation to a death either in police custody or following police contact. There had been other investigations. Numbers,

Signature of Witness 

I'm sure would be available. I don't have access to any of the statistics or anything but it wasn't a first.

134. They were different. I think one was in a police cell, I remember, and I believe it was Billy Little who had dealt with that.

135. I have been asked if there had ever been a PIRC investigation that resulted from a death where the deceased was in the process of being arrested. No.

136. I have been asked if there were any other differences between the Bayoh investigation and previous PIRC investigations. Only Mr Bayoh's ethnicity. It didn't make a difference at that time. We were at the early stage of the investigation and the important thing was to get the fundamentals right and follow the evidence. We didn't know the result of the post-mortem. We'd absolutely no idea what the cause of death was, whether it could be attributed to the actions of the police or whether it'd been natural causes or whatever. At that early stage, the important thing is to manage where you're going to get evidence. We discussed evidence, house-to-house enquiries from independents, but really, really importantly the result of a post-mortem and what that might tell us, and that seemed to be under control.

137. I was aware at that time that there had been a number of deaths, not in our area, but in America, for example, which were coming under public and professional scrutiny. But it's important at that stage to keep an open mind and not to jump into conclusions around racism. Do not discount it, but you need to follow the evidence. I did believe that there would be media interest because of Mr Bayoh's ethnicity because it was topical at that time in relation to other deaths in England and abroad.

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138. I can remember the death of the black man in New York who I believe had been selling cigarettes or something like that and had been tackled by the police and had died. There had been the start of the Black Lives Matter campaign. I witnessed that personally during a holiday in New York. There had been a number of occurrences in England where people had died following arrests or during restraint by the police around that time.

139. I have been asked if I considered at the time that Mr Bayoh's ethnicity could have been a factor in the incident. You'd have to have evidence to support that. I think it's very, very difficult to make a decision that early on. The idea of an investigation is to gather the facts, the evidence and then as the facts and evidence are known, to be able to make a determination like that. At that early stage, Mr Bayoh was a black man. It was of public interest. It had to be in your mind, but you had to keep an open mind.

140. I have been asked if I considered that Mr Bayoh's ethnicity would have an impact on the media interest around PIRC's response to the incident. Yes. It was higher profile. It didn't make it any more important, it couldn't have been any more important, but it did receive considerable media coverage.

141. I have been asked if I had any further input into the investigation on 4 May 2015. No, I didn't.

On-call system

142. I have been asked how PIRC's on-call system worked. A small organisation with a requirement to provide cover over a 24-hour, 7-day-a-week, 365-day-a-year operation. The way that we did it was that we took a minimum number, so we would have one of the senior management usually, myself, Irene Scullion, John McSporran, Ricky Casey and Marcus Mitterer. We would

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be on call for the week to respond to reports or reviews or direction from Crown or incidents coming from the police, and I suppose we would triage with the information that we had available as to whether there needed to be an immediate response or whether documentation supplied and considered the following day was appropriate.

143. We didn't have scene managers attached to every team. The teams are small. Deputy senior investigator and I think two or three investigators and because we only had 20 investigators it wasn't possible to constantly have a scene manager or a FLO available. That would have been far too much of a burden on that individual.

144. I have been asked if prior to 3 May 2015 I was aware of investigations where staff who were not on call were contacted and asked to report for duty. I don't remember that; however, that would certainly have been a route taken if necessary; and again, you couldn't expect people who were on leave or on days off to sit in waiting for a telephone call, but that wouldn't preclude from attempting to reach them and call them out if they were available. A simple process of phoning around and trying to contact staff members and asking them to attend.

145. I have been asked if I ever deployed to an incident whilst being on call. Yes, I did. I deployed to a police shooting and a fatal road traffic accident in Edinburgh. We were contacted on both occasions by the Crown Office. I believe that it was one of the deputy senior investigators who received a phone call about the shooting, and I was contacted. I'm not even quite sure whether I was the on-call senior that day, but I lived nearby and I attended because it was an incident which required immediate attention and direction.

Signature of Witness



146. I have been asked if it would be common following a death in custody for other senior members of staff to be contacted by the on-call senior investigator. Yes, because ultimately you have a responsibility, and you would want, if possible, to offer assistance and support.
147. I have been asked if I was aware at any point of a suggestion that an officer had been stabbed during the incident. I learned later on that there had been releases in the media around an officer being stabbed. It certainly didn't come from our organisation, but there was information being carried in the press around that.
148. I have been asked if PIRC investigated where these reports came from. It formed part of the wider investigation because what we were actually doing was pursuing the evidence which was truthful. It played out in that. I think how that got into the press didn't help, but it wasn't the most important line of inquiry at that time.
149. I do believe that some of the phone calls reporting Mr Bayoh's presence on the street armed may have mentioned a large knife or a machete, but how it got from there into the media, I'm not sure. The officer being stabbed, again, I don't know where that came from at all.
150. It wasn't helpful. It's inaccurate. Any inaccurate information going out there isn't helpful. It doesn't do anyone any good. It doesn't help the police. It certainly doesn't help the family, a family who had clearly not been provided with the best information that was available at that time.

Investigative strategy

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151. I have been asked what approach PIRC takes towards developing an investigative strategy. Immediately they would react to what was in front of them. They would ensure scene management was in place. They would ensure that FLOs were identified. They would ensure that attempts were made to interview important witnesses. There's a lot going on. Whether anyone would actually have time to sit down and write out a strategy document or something as clear as that is doubtful, the numbers that were on the ground.

152. When John McSporrان came on duty, I'd expect him to have a clearer strategy and to put a strategy together in relation to media, interviews, scene management, family liaison and all that.

153. I have been asked if those would be written strategies. If he had time to do it, because there was a lot going on, or there may have been entries in a policy file. A strategy around house-to-house investigations, a strategy around forensic examination – if not a full written document, certainly I would expect that it would be in a policy file or captured somewhere.

154. It's based on experience and what you face and following the evidence, but there are lines that clearly would be standard: forensic examination; update from the post-mortem results; strategy around interviewing the witnesses; how we are going to deal with the media. These things are all contained within the senior investigator's responsibilities, whether that be as individual, stand-alone, written strategy documents or whether they're contained within briefing paper or a policy.

155. I have been asked if it is the responsibility of the senior investigator to communicate those strategies to the rest of the team. That is the firm role of the senior investigator.

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156. I have been asked if, as director of investigations, I would check if those strategies were in place. Yes, I would have been interested to see clearly what the main lines of investigation were and then to be happy that the investigation was going in the right direction.

157. What we don't want here are too many fingers in the pie. The person for making the decisions in relation to the running of the investigation are the senior investigator and his or her deputy, agreed between them about what their responsibilities would be. At briefings, or if I read something or heard something that I thought was completely in the wrong direction, I would step in, give guidance.

158. I have been asked how hypotheses are used as part of an investigative strategy. You would sit and you would consider the various hypotheses that might have led to the events occurring, and you eliminate them. And you hope, at the end of the day, as you work your way through these hypotheses, you're left with the actual reason. You have an open mind; you don't have all your eggs in one basket. By gathering evidence, you want to get into a one-horse race. You're trying to identify, through gathering evidence, what actually happened, and on the way you should be able to discount certain matters.

159. I don't think there would have been a large number of hypotheses in this investigation simply because we knew the circumstances, we knew Mr Bayoh, we knew the officers that were there, and we knew that there had been contact. This wasn't a set of circumstances that you have in many homicides where you have absolutely no idea who the perpetrator is or why or what happened. There was a narrower option for the hypothesis here. You're then getting into a set of circumstances as "Why did this happen?"

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Was there an overuse of force? Was the force used by the police proportionate? Was it justifiable? Was it the minimum required?"

160. I have been asked if I recall Mr Bayoh's race playing a part in the development of these hypotheses. Not immediately I don't because it is still early on. I'm not discounting that, but this is the police responding to a live incident. Unless there's evidence to suggest that there was some racial or racist motivation to it early doors, yes, you'd be open to it because, when you're conducting house-to-house enquiries, you're not just interested in what people see; you're interested in what they hear. If house-to-house enquiries or any other witness statement suggested that there had been inappropriate remarks which would have been of a racial matter, clearly, at that stage you would have considered that in more depth. I honestly don't think it was at the start. I think later on it was considered.

161. I have been asked if I consider that the impact that Mr Bayoh's race had on events should have been a hypothesis from the outset of the investigation, rather than later on. I think you need to follow the evidence, and I think at that early stage, there was no evidence. We didn't even know at that stage why Mr Bayoh had died. We had no idea of the cause of death, so maybe it would have been better if it had formed one of the hypothesis early on, and it would have done no harm to have considered it.

162. I have been asked if, at the outset of a PIRC investigation following a death in custody, it is common for PIRC to effectively take on Police Scotland's hypotheses. No, but you go in and you assess. You have a look at the information that's available to you. I would be looking for facts from Police Scotland, rather than their hypothesis. I would be looking for them purely and simply to furnish me or the investigators with the facts of the matter and then allow the senior investigator to determine what the hypotheses may be.

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Views on actions taken on 3 May 2015

163. I have been asked if PIRC was in charge of the response to the incident involving Mr Bayoh once Keith Harrower received the call from COPFS at 0935 hours on 3 May 2015. If they were being directed by the Crown Office to investigate that from that point, yes. I would expect early contact between the senior PIRC, the person with the information, to the senior SIO within Police Scotland to inform that person first and foremost.

164. I have been asked if Keith Harrower was in charge of PIRC's investigation on 3 May 2015, despite the fact that SI Richard Casey was also working that day. He was in charge at the scene of the incident, yes, I would say that. I think he would be leaning on and updating Richard Casey. Richard Casey must have had some input into it; he was senior to Keith.

165. I have been asked if SI Casey was ultimately in charge of the response to the incident on 3 May 2015. Yes, I would say that he was ultimately in charge of the response albeit that Keith Harrower was on the ground. SI Casey was the senior investigator

166. I have been asked if I know why SI Casey didn't deploy to the incident in Kirkcaldy. No, I don't. I don't know what his justification around it was. I may have expected him to go to Kirkcaldy, yes, but I don't recall why he didn't.

167. I have been asked how feasible it is for PIRC to direct an investigation remotely, without being at the locus. It's more difficult than if you were at the scene, but that doesn't stop you from having that initial discussion and outlining what your expectations would be. You're requiring certain actions to be taken on your behalf. You then have to accept that those will be done as

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you have asked, and you're unable to clarify whether that has occurred until you get there or you find out what was done. You have to take it on trust.

168. I have been asked if I would consider it standard practice for PIRC investigators to meet at Hamilton prior to deployment to a scene following a death in custody. I think they would have to go to Hamilton in any case to get transport, motor vehicles etc. to uplift anything else that they might need.
169. There were boxes already made up for investigations that included statement paper, production bags, suits to enter scenes, all of the sort of things that you would need during the early stages, and so all that sort of stuff was there.
170. The vehicles are there and provided for PIRC work. They would be stocked with the equipment that we required. It was just that that was the way that it was done, that we used vehicles that belonged to the organisation. I can't recall at that time whether the vehicle sat at the office or whether on-call staff took them home. But for whatever reason they went to Hamilton. If it had been possible to go directly there and cut down that time in going into Hamilton, that would have been better. Earlier control whilst you were there.
171. Had they been in a position to make themselves attend directly, they would have been there earlier, no doubts about that. I'm not sure what, if any, difference that would have made on that day.
172. I have been asked if I feel that DSI Harrower should have attended the locus at Kirkcaldy directly. I think he should have gone there as quickly as he could. I can't remember what his reasoning behind going to Hamilton was. Was to get the team together? Was it to ensure that everybody knew what they were going to rather than discussing these things once you get there in the presence of the police? I think the situation is that, yes, the sooner they can

Signature of Witness



get there the better; and if that had been possible to go without going to Hamilton first, that should have been what happened.

173. I have been asked if I consider PIRC had sufficient resources to respond to the incident on 3 May 2015. Again, that depends what the priority is. I don't know what Keith Harrower knew at that time, but I think we know by then that there was probably little to be learned evidentially from a forensic examination of the scene of the arrest, that the majority of the investigation priority would be dependent on the post-mortem and ensuring that Mr Bayoh's remains were treated correctly so that no evidence would be lost. That would absolutely have been a priority for me. I would still have expected somebody to look at Hayfield Road, but I think, by then, Mr Bayoh himself and the hospital were the major priority. I would still have looked for the scene to be protected, however.

174. Another priority would have been to try and get statements from the central officers. With those numbers and remembering that, at that stage, the Crown had merely instructed that the PIRC investigate matters from the point of contact between the police officers and Mr Bayoh, yes, they should have been sufficient to deal with the immediate priorities. Would more have been better? Again, more always makes it easier, but you have to go with what you've got.

175. I have been referred to Detective Superintendent Patrick Campbell evidence to the Inquiry, in which he stated, with reference to the level of PIRC's resources on 3 May 2015 (day 47, page 128, line 23):

A. ... I had slight concerns round about their awareness of capability and also the capacity round about the number of resources that turn up at that time to take on an investigation such as this, which was

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gathering pace, there was significant media attention around it. So it wasn't just investigative side, there were other areas that were playing out at that time.

Q. When you say you had concerns about their capacity, what do you mean by that?

A. Resources-wise. I think we had about – I recall at one time we had probably about 20, 22 resources on it at one time from Police Scotland, detective officers involved in the investigation. I think at that day, I think they turned up with four or five PIRC.

176. I have also been referred to DS Campbell's evidence on a subsequent day in this regard (day 49, page 174, line 5):

A. ... it's clear it was insufficient for the job on 3 May, and that's why from a Police Scotland perspective we'd significant resources pulled from all over the country, as well as from the Major Investigation Teams, to support the PIRC in respect of the investigation.

177. I have been asked for my views in relation to DS Campbell's comments. That depends what DS Campbell believes was the PIRC role on that day and the direction from Crown. There were lots of other matters ongoing, searches of houses etc., which Police Scotland took on because that avenue of investigation had been left with them by Crown at that stage. PIRC's direction from Crown was quite straightforward and it was in relation to contact between police and Mr. Bayoh, and what went after that. I believe that that was about managing the scenes at that time, and for that reason, there were sufficient resources.

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178. Whether they were sufficient or not, it was all we could get and all we could muster. We would have preferred far more people, but you need to do the best job with what you've got at that time. I appreciate what Pat Campbell's saying, but was Pat Campbell even aware of what the direction from Crown was at that time?

179. It was certainly insufficient to go searching houses and take on that wider area that the police had been left with, but if it was management of Mr. Bayoh's remains, the hospital, and the officers – trying to get statements from them – I think with the numbers that could have been done. The problem with that is around independence and perception of independence. To take that offer, which is almost what Pat Campbell is making there, to give some of these tasks to police officers, when Crown have directed that we conduct that part of the investigation could be seen to dilute that independence, and you have always got to remember that as an investigator.

180. I have been asked if I consider that there would have been a benefit to separating the officers following their return to Kirkcaldy Police Office. I think there would have been a benefit in having someone present where they were to ensure that their needs were taken care of, because it would be a traumatic event for them as well, but to ensure that they didn't discuss or collaborate on the events.

181. This whole matter around separating officers in these circumstances has been a discussion that has gone on for a long time and it usually relates to firearms incidents. I think at least there should have been control of the officers in the environment they were in to ensure that if they needed welfare that could be provided, but to ensure that discussion about what had happened was kept completely sterile or at best, controlled.

Signature of Witness



182. My understanding is that at some stage I think Mr. Nicolson instructed Conrad Trickett to take on that role. There needed to be some control there. We also need to realise that they had been together for some considerable time before the PIRC were even aware of the event having occurred.

183. I have been asked if DSI Harrower should have requested that Police Scotland ensure that someone be present with the officers to discourage conferral. Yes. It would have been better if that discussion had taken place.

184. I have been referred to the fact that PIRC's investigators arrived in Kirkcaldy around 1330 hours on 3 May 2015 and that the Inquiry has had sight of evidence that identifies that the investigators tasked with management of the scenes at Victoria Hospital and Hayfield Road did not attend those scenes until after 1900 hours that day. I would have preferred someone had been there earlier. You're on site, and you have a better understanding of what is occurring than if you are apart from that.

185. I have been asked what standard practice would be in relation to the deployment of PIRC's FLOs following a death in custody. I think it's really important that as early as possible following the identification of the deceased, that family members are notified. That doesn't need to be a FLO that does that. In fact, experience again shows it's better that it's not a FLO, because that is one of the most difficult jobs to perform in policing.

186. We have police FLOs initially because they're there and available, and that's one area that I do agree with Pat Campbell in relation to. They have the staff that are available to them to get FLOs in there to explain the process around identification and to explain to families the circumstances as they are known at that time. Although the police would have taken the initial approach to the family, that in due course, that responsibility would be handed over to the

Signature of Witness



PIRC as investigators who would then appoint FLOs who would continue that liaison with the family.

187. If you have a joint deployment, quite clearly, you're going to have a police officer involved in an area of business which is really sensitive around evidence and information being passed to the family. If you had that, I think the independence of the investigation, could be questioned.
188. I have been asked how quickly responsibility for family liaison should be handed over from Police Scotland to PIRC. As quickly as you could arrange FLOs, bring FLOs up to speed, brief FLOs about what your expectations were. I think as the day went on 3 May 2015, in an ideal world, yes, FLOs should have been contacted and should have been brought aboard. The earlier that you can deploy PIRC FLOs, the better, so I think that it would have been worth them getting the FLOs in there earlier.
189. I have been asked if a family's religion would have an impact when choosing to assign a FLO to an investigation. I don't think it would be the first thing that would jump to mind. The role of the FLO would be to go and speak with the family and to ask those sorts of questions around religion, because different religions have different attitudes and requirements towards death. You want to then gather that information. I don't think that you could as a matter of course go along, find out what religion a family were, and then go and pick FLOs up who were the same. I think you've got to be realistic about that.
190. I have been asked if a family expressed a desire for the FLO to be female, would that be considered by PIRC. If that was possible, then, yes, that would be reasonable. I don't even know whether we had any female FLOs at that time.

Signature of Witness



191. I once heard it said that in the situation of death, it is very, very difficult to make things better immediately, but if you don't get it right, you can make it worse. If the family had particular concerns around a FLO deployment or would feel more comfortable with a particular FLO deployment and that were possible to deliver, I would see no reason for not having that.

192. I have been referred to PIRC's Family Liaison Policy (PIRC-04460, page 5), which states: "*The SI should ensure that a risk assessment will always be carried out prior to an FLO being deployed to a family and attending the family home.*" That doesn't mean that we write a screed around what the risk might be. You consider what they are going to face from the knowledge that you have at that time and then you deploy them. I don't think I would be putting back the deployment of FLOs unless there was a real risk to their safety.

193. I have been referred to PIRC's Family Liaison Policy (PIRC-04460, page 7), which states:

It is essential that prior to any FLO deployment the SI has formulated a family liaison strategy. The strategy should set out the objectives for the liaison between the family and the investigation and are the basis for tasking the FLO.

...

The Family Liaison Strategy is one of the most important considerations that the SI and investigations team will have to address throughout the course of an investigation.

Signature of Witness

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194. I would not as a matter of course delay the deployment of FLOs whilst we write strategies. Now, a strategy can be quite simple, one line: "Meet with the family and give them as much information that we have available, and this is what I want you to pass to them." That might change as time goes on and when you sit down at later date, maybe it would be appropriate to write up a strategy.

195. In this set of circumstances for example, the strategy would have been completely different because we didn't get access to the family. The family made the decision that they are more than entitled to make, and that was to have all contact made through their solicitor.

Briefing on 5 May 2015

196. I have been asked what briefing I received when I returned to the office on 5 May 2015. We received a briefing paper (PIRC-03694) which would always be produced in my name. That was the standard procedure and it would give as much detail as was known at the time to bring me up to date.

197. I have been asked who prepared the briefing note. Keith Harrower.

198. The post-mortem had taken place and I was informed that the findings were inconclusive at that time and required further investigation in relation to toxicology and other areas of pathology.

199. I have been asked what my priorities were in relation to the investigation on 5 May 2015. Identifying an experienced senior investigator, getting up to speed with what had occurred and what was being done. I think I learned, around about that time, that the officers had refused to provide operational statements. It was later, but I learned that they had not filled in use of force

Signature of Witness 

forms etc. which I would have expected and which would have been an initial account of events and would have been helpful to have.

200. I was also made aware at that stage around the FLOs that an arrangement had been made to meet with the family, I believe that day, the 5th. I later learned, of course, of the change of arrangements in relation to that, about who would be the point of contact because initially I think it was his sister, Kadi, that was going to be the point of contact.

201. I learned that Billy Little, who is a very experienced investigator, was in control from an operational viewpoint on the Monday. However, when I came on duty, I informed John McSporrان, who had also come back that day, that he was going to be the senior investigator for the incident.

202. I decided that, in the circumstances – and it was clearly going to be an intricate and involved investigation – that it was appropriate that John McSporrان, up a level again from Billy Little, was made the senior investigator.

203. It was clearly going to be a high-profile investigation. The circumstances of death in custody in the street, great public and media interest around it, so you use your most experienced people; and although Billy Little is very experienced, two heads are better than one. I was quite content that, if it came to situations with days off or John McSporrان being involved in something else, or *vice versa*, they would be able to manage the complexities of that investigation.

204. I have been asked if the appointment of John McSporrان was influenced at all by Mr Bayoh's ethnicity. No, purely and simply that it was a death in custody. It was going to be high profile. Part of that, no doubt, was because

Signature of Witness



.....

of Mr Bayoh's ethnicity because there were no doubts in my mind that there would be a press interest, a public interest, but it was more to do with the fact that Mr McSporran was an able and experienced investigator.


205. I have been asked why there was a handover of responsibility from Keith Harrower to Billy Little on 4 May 2015. Billy Little came on fresh. Keith Harrower would still have an on-call responsibility for the rest of that weekend in any case, so the process that we tried to adopt was someone's coming back fresh after days off. They're going to have a run before they're due other days off or leave. We'd have looked to see if anyone was due to go on leave, I don't know who appointed him, but I think it was Irene Scullion who asked Billy to take on responsibility for the operational delivery at that time.

206. I have been referred to the briefing note (PIRC-03694, page 2, para 4), which states, with reference to the officers attending Hayfield Road, that "*They could clearly see that Mr Bayoh was in possession of a knife and making his way towards them*". That was inaccurate.

207. I have been asked if I was aware that this was inaccurate on 5 May 2015. I think I was aware because I'd been told that a knife had been found nearby. That it wasn't the case that he had a knife, but where that information comes from, I'm not sure.

208. I have been asked if the inaccuracy within the briefing paper had any impact on PIRC's investigation when I became involved on 5 May 2015. No.

209. I have been referred to an extract from DS Patrick Campbell's evidence to the Inquiry (day 49, page 73, line 5):

Signature of Witness 

A. I think the problem with the PIRC deployment at that stage, other than the resources, is that over the course of 24, 36 hours they changed the lead investigator. So Keith had --

Q. What issues did that cause?

A. Just obvious challenges, the fact is you're bringing someone on fresh into the investigation when you've been there for 12, 13 hours at that stage, you know what I mean, before that ... before Billy Little's appointed around that. So again, there was challenges with the fact that the change of a senior investigator from PIRC at such an early stage of a critical investigation would undoubtedly cause challenges.

210. I have been asked if I agree with DS Campbell that the handover of responsibility for the investigation to DSI Little and SI McSporrان caused "challenges". No, I don't. In fact, I think he makes a point that Keith Harrower had already maybe been there for 13 hours. Billy Little turned up on Monday morning fresh. It wasn't as if there was lots and lots of available information at that time and Billy Little, I've no doubt, has come up to speed with what had occurred relatively quickly. We didn't take Billy Little out of the investigation when John McSporrان came on duty. They augmented one another, using their experience, so while I appreciate that that's Mr. Campbell's opinion, I don't necessarily agree with it.

211. I'm actually quite surprised at Pat Campbell's saying that because within policing you may very well find that in some investigations like that, a detective inspector is the first there, and deals with it for hours and then the following day a detective superintendent is handed it as the senior investigating officer. So, I'm not sure where the difference is there. It's not

Signature of Witness 

unusual. Keith Harrower doesn't go away. He's always there. He's still involved with the investigation; it's just that he's on call and Billy Little is fresh.


212. I have been referred to the minutes for a morning briefing on 6 May 2015 (PIRC-04156, page 3), which note *"Discussion by SI McSporran and DOI Mitchell regarding pin-pointing the knife. The knife has only been photographed in situ by an officer, on his personal phone."* I have been asked what this referred to. Where exactly was the knife found. Where was it in relation to the struggle and the relation to the point where Mr. Bayoh was actually arrested.

213. I would certainly have preferred that had the knife been left in situ, covered, that an officer, a SOCO had come out and taken photographs of the scene and anything found there. That's what I would have expected the police to do. I wouldn't have expected them to move it at that stage. I don't know what their justification for that was.

Post-mortem

214. I have been asked what PIRC's normal involvement would be following a death in custody or following police contact. Investigators would be sent to view the post-mortem and be available to seize any productions, etc., so that those productions could then be transferred for whatever examination that they may require.

215. It would be normal for a briefing to be produced for the pathologist or a verbal update given to the pathologist before the post-mortem began, and to take whatever instruction from the pathologist that the pathologist might wish to give around specialist examination. I know this was pulled together quite

Signature of Witness 

quickly so I'm not quite sure whether a briefing paper was handed over or whether it was a verbal update to the pathologist at that time.

216. I have been referred to the "Officers Note" that was prepared following the post-mortem (PIRC-04148). I have been asked if I am familiar with this document. I think I probably read it, but I don't specifically remember the document.

217. I have been referred to the Officer's note (PIRC-04148, page 1), which states "*The family of the deceased had intimated to both Police Scotland and the PIRC that they did not want to be involved in the identification of the deceased.*" I have been asked if I was made aware of the family's position in relation to identification of Mr Bayoh's body. I do recall a discussion around the family wishing for the post-mortem to be held back until other relatives arrived. I later learned through discussion that alternative means of identification had to be undertaken because the family weren't attending the post-mortem. It would be normal for a member of the family to make the personal identification before the post-mortem began.

218. I have been asked if the family's concerns were passed to the Crown Office. I believe that they were passed to David Green, the head of the Scottish Fatalities Investigation Unit. I think the decision was to carry on with the post-mortem at the earliest opportunity. Crown Office have total responsibility to instruct the post-mortem and are in charge of that area of business. You could bring to the attention of the instructing procurator fiscal, but it would be down to them to make the ultimate call on that.

219. I have been asked what my understanding of the relationship between Mr Bayoh's family and PIRC was at the point the post-mortem took place. There was no relationship. I believed that there had been an arrangement made for

Signature of Witness



the FLOs to meet with the family later that day, but that was countermanded. It's the family's choice, and we would adhere to that, but it was made clear at that stage – and I think it was Alistair Lewis that told me this – that there had been contact to make that arrangement and the decision had been made then that any future contact should be made through the family's solicitor, Mr Anwar.

220. The note (PIRC-04148), at page 2, identifies that: "*The area of cultural issues was highlighted with DCI Hardie confirming that the deceased was Muslim, again the pathologist were happy to proceed after being advised by Mr Ablett that the investigation would take precedent.*" I have been asked in what way an investigation might take precedence over any cultural or religious sensitivities associated with a deceased person. The requirement for a quick understanding around cause of death. It could form a very important aspect of the investigation, for example, identifying the status of the officers involved in his arrest.

221. I have been referred to the fact that the note (PIRC-04148) identifies that DC Gilzean, DC Grady and DCI Hardie were present at Mr Bayoh's post-mortem. I have been asked if, following a death in police custody, it is common for the post-mortem of the deceased to be attended by police officers. No. I suppose "Why were they there?" would be the question I would be asking, and I know that DCI Keith Hardie was the single point of contact with PIRC in relation to providing documentation, etc.

222. It was an independent investigation into a death, and again the question is, "Is it appropriate for police officers to be there?" I think it's unusual that they would be there. At the previous post-mortems that the PIRC would attend at, I'm not aware of police officers being present.

Signature of Witness 

223. I have been asked, in my experience, what is the normal period of time between a death in custody or death following police contact occurring and a post-mortem taking place. That would greatly depend on the circumstances, the availability of pathologists, but my experience is that Crown liked to expedite post-mortems for a number of reasons. Again, there's the family's thoughts to be taken into consideration and I know they asked that it may have been put back, but at the same time, I know that they were keen to find out how Sheku had died. It's a balancing act.

224. I have been asked how soon after a post-mortem I would expect a deceased's family to be informed of the results. As quickly as you possibly could because the last thing you need is them hearing from a non-official source.

225. On 5 May, I learned later that day that the family had been updated but the police had been updated as well. I don't have any experience of that previously. I was surprised that they were told. I just thought it was unusual at that stage because ultimately we didn't have any statements from these officers. We didn't know what was happening. I think Billy Little made that decision to share that information. I don't necessarily agree that it should, not at that stage. Whether he thought that maybe it would help in relation to the officers providing statements, if they knew that no one was saying that blows or etc. had caused the death, I don't know. I didn't ask Billy Little. It had been done. Having that discussion wouldn't have changed the fact that the information had been shared. I don't think it had any impact because they still didn't provide statements.

226. I think that the family should have been informed, and it may have been appropriate at a later date because there are welfare issues around the officers as well, but I think there should have been more discussion about it.

Signature of Witness



Maybe even discussion with the procurator fiscal as to whether it was appropriate.

Liaison with Police Scotland

227. I have been asked if I had any contact with Police Scotland during the course of the investigation. No, not in relation to the investigation.

228. I have been referred to DSI William Little's Inquiry statement (SBPI-00255, paragraph 59) in which DSI Little refers to speaking to ACC Ruaraidh Nicolson at 1235 hours on 4 May 2015. In that call, ACC Nicolson was "*concerned regarding the perception to the public that the police were still investigating the death ... as they (Police) had been instructed to investigate the preceding events and we had to investigate the event itself and the events thereafter*". I have been asked if I was made aware of these concerns, or any other concerns raised by Police Scotland in relation to PIRC's investigation. No. I suppose it was a reasonable concern on Mr Nicolson's behalf, but clearly that further direction from the Crown should have negated his concerns further.

229. I have been referred to an "Action" (PIRC-02938) which refers to "*adverse comments made in relation to PIRC action*" by Ch Supt Garry McEwan within his operational statement (PS03136). I have been asked if I recall any such "adverse comments" being made by Ch Supt McEwan. No.

230. First and foremost, you would ask: is this pertinent to the investigation? Does that take precedence over continuing the investigation into Sheku's death, or is it something that we note and deal with later? John McSporran is the only person that can answer why no action was taken on that.

Signature of Witness



231. I have been referred to the statement obtained by PIRC from Ch Supt McEwan subsequent to the Action being created (PIRC-00181). I have been informed that Ch Supt McEwan does not appear to be asked about the “*adverse comments*” made within his operational statement. I don’t think we would be interviewing him to try and bottom out his criticism of PIRC. I don’t think that’s necessarily relevant to the investigation. As a learning, absolutely. But whether it’s relevant to deal with it during an investigation like that is a different matter altogether.

232. I have been asked if I was content with the support that PIRC received from Police Scotland throughout the investigation. Broadly, I was. The only sticking point was in relation to provision of statements by the central officers. I think they did what they did. They were in a set of circumstances where I don’t think they even had the authority to order the officers to give statements. It was disappointing because we made the point that we wished to interview them as witnesses, but it’s impossible to compel someone to speak if they’ve decided they’re not going to.

233. I have been asked if, at any point in the investigation, I considered that information about the incident or PIRC’s investigation was being shared or “leaked” by Police Scotland to other third parties. Not that I was aware of, no. I don’t recall speaking to Ruairaidh Nicolson about any leaks.

Relationship with COPFS

234. Crown are the lead body. The operational decision-making and the operational investigation is undertaken by the investigators within PIRC. Any

Signature of Witness 

report or information that is gleaned from the investigation will ultimately be shared with the Crown to allow them to decide what, if any, further action is appropriate. So, ultimately, they direct. If they come and tell us, "Here's your terms of reference. Investigate that," and want to add to that or give us some other investigation to do, so long as it's a lawful instruction, we are duty-bound to do it.

235. They would look for regular briefs and updates, and I think by that stage that our direct link into Crown Office from an operational viewpoint was with Les Brown, who was in charge of Criminal Allegations Against the Police Division (CAAPD). So, there were discussions and I'm sure there'll be documentation going back and forward between the investigators and Les Brown. Not around every action that's raised or every statement that's going to be taken, but if the investigators feel they need clarity around the Crown position in certain circumstances they would contact the Crown.

236. They don't want to know the minutiae of every action that's raised and how you're getting to information, etc., but if there is a clear and important change in the investigation – for example, critical evidence that would change the officer's status – that would certainly be shared with Crown. I think when it came to actually taking statements from the officers we confirmed with Crown that they were still content that the officers were to be interviewed as witnesses at that stage, albeit things hadn't changed greatly. That's the sort of reassurance that they would be looking for and that we would be looking for as well.

237. I have been asked how much autonomy PIRC has with a Crown-directed investigation. Lots of autonomy so long as it adheres to the direction initially provided in the terms of reference.

Signature of Witness



238. I have been asked if, in the course of a Crown-directed investigation, PIRC would look for guidance from COPFS. Only if necessary for purpose of clarification about terms of reference rather than the operational delivery or, in the case of the investigation into Mr Bayoh's death, the sharing of information with expert witnesses. It would be more to do with processes, of how CAAPD work or how SFIU work, how they would like things reported to them, that sort of thing. We wouldn't take legal advice from them.

239. All of that information that we are gathering in a Crown-directed investigation actually belongs to Crown. We are the guardian of it at that time for the purpose of conducting an investigation but, ultimately, they're directing us and we're gathering it, and then we're going to pass everything that's relevant to them to allow them to make decisions.

240. When we were sharing information with experts who had been identified, the report that was pulled together and the information that we intended to share was shared with Crown to ensure that they were content that we were passing that information, which is theirs, to the third party. So that kind of level is just slightly above the normal operational decision making around, "Interview John Mitchell and ask him about A, B, C, or D." The sharing of information with third parties was more of a strategic decision, almost.

241. I have been asked if, during a PIRC investigation, COPFS will in any way be carrying out their own investigations in the background. Not that I'm aware, I can't see them conducting a parallel investigation. They will clearly consider the information and reports that the investigators provide them with, but I am unsure whether or not they would consider this to be an investigation in its own right.

Relationship with COPFS during investigation

Signature of Witness 

242. If they would want to change direction or give us more to do we would have meetings and they would explain why and provide further written instruction and we would give them updates on the further investigations instructed.

243. I have been referred to the minutes of a morning briefing on 27 May 2015 (PIRC-04156, page 28), which note: *“Established yesterday that the Crown have passed information to family that they have not provided to PIRC. DoI Mitchell has had discussions with Crown re this.”* We were still in a position where we were updating Mr Anwar with information that we felt that the family should know about. I remember this incident. I think it was Alistair Lewis had contacted Mr Anwar to give him an update which he could pass to the family, to be told, “I already know that,” and that caused us concerns because it looked unprofessional. We were unsighted. It was not the fact that the information couldn’t or shouldn’t have been passed, but it was more around, “Please, if you’re going to pass information to Mr Anwar and the family, can you tell us you’ve done it so that we don’t look stupid phoning and passing them information that they already had?” because that’s unprofessional.

244. I do not think that this situation would build trust or faith in the PIRC. It wasn’t a great relationship. Did it make a great deal of difference? Probably not, but I think it must have been quite embarrassing for Alistair Lewis to find out that he had been told. I also know that one or other of the post-mortem results was passed to the family before it was passed to us. Can I tell Crown not to do that? No, of course I can’t. It’s Crown’s information. Pathologists report to Crown. Crown come back to us, but you could see that there might be a bit of embarrassment if the family know that before we do, and if you’re trying to pass the family information that you think is important to them and they already know it, it looks as if there’s a bit of a disconnect there.

Signature of Witness



245. I have been referred to the minutes for a morning briefing on 22 June 2015 (PIRC-04156, page 63) which note that: *“DoI Mitchell has contacted COPFS Les Brown to highlight PIRC’s concerns about Mr Anwar and the family being made aware of the content of the post mortem report.”* There’s a set of circumstances there where the family have every right to know the content, but we didn’t know. We’re then making contact with Mr Anwar and the family. That looks unprofessional, that they know something that we don’t know and we’re conducting the investigation. I don’t think for one minute it was done with malice aforethought. I think it was just done without telling us at the same time, or shortly thereafter so that that sort of disconnect didn’t happen, and I think that’s reasonable. We’re the investigators. If there’s information pertinent to the inquiry we should be getting shared with it as well at the earliest opportunity so that we can go on with our investigation

246. I have been asked what Les Brown’s response was when I spoke to him in this regard. To try and make sure it didn’t happen again, definitely.

247. I have been asked if, around the end of May 2015, I recall speaking to Les Brown and receiving information in relation to the fracture of Mr Bayoh’s rib. I know that that information was passed from the Crown because that was important. I don’t remember whether Les Brown told me directly or whether it came to John McSporran. I do know that it had been missed in the initial post-mortem.

248. I have been asked if I recall discussing the fracture of Mr Bayoh’s rib with Peter Watson at any point. No, I don’t.

249. I have been asked if I had received information from Crown Office in relation to the fracture of Mr Bayoh’s rib, whether I would have felt it necessary to have informed Peter Watson. Absolutely not, no. That was the information

Signature of Witness 

for the inquiry's benefit. I wouldn't see the purpose of passing that information or to update Peter Watson about that.

Legislative basis for COPFS instruction

250. I have been asked what my understanding on 5 May 2015 was of the legislative basis for Crown's direction to investigate the incident involving Mr Bayoh and whether it was an investigation of a death in police custody or an investigation of alleged criminality on the part of a person serving with the police. It was a death in police custody.

251. I have been asked if I am aware of the legislative basis for Crown's direction changing during PIRC's investigation. No.

252. I have been asked if it is possible for PIRC to be directed by COPFS to investigate on the basis of both section 33A(b)(i) and section 33A(b)(ii) of the 2006 Act simultaneously. Not to my knowledge. It's the same powers that we're using to conduct that investigation when directed by COPFS. If, during the investigation, we're dealing with it as a death in police custody, and interview those officers, and they make some comment which would be incriminatory, they would be stopped, cautioned and given access to a solicitor and continue to be interviewed under caution, which I suppose, in real terms, has naturally then turned into a criminal investigation.

253. I have been asked if Crown directing PIRC to investigate the incident as alleged criminality on the part of a person serving with the police rather than a death in custody would have had an impact on PIRC's approach to the investigation, or on the officers' status as witnesses or suspects. I think the same lines would still have been appropriate and, no, I don't think it would have affected the overall investigation. The officers' status as witnesses or

Signature of Witness 

suspects would be led by the evidence that you are finding, hence the importance of a post-mortem, independent evidence garnered from house-to-house inquiries, interviews of witnesses, CCTV footage, etc.

254. It was a Crown-directed investigation into a death, so it was always going to be treated at the highest level and the greatest priority.

255. I have been asked why Les Brown, the head of CAAPD, was PIRC's principal point of contact at COPFS if it was a death in custody investigation, rather than alleged criminality, that was the legislative basis for the instruction. That was a decision by Crown Office, not a decision by PIRC or following discussion with PIRC. We were just informed that our route during the investigation was to liaise with Les Brown, who was now being given that responsibility. It was an investigation into the circumstances surrounding Mr Bayoh's death. That didn't preclude the fact it may very well become a criminal investigation at some stage, and Les Brown would definitely be involved in it.

COPFS instructions

256. I have been referred to PIRC's terms of reference being expanded on 5 May 2015, in a letter from Stephen McGowan to Irene Scullion (COPFS-02539). I spoke to Stephen McGowan and questioned whether it was now a broad enough direction because of the inconclusive findings of the post-mortem, because it was clear to me at that stage that we would need to find out then what had gone before, where Mr Bayoh had been before. I think someone at some stage must have mentioned something about a fight that he'd been involved in early on in the night as well, so it was interesting to get a picture leading up to the altercation with the police.

Signature of Witness



257. I believed that the terms of reference were too restrictive. I didn't know about Ruaraidh Nicholson's concerns that the police were still investigating the police, but I certainly thought that by broadening that out, we would've got a clearer picture of what happened in the time leading up to the confrontation, and I think that was important to try and help establish the cause of death.

258. I have been asked if PIRC should have pushed earlier for the terms of reference to be broadened. No, because you need further information. An incident like this is always going to play out differently and it's only once you have that information, you're in a position maybe to take questions: what should and shouldn't be done. I think, once we knew the initial result of the post-mortem, that it was important that it was expanded in the way it was expanded. I can't think of a reason at that stage why we would have been questioning Crown about their direction at that time.

259. I have been asked if there is any impact on a PIRC investigation if the initial instructions from COPFS are not received in writing. No.

260. I have been referred to a letter from Stephen McGowan to Kate Frame dated 12 June 2015 (COPFS-04010 (a)), in which PIRC's terms of reference were further expanded to cover allegations that the family were provided with misleading and erroneous information concerning the death of Mr Bayoh; concerns surrounding the thoroughness of initial attempts by the police to secure evidence; and that there was inappropriate conferral between police officers. It comes off the back of a meeting with the family and Mr Anwar. Les Brown did speak to me and tell me that there were concerns around the way the family had been treated, the way the police had initially dealt with it and to expect a letter.

Signature of Witness



261. I have been asked, once the terms of reference had been expanded in this way, whether consideration was given to obtaining further statements from witnesses from whom statements had already been taken to cover the areas covered by the expanded terms of reference. I would take it that, if they hadn't been captured initially, yes, there would have been a requirement to go back and interview people. There had also been a requirement to interview the officers who had contact with the family on that day, if that had not already been captured.

262. I have been asked whose decision it would have been to seek further statements from witnesses. I would think that that would have been an operational decision that John McSporran was well capable of making.

263. I have been referred to the statement obtained by PIRC on 2 June 2015 from DC Andrew Mitchell, who was involved in passing the death message to Mr Bayoh's family (PIRC-00026). I have been informed that, within that statement, DC Mitchell does not appear to have been asked to respond to the allegations made by Mr Bayoh's family in relation to the information that was passed to them on 3 May 2015 and no further statement appears to have been obtained from DC Mitchell after PIRC's terms of reference were expanded on 12 June 2015. I have been asked if I would have considered it best practice for a further statement to have been obtained from DC Mitchell to cover this. I would've thought so, yes.

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

Signature of Witness




265. I have been referred to the statement obtained by PIRC from Ch Supt Garry McEwan on 24 June 2015, after PIRC's terms of reference were expanded on 12 June 2015 (PIRC-00181). I have been informed that the allegations made by the family about the information passed to them on 3 May 2015 do not appear to have been put to Ch Supt McEwan within this statement. The allegations only appear to have been put to Ch Supt McEwan in a subsequent statement, obtained in January 2018 at COPFS's direction (PIRC-00182). Again, that's a purely operational decision that would be made by the senior investigator. I didn't read absolutely every document. That is left to the senior investigator to progress the investigation.

266. I have been asked if I would have expected, based on the expanded terms of reference, that those allegations would be put to Ch Supt McEwan. Yes.

267. I have been referred to a document titled "*Relevant communications – Police Scotland and Family of Deceased*" (PIRC-04015(a)). I have been asked if I am familiar with this document. No.

268. I have been referred to an "opinion" on page 2 of this document, which states:

Police Scotland did not lie to the family about the death. However, they appear at some stages to have withheld information from the family and denied knowing key facts (which they were in possession of). They were slow to inform the deceased partner and his family of police involvement. Some members of the family appear to have misheard or misinterpreted the information they were given, which has given rise to their suspicions and subsequent allegations.

Signature of Witness 

269. I think that conclusion also appears in the report to Crown. Or something similar.

270. I have been asked if I was involved in any way in the analysis of the evidence in relation to the allegations made by Mr Bayoh's family regarding the information they were passed on 3 May 2015. No.


271. I have been asked what, in my view, is the difference between lying and denying "*knowing key facts (which they were in possession of)*". They didn't speak an untruth but they withheld information. That would be my reading of that. It's suggested there that there was information they did have that they didn't pass to the family, which could have been passed to the family at that time. But they stop short of actually telling lies about anything, would be my reading of that.

272. I have been asked if I was aware at any point of any concerns raised by COPFS in relation to PIRC's handling of the investigation. No. Far from it. They were happy with the quality of the report, etc. I didn't have any notification at all that they were unhappy. I don't remember any criticism.

273. I have been asked if I was content with the direction and support that I received from COPFS during PIRC's investigation and if I was content with the clarity of COPFS's instructions in this regard. Yes.

Operational statements

274. Any investigation is evidence-led and the earlier you can get as much information as possible allows you to make decisions much more clearly. So operational statements from officers who are directly involved in an incident

Signature of Witness 

are clearly important to get an understanding, at the earliest opportunity, of what occurred.

275. An operational statement would be their summary of the events as it related to them on that day, so an explanation of what occurred, when it occurred and what action they had taken.

276. The normal process was that at the earliest stage of an investigation a single point of contact (SPOC) was set up with Police Scotland and requests were pushed through that point of contact, asking that officers prepare and submit operational statements. There would be a request and I know there was a request made by Keith Harrower at that time, via senior officers within Police Scotland, to have officers provide their operational statements.

277. That was an agreement that we reached through discussion with Police Scotland prior to this investigation. It was a pragmatic agreement. From the outset on 1 April 2013 we had worked closely with the Professional Standards Department within Police Scotland and had come to these arrangements. It seemed to be in most cases the most appropriate way, considering the inquiries could be all over Scotland, and rather than having investigators travelling to all points, a SPOC asking that these statements were prepared and presented at the earliest opportunity. The SPOC would usually be a member of the Professional Standards Department or a senior officer at a local level who had direct access to those officers and was able to instruct them.

278. Around that table there were members of Police Scotland, including a member of the Professional Standards Department, and that was discussed and minuted and it will appear in a SOP somewhere, I've no doubts.

Signature of Witness

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279. I have been asked if I know in which SOP this is documented. I'm sorry, I don't.

280. I have been informed that, to date, the Inquiry has not identified a PIRC SOP in which this procedure is documented. I have been referred to a memorandum of understanding between PIRC, Police Scotland and SPA dated September 2013 (PIRC-04437). This procedure is not documented in this MOU. I would say that this was an incorrect assumption on my behalf. I am however, aware that it was standard practice that on commencing an investigation into Police Scotland that a request in writing was made to the Professional Standards Department at Police Scotland to nominate a SPOC who would assist in progressing access to documentation such as officers' operational statements, SOP held on police systems and, when required, to make arrangements for police officers or members of staff to attend at a predetermined time and place for interview. This procedure was seen as a practical solution to expedite investigations and was supported by Police Scotland.

281. I have been asked if PIRC was permitted to approach officers directly to obtain operational statements. Yes.

282. The Act gave us as investigators two completely different levels of power. If it wasn't a Crown-directed investigation, the Act provides that the Commissioner can require Police Scotland to provide them with information in a format required by the Commissioner, i.e. statements, CCTV footage, paperwork, etc. In a Crown-directed investigation, that's somewhat different. The Commissioner could not require all officers to provide statements, so there was a difference there. The responsibility of supplying an operational statement must first and foremost be one for the officer, with the assistance of the SPOC if necessary, as time went on.

Signature of Witness 

283. I have been asked in what circumstances a person is treated as a suspect by PIRC rather than a witness. When there is a sufficiency of evidence to suggest that they may be criminally liable for a certain course of behaviour. They would be interviewed under caution and have access to a solicitor.

284. I have been asked who is responsible for determining if there is a sufficiency of evidence. It could be the PIRC during a particular investigation. It could be as a result of discussion with the Crown Office. It could easily be a discussion between both or a decision by the PIRC senior investigator at the time.

285. I have been asked if a higher evidential threshold requires to be met for a police officer to be charged in comparison to a member of the public. No, definitely not.

286. I have been asked whose responsibility was it to communicate an officer's status as witness or suspect to that officer. The PIRC investigator.

287. I have been asked if the PIRC investigator should, accordingly, communicate directly with the officer about their status. Not necessarily. If a person was falling under the category "witness", I don't think there's any requirement that PIRC would have to keep telling them that. I think it would be fair enough under those circumstances to deliver that message through a solicitor or the SPOC.

288. I have been asked if it was appropriate for Keith Harrower to make a decision in relation to the officers' status on 3 May 2015. I would say so, yes.

Obtaining the officers' operational statements

Signature of Witness 

289. On 5 May, a telephone call was received from Mr Peter Watson, who is a lawyer representing the SPF. Mr Watson identified himself as acting on behalf of the officers concerned in the arrest of Sheku Bayoh. During the call I informed him that we were keen to get operational statements from those officers. He at that time knew the result of the initial post-mortem examination and his position was that his advice to the officers was not to supply statements at this time. I tried to assure him that the officers would be dealt with as witnesses but, despite that, he stuck to the line that his advice to the officers at that time was not to provide statements.

290. I spoke again with Mr Watson a couple of days after that. I think that might have been 7 May. That was to inform him that despite our previous conversation we were going to have the officers approached individually and asked if that was their position. His position still was that he advised them not to provide statements.

291. I have been referred to a note of this call with Peter Watson on 7 May 2015 (PIRC-03710). I have been asked if it is my handwriting and if the note of the call is in line with my recollection. It is, yes.

292. I have been referred to an email sent later on 7 May 2015, at 1219 hours, by SI McSparran to DCI Keith Hardie (PIRC-02671) confirming that the status of the officers was as “witnesses” and requesting that they provide operational statements. I have also been referred to an email in response from DCI Hardie, sent from Stuart Wilson’s email address, at 1455 hours on 7 May 2015, in which DCI Hardie identifies that various officers have been approached to request statements and they declined to provide statements on the advice of their solicitor (PIRC-02671). Yes, I recall that. I think it was important that we heard directly from the officers that that was their position.

Signature of Witness



I'm not doubting anyone around his credibility, but I think that was the correct approach at that time.

293. I have been referred to the minutes for a morning briefing on 7 May 2015 (PIRC-04156, page 6) which note, within an update that I provided: "*Officers still haven't submitted operational statements, this has been raised with ACC Nicolson*". I didn't speak to ACC Nicolson about that. That was the intention. However, we moved beyond that at that stage. We decided to go directly to Mr Watson and, once we heard that his advice was not to provide statements, I felt that there was little or no point contacting Mr Nicolson and asking for him to do that.

294. I have been asked if PIRC considered approaching the officers directly rather than via their solicitor, or via the SPOC at Police Scotland. Not that I'm aware.

295. I have been asked if a direct approach to the officers might have been beneficial to the investigation. Not based on the fact that the officers from day one had access to a SPF representative, had chosen not to submit Use of Force Forms, which in some ways would have contained the sort of information that we would have expected to see in an operational statement. And then various approaches through the SPOC and the fact that the position of their solicitor was that they would not provide statements. Time was better spent trying to ingather evidence from completely independent sources, house-to-house inquiries, CCTV, furthering the whole matter of post-mortem and cause of death, rather than spending time back and forth to officers who quite clearly were taking the advice of a solicitor not to provide statements. That was the rationale behind it. Statements from the central officers would have helped the Inquiry, there is no doubts about that, but there are many, many other lines of inquiry that need to be followed.

Signature of Witness



296. I have been referred to PC Amanda Givan's evidence to the Inquiry (day 18, page 64, line 7 of transcript):

Q. Did you feel by the end of the day that they had not had clarification of their status as witness or suspect?

A. They absolutely didn't have clarification of their status.

Q. You're quite sure about that?

A. Absolute – yes, I'm certain.

297. It could only be because there's been a breakdown in communication within Police Scotland, between the senior officers and whoever was dealing with the officers on the ground. My understanding was it was made quite clear, from Keith Harrower to senior police officers, that at that stage of the investigation the officers were being considered as witnesses and that that message was passed to them.

298. I have been asked if, in a Crown-directed investigation in May 2015, PIRC had any powers to compel officers categorised as witnesses to provide statements. No, no power to compel.

299. I have been referred to a letter from the Commissioner to Lindsey Miller, COPFS, dated 23 March 2018, in which reference is made to a meeting that I attended along with the Commissioner, the Lord Advocate, Les Brown and Lindsey Miller in relation to the status of the officers (PIRC-02465(a)). I met with the Lord Advocate at that time along with the Commissioner about what we may be able to do legally in relation to getting statements from the

Signature of Witness 

officers. This meeting took place early on in the investigation. Within days of me coming back to work following Mr Bayoh's death. I suppose we were asking the question, "Was there anything that Lord Advocate could do to make the officers provide statements?" The long and short of it was "no."

300. It was more about the provision of statements than their status, because nothing had changed evidentially. Even more so because the post-mortem results were inconclusive as far as a specific cause of death.

301. I have been asked if this meeting took place before or after I spoke with Peter Watson on 7 May 2015. Before, I think. Yes, I'm quite sure in fact it was before. I believe it was the 6th of May, from memory.

302. I have been asked if I recall minutes being taken at this meeting. No.

303. I have been asked if I know the context around why this letter was sent by the Commissioner to COPFS in 2018. No.

304. I have been asked what, if any, consideration PIRC gave to the officers' failure to provide statements being a breach of a constable's duty under section 20 of the Police and Fire Reform (Scotland) Act 2012. There was lots of discussion in relation to what this Act may have provided, but ultimately the decision was made at the end of the day that it did not override the common law aspect of compelling witnesses to provide statements, which may in time in some way be a challenge in relation to a future charge or incrimination.

305. I think there is a belief that the police have certain powers and with those powers come further responsibility. However, on 3 May 2015 there was nothing in the law that provided the PIRC with the ability to compel police officers to provide statements in a Crown-directed investigation.

Signature of Witness



306. I was surprised because I don't recall it occurring before. I was disappointed. However, they were accepting legal advice and quite often legal advice, from my viewpoint, isn't always the best advice in certain circumstances. Advice was given, you could maybe understand why they were taking that line. That's purely a decision for them. It's a very difficult area because they would say that they had rights as well, and I think that's the line they took.

307. I have been asked if I can recall another situation after the incident where officers refused to provide operational statements to PIRC. No.

308. I have been referred to two memoranda issued by Police Scotland on 26 March 2015 in relation to the process through which statements would be obtained from officers who were subject to on-duty criminal complaints (PS10953 and PS10954). I have been asked if I recall these memoranda. I remember the discussion around that and I have seen that memo at some stage, yes.

309. I have been asked if PIRC was aware of these memoranda as at 3 May 2015. No, we certainly didn't know about the publication of the memoranda at that time. I think it was quite early on in the investigation of the death of Sheku Bayoh because I can remember it formed part of a discussion that we had and, in its format, appeared to me to be supporting the position of the officers. That was clearly a memorandum that had been discussed between the Crown Office and the police, but we were no part of that.

310. I have been asked if I would have expected to have been informed of the result of those discussions. It would have been helpful.

Signature of Witness 

311. I have been referred to a note of a call with Peter Watson on 1 June 2015, at 1035 hours (PIRC-03725):

Mr Peter Watson telephoned enquiring whether the final post-mortem results were known. He re-iterated that the officers he represents are not refusing to make statements but will not provide same until their status is clear which is dependant on final post-mortem findings.

312. I have been asked if this note matches my recollection of what was discussed with Peter Watson on 1 June 2015. Yes.

313. I have been asked if I recall discussing anything else with Peter Watson at this time. Not at that time, no.

314. I have been referred to Peter Watson's position that the officers would not provide statements until their "status is clear". That was his opinion. My opinion was quite straightforward in relation to that: that they were witnesses. I'd had that discussion previously. We had had the officers approached and again made them aware that that was the position. I didn't see that there was much point in continuing with that discussion further now he was saying that they weren't refusing; they were just not going to provide them at that stage.

315. I think the next discussion was with [REDACTED] who was a senior officer-bearer within SPF. I'm sure he phoned me. Again, it was around the status of the officers and could we confirm it in writing.

316. Absolutely, it was in writing at that stage. It was made in writing to Police Scotland as a request via the SPOC, outlining to the SPOC exactly what we wanted the SPOC to do.

Signature of Witness [REDACTED]

317. I can only assume that there has been a discussion within the Federation around the position of the statement giving. I reached the conclusion that if we wrote to Mr Watson and confirmed that in writing, the likelihood would be that the officers would provide statements.

318. I have been referred to the fact that Peter Watson had stated previously that the officers would not provide statements until their status as witnesses was confirmed and that the confirmation of their status was contingent on the results of the final post-mortem. I have been asked if I am aware what changed in this regard. I have no idea. I wasn't party to why that decision was made at that stage.

319. I have been referred to a note of a call with Les Brown on 2 June 2015, at 0955 hours, (PIRC-03726). The note states:

I telephoned Mr Les Brown PF, CAAPD, to inform him that following discussion with Mr David Kennedy Police Scotland Federation and a subsequent meeting between Mr Kennedy and Mr Peter Watson Solicitor acting on behalf of the police officers involved in the arrest process it had been suggested by the Federation that the officers would make themselves available for interview if their status was confirmed as that of a witness.

Mr Brown (COPFS) agreed to consider the matter, seek further direction from COPFS and respond.

320. I have been asked if I recall this conversation with Les Brown and if the telephone note matches my recollection. Yes. I think I followed that up with an email perhaps to the legal representative, Peter Watson, confirming that that was the position, that they remained as witnesses.

Signature of Witness



321. I have been referred to an email I sent to Professor Watson at 1046 hours on 2 June 2015 in which I confirmed the officers' status as witnesses (PIRC-04006). I have been asked if this is email to which I am referring. Yes.

322. I have been referred to a further note of a call with Les Brown (PIRC-03727):

Mr Brown return call from DOI – Mitchell confirming that COPFS were content with interview of the officer involved in the arrest process – status witnesses. Further consideration should be given to their status if during interview they make any incriminating comments – the suspect status and 'SARF' process should be adopted.

323. I have been referred to the fact that the telephone note is dated 3 June 2015 at 1015 hours. I have been asked if the date of 3 June 2015 is correct and the call was not received on 2 June 2015. I would be surprised if it was the 2nd when I've dated it the 3rd. As far as I'm aware, yes, that would be correct.

324. I have been asked if, following my initial call with Les Brown at 0955 hours on 2 June 2015, I was required to wait for Les Brown's sign off before confirming the officers' status as witnesses to Peter Watson. No, because, as far as we as investigators were concerned, nothing had changed and the officers were going to be witnesses. I could only imagine I thought it might have been a better idea to update Crown. I think in my mind, then, I believed that there was going to be a change in the officers' position and it was a matter of updating Crown that this was likely and were they still content with that.

325. It would be a response that we'd be more than aware of anyway, that if during interview the officers had said anything that appeared to incriminate them there would be a duty to deal with them then as suspects, and to follow

Signature of Witness 

the process instigated at that time around the access to the solicitor, tape recording, etc.

326. The interview would've been stopped. John McSporran as the senior investigator would have been informed. It would have been considered at that stage what the officer had said and, if it was decided that the officer's status had changed to that of suspect because of comments made, the SARF process would be taken on at that stage. The whole SARF process ensured access to a solicitor to support a suspected person at that time.

327. I have been referred to an email from Professor Watson at 1130 hours on 2 June 2015, in response to my email at 1046 hours that day (PIRC-04006), which states: "*I have also said they will not by implication be asked any questions which imply any criminal conduct on their part.*" That's in Peter Watson's words. They would be asked questions pertinent to the events of that day and their part in it, as witnesses. I don't think that the solicitor's in a position to be telling the investigators what questions they should ask.

328. I have been asked if the decision to interview the officers as witnesses had any impact on the questions PIRC felt able to put to the officers within those interviews. No, I don't think it makes any difference to the questions that you ask. The officer could choose to answer or not answer the question, because you cannot compel them to provide statements either as a witness, nor as a suspect for that matter.

PC Givan's operational statement

329. I have been referred to the minutes for a morning briefing on 15 June 2015 (PIRC-04156, page 54) in which I provided an update "*in relation to difficulties faced trying to interview Amanda Given*". Just that all attempts to

Signature of Witness 

have her attend or make herself available for interview had been unsuccessful up to that stage. She was refusing, or she wasn't making herself available. Whether it was due to different shifts, I don't recall, but I know that the investigators were keen to interview her and that it hadn't been possible. She hadn't been particularly helpful and willing to come forward.

330. I think it was because she was a Federation representative and Peter Watson was representing the Federation that I spoke to Peter Watson and asked him if he could facilitate that interview.

331. I have been referred to an email from Peter Watson to me on 9 June 2015 at 2002 hours in which Peter Watson asks, with reference to PC Givan: "*On what legal basis do you consider you have right to interview her and what relevance is she [to] the matter you are investigating.*" The reason we wanted to interview her, she was a Federation rep and she had early contact with officers on the day. She's a witness to the events of post-arrest. She was present with the officers at the Kirkcaldy Police office, and quite clearly they were refusing to submit forms that we would expect and we were trying to find out whether she had provided any advice to the officers in relation to that.

332. I think at the end of the day after that discussion it was agreed that she would make herself available but she was looking for the support of the Federation solicitor at that time during the interview, and that was a better situation than having no statement at all. She's an individual and, ultimately, as a witness she has rights as well. I don't think she needed a solicitor, but that was her decision.

Requests for officers' weights

Signature of Witness



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333. I have been asked if I recall any discussions around obtaining the weights of the police officers involved in the arrest of Mr Bayoh. Yes, I do. I believe that that was a direction from Crown after a discussion that they'd had with Mr Anwar. I believe the officers were approached and asked to provide that information. Again, this sort of thing would be done through the SPOC.

334. I have been referred to a letter that I sent to Chief Superintendent Eleanor Mitchell dated 21 August 2015 (PIRC-02285), within which I refer to information on the officers' weights having been received with the exception of the weight of PC Paton. I was just looking for her assistance as the head of the Professional Standards Department to see whether we could complete that line of investigation.

335. I have also been referred to Chief Superintendent Mitchell's letter in response dated 11 September 2015 (PS05030), in which she states that she couldn't compel PC Paton to provide his current weight, but she provided me with his weight as of the date he joined Fife Constabulary in 1991. Again, it's a difficult one because there is no ability for us to compel people to give information. I thought it was unusual. I couldn't see the point in it, but that was the position he was taking, and his weight in 1991 when he joined the police, that is of little relevance to us at that stage. It would have been helpful had PC Paton provided his weight. I suppose we couldn't finish that line of inquiry.

Notebooks, use of force forms and CS/PAVA forms

336. I have been asked if, in May 2015, PIRC had power to compel officers to complete paperwork after an incident including notebooks, use of force forms or incapacitant (CS/PAVA) spray forms. No, not in an investigation directed by the Crown. My understanding of these forms is there's no legal

Signature of Witness




requirement around these forms. These are internal police procedural forms, so, if officers refuse to fill these forms in, that could be construed as a misconduct matter but that would be down to the Police's Professional Standards Department to take that on. We did not investigate misconduct matters in relation to anyone other than senior officers.

337. It could have been a neglect of duty by not filling these forms in. I would imagine that completion of the use of force form would be covered by a standard operating procedure.

338. I have been asked if within a Crown-directed investigation PIRC would ever contact Police Scotland to identify that there may have been misconduct on the part of one of its officers. Not our role. Police Scotland were more than aware that the officers had not filled in these forms. It would be up to them if they decided that that was misconduct to take that on.

339. In this set of circumstances the report being compiled belongs to the Crown. We are not allowed to share the contents of that report without prior permission of the Crown. If the Crown decided in some way parts of that amounted to misconduct, they may or may not wish to bring that up with the police. Different story altogether when we're doing that type of investigation where the referral to the Commissioner is made by the police requesting an investigation because of a use of CS spray. We would then report back with the facts of the matter. Reports from the Commissioner went to the Professional Standards Department who would then consider whether the findings warranted an investigation in terms of the misconduct regulations.

340. Ultimately the information has to come from the officer who used the incapacitant spray. The officers involved in the arrest of Mr Bayoh refused to provide information. If they had filled in details in an incapacitant spray or

Signature of Witness 

use of force form, that would have been an initial account and it would have given us some idea of what occurred on that day. They decided at an early stage that they weren't going to do that, and we had no power to compel them to provide us with that information.

341. I have been asked if PIRC has less power to obtain incapacitant spray forms within Crown-directed investigations than in investigations referred to PIRC by Police Scotland. Yes.

342. In the context of an investigation of a serious incident involving the police referred to PIRC by Police Scotland, I have been asked whether the obligation to provide an incapacitant spray form to PIRC rests with Police Scotland or the officer who discharged the spray. On Police Scotland.

343. I have been asked when PIRC would normally expect to receive such paperwork within an investigation. Quickly. Maybe on that day or in the immediate days following.

344. I have been asked whether, whilst a PIRC investigation is ongoing, it is possible for Police Scotland to raise conduct proceedings under the Police Service of Scotland (Conduct) Regulations 2014. I think, from experience, they wouldn't go into a misconduct matter which might encroach on a wider investigation, like a death in custody. Quite often under those circumstances misconduct investigations may be postponed.

345. I have been asked if I aware of conduct proceedings ever being initiated by Police Scotland against officers who were at the same time subject to a PIRC investigation. Simultaneously, no.

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346. I have been referred to the minutes for a morning briefing on 3 July 2015 (PIRC-04156, page 77), which, within an update provided by Irene Scullion, note: *“Crown have advised that the investigation may extend into criminal neglect of duty or attempt to pervert.”*

347. I have been asked if I recall any discussions about PIRC’s investigation being extended in this way. No, I don’t.

Decisions to obtain statements

348. I have been informed that there are various senior officers who had an involvement in the investigation and from whom PIRC did not take statements, including DCI Keith Hardie, DS Lesley Boal and Inspector Stephen Kay, with reliance apparently placed on those officers’ operational statements instead. I have been asked how common it is for PIRC to obtain further statements from police officers upon receipt of their operational statements. Yes, it would happen. If you read the statement and it didn’t cover the areas that you wish to cover the officer would be re-interviewed by a PIRC investigator. That was an SI decision, clearly. The senior investigator in charge of the investigation, John McSporran.

349. I have been asked if I had any input into the process of checking if further statements required to be obtained from relevant witnesses. No. John McSporran was appointed as the senior investigator. Those decisions at that level were his.

350. If there was a particular matter, maybe, for example, around trying to get a statement from Amanda Givan, if he thought I could do that through Professor Watson, or if there was an area of business that he was unsure of,

Signature of Witness 

yes, he would come to me maybe for some assistance, and general day-to-day decision-making was down to the senior investigator.

351. If I was aware that there was a statement which didn't fulfil its need I would probably have spoken to John McSporran and said, "Do you not think it's important we do A, B, C or D?" But that would mean I would read every statement, every action, every piece of documentation that came into that investigation, and that just is not a possibility, I'm afraid.

Officer interviews

352. I believe there's an interview strategy document which was completed by the senior investigator or under the instruction of the senior investigator which would cover what he believed, with his knowledge of the investigation, the pertinent points to put to the officers. In a major investigation, which this was, that is good practice.

353. I have been asked if I had any involvement in the creation of the witness interview strategy (PIRC-04182) used in obtaining statements from the officers involved in the arrest of Mr Bayoh. Not that I recall because my day-to-day knowledge of the investigation would not be as good as either the senior investigator or his deputy. It couldn't possibly be. There was other business ongoing. This was not the only investigation that was underway that I would have some oversight on. It was important that the central decisions were made by those who had best knowledge of the Inquiry, who were always going to be the senior investigator and his or her deputy.

354. I have been referred to the fact that the questions contained within the witness interview strategy (PIRC-04182) largely focus on the "what", "when", "who" and "where" of the circumstances of the incident. Only two questions


Signature of Witness 

ask the officers “why” certain actions were taken – why use of force and CS/PAVA forms were not completed and why there are no entries in the officers’ notebooks in relation to the incident. I have been asked if I recall any discussions within the PIRC team about exploring with the officers why they decided to take certain approaches to the incident or employ certain tactical options in their response. No, I don’t. These are broad headings which need covered; that doesn’t exclude further questions being put. For example, “So, you said you did this. Why did you do that?” You know, it doesn’t exclude that. You’re not saying to people, “Don’t ask questions other than this,” but, “This is the minimum that I would expect you to ask.” You’ve no idea how an interview is going to play out, so it doesn’t restrict the interviewer from asking for clarification or to make a point clearer or give more information about that point.

355. The fact that it’s not written down there, maybe it should have been, maybe it would have been clearer, but I don’t think it would ever have stopped anyone during an interview asking those questions.

356. I have been asked if, in an interview following an incident, I would consider it important to ask why certain decisions were taken by the officers. Yes. An awful lot is to do with justification, so that would be a natural question under that circumstance. “Why did you find it necessary to use CS spray? Justify your actions.” Even without using the term “justify your actions,” “Tell me why you felt it was appropriate to use a baton. Why did you find it necessary to use handcuffs?” I’m quite sure all these questions were asked. I’d be surprised if they weren’t.

357. Under certain circumstances, police officers have the right to use force. That force has to be proportionate, not beyond the force necessary, and they must be able to justify that in time.

Signature of Witness 

Analysis of statements

358. I have been asked if PIRC compared and contrasted the statements obtained from the officers that attended Hayfield Road to identify areas of consistency and inconsistency. Yes. I don't know who carried it out, but the instruction would come from John McSporran.

359. I have been asked what consideration was given to taking further statements from the officers to question any inconsistencies between their respective accounts, or to ensure that all relevant areas were covered. I don't think statements were taken. Whether there was consideration, again, that's a role for the senior investigator.

360. I have been asked if I recall being approached by SI McSporran to discuss the possibility of obtaining further statements from the officers. No, because again, that was a decision for him to make.

361. I have been asked if there was any suggestion that PIRC could not take further statements from the officers in light of the difficulties encountered in obtaining their initial statements. No, I think that we were always keen to take statements, always keen. The problem was to manage to achieve that agreement from the officers. There'd be no suggestion whatsoever that if there was a need to go back and interview that that wasn't going to happen.

362. I have been asked if consideration was given to obtaining further statements from the officers following the expansion of PIRC's terms of reference to include matters such as conferral and issues of race. I know that there were additional lines of inquiry, a closer look into officers' backgrounds, etc., discipline matters, training, but I don't recall whether the officers were re-

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interviewed. I don't think they were and, again, that's a decision made by the senior investigator. I didn't make that type of decision.

363. You have to consider what you had and who you had previously interviewed might be able to give more information specifically to progress the area of racist behaviour or considerations.

364. I have been referred to PC Craig Walker's PIRC statement, dated 4 June 2015 (PIRC-00264), on page 9, in which he describes providing CPR to Mr Bayoh:

I placed interlocked hands on the centre of the chest and started compressions in line with the training I've had. After two or three compressions I heard the sound of a rib breaking in the chest area. In my training I was told if you were doing it right you might break a rib, don't worry and don't stop.

365. I have been informed that PC Walker does not refer to hearing the sound of Mr Bayoh's rib breaking within a self-prepared statement that he created prior to providing his statement to PIRC (PIRC-00265). I have been asked if I recall there being any discussion about this difference between PC Walker's two statements. No, not at all. Could it have been that he was asked about the broken rib in the second statement? He didn't put it in the first statement, goodness knows why, but operational statements quite often need expanded.

366. I have been referred to PC Walker's PIRC statement (PIRC-00264), on page 11, in which, when describing discussions that took place at Kirkcaldy Police Office, PC Walker states: "*While I was in the canteen with my team the advice from Amanda Given was to say nothing to anyone at that time.*"

Signature of Witness



367. I have been referred to PC Givan's PIRC statement, dated 22 June 2015 (PIRC-00238), on pages 3 and 4, in which PC Givan states:

I have been asked about advice I gave to officers regarding whether they should provide statements ... I told the officers that they may or may not be asked for a statement that day and that they should establish their status, either a suspect or a witness if they are a suspect they cannot be compelled to give a statement and that I would arrange to get legal advice.


...

At no time did I say to her [Chief Inspector Nicola Shepherd] or any other persons not to give a statement, other than the advice I gave to the officers.

368. I would have expected that during that interview, once she had said that that hadn't occurred or that it would have been put to her that officers had said that she had given advice, that that would have been put to her.

369. I have been asked if I recall any discussion about going back to PC Walker to put PC Givan's differing recollection to him. No, I don't. I think the statements clearly show that there's a difference in recollection.

370. I think Amanda Givan was quite adamant during her interview that she didn't give that advice specifically about not giving statements. Yes, you could have gone back and asked the question. Whether it would have clarified the part, or whether Constable Walker had said, "No, she definitely did," and then you'd go back to her again, would she have changed her mind? I would have thought it would have been pursued quite rigorously with her during her

Signature of Witness 

interview because I would have imagined that the interviewer would know that by saying that she was contradicting information from other officers. I'm not quite sure that going back and forward would have resolved that matter.

371. I have been informed that it was John McSporrان who took Amanda Givan's statement. He would be more than aware of the fact that there was that contradiction.

Witness interviews

372. I have been referred to PIRC's Family Liaison Policy (PIRC-04460, page 8) which states, within a discussion of the content of a family liaison strategy:

Gathering evidence and productions from the family (given the potential for compromising the FLO's relationship with the family and to minimise the chances of a challenge to the integrity of the evidence recorded, FLOs should only be asked to interview significant or vulnerable witnesses in very exceptional circumstances following full discussions on such matters with the SI)

373. I have been asked if it was considered best practice for PIRC FLOs not to take statements from family members. I don't think you can be so specific. I think what it's actually saying there is you have to consider every set of circumstances and have a look at the merits in each individual investigation and each individual witness.

374. I would take a supportive position from the FLO as well because once FLOs are in with families, they very quickly pick up a vibe about vulnerability. That's the investigative side of their business as well. It's to feed back.

Signature of Witness



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375. I have been informed that PIRC's FLOs Alistair Lewis and John Clerkin took statements from Mr Bayoh's family members, including Collette Bell, Ade Johnson and Kadi Johnson. That's obviously after discussion with the SI. It's determined that, yes, that that was a credible decision.

376. I have been asked if I would consider there to be any potential negative consequences arising from PIRC's FLOs taking statements from family members. I can't see why there would be.

377. I have been informed that Collette Bell's statement to PIRC (PIRC-00028) identifies that she was asked by John Clerkin about Sheku Bayoh's preferences towards drink and drugs and regarding Mr Bayoh's view towards police. The statement also includes details that would suggest Ms Bell was asked about Mr Bayoh's awareness of other people's views of his mixed-race relationship.

378. Three quite separate areas, I would consider. Alcohol and drug use, I don't see that there's a problem with asking these questions. We've got to ask hard questions sometime, and right up to this point a definitive cause of death hasn't been established. I think that's a legitimate question when you're instructing or asking expert witnesses to provide an opinion about what the cause of death might have been. The aspect about his attitude with the police, again, I think that's a reasonable question around had he ever had confrontation with the police before, what did he think of the police because of that, or was there a suggestion that he mistrusted or disliked the police, or would he be likely to take a certain course of action if confronted by the police? I think these are legitimate questions. The part about their mixed-race relationship, I don't get a strong feeling about why that might have been so important. I would need to know more about that before I could comment whether I felt that was appropriate or not.

Signature of Witness 

379. I have been informed that Lorraine Bell was present when PIRC took a statement from her daughter, Collette Bell, on 8 May 2015 and Lorraine Bell later provided a statement to the PIRC on 3 June 2015. Kadi Johnson was present when PIRC took a statement from her husband, Ade Johnson, on 13 May 2015 and Ade Johnson was present when a statement was obtained from Kadi Johnson on 2 June 2015. I have been asked if it was in line with best practice for PIRC to obtain statements from witnesses when other potential witnesses were present at those interviews. I would have to give consideration to what negative effect that that might have, and it's a balancing act around support. It's a balancing act around a family who we knew felt that they had had a bad experience with the police. I could never call it best practice to have two people in the room, take statements from one, then going back and asking the other one. It would be a bigger concern if they had been eyewitnesses to an incident because quite clearly there could be an influence, one over the other. Whether it related to family background, I'm not quite sure what great challenges that that might involve later on or at any time, but in an ideal world, no, it wouldn't be best practice to do that.

380. I have been informed that a statement was taken by PIRC from DC Derek Connell on 6 May 2015 in the presence of DS Samantha Davidson, who attended the scene with DC Connell on 3 May 2015. PIRC later took statements from DS Davidson on 29 May and 2 June 2015. I have been asked if I was aware of this. No, I wasn't. That wasn't best practice. I would like to interview these officers individually, get their account in their words, without anyone else being present who might be asked similar questions at a later date, because it's their account that we want. Their honestly held belief. Not something that they may have heard from someone else.

Signature of Witness



381. I have been informed that, on 26 May 2015, PIRC investigators took a statement from Alan Finlayson, a paramedic involved in the response to the incident on 3 May 2015. I have been referred to Mr Finlayson's statement to the Inquiry (SBPI-00007, paragraph 110), in which he states, with reference to PIRC's investigators:

They were really quite snippy and quite arrogant about the whole thing. It really didn't start off well that meeting. There was a lot of bad feeling. I was under duress to provide evidence from a statement that technically I shouldn't even have had in my hand at that time.

382. I have been informed that, on 27 May 2015, PIRC investigators took a statement from James Hume, a friend of Mr Bayoh. Within his statement to the Inquiry (SBPI-00021, paragraphs 54 - 57), Mr Hume states he was asked by PIRC's investigators if Sheku Bayoh took drugs, drank alcohol or took steroids and if Mr Bayoh was an aggressive person who became involved in fights. I have been referred to Mr Hume's Inquiry's statement (SBPI-00021, paragraphs 55 and 57), in which he states:

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

...

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

Signature of Witness



383. I'm disappointed if that's how witnesses felt, but I'm not so sure why the paramedic or ambulance technician felt that way. A better explanation should have been given, and maybe it should have been left and taken up with someone else who felt more in a position to provide that or, maybe, it just wasn't explained well enough to him about what type of investigation it was and how evidence had to be gathered. So, that's disappointing, but that was never brought to my attention at the time.

384. If it seemed to be a real problem, I think we would have to be identifying it as a training need, but if it was something that could be dealt with, even by the way of an apology, I would have expected them just to get on with that.

385. The second part around Mr Hume and some of the questions that he was being asked about whether Mr Bayoh was a drinker, whether he was aggressive. It might be that Mr Hume thought that the investigators were trying to apportion blame there, but far from it. If the gentleman's answer was, "No, he was a mild-mannered person who didn't take drugs nor drink," that also has a bearing on what the police were saying about his behaviour that day. So, I think that's a legitimate question. Quite often as an investigator, you ask questions that people don't like, but unfortunately that's the way of it. Often, it's how you deliver it and discuss it beforehand and explain why. If that's the feeling and that had been brought to our attention, we could certainly have had a look at doing something about it. I don't know how many people were interviewed during that Inquiry and I don't know how many made those sort of complaints. Was it a very small percentage? Was that out of the norm? If it was the norm, I'd have wanted to know about it and do something about it.

Signature of Witness



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386. I have been asked if I was aware at any point within the investigation of any concerns raised by witnesses in relation to the approach of PIRC's investigators. No.

SPF media engagement

387. I have been referred to a statement released by SPF to the media on 14 May 2015 (SPF-00010 (a)), which contains details about the incident involving Mr Bayoh, including: "*A petit female police officer responding to a call of a man brandishing a knife was subject to a violent and unprovoked attack by a large male. The officer believed she was going to die as a result of this assault.*" Completely unhelpful. We're in the very early stages of an investigation where it hasn't been determined what the facts were, and I don't think that type of release does anything but stir annoyance in some areas. That sounds as if that's an absolute fact.

388. I don't know whether it had an impact on our investigation because ultimately that's down to public opinion at the end of the day, but I still don't think that it's the type of media release that supports any investigation.

389. My position is that that release wasn't appropriate in any case, regardless of where we were. I just don't think it is, because it's pre-judging an investigation that's ongoing. It's making statements which have not been challenged by the investigation team. I don't know what overall effect it had in our investigation. It's very difficult to judge what effect in public minds that type of comment has.

390. We had to be very careful in how we responded. We couldn't control what the SPF decided to put out in the press. We couldn't control what Mr Anwar, or the family decided to put out in the press either. We had to get on with the

Signature of Witness



job of conducting an investigation, and not to become involved in media matters of allegation and counter-allegation. If we were going to the press, it was to appeal for witnesses or whatever it was. It was not to get involved or pre-judging or playing out the facts of the investigation in the media.

391. I have been asked if I recall speaking to SPF following this media release.

No.

392. I have been referred to a press release issued on behalf of SPF on 2 June 2015 (SPF-00019), in which the legal adviser for the SPF, Peter Watson, stated:

The officers involved have never refused to provide statements. It was agreed at the outset with PIRC that they would revert to us when they wanted statements and when they were clear on the basis that statements were to be given. PIRC emailed me this morning at 10:46am asking for our assistance to organise interviews and we answered at 11:29am confirming we would be pleased to assist. Those are the facts."

393. That it was completely inaccurate. The suggestion that that was the first and only time that we had made it clear to Mr Watson or anyone else, including the individual officers, that their position was that of witness and that we wish to take a statement from them.

394. I don't know by that stage if it had any negative reaction or impact on our investigation. It certainly was inaccurate, and it was followed up by a response from the Commissioner, but I can't say that it impacted our investigation.

Signature of Witness 

395. I have been referred to a statement released by PIRC on 4 June 2015 (PIRC-03925, pages 31 – 32):

The PIRC has been leading on the investigation into the death in custody of Sheku Bayoh and since the hours following his death on Sunday 3 May 2015 has made several attempts to secure statements from the arresting officers. Those officers have now agreed to provide statements to the PIRC and now that PIRC is in the process of gathering the material, it will be considered along with the information already gathered throughout the course of the investigation to date.

396. I would have some discussion around that with the Commissioner as well and our head of media. The person that had final say was the Commissioner, because she is the responsible person at the end of the day.

397. I have been asked if it was common for PIRC to comment on its investigations in the media in this way. No. We stayed greatly out of the media, other than to attempt to secure witnesses, etc. I think we believed that that comment was inaccurate and may have undermined our position as investigators.

398. I have been asked if I recall having any discussions with SPF about this matter. I think I spoke to Calum Steele. He was either the president or the chair of the Federation. I think it was after we responded in the media, because I think that's why he then phoned to the office.

399. Just the fact that that was inappropriate. He was still claiming that attempts hadn't been made, and I was saying, "Well, that's wrong; there were several attempts made."

Signature of Witness



400. I wasn't impressed with those two incidents but that, again, is my opinion. It's the way I felt. It undermined the position of the investigators. In the minds of the general public or the family.

401. I have been referred to a letter dated 5 June 2015 sent by Calum Steele, SPF, to the Commissioner, Kate Frame on 5 June 2015 (SPF-00025), which states:

On the 7th May and following receipt of information that the officers involved were to be compelled to give statements an email was sent to Detective Chief Inspector Hardie in which clarification of the status of the officer's question is sought.

That email is copied to John Mitchell.

I am advised Mr Mitchell subsequently confirmed by telephone that no statements could be compelled and that the status of the officers was fundamental. I am also advised Mr Mitchell himself advised that the status of the officers couldn't be confirmed until such time as the post mortem had been carried out and that he would clarify with Mr Watson when the position would be clarified.

I am also aware that in a number of subsequent telephone conversations Mr Mitchell commented that in his opinion the officers were always (likely) to be considered witnesses but no written confirmation to this effect was received.

402. I have been asked if this matches my recollection. Absolutely not. I made it quite clear to Peter Watson that, in our view at that stage, the officers were witnesses and we wished to interview them as witnesses.

Signature of Witness 

403. I have been referred to the text that states that I “*advised that the status of the officers couldn’t be confirmed until such time as the post mortem had been carried out and that he would clarify with Mr Watson when the position would be clarified.*” That was Mr Watson’s position, not mine. I don’t know where Calum Steele gets that. He seems to be getting it the wrong way around, I would suggest.

404. I have been referred to a subsequent letter dated 25 June 2015 from the Commissioner, Kate Frame, to Calum Steele (PIRC-02151(a)), in which the Commissioner refers to me speaking to Mr Steele after his letter (SPF-00025) was received and providing “*clarification*”. Yes, I remember, he was quite heated about the fact that our response in the press was inaccurate, and again I pointed out to him the various attempts that we had made to secure statements from the officers.

SPF investigation

405. I have been referred to a letter dated 3 September 2015 from Professor Peter Watson to the Commissioner, Kate Frame, enclosing a copy of his letter to the Lord Advocate (of the same date) and a report containing a [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

406. I have been referred a letter dated 7 September 2015 from Professor Peter Watson to the Commissioner, Kate Frame, [REDACTED]
[REDACTED]

Signature of Witness [REDACTED]

[REDACTED]

407. I have been asked if PIRC discussed the parallel investigation with Crown Office. I honestly don't remember.

408. I have been referred to an email dated 16 October 2015 in which Mr Bayoh's family's solicitor contacted the Commissioner, Kate Frame, and expressed concerns about the investigation being carried out on the instruction of Professor Peter Watson and the actions of his investigator, John Sallens (PIRC-02503). I have been asked if I recall what I discussed with DSI Little in this regard. No, I don't. We're probably aware of the content of the letter, discussed it with him, and then sent a letter on to him in confirmation, would be most likely.

409. I'm not sure that it had any impact. It didn't sideline us or make us take a different route, nor did we waste time in investigating something that I don't think was within our gift to investigate.

410. Our investigation carried on regardless. I'm not sure whether we could have done anything about it in any case. My understanding was that that John Sallens was working for Peter Watson. I do not see that we would have a role in investigating John Sallens or anything that John Sallens was doing. I don't know what right Peter Watson had to conduct an investigation on behalf

Signature of Witness [REDACTED]

of his clients. I would imagine he would be entitled to act on behalf of his clients.

411. I have been asked if PIRC took any steps to dissuade Peter Watson from continuing with this parallel investigation. Not as far as I'm aware, no. I don't actually think we considered anything other than to be aware that it was happening, because I don't think that, legally, there was anything that we could do about it.

Investigation of issues of race

412. I have been referred to a letter dated 2 September 2015 from Les Brown to the Commissioner, Kate Frame (COPFS-02557). This letter states, on page 4: *"I require confirmation from the Commissioner that issues of race and whether there is any evidence of racial motivation is a primary focus in the PIRC investigation."* I don't remember having any discussion about it being expanded. I believe it was after a discussion between Crown and Mr Anwar. Once we get to the position where the family have made these allegations that Mr Anwar or the family have identified this previous incident in Fife, yes, that had to be looked at very closely.

413. This relates to the texting the racial slogans etc. We looked to see whether we could determine whether any of the officers involved in interaction with Mr Bayoh on the day had any part of that or had any communication or were associated in any way with these officers and, as far as I'm aware, we didn't find any evidence of that.

414. I know that information was shared by Mr Anwar in relation to comments that one of the officers, Alan Paton, had allegedly made to a member of his family and that the family held concerns that Mr Paton was in some way racist.

Signature of Witness



415. There was an investigation conducted with his family who were supplying that information to try and establish whether that was, in fact, the case. The discussion was around ensuring that we got access to the members of the family and gathered their evidence and considered their evidence along with all the other evidence and made sure that it appeared in the report to Crown.

416. I have been asked what consideration PIRC had given prior to receipt of this letter on 2 September 2015 to race being a factor in the incident. It was a consideration. The plain fact was that Mr Bayoh was a black man who, after an altercation with the police, had died, but the investigation then needs to be led by evidence, and evidence was not obvious that race had played a part in the way that the police approached the incident that morning. Speaking to people during house-to-house enquiries or people passing at the time, you wouldn't only be asking them what they saw, you would be asking them what they heard and, to my knowledge, there was never any suggestion of anything being said by any of the officers or any comments which would have been significant that would have led to belief that the motivation for the officer's behaviour was one of Mr Bayoh's race, but that doesn't mean that you don't have a look at certain aspects that might prove or disprove that.

417. I have been asked what steps PIRC took to explore whether race could have been a factor in the incident prior to the letter being received from Crown Office. Enquiries with Professional Standards Department etc. to see if there was any history held within personnel files or misconduct matters in relation to any of these officers. Whether there was any evidence at all of any racist behaviour that would raise concerns within policing. I am unable to recall if these steps were taken before the letter received from COPFS on the 2 September 2015.

Signature of Witness

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418. I have been asked if the race or ethnicity of a deceased person is automatically considered by PIRC as part of an investigation following a death in custody or a death following police contact. People will die in tragic circumstances and be from an underrepresented minority group. That doesn't necessarily immediately mean that there's a racist element to it. You always need to still find evidence to support that.

419. You would consider it, and I'm sure it was. If I recall, it's documented in John McSporrans policy file. I know that it was there. I don't know when.

420. I have been asked, prior to 3 May 2015, what experience I had of investigations of deaths in custody or deaths following police contact in which race was a factor to investigate. I don't recall one.

421. I have been asked if PIRC had ever considered the issue of race within an investigation prior to 3 May 2015, or if race became a consideration in an investigation subsequent to the investigation following the incident involving Mr Bayoh. Not that I recall, no.

422. I have been asked if I considered the investigation of issues of race to be more challenging for PIRC if this was the first time that PIRC had been required to investigate allegations of racism or issues of race. No, because it's all about gathering evidence and finding where the evidence leads you. What you're trying to do is start off by ingathering all information that may be available. Take statements: see what you can glean from those statements and see if you find information or evidence that tends to support that race or racism played a part in events.

423. I have been referred to a letter dated 19 October 2015 that I sent DCC Neil Richardson (PIRC-02292(a)) in relation to the investigation of allegations

Signature of Witness

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made against PC Paton, allegations of racism made against any person who served in the former Fife Constabulary, and details relating to the investigation of three officers dismissed for sending racist texts. Everything that's asked for there was clearly felt to be pertinent to the investigation and lines of investigation that John McSporrان had identified in order to fulfil the further direction from Crown. The reason I wrote to DCC Richardson was that in his role he would be responsible for complaints and discipline within the force. He sat at the top of that branch of business. We went straight to the top asking for access to documentation which may have been considered to be sensitive information.

424. I have been referred to an update that I provided on 24 December 2015 to Les Brown, COPFS, by email (COPFS-02782). Within this update, with reference to PIRC's investigation around issues of race, it states:

An examination of all complaints of racism made against Fife Police / Fife Division of Police Scotland provides that, in comparison to other divisions or police forces over a 7 year period, Fife Police / Fife Division show an smaller than average norm, i.e. average number of racist complaints made against Fife Police/Fife Division is 0.3% of all complaints, Scottish police force / divisional norm is 1.9%. This is indicative that institutional racism played no part in the approach of the officers to Sheku Bayoh.

425. I have been referred to a letter dated 13 January 2015 [sic – 13 January 2016] from Mr Brown to me (COPFS-02562) in which he states:

I have read the comments made in respect of the allegation of racism in Fife division and note that some statistical analysis has been carried out but would question whether the figure "is indicative that institution

Signature of Witness



[sic] racism played no part in the approach of the officers to Sheku Bayoh" as stated by John McSporrان.

426. I have been referred to an email from John McSporrان to Les Brown on 18 January 2015 (PIRC-02091), which states: "*For the avoidance of doubt, my report will, where possible, address the issue of whether there is an indication that race influenced the approach taken by officers either individually or collectively in the response to the incident.*" I don't know if I can add much to what I've already said about that aspect of the investigation. The lines of inquiry which would tend to prove or disprove that there was race at the heart of this were being looked at as they could be.

427. I think that response from John McSporrان to Les Brown has clearly been pulled together quickly, because Les Brown was meeting with the Lord Advocate. I think it is absolutely correct that Les Brown comes back and asks the question, "Do you think what you're telling me now actually supports the comment about it not being indicative of?" John McSporrان has gone back and said, "Well, the investigation continues," and I think at that stage there was still lots of ground to be covered in relation to the sort of information that we'd asked Neil Richardson for, and access to. The findings from those interviews and investigations, paperwork etc., ultimately would all have been included in the report under a particular heading.

428. I have been asked if I was involved in carrying out the statistical analysis undertaken by PIRC as part of its investigation of issues of race. No. I honestly don't know whether John McSporrان did that himself or he gave that role to someone else, or whether those were figures produced by the police and then looked at by John McSporrان. I'm not sure. They must have come from the police because it relates to complaints about the police.

Signature of Witness



429. I have been asked if I am aware of PIRC giving any consideration to hiring an expert in statistical analysis to carry out this work. No.

430. Whether new lines of inquiry were identified, I'm not 100 per cent sure, but I would assume – and I know that's sometimes a mistake – that every avenue was being pursued. I think it's fair to say that there were actually restricted avenues of investigation around attempting to identify whether race played a part, and that much of that would have to be based on historic information or prior complaints and, again, the wider aspect of whether Fife division was institutionally racist or otherwise. I don't know what percentage of complaints would have to be received within a division for someone to turn round and say, "We are institutionally racist." That's a very difficult thing. Iain Livingstone's comments were based on much wider information than the number of complaints received in a particular police division. To get to that point where you can say, "Yes, it was a racist incident, or it wasn't," is a very, very difficult set of circumstances.

431. I think if the evidence was there, we would have found it. I don't know how much broader you can make the investigation. For example, I do not know how you investigate unconscious bias, for the very fact it's unconscious. I think you'd have to look at what training people had had, what their understanding was of that training they had. Negative stereotyping, all of that, but that is a very difficult thing to prove or disprove, I would suggest.

432. I have been asked if these challenges were discussed within PIRC during the investigation. No, they weren't, because I'm not quite sure again how we could discuss whether unconscious bias played a part in this at that time. What we did investigate was the information provided by Mr Bayoh's family saying that they had been informed that Constable Alan Paton held racist views. What we did investigate was Alan Paton's and the other officers'

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previous HR and disciplinary records to see whether there was any evidence recorded in them that they held that type of view. We looked at the other Fife division investigation in relation to the inappropriate racist texts to see whether any of the officers involved in Mr Bayoh's arrest had in any way been involved in that investigation, which may very well have supported a racist view amongst those officers.

433. I have been asked if, when investigating issues of race, PIRC considered attempting to identify comparator evidence that might have permitted PIRC to compare how Mr Bayoh was treated against how other individuals, who were not black, were treated in similar circumstances. I don't believe so. I'm not quite sure how you could do that. I feel that it would have been necessary to identify incidents which were identical in all aspects of the events leading to and including the interaction between the police and Mr Bayoh to draw a meaningful comparison.

434. I have been asked if I was aware of the Macpherson Report at the time of the investigation. Of course, yes. I was a serving police officer at the time of the whole Macpherson Report. I was aware of it through the media, but I have no doubts that the recommendations would be used in training programs etc.

435. I was a policeman for 34 years and underwent lots of training in relation to race, underrepresented minorities etc., and it continued to change and be added upon.

436. I don't think at any stage unconscious bias formed part of that training from my recollection. I think it did when I was in the PIRC. I think there was one input, but whether that was prior to or after Sheku Bayoh's death, I couldn't be sure. I think it was probably post-Mr Bayoh's death.

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437. It was delivered in person. It was around the human nature of stereotyping, favouring or being against certain individuals or groups because of beliefs that you had over the years, not all of them negative; being more favourable towards a particular group because you knew more about them. I think that the big point that was made around that whole thing is to sort it, you must agree that it exists, because if you don't agree it exists, there is no remedy to it, and that's what I took from that, but it's still a very difficult thing to investigate is unconscious bias.

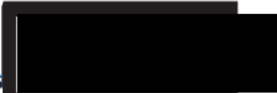
438. I have been asked if PIRC had any guidance or reference materials in relation to investigations touching on issues of race. There wasn't a particular SOP or memo of understanding or anything like that that related to dealing with matters that related to race.

439. I have been asked if PIRC considered seeking guidance from previous investigations or inquiries, such as the Lawrence Inquiry, in relation to the approach to be taken within the Bayoh investigation. I would probably have to say no.

440. I have been asked if there was any discussion about the Lawrence Inquiry and the Macpherson Report within PIRC during the investigation. No.

441. I have been asked if PIRC sought any guidance from third parties in relation to its investigation of issues of race, such as the then-IPCC. Not that I am aware.

442. I have been asked if I consider this could have assisted PIRC's investigation and permitted PIRC to learn from other experiences. It may have.

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443. I have been asked if I recall if PIRC sought or received any guidance or direction from COPFS in relation to the investigation of issues of race. No. In fairness to Crown, they rarely instruct specific lines of inquiry. They direct a broad spectrum. They instruct that we should consider, but they leave it up to the investigator to determine how that should be done.

Language in witness statements

444. I have been asked if I read police officers' statements when they were obtained. I read some statements, yes. I read the statements provided by the central officers eventually when they came in. I'm not even sure that I read them all. I read some of the statements as they came in.

445. I clearly had an interest in what the officers were saying. Those weren't the only statements I read: I read different statements at different times, just to keep myself apprised of what was happening. For information purposes.

446. I have been asked if, having read the officers' statements, if I had any observations or concerns or points that you wanted to raise with SI McSporran. No, not at that time.

447. I have been asked if I was involved in the analysis of the contents of the officers' statements. No, I wasn't.

448. I have been referred to PC Paton's PIRC statement (PIRC-00262), in which, on page 4, he states: "*It also ran through my mind that this male could be part of a terrorist plot.*"

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449. I have been referred to PC Paton's PIRC statement (PIRC-00262), in which, on page 5, he states: *"I kept thinking about the Lee Rigby boy, the soldier who was killed."*

450. I have been referred to PC Good's PIRC statement (PIRC-00274), in which, on page 7, she states: *"I was also thinking at that point of the Lee Rigby incident in London, mainly due to the fact of the coloured male and the potential terrorist connotations."*

451. I have been asked if I have any view in relation to the officers' comments drawing comparisons between the incident involving Mr Bayoh and the incident involving Lee Rigby. It seems to be a very personal opinion, I would suggest.

452. I have been asked if I recall there being any consideration within PIRC that the link made between Mr Bayoh and potential terrorist activity could have been influenced by Mr Bayoh's race. I cannot recall any discussion around that, but I understand exactly. "Why do these officers think that? Is it to do with Mr Bayoh's ethnicity? Is that what brings that to their mind, or is it because it's a man armed with a knife at that time of the morning?"

453. I remember PC Good making that comment and I find that very difficult to get inside someone's head and understand why they would reach that decision. It's not necessarily what would've jumped into my mind had I been sent to a call relating to a man armed with a knife. I would just have assumed that it was a man with a knife, regardless of the ethnicity of the individual. It would be a safety aspect to me. I'm a long way away from the police. These are young officers. I don't know what was through their mind or what briefings they get, or what intelligence they have that makes them think that way. It

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doesn't immediately jump to me in Kirkcaldy on a Sunday morning that this might be a terrorist incident.

454. I have been asked if it would have assisted PIRC to have gone back to PCs Paton and Good to ask why they were drawing a connection between the incident involving Mr Bayoh and Lee Rigby. It certainly wouldn't have done any harm. Yes, it could have been a re-interview situation. I'm not sure I would say "should have" at that time but it could have been an option to get some clarity around what made her think that.

455. I have been asked if there were any discussions within PIRC regarding PC Good's use of the word "coloured" to describe Mr Bayoh. No, and it's poor, because it's not the sort of language that should be used. Mr Bayoh is black.

456. I have been referred to PC Good's PIRC statement (PIRC-00274), which, at pages 9 and 10, states: "*I could see that the t-shirt was a tight fit as I could see the definition of his muscle through it, particularly at the back, and in particular his shoulder muscles, he was massive and is the biggest male that I have seen.*" That's her opinion. We have the facts about Mr Bayoh. We knew how tall, how heavy, he was. That's purely and simply her opinion. On that day, confronted by that individual, that's what she thought.

457. I have been informed that Mr Bayoh was 5' 10" tall and weighed 12 stone 10lb and one of the officers who attended the incident was 6' 4" and at the time of the incident was 25 stone. These facts contradict Constable Good's comments about Mr Bayoh. I don't understand that.

458. I have been asked if any consideration was given to PC Good's view being influenced by Mr Bayoh's race. No, I don't recall. She should have probably been challenged in the first taking of that statement in relation to, "Could you

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give me a wee bit more of what made you think that, etc.?" Fear might be one thing. The fear of what she was facing. I've never met that officer. I know nothing of her. Again, it's one of these set circumstances that may have done no harm and maybe have assisted to go back.

459. There are multiple opportunities. At the end of the day, at any stage, you could return to that officer and ask for clarity.

460. I have been referred to the statement provided by PC Nicole Short to John Sallens (PIRC-00253), in which, on page 5, she states: *"The man was deranged with super human strength and in my mind intent on killing someone."* I do not remember anyone asking or considering asking the question, "Are you saying this because of his race?"

461. I have been asked if, in my view, PIRC should have gone back to clarify where the attributions of size and physical strength to Mr Bayoh derived from and why the officers had those thoughts. In hindsight, maybe that would have been appropriate. Were these comments made because not only his size and build, but because he was a black man?

462. I have been referred to the statement provided by PC Nicole Short to John Sallens (PIRC-00253), in which, on page 5, PC Short states: *"I was eventually admitted to Kirkcaldy hospital and kept in overnight and given a CT scan. I asked the wee Pakistani doctor whose surname began with an S that if the scan came back normal what had caused my face to droop?"* The language could have been better. Again, it's her description. The doctor was clearly, in her opinion, Pakistani. I think the thing that makes it sound worse is the word "wee." Without that, if she had purely said, "the Pakistani doctor," I'm not quite sure that that would have been contentious at all, and again, the use of that word "wee," is that a dialect thing? I don't know.

Signature of Witness



463. I have been asked how PC Short would be aware that the doctor was Pakistani. I would imagine his colour, his ethnicity. It's a generalisation that she's making. Would there have been an opportunity to go back and say, "What makes you think the doctor was a Pakistani?" and whether that would be indicative of her mindset? It could have been done. It could have been considered.

464. I have been asked what involvement the Commissioner had in PIRC's investigation of race. Not as much as the senior investigator. She's obviously aware that the investigation was ongoing, and she was to assure the report at the end of the day, but actually taking a hands-on directorial role? No.

465. I have been asked if PIRC was sufficiently equipped to investigate issues of race relating to deaths in police custody or deaths following police contact in 2015. I thought we were, yes, but maybe there was an opportunity to seek guidance from people who had more experience. Maybe I should have considered whether there was an outside agency that could have assisted. Maybe that was a fault on my part. I don't know who I would have turned to. There are other investigative bodies that probably have faced that and, in hindsight, it may have been worth turning to them.

Investigation of racist text messages

466. I have been asked what involvement I had in investigating the case of racist text messages sent between officers in the Fife area. I think an approach was made to the Professional Standards Department within Police Scotland to provide all details of that investigation.

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467. I don't think it was met with immediate positive response. It caused a delay. I think there was discussion around how appropriate it was to provide the PIRC with that information. Information was provided, but I don't think it was immediate.

468. I have been referred to a briefing paper dated 3 February 2016 that was prepared by DSI William Little in relation to this aspect of the investigation (PIRC-03693). I think it was to discuss the provision of information. Police Scotland were questioning whether we had the right to that information and where it actually linked into our own inquiry.

469. I have been referred to a letter from DCS Clark Cuzen to DSI Little dated 2 February 2016 (PS05037), which is referred to within the briefing paper. I have been informed that, within this letter, Police Scotland requested clarification of the legal basis of PIRC's request for information relating to the investigation of the racist text messages sent by officers in Fife, including a download from one of the officers' phones. The senior investigator wanted access to the telephone messages of the officers involved in that inquiry to try to cross-examine them against other information to see whether there had been any contact with any of the officers involved. For example, "Did any of these officers contact Alan Paton, and could they check personnel files to see whether Alan Paton had a telephone number and provide it?"

470. I think under the relevant regulation, Police Scotland didn't think that that was a power that we had to require that information.

471. I have been referred to a letter I sent to DCS Cuzen on 9 February 2016 setting out the legal basis upon which the information was requested (PIRC-02304(a)). Without doing that, I didn't think there was any way that we could

Signature of Witness



be sure that there hadn't been any contact and, even then, it would be dependent on having the right telephone number.

472. I have been asked if it was common for PIRC to require to write to Police Scotland in these terms to set out the legal basis upon which information was being requested. No. In any case, the majority of that legal basis and other investigations was quite clearly outlined in the 2006 Act.

473. This is a sensitive area of business, access to personal data, so I imagine that they wanted to keep themselves right and to try and expedite matters. I decided that that probably would be the best way to progress things. Although I would have preferred they had just done it, I felt that if that opened the door, it was worth taking time to send.

474. I have been referred to a further letter sent by DCS Cuzen to me, dated 18 February 2016 (PIRC 02309(a)). I think it was purely and simply why they were reluctant to release this information to us. It was pertinent to the investigation, and we had a direction from Crown to investigate that.

475. They were protecting their position in relation to a sensitive area of business. They sought legal advice from their in-house lawyer and stood by their decision. Whether I was happy with that or otherwise, I think it had been very difficult for Clark Cuzen or anyone else for that matter just to hand over the information that we had if there were discussions ongoing and the solicitor was saying that it shouldn't happen. So, it was frustrating we didn't get it because we want to take that line of investigation to a finality.

476. I don't think they were meaningfully being obstructive. I think they were concerned that to hand that material over would be in breach of the legislation, which is a completely different thing than being obstructive. It

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might have felt like obstruction because we wanted to move on and get a reasonable answer to that, but I think it was less about just being obstructive and say, "No, you're not getting it" and more about, "No, I can't give you it because I'm not legally entitled to give you it".

477. Regulation of Investigatory Powers Act 2000 (RIPA) deals quite often with secret or sensitive information, and I think the police were challenging whether or not the 2006 Act that we worked to superseded the surveillance authority, etc.

478. There had been discussion early doors in relation to the sharing of sensitive intelligence if it was required during an investigation, but there was always a reluctance. There were always concerns within policing about making that type of evidence or information available to outside agencies.

479. I think, at the end of the day, we got the information we were looking for. What's likely to happen in the set of circumstances here is that, once I've done my bit to try and oil the wheels to make things happen, if it's actually delivered, it would be then delivered to the senior investigator or to the investigation, but I don't remember the specifics of what was delivered or what the outcome of that was.

480. I have been asked if I recall the Interception of Communications Commissioner (IOCCO) having any involvement in this aspect of the investigation. No, I certainly didn't have any discussions with them.

Family liaison

481. I have been asked what involvement I had in liaising with Mr Bayoh's family and solicitor during the investigation. I only met them once, and that was an

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arranged meeting. The Commissioner was present as well, and it was later on in the investigation. I didn't have any other contact with Mr Anwar or the family.

482. There were general discussions because ultimately the best route is face to face with the family. Or if the family want telephone call updates etc., the family have the right to drive that piece of the business. They have the right to receive that information in whatever manner they wish to receive it. They chose that all of the contact should be made through Mr Anwar, and that's the way we did it.

483. Alistair Lewis came to me saying that information had come via our media that a daily paper was going to write a story about Collette and Zahid [REDACTED]

[REDACTED] . [REDACTED]
[REDACTED]

I was asked the question because I take it John McSporrán or the others might not have been available at that time and that was the only time I was involved. I said, "Well, I would hate for them to write that, and for Collette or any of the other family members to see that without first being aware that it might occur." I asked Alistair to contact Mr Anwar and make him aware that the paper was maybe going to write this story and maybe his client should be made aware of it.

484. It was professional, but it could never be described as close or convivial and why should it be? Mr Anwar had a role to play, the family had questions they wanted to ask, we had an investigation to run and provided the answers as we could. My opinion and my experience is that direct and personal contact with the family is the best way. However, if the family decide that that's not what they want, that's what we do. The relationship could have been better. I think there's opportunities missed through not having direct contact.

Signature of Witness [REDACTED]

485. It's very, very difficult when the majority of the correspondence is written and you're dealing with one person and one person only.

Liaison with families in other investigations

486. I have been asked how PIRC would usually liaise with the family of a deceased following a death in police custody. FLO's and, where appropriate, the senior investigator would meet with the family just to explain what was happening and who they were and the outcome we would be reporting to, etc.

487. You couldn't sit down and say that each and every family have the same requirements, but things like arranging police attendance at, say, a funeral because there was going to be lots of people there. If they would tell us that, we would make sure that access was available to the hearse. Simple things that make a difference to the family when they're dealing with a death: return of the property, updates about when the deceased might be released. That's always a very difficult one. Families want their loved ones back quickly. Try and, as best as you can, provide them with the information that they are looking for that keeps them in the loop, makes them part of the process.

488. I have been asked if I considered that PIRC was able to provide this support to the Bayoh family. I think we could have if we'd been given the opportunity, but I think it was limited because there was little personal contact. You can only do what you're asked to do, and that's the way that the family wanted to do it. The family's wishes were that the single point of contact be Mr Anwar.

Correspondence and contact with Mr Anwar

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489. I have been referred to a letter dated 31 July 2015 from Aamer Anwar marked for the attention of John McSporrان and Kate Frame (COPFS-04726 (a) I have been asked if I recall this letter being received. I recall PIRC receiving that type of letter looking for written answers, yes. I think it was more than one. I'd imagine I saw that at one time.

490. I have been referred to a letter dated 7 August 2015 from Kate Frame to Aamer Anwar (PIRC-02420(a)) in response to the letter dated 31 July 2015. Yes, I recall the response. I may have had some input to it. I would imagine the greater majority was drawn from information we had available.

491. I have been asked who at PIRC was involved in responding to queries and concerns raised by Aamer Anwar. Certainly, everything would go through the Commissioner. If it was sent to us, she'd read it. When it went back out, she'd read it and be content with the content.

492. I have been asked if other members of the team would also be involved in the process. Probably John McSporrان and William Little.

493. I have been asked I feel that the family's solicitor raised legitimate queries and concerns during the investigation. On occasions. Some were queries and concerns that we probably couldn't even answer. Of course, if the family are asking Mr Anwar, and he's the point of contact, why shouldn't he put it on paper and write to us if that's the way they want to deal with it?

494. I think we tried to give answers to everything, and if we felt that it wasn't legitimate or we couldn't answer it, I think we said that. Whether it's through Mr Anwar or whether the family are asking these questions directly, quite often you're asked questions that you can't answer. It's not the case that you've decided not to answer them or provide information. It's that you just

Signature of Witness 

don't have that information or, on occasions, there is a chance that there may be a criminal prosecution and some of the questions relate to very specific evidence which would support that, that might not be appropriate to answer at that stage.

495. I have been referred to a note titled "*Audit of questions raised by Mr Anwar*" (PIRC-04134). I think it's a ready reckoner to make sure that everything that has been asked of you has been answered where it can be answered, or an explanation has been given as to why it can't be answered. I think it's a good practice. It was an internal document as far as I'm aware.

496. I have been asked if I asked for this document to be created. No.

497. I have been referred to a document titled "*Summary of FLO contact during June 2015 with Aamer Anwar*" (PIRC-02492(a)). I remember that being put together. Again, it's a ready reckoner. Let's get it all down in the one place, so we know what we have. The concerns were that there was little or no contact with the family. That's a piece of good practice, just to clearly see what contact there has been.

498. I have been asked if I asked for this document to be created. No, it wasn't my decision.

499. I have been referred to the summary of FLO contact (PIRC-02492(a)), on page 2, where it states:

At an early stage the family intimidated several other family members and friends may be potential witnesses. Despite several requests by email, phone calls and meetings, including the offer of PIRC FLO

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.....

assistance to progress this line of enquiry, there has been no response from Mr Anwar. This line of enquiry is therefore not complete.


500. I knew that there was a concern around that. Because Mr Anwar was not solely dealing with the Bayoh family. I'm quite sure they had other responsibilities in his business life but that in some way he's not always available to the PIRC FLOs if he's away in court. That's again why I think it would have been easier if we would have had direct contact with the family. I don't know if we could remedy that. With a long experience of dealing with families, I'd never found myself in that position before. I'm not saying that solicitors were never involved, but constantly having to go through a solicitor.

501. It slows things down, because the solicitor for obvious reasons will not always be available at times when you would like to have shared information or asked information of the family. But, again, if that's what the family wish was, that's totally understandable and we need to adhere to that.

502. I have been referred to PIRC's FLO log (PIRC-04152), pages 40 – 43, where the entries jump from 14 September 2015 to 10 August 2016. I think by then the family and Mr Anwar were accessing Crown direct. They were getting the information that they required from Crown.

503. I have been asked if a conscious decision was taken by PIRC not to engage with the family during this period. Not as far as I'm aware.

504. I have been asked if, despite the fact that the family were engaging with Crown Office during that period, I consider it would have been helpful for PIRC to continue to engage with the family during that period of time. Only if we had something to tell them. I could only imagine that there was no update that they requested or required. There appears to have been a disconnect at

Signature of Witness 

that stage between Mr Anwar and the FLOs and the FLOs and Mr Anwar. I could not tell you what the reason behind that was or who made that choice.

Meeting with family on 3 September 2015

505. I don't recall that it was particularly positive. I still think the family weren't happy with the level of information that they were getting. I understand that as well because families want to know. Families tend to ask, on occasions, for information which might be pertinent to an investigation which turns into a criminal investigation, and it wouldn't be correct and proper to pass that to them at the time. It wasn't a comfortable environment within the room.

506. Generally, it was about why we didn't have statements from the officers and why the officers hadn't been arrested at that time. It was an attempt to bring the family up to speed as far as we could, and I think we were able to provide some information.

507. Every family's the same. They all want more and you can totally understand that but sometimes (1) you don't know the answer, and (2) you want to be 100 per cent sure that what you're telling them is accurate, because we know that they were unhappy with the initial contact with the police and the misinformation, in their view, that was passed. The last thing that we wanted to do was pass information which hadn't been ratified and it was quite clear because it's not in our business to cause any more problem. We tried to answer questions as best we can. So, I would have hoped that the family got something from it.

508. Mr Anwar and the family wanted a meeting. We would have been open to a meeting with the family before this point, but it was never requested, and I suppose we never offered it. Although, when we say we didn't meet the

Signature of Witness 


family, of course we met with the family. The organisation met with the family through John McSparran, Billy Little and the FLO's. The people who tend to take on these meetings are the senior investigator and the FLO's.

509. Family liaison and the approach wasn't driven by us. It was driven by the family and Mr Anwar. That's the way they wanted to do it.

510. I have been asked if, in light of the challenges there were in the relationship between the family and PIRC, whether an earlier meeting between the Commissioner or myself and the family could have helped in any way. I don't know but it was arranged for the FLO's to meet them within the first few days, and that was cancelled. It wasn't as if it wasn't an offer. If that had occurred or if another arrangement had been made in the very near future beyond that, we would certainly have taken that up.

511. I have been asked if it would have assisted PIRC's investigation and the relationship with the family for there to have been further meetings between PIRC's team and the family. I'm not sure that it would have. We don't need to have a situation where everyone from PIRC sitting in high positions sits round the table with the family and has discussions every month. What's far more productive is, if the family have questions to ask, they contact the FLOs directly to ask those questions. That is a far more productive arrangement from my experience than sitting around a boardroom table having a top-level discussion.

512. If the family during any of these meetings with the FLOs or with the senior investigator requested a meeting with the Commissioner or with me, I wouldn't say there would be any reluctance to take that on, but it generally wasn't requested.

Signature of Witness 

513. I have been asked if it was common for the Commissioner and myself to meet with family members during investigations. No, because the role is quite specific. The senior investigator and FLO's would do that.

514. I have been referred to PIRC's family liaison log (PIRC-04152), which, at pages 31 – 33, contains a note of PIRC's meeting with the family on 3 September 2015. I'm afraid that there are some things that I just can't remember specifics of.

515. I think by this stage the family had already known about the allegations made about Constable Paton. That was my thought when I thought about it maybe weeks afterwards, that this whole thing about racism. I got the feeling that that was known to the family at that stage because the family had been approached by a member of Alan Paton's family and told about the alleged racist comments or racist attitude that he had.

516. I have been referred to Alistair Lewis's note (PIRC-04152, page 32) that: *"Commissioner assured family all investigators are diversity trained"*. I have been asked what this diversity training involved. I've had so much diversity training over the years. I've had continuous updates and diversity training, and rightly so. I do remember getting an input which did talk about unconscious bias, but it wouldn't be truthful of me to say whether that was before or after. It wasn't just investigators. It was a whole organisation having diversity training, and it was outsourced and brought in.

517. I have been asked if I recall any details about this training. I can't recall.

Impact of meeting

Signature of Witness 

518. The relationship didn't change. Just lack of trust, etc. It started appearing in the press and everywhere. There's not a great deal more I can say about that. If that's the way the family felt, that's the way they felt.

519. I have been asked if the approach to dealing with the family's legal representative changed following the meeting. No, because the FLOs were updating Mr Anwar. That was the family's wish, and it's absolutely correct that you adhere to the family's wish.

520. I have been referred to a letter dated 16 September 2015 from Aamer Anwar to the Commissioner, Kate Frame (PIRC-01839), on page 1, where it states: "*However as the family stated their confidence in the PIRC has been shattered.*" Yes. Lost faith, lost trust, either through letters, hearing it on the television, reading it in newspapers.

521. I have been asked if I can recall any press releases issued after the meeting with the family. Not specifically, no. There were lots of press releases. I honestly don't remember all of them.

Media liaison

522. I have been asked what impact Mr Anwar's engagement with the media had on PIRC's investigation. I don't know whether it had any impact on our investigation, but a lot of it was critical of PIRC's actions.

523. I have been asked if I considered the criticism to be justified. Not necessarily, no. The majority was around loss of faith, loss of trust. It's very, very difficult to deal with that. How to repair that. If that is how the family felt, and clearly they did, they felt the same with the police as well, or the initial police response, which I don't think laid a smooth path in relation to any contact with

Signature of Witness



the family going forward. Once the family had been dealt with in what they considered to be an unfair manner on day one, I think that did affect interaction directly with the family.

524. There was this constant drive about who worked in the PIRC and what their backgrounds were and, in some way inferring that if that's the case, things won't be getting done right. Not from the family, but more just from certain news outlets.

525. I have been referred to the minutes for a morning briefing on 25 June 2015 (PIRC-04156, page 59), which, within an update provided by SI McSporran, note: *"He spoke to Mr Anwar yesterday about information which has been released to the press. Unhelpful, but Mr Anwar alleged that the Crown had provided him with the information. SI McSporran will look into this further."* I can't remember what it was. I don't think that we could measure that it had an adverse effect on our investigation.

526. Directly, I didn't liaise with the media. Again, that's a role for the SI through the Media Unit. I might be more likely to look at the drafted lines and consider whether I thought they were appropriate. I don't think there were many media releases beyond requests for witnesses, etc. There was the answer to a few questions later on, but I don't think there was massive media release.

527. I have been asked if I worked closely with Michael Tait, PIRC's Head of Communications. Yes, I saw him regularly, on a daily basis.

528. The Commissioner was quite keen always to be on top of media going out. She was the Commissioner. Anything coming out of the organisation was related to her directly as the leader. It was always worth checking media releases to see whether we thought that the language being used was fair,

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equitable, not inflammatory, because we certainly weren't wanting to get into a set of circumstances that appeared to be occurring between the Federation and the family with some of the comments in the press.

529. I have been referred to PIRC's "*previous lines up until 11.05.17*" (PIRC-03925), pages 17 – 21, covering the period following the meeting with the family on 3 September 2015. It's actually more than I would have remembered, but the majority is in answer to something rather than proactive. I'm quite sure that a number of these releases that we were responding to contained some form of criticism or question about why A, B, C or D wasn't being done. From Mr Anwar on the family's behalf, or just generally from media outlets. I would imagine occasions that the Commissioner would have been keen to respond to some of these to try and assure the public that we were conducting a thorough investigation.

530. I have been asked if the Commissioner would have been involved in the sign off on all of media lines. If she was there, she would be, yes.

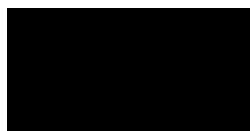
531. I have been asked what impact the media coverage had on PIRC's investigation. I don't think it did, you've just got to on work, if you work in an area like this, you've just got to accept that on occasions there'll be criticism.

Repatriation of Mr Bayoh's body

532. I have been asked if I was involved in any way in the liaison with the Sierra Leone High Commission during the investigation. No.

533. I have been referred to a report in the Scottish Mail on Sunday dated 25 October 2015, which alleged that the police attempted to repatriate Mr Bayoh's body to Sierra Leone following his death (PS10004). I have also

Signature of Witness



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been referred to an email that Irene Scullion sent me on 29 October 2015 (PIRC-04024) which states:

As discussed, in relation to the media reports that the police contacted the Sierra Leone High Commission on 5 May to attempt to have his body repatriated to Sierra Leone, I've summarised below the sequence of events. As we agreed, given that this story is completely false, it may be prudent to make the media aware of the facts.

534. I have been asked if I can recall dealing with this matter. I don't, but I think I would have soon put that out of my mind even if I had read it because the first few lines say it all: "this is completely false." So why would we be giving air to newspapers who write false reports?

535. I have been asked if consideration was given to issuing a line to the media in response to this. I'm not even sure whether it's a thing you would put a line out about. It may very well be that, having discovered that it was completely spurious, the Mail would receive a phone call from someone like Michael Tait, PIRC's Head of Communications, saying "Look, I don't know where you got that from, but it's just not true," basically warning against continuing with that line. I mean, it seems absolutely ridiculous.

Expert witnesses

536. The whole matter of instructing expert witnesses was shared with Crown, so PIRC looked at the specialist areas that we considered were worthy of further investigation whether that be the effect of certain drugs, because ultimately no-one was giving us a definitive cause of death. So, for example, the drugs that Mr Bayoh had taken, what effect would that have on him? The police were clearly opining that they made him violent or fight back. It wasn't to

Signature of Witness



prove a particular point; it was to get an expert opinion on the effect of those drugs. We looked at the drugs that were there, we looked for people who had an expertise in that area we looked for people who had an expertise in a number of different areas in relation to positional asphyxiation. Those suggestions were then shared with Crown to ensure that Crown were content that that was the correct direction to be going in.

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

538. The College of Policing held a library of certain experts. We asked them. I think we also approached our equivalent down south – the IPCC at the time – to see whether they had any ideas and then did some research on the internet to see whether we could find people with experience in the types of areas that we wanted to continue investigation into. I was aware of the processes, rather than individuals. I heard them speaking about people they were intending to ask advice from.

539. I have been asked if I provided any direction to other members of staff about the process of identifying expert witnesses. No, I didn't. John McSporrán; he must have had assistance from others as well. I was the one that suggested that rather than just go with the experts that we identified, we should share that with Crown to ensure that they were content. I just felt that it was good practice that the Crown, who ultimately are making the decisions on

Signature of Witness



everything that we are sending them, should have an insight into who we were intending to use to provide the expert witness. Ultimately ratifying the suggestions.

540. I have been asked what involvement the Commissioner had in this process. She would see who was involved, I would imagine, and have her opinion on it as well. I know that the Commissioner had at one stage attended college in America, the FBI college, in her previous life where she was a prosecutor. I think it might have been a fellowship or something like that and was aware that the FBI had experts.

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

542. There's a uniqueness of the circumstances here because, in the past, families rarely have that reliance on a solicitor to support them in family liaison matters. I believe that Mr Anwar had discussion with Crown Office that he would like to be involved on the family's behalf in suggesting certain experts, and Crown agreed. Again, the same stipulation was put in place for the experts suggested by Mr Anwar. Crown were furnished with the details of those suggested along with their CV outlining their experience etc., and then Crown ultimately had the say whether these were people that they wanted to consider as expert witnesses.

543. I have been asked if I had been involved in the instruction of expert witnesses in my former role as a police officer. Yes, I had done it. The central library held by specialist police operations down south would provide you with detail. You've almost a summary of what it was that you wished investigated, they would provide you with a list of witnesses who they believed would provide the sort of expertise that you were looking for, and ultimately at the end of the

Signature of Witness 

day it was still down to Crown which of these witnesses they were going to use.

544. I have been asked who reviewed the experts' CVs, once they had been identified. I think it would probably be John McSporran, but that was communicated to Crown, and we received agreement around that.

545. I have been asked if I'm aware of the criteria that were used to select the experts. No, I don't. A relevant knowledge of the matter under consideration. I think probably from the Crown perspective, the experience of giving evidence in court would have been one of their considerations. The experience and the knowledge of how the system worked for giving evidence, I think that would be important.

546. I have been asked if PIRC took steps to ensure that the witnesses were sufficiently independent. I know that John McSporran did a bit of work around the CVs for those witnesses. I do know that he relied quite heavily on the College of Policing down south, who hold a library of witnesses who have previously been used in inquiries and met the requirement of the Crown Office previously. I am unaware of any conflict of interest in any of the witnesses that were identified in relation to use in this investigation.

547. I have been asked if I ever received training in relation to the identification, selection and instruction of expert witnesses. No. I don't think there's specific training identifying experts; ultimately every inquiry is different, so you'd have to look at the specifics of certain inquiries. Expert witnesses provide opinion and expertise and if it's accepted by the court and they have an area of expertise which can be trusted and relied on, they go into a bank. So that if the next time someone has a similar type of investigation, they can provide that name. It's not just a delving into the internet, sticking on a few search

Signature of Witness



criteria, getting a list of names and deciding that they're your experts; you would look to have some substance behind why. If they're already used in similar other matters, that builds their reliability, I would suggest.

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

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

550. I have been asked if I was content with the identities and level of expertise of the experts instructed by PIRC and COPFS during the investigation. I was and, more so, I was content that Crown were happy.

551. I have been referred to the minutes for a morning briefing on 18 June 2015 (PIRC-04156, page 59), which, within an update that I provided, note: "*The post mortem results are key and the work surrounding the drug use is an important area. Essential that we locate an expert witness.*" The drug side of it, important – but no more important than the restraint aspects. Maybe we were having difficulties identifying expert witnesses that were able to provide the type of information and analysis that we were looking for, and that would probably, from the tone, be a "let's get on with it." No more, no less than that.

552. I have been asked if I took a personal role in the identification of expert witnesses in this area. No, I didn't.

Signature of Witness



553. I have been referred to the minutes for a morning briefing on 24 June 2015 (PIRC-04156, page 65), which, within an update that I provided, note that *“the Commissioner wrote to the American FBI for details of an expert on Alpha-PVP”*. I remember the Commissioner speaking initially about FBI Occurrences of that drug in this country, and I think maybe even in Europe, weren’t particularly high. However, that wasn’t the case in the United States, as far as I was led to believe. As a result, in an effort to identify someone who had that area of expertise, the Commissioner – using her knowledge, because she had been in the Quantico course – knew or believed that they might have been able to assist in that route.

554. If you’re going to approach an organisation like the FBI, that it’s the top of the tree that should make that approach. I wouldn’t expect her then to progress that inquiry personally, but to identify the contact and then give it to the investigators to continue with. I’ve got a feeling that maybe the Crown weren’t keen, at that stage, to pursue a United States input. Something tells me that.

555. I have been referred to an exchange of emails I had on 19 and 20 July 2016 with Stephen McGowan, COPFS, in relation to the possibility of obtaining further evidence from US law enforcement agencies in relation to Alpha-PVP (PIRC-01988). We hadn’t been able to identify someone here, and we would have been looking for Crown approval of using someone from America and what that might entail. It’s as simple as that. It was a Crown decision. Stephen McGowan’s not saying “don’t.” Crown counsel would be the one that decided whether that offered value.

556. I have been asked how hard I would push back if I disagreed with a decision by COPFS in relation to the investigation. I would have a discussion with the Crown and put my point. They would ultimately make the decision.

Signature of Witness



Source of drugs

557. I have been asked how important it was for PIRC to identify where Mr Bayoh sourced his drugs. I think it would be more important to understand what the drugs were rather than where they were sourced from. I'm not sure of the relevance of that because, ultimately, if they were sourced from a member of the public, PIRC have no responsibility to investigate a member of the public in relation to contraventions of the Misuse of Drugs Act.

558. I have been referred to a statement obtained by PIRC from Kirsty Macleod on 8 July 2015 (PIRC-00054), which states, on page 2: *"I have no idea where Shek got his drugs from. I wouldn't ask him, as the less I know the better."* I have been asked if I was aware of a line of investigation being pursued in relation to the source of Mr Bayoh's drugs. No, I wasn't aware that that was ongoing. It's a question that's been asked. I'm not quite sure it stretched to an investigation. For the life of me, I don't know why it's been asked, but it's been asked.

559. If this witness had given information, that would have to be considered as intelligence and I think that we would be dutybound to share that with Police Scotland.

560. A difficult set of circumstances because ultimately it would not have been beyond the bounds of investigation that, had we identified who he had purchased his drugs from, we would maybe even have to have considered that that person was a witness in relation to attempting to identify or attempting to gain further information about Mr Bayoh's cause of death. But if PIRC investigators are being provided with information which amounts to

Signature of Witness



intelligence in relation to drugs dealing, I think they would have a duty to share that information with the Police Scotland.

Delivery of samples to medical witnesses

561. I think they were delivered personally, because they were Crown productions. They would be taken to the expert, handed over and signed for. You wouldn't send it by courier or anything like that.

562. First and foremost, there isn't a guidance document or a SOP for absolutely everything that's done in an investigation. Common sense needs to take a place on occasions. Productions are delivered to labs or wherever they're going, and you'll have done background checks, I have no doubt, and you have to trust the people that you're handing them over to. If it's a very short examination, you would probably leave them with it to get on with it, go back, pick it up, and then take it away, or on occasions it may very well be that you are providing the corroboration, albeit not scientific, of some of the facts. It would be very dependent on what examination was going to take place, who was going to take it and do it, where it was being done and how long it would take.

563. If you had reason to mistrust the individual you were handing them over to, you wouldn't do it in the first place, I would think. Does it cause a problem? It's a problem if they go missing. Did this happen on this occasion? Not as far as I'm aware. Again, what we would actually do, then, would be maybe challenging an expert witness's integrity.

564. When it comes to expert witnesses, that's a difficult one, because the alternative is that maybe the examination couldn't be carried out if you didn't give that person some time and didn't always stand at their shoulder.

Signature of Witness 

565. I have been referred to DSI Keith Harrower's second PIRC statement (PIRC-00008), at page 3, where he refers to meeting with Dr Nathaniel Cary on 20 August 2015 and providing Dr Cary with histology slides and a copy of PIRC's expert witness package:

The samples were left with Professor Carey for him to complete his work.

About 1503 hours that day I re-attended at Professor Carey's home address and collected the box containing the histology slides. I checked the contents and all was in order. I thereafter left this location to travel back to Scotland.

566. I certainly didn't have that discussion with him, no. Keith Harrower's got lots of experience in criminal investigations, and no doubt in death investigations as well, and in the handling of productions. I would rely on the experience that they had gained elsewhere.

567. I remember Mr Anwar raising some concerns. Strange it's about an expert that he identified, but I wasn't aware that it caused a problem or there was any challenge around the evidence that was provided.

568. Mr Harrower, if he did that, could have stood on Dr Nat Cary's shoulder, and Dr Cary could have performed some sort of examination. Keith Harrower wouldn't have known that was happening because he's not a doctor. Maybe it wasn't the best practice to leave them. It would have been pertinent to ensure that, if that wasn't appropriate, it didn't happen again. Likewise, if you're delivering them to authorised labs that are registered, you leave it

Signature of Witness



there with the best will in the world. You just hope they do what they're meant to do.

Dr Karch

569. I have been asked if I am aware how Dr Karch was identified. I think, again, by John McSporrان. I think it was just through research. Who he made that research with, I'm not 100 per cent sure.

570. I never had any contact with Dr Karch, no.

571. I know that this theory of excited delirium was mentioned. I have never understood who mentioned it, where it was brought up. I just remember a discussion in the days after I returned in May about excited delirium often being, not the cause, but quoted as a cause. I don't think it originated from a member of PIRC's team. I remember them talking about it, but for the life of me I don't know where it came from.

572. It was something that was put forward, and other investigations where people had died in this circumstance. I'd heard of it, but I didn't know what it exactly was. However, it would have been very difficult once it had been spoken about by someone and out there not to pay some attention to it along with other expert opinion, and, if it's not right, the Crown would decide that they didn't want to use it or tell us not to do it, and I don't think they did say that.

573. I don't know whether a report was produced. A report may very well have been produced but I think maybe it was discounted, from memory.

574. I have been referred to a letter dated 12 October 2015 from the Commissioner, Kate Frame, to the Lord Advocate concerning expert

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witnesses (PIRC-04246). I have been referred to page 3 of the letter, where it states: "*Dr Karch is considered to be one of the world's foremost experts in this field.*" Expert witnesses tend to tell you that. I doubt that it would be the Commissioner that would find that.

575. I have been referred to a subsequent letter dated 6 November 2015 from Aamer Anwar for the attention of the Commissioner, Kate Frame, (PIRC-01858). I have been referred to page 8, which states:

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

576. I have been asked if I recall these matters. I don't, actually. I couldn't have told you it was Dr Cary. They would still have had to be worked on in relation to determining what experience and expertise they actually had by considering his CV, and even once he's been instructed, I think a decision would be made by Crown whether they felt that he was credible and would be an expert witness that they would be content in using.

577. I have been asked if, at the point that Dr Karch was instructed by PIRC, I had any awareness of his views as an expert on excited delirium. No. I didn't know that much about excited delirium, to be quite honest with you. I think I was aware that it was a subject matter in relation to deaths in custody, probably more so in the States. I think that was the breadth of my knowledge of excited delirium.

Signature of Witness



578. I have been asked if this was deaths in custody more generally, or deaths in custody of African American men. I think this related generally to all deaths in police custody where a struggle had taken place.

579. I have been asked if, in May 2015, I was aware of excited delirium being a contentious area. No, I think I just became aware as things rolled out, and maybe even on the back of Mr Anwar's concerns. I know that it is hotly contested by other experts who do not consider it to be something that can be relied on.

580. An area of contention, but aren't a number of expert opinions? In my experience you'll have two experts who will be at completely different ends of a particular spectrum and believe that they're both right, and it's then down to who can substantiate their viewpoint and confirm and corroborate their findings. Having instructed an expert witness to offer an opinion, I don't think that means that the Crown need then continue with that course. If the decision is made later on that Crown consider that there is concern or contentiousness around that, I don't think for a minute that they would choose to use that in evidence. I think what I'm saying is there's a safeguard built in.

581. I have been referred to an article in the Scottish Sun on Sunday on 1 November 2015 in which Dr Karch was quoted to say, with reference to Mr Bayoh: "*I can tell you that saw evidence of heart disease*" (AAC-00381, page 38). I think I do remember that, yes. I don't know if we did respond to it.

582. I have been referred to a letter dated 4 November 2015 that I sent to Les Brown (PIRC-02034) which, on page 2, refers to this article. I have been asked if this letter to COPFS drew a line under matters from my perspective. I think it did. It would be wonderful if we could stop newspapers writing things that we don't like but you've got to be surprised that someone like Karch even

Signature of Witness 

made any sort of comment, albeit he claims he was taken off guard and stopped immediately.

Expert witness package

583. I have been referred to the Minute from the Commissioner, Kate Frame, to the Lord Advocate and expert witness package prepared by PIRC (COPFS-06005). What I do recall is that the expert witness package was certainly shared with the Crown Office to ensure that they were content with its contents, and the fact that those contents could be shared outwith the investigation with expert witnesses.

584. I believe I read some of it. Again, I can't remember exactly who did all of the writing, but if I was in any way involved, it would be merely around style rather than content.

585. I have been asked who would have been primarily responsible for the creation of the expert witness package. John McSparran, although it would have been quality assured by Kate Frame before she put it out in her name. That is very much a Crown-styled document and Kate Frame's background is as a Procurator Fiscal.

586. I have been asked who prepared the briefing paper for expert witnesses contained within the expert witness package. I think it was Keith Harrower.

587. I have been asked if I recall COPFS identifying that the expert witness package prepared by PIRC contained an incomplete version of Ashley Wyse's statement. I don't, no.

Signature of Witness 

588. I have been referred to a letter dated 15 March 2017 from Mr Stephen McGowan to the Commissioner, Kate Frame (COPFS-02575) and an e-mail dated 24 March 2017 from the Commissioner to John McSporran and me (PIRC-02457). Having read these documents, I now recall this matter. My recollection is that during typing of the witness statements a significant section of the statement taken from Ashley Wyse, specifically details of the struggle on the ground between Mr Bayoh and the arresting officers, was omitted from the typed statement and this omission was not identified during the proof-reading stage. As a result, this information was not included in the original expert witness packages or in the statement shared with the family's solicitor. On COPFS identifying this regrettable administrative error the previously omitted significant evidence was then provided to the expert witnesses and the family's solicitor. All typed statements were compared against the original manuscript statements and any errors found were rectified. The administrative error resulted in the expert witnesses having to reassess their findings and although this was an avoidable error, once rectified, it did not negatively affect the outcome of the expert witness conclusions. The error as stated was an administrative error relating to proof reading of typed statements rather than an investigative failing. I am aware that the details omitted from Ashley Wyse's typed statement were included in the full reports presented to the Crown that they considered in reaching their final decision. I am not aware of any other matter that would give rise to concern about the overall investigation.

Compliance with SOPs

589. I have been referred to a letter dated 1 June 2015 from Les Brown to the Commissioner, Kate Frame (COPFS-02532). I have also been referred to a letter dated 2 June 2015 that I sent in response to Les Brown and in which I confirmed that PIRC's investigation would examine Police Scotland's

Signature of Witness



compliance with SOPs (PIRC-02017). I have been asked if I recall this correspondence. No.

590. It would be common for PIRC to look at standard operating procedures and whether they were adhered to in whatever area of business it was and the relevance to that investigation. I could only imagine that much of that to do would be around restraint and use of force.

591. I know Crown have instructed it, but I'd be really surprised if that wasn't being done as a matter of course. From memory, the inquiry spoke with expert witnesses in relation to use of force, etc. I think even whether the standard operating procedures were fit for purpose. I don't really think I could expand much on that other than the fact that it was done.

592. I have been asked if I recall there being any discussions about the assessment of the training that the officers had received in relation to use of force and restraint and whether their actions complied with the training they had received. I don't specifically remember any discussion around that, but I would have thought that that would have formed a fundamental part of the expert opinion.

Health and Safety Executive

593. I have been referred to page 3 of the letter of instruction dated 2 September 2015 issued by COPFS to PIRC (COPFS-02557) which makes reference to the potential involvement of the Health and Safety Executive (HSE) in the investigation. I have been asked if I recall PIRC liaising with the HSE during the investigation. No, I don't. Not absolutely everything that was done in that investigation would be run past me or I would have been updated. If I had

Signature of Witness



been in the office at the time, I might have been told about it. If not, they would carry on day-to-day business in relation to that.

594. I have been asked if I ever recall HSE becoming involved in a matter that PIRC was investigating. No, I don't. I know that they're quite reluctant to become involved in anything to do with emergency services. I know that from history they tend to stay well clear of it, and the Crown have a special health and safety business area who tend to deal with these things.

595. I have been asked how well equipped, in terms of resources and expertise, PIRC was in 2015 to investigate matters arising under the Health and Safety at Work etc. Act 1974. There was no expertise in relation to health and safety matters as far as I'm aware.

Data protection

596. I have been asked what involvement I had in PIRC's investigation of allegations that Police Scotland officers and staff carried out checks against Mr Bayoh, his friends and family members within police systems and databases. I was aware of it, but I didn't play any part in actually investigating that matter. That again was down to the senior investigator and his team. I think, again, that direction came after a meeting with Mr Anwar, the family and the Lord Advocate. There would have to be justification attached for doing such checks.

Intelligence held by Police Scotland on Aamer Anwar

597. I recall discussion around that, yes. That's another area that was discussed in more detail with COPFS, and I think it was round about that time the decision was taken that we were not the appropriate body to continue that

Signature of Witness



line of investigation. The Information Commissioner, I think, was identified as the appropriate person.

598. I have been referred to a statement prepared by DI Ramsey Wilson on 11 and 28 April 2016 (PIRC-00488), in which he makes reference to the intelligence held by Police Scotland in relation to Aamer Anwar and the badging of that intelligence as "Refract". I do recall a discussion around that. The heading's used within the intelligence system, and I believe that it referred to counter terrorist-related matters. I think it was held incorrectly under that heading. Mr Anwar's business was totally legitimate. I wasn't involved really in any discussions around that. That again was down to the senior investigator and his team.

599. I have been referred to a draft application to the Procurator Fiscal for a search warrant for all premises occupied or used by Police Scotland and those occupied by Scottish Police Authority seeking all personal data held concerning Aamer Anwar (PIRC0-04535). I have been referred to the fact that John McSporran is the applicant and I am identified as the "senior manager". I don't recall seeing that before. My understanding is that that document was prepared by John McSporran should it be required, but I see it's not dated. It doesn't have a reference. It doesn't have a PF reference number. The last bit, that's a style document. That's the way it would be, and a line manager above the person requesting that information would always be included. As far as I'm aware, it was a draft document which was never sent anywhere.

600. I suppose it was that John McSporran felt that he required information from Police Scotland to further that line of investigation, that that wasn't forthcoming for whatever reason, and he felt that it may be necessary to have a warrant to get that information from police systems, so he has gone ahead

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and prepared a draft document to send on if it were needed. I don't recall this matter being discussed with me and I can only surmise that that is the reason behind it.

601. I suppose that John McSporryan thought that this might be the only means to achieve an end to this line of investigation because that information wasn't being supplied by Police Scotland. And the only way to get that was down the legal route of a search warrant. Whether that would have ever been issued by Crown, I don't know, but ultimately that might have been the only route that John McSporryan saw open to him before the decision was made to take that avenue of investigation to an outside body (Information Commissioner).

602. I have been asked if a PIRC investigator would only seek a search warrant in these circumstances if all other avenues for obtaining the information had been exhausted. I would agree. That's exactly the point.

603. I have been asked if it was common for PIRC to seek a search warrant to obtain information from Police Scotland. No, that would be the one and only occasion that I can ever recall it.

Examination of mobile phones

604. I have been referred to a letter that I sent to Professor Peter Watson on 16 June 2015 (PIRC-02356(a)), which states, with reference to PC Nicole Short's phone: "*I can confirm that access to the phone will be limited strictly to recovery of the photographs of her injuries*". There was an argument around the right to seize that phone, and eventually she handed it over. I remember having that discussion with Peter Watson about what we would be doing.

Signature of Witness



605. I think it must have been noted that she had taken these photographs and kept them on her phone. It was very important whether she had any injuries or not, as it's been alleged, that she was stamped upon. It was important that we got those, and I think there was a reluctance on her part to hand the phone over because the only thing that would be of any interest to us at that time was the capture of those injuries. We weren't in the business at that stage – or at any stage, I don't think – of having a look at everything that was on these officers' telephones.

606. We would have to have grounds to do that. There would have to be a specific reason: if there was a suggestion that the officers had been in contact with one another and were passing it or were talking about things that they were then denying or not giving up. The other way is you take a phone from someone and you get their permission. That's the only two ways I could imagine. You'd have to meet a criteria before you generally and randomly examine the whole content of the telephone. It's generally the provisions of gathering evidence. It may very well be we need to get a warrant.

607. I have been referred to an email chain between PIRC and COPFS starting on 21 February 2018, in which there were discussions in relation to the examination of data from Ashley Wyse's mobile phone (PIRC-02587). I have been asked if I was aware of these discussions at the time. No

608. I have been referred to an email within the chain, on 21 February 2018, in which Stuart Taylor seeks guidance from COPFS in relation to PIRC's examination of the download of Ashley Wyse's phone and whether COPFS was content for PIRC to only examine the files from the download that related to the incident on 3 May 2015, based on consent to this effect in a statement obtained from Ashley Wyse.

Signature of Witness 

609. I have been referred to a subsequent email, on 27 February, in which Les Brown replied, stating: "*PIRC should pursue all legitimate investigative avenues in order to legally obtain and evaluate evidential material that assists in the inquiry instructed by the Crown.*" I think that's basically saying, "That's an operational decision, you decide what's necessary," but you'd have to justify doing that or go back to the lady and say, "Do you have any problem with us looking further into that data on your telephone?" I don't think it was very helpful, but at the same time I don't necessarily think it's a decision for Les Brown to make. We are charged with conducting an investigation. If we think that that's a legitimate part of the investigation and we need that information, how we get it is up to us to decide.

610. I have been referred to subsequent emails within the chain between Billy Little and John McSporrán on 27 February 2018 and 12 March 2018 respectively. I have been referred to John McSporrán's email, in which he states:

The challenge I perceive is 'what if' any of the material (on the phone) generated after the incident has a bearing on the incident. Let's remember that we are investigating a death and undertaking an evidential inquiry into the death. It does not matter whether it is a criminal or death investigation, the standards applicable are to both.

The point of contention appears to arise from within Ashley Wise statement, i.e. "During that incident I used the camera on my mobile phone, a Samsung Galaxy S5, to video bits of what was happening outside. I later handed over that mobile telephone to officers from Police Scotland and gave them authority to examine and download the video excerpts applicable to the incident. I subsequently gave that same authority to Investigators from PIRC."

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Ashley Wise does not give authority for anything. The phone is a Crown production and is seized as a production. At the point of seizure, ownership transfers to Crown, i.e. PIRC, who can examine anything on the phone to determine whether it has a bearing on the investigation. I think our investigators and the police need to understand these matters better.

Examine all the material to determine whether it has a bearing, if it has, produce it as evidence.”

611. I would have preferred that we had gone back to Ashley Wyse. I don't know whether they did examine all the data within Ashley Wyse's phone. Having said that, John McSparran knows much more about that area of business than I ever will.

612. I have been asked if I would consider that, without Miss Wyse's specific consent for the examination of further data from the phone, PIRC had a legal basis to proceed with that examination. I would want to know where the grounds were. Do I actually have grounds? Do I have carte blanche to look through that phone that day? That day's important. You certainly wouldn't have carte blanche going in any further, but I don't necessarily think that would have been the best way to deal with it.

613. I would have to look at the legislation to see what that legislation allowed me to do. Now, if it allowed me to do that, yes, however, if there was any dubiety at all, no, I wouldn't do that.

614. I have been asked if PIRC had access to internal legal advice at that time. We didn't have an in-house legal advisor. They do now.

Signature of Witness



Final Report

615. John McSporrان certainly took the lead in that whole area of business. He pulled all of the information together. I believe that there were several sections in the report. I think those separate areas were pulled together and written by other people but were all checked by John McSporrان, who pulled it all together into one report. I read the report and so did the Commissioner, and I know for a fact that, again, probably with her COPFS training, wanted it set out in a particular format. It was formatted into a report which would fit into Crown Office's understanding of how a report should be prepared.

616. It was a massive job to pull it together, and ultimately John McSporrان then had the say on the report. It was his report. He checked it. He made sure that it was accurate, as far as he was concerned, and submitted it.

617. I would have looked at some of it, and I certainly read the document before it went to Crown and so did the Commissioner but all of these documents leave the building in the name of the Commissioner, and she was very keen to ensure their accuracy. But we might still have been sitting cross-referencing it all at this moment in time if we had checked. I would doubt very much if every line and every paragraph in the report was cross-checked against evidence. I think we need to rely on the person who produced the document being in possession of the evidence that supports that.

618. I have been asked if I was content with the report when it was submitted. Yes. As far as I'm aware it was provided to Crown at the earliest opportunity.

Sharing recommendations with Police Scotland

Signature of Witness

A black rectangular redaction box covering the signature of the witness.

619. I have been asked if, in a Crown-directed investigation, PIRC has ever been permitted to publish its report following completion of its investigation. Not a Crown-directed report, absolutely not. That report, in its entirety, belonged to Crown Office, and it would only ever be if they gave us permission to publish a report, but during my time I do not ever remember a Crown-directed investigation ever being reported in public by PIRC.

620. I have been asked how Police Scotland can be made aware of any recommendations or gaps within SOPs or practices identified within COPFS-directed investigations. Well, my understanding around that is that that would be liaison between Crown and Police Scotland. If Crown considered that report and felt that there was no action to be taken in relation to a criminal matter, for example, but that there were matters within the report that raise concerns around police behaviour which may amount to misconduct, that would be shared by Crown, probably via CAAPD, to take that up.

621. The police would re-investigate those themselves. They wouldn't lift the evidence directly from that report or whatever was sent to them by Crown. They would conduct a completely new misconduct investigation in terms of the misconduct regulations.

622. Because it had been a Crown direction, it wasn't in our gift to share the content of that report with anyone else without Crown's express permission. There would have had to have been discussion around that. If the PIRC was concerned about something being lost that could make policing better, that could improve MOUs, could improve SOPs, etc., a discussion around that and sharing that information with the police would be, in my view, totally appropriate. Whether that then would be shared directly from Crown to the police or whether Crown would then allow the Commissioner to extract those elements from the report and share them with the police.

Signature of Witness



623. I have been asked if I recall any discussions in this area in relation to the Bayoh investigation. I don't, no.

624. I have been asked if there were recommendations contained within PIRC's reports following investigations requested by Police Scotland or the SPA. Yes, there were, yes. There were findings and recommendations made.

625. There are no powers that allow enforcement. It's an agreement, an understanding between police and the Commissioner that they would take action and were given a period of time to provide an update and that happened in a majority of occasions. Sometimes it took longer, but my recollection is that there was actually no power in the legislation that compelled the police to undertake these changes. It was down to discussion and agreement.

626. I was involved in a number of discussions. It didn't only relate to our investigations. It also related to the review process of how the police had handled complaints, and the agreement was that, where the PIRC was making recommendations, it was expected that Police Scotland would respond and tell the PIRC what action they had taken. Or, if they weren't taking action, why they didn't consider it was correct to take action. I think three months was the initial timeframe to provide a response to what action had been taken.

Article 2

627. I think we were well versed in relation to the right to life, etc. I think that was well rehearsed in relation to the conduct of investigations and what the expectations might be.

Signature of Witness



628. I have been referred to a MOU between COPFS and PIRC from 2013 (PIRC-04453), which states, at section 5.5: "*PIRC investigations are intended to comply with the five principles outlined by the ECHR*". I have been asked if I recall this document. Yes.

629. I have been referred to a document which is titled "*Operational model: Response to Article 2 investigations*" (PIRC-04446), which identifies, on page 2, the principles of independence and an effective investigation to be the most important to PIRC. I certainly had a hand in drafting it. That's my initials. That whole matter formed quite a bit of discussion in the run up to 1 April 2013, but certainly that was under discussion before I was even appointed in the role on 1 November 2012. There were ongoing discussions we were having with Police Scotland and Crown about the independent aspect of the PIRC.

630. I have been referred to a document titled "*PIRC independent investigative processes following police use of firearms*" (PIRC-04438). It relates to the post-incident management process, and I have firmly believed for a time that this was transferable. Although it related to police use of firearms, it could equally relate to an investigation into a death in police custody which did not involve firearms. I certainly had a big part in writing that document in discussion with members of Police Scotland who were attached to the group involved in planning the move to a single police service, and also the introduction of the PIRC as an investigating unit.

631. I have been asked what steps PIRC took to ensure that its investigations complied with the principles of Article 2. We tried to make all of our investigators, and particularly our senior investigators and the deputy senior investigators, more than aware of their responsibility at the outset of such an

Signature of Witness



investigation to ensure that they adhere to that independence, that the wording was clear in their mind at the inception of an investigation where Article 2 was a consideration. We had in-house training and worked closely with Police Scotland and post-incident managers and made our staff aware and had them along to these training events so that they understood the responsibility should an incident like that occur.

632. It was training insofar as it was a joint information sharing day with PIRC investigators, the Commissioner, myself and post-incident managers from police, firearms officers from police, other senior police officers to discuss what format that type of investigation should take and what our expectations would be of the police at the early stages.

633. It took place over a period of time. We had different events where we got together and discussed and participated in these matters.

634. I have been asked if there were discussions about the principles of Article 2 during this training. Yes.

635. I have been asked, in investigations following a use of force where Article 2 is triggered, what steps PIRC take to ensure that the investigation was adequate, as one of the principles under Article 2. There was an attempt to ensure that we ingathered all available evidence and that we got support from Police Scotland in so doing.

Investigation overall

636. I have been asked who at PIRC was ultimately responsible for the effectiveness of the investigation. The Senior Investigator, John McSporran.

Signature of Witness 

637. I have been asked what responsibility I and the Commissioner had for the successful implementation of the investigation. I think our role was very much about providing support where and when support was required, around a number of aspects. Resourcing. If there was a particular question that we could assist with, we were open to be approached for advice, but the day-to-day running of the investigation and all its investigative strands is the responsibility of the senior investigator.

638. Clearly, one of the main challenges was the initial provision of information from the central police officers. Resourcing was a challenge insofar as we managed but it may very well have slowed progress down somewhat because you can only ask people to work so many hours and, although they were willing, capable and able, that was a challenge around the pressure that you were putting on people, and I think everybody needs to remember this was not the sole investigation that was ongoing at that time, and I appreciate 100 per cent it was the most important thing in that family's life at that time, that they were looking for speed, they were looking for accuracy. Accuracy is doable; speed isn't. It's important that it's meticulous and that you cover all avenues, but there were other things going on around that time which were equally important to the people that those things impinged on. There were other matters in relation to serious injuries following police contact, there was the tragic circumstances around the M9 deaths, all of which had to be dealt with equitably.

639. I think it's totally impossible to give equal priority. I think you need to sit down and, within your finite resources, ensure that the highest priority at that time is met, and that can change almost on a daily basis. That's why it was important to have an idea of what the priorities in each ongoing investigation were.

Signature of Witness



640. I had a big part in that because when you are running an investigation, you want to progress your investigation as quickly as you can and give it your best. Everyone thinks that their investigation is the most important thing. Realistically, they know that's not the case, and it was down to me to ensure that, within the finite resources, the day-to-day priorities, things that couldn't be left to the next day, had to be the priority for that day, and that's a difficult balancing act but it's one that you have to take.

641. Clearly, the senior investigators or the investigators who were running investigations would be putting their point forward, but ultimately I would take responsibility along, probably, with Irene Scullion at that time, to ensure that the correct balance was being struck.

642. I have been asked, knowing what I know now, if there is anything I would have done differently within this investigation. No, I don't think there's anything that could have been done differently. I know that one of the big challenges that we faced was getting statements from officers, but we had to work within the confines of the law. There was no provision in law that allowed us to do anything which would have compelled those officers to provide statements. I know that the family would have liked that, and I understand why the family would have liked that, but there was no provision in law that would allow that, and I think that's probably one of the greatest challenges, to get that message across.

643. They stood up, man and woman, they worked additional hours, they came out when they were asked to come out, and they worked hard, and that's all that we can ask for.

644. I have been asked if, following the Bayoh investigation, there was any sort of briefing or lessons learned exercise carried out within PIRC. There was not a

Signature of Witness 

lot of time. We didn't have a lot of spare time on our hands, and it was very much about learning on the job and if you took a course of action which you believed would benefit others, these things were discussed constantly at the morning briefings and the like. I don't remember a time from 1 April 2013 till I retired in March 2018 where there was an awful lot of breathing space to sit down and having days and days in discussion. That had to be imparted at the time. It was very much about learning on your feet, and much of it was in relation to resource numbers, doing what you could with the finite resources that you had. Not bottling that up and keeping them for a day where we could sit down, but we did have in-the-house training. We would sit as a group on occasions and discuss challenges that we had faced and how we could maybe make that better for the future.

Race

645. I have been asked to what extent Mr Bayoh's race was a factor in any of my decisions and actions in the investigation. In no way, shape or form did Mr Bayoh's race negatively impact on my decision making. Every line of investigation was pursued, as far as I am aware.

646. I have been asked if not giving consideration to Mr Bayoh's race could have been an explanation for why a relationship could not be established with Mr Bayoh's family. I am of the opinion that challenges in building a relationship with the family were greatly hindered by their initial contact with the police on the day of Mr Bayoh's death and a belief that they were being treated differently because of their race. The family made the decision that they wished any further contact with investigators to be through their solicitor, Mr Anwar. I believe that the lack of personal contact between the family and PIRC family liaison staff was a missed opportunity to build a relationship which may have had a positive contribution to communication and

Signature of Witness



understanding of both sides' needs and expectations. However, it was important to adhere to the process preferred by the family.

647. I have been asked if, in 2015, there was a system of recording the race or ethnicity of the deceased person who was the subject of an investigation following a death in police custody or death following police contact. Personal details in relation to dates of birth, sex, etc. I don't believe there was a particular section that related to ethnicity.

Training

648. We did run courses in relation to updating family liaison understanding, scene management, report writing. Our investigators were involved in training along with COPFS at their school in Glasgow. There was quite a bit of opportunity around training, and we took that. We did try, at one stage, to form a group with other oversight bodies, the Garda Síochána Ombudsman, the Police Service of Northern Ireland Ombudsman and the IPCC, as it was at that time, but I think legislation proved difficult around that. There was so much difference in legislation that trying to pull together bespoke training packages which would cover the needs of all our organisations became difficult.

649. For FLO training, you're really restricted in where you can get that type of training. Big business doesn't have FLOs, banks don't have FLOs. It's only policing bodies that have FLOs, and it's delivered to a high standard at Tulliallan College.

650. We arranged a scene management course delivered by the SPA at Tulliallan College at one stage. There were no police officers on it, only our staff and I believe there were staff from the other oversight bodies in the UK brought into that because up until then, they had a book delivery process. Tulliallan

Signature of Witness



provided them with a practical demonstration, what you do at the scene when a road accident happened, what you did when you went to a house that was a scene of crime.

651. I know that Irene Scullion in discussion with [REDACTED] University tried to pull together a training programme for trainees, which we would have bought into and hoped that other organisations might have a need for in and around investigation, but that didn't start simply because, well, money, at the end of the day, and it wasn't practical at that time for the [REDACTED] University to draw up a syllabus and to support that type of training process.

652. There's a portfolio document that exists, and it walks the trainee through certain aspects. It would include statement taking, report writing and family liaison.

653. Where there was training, we linked into it. It was very difficult for a small organisation like ours to provide bespoke training, simply because it wasn't available, other than where it mirrored police training, and we were very careful not to dilute our independence by getting too involved in training delivered merely by the police.

654. I have been asked if, at PIRC's inception, reliance was placed on the knowledge and expertise of former police officers to ensure that investigators were sufficiently well-trained. Yes. There were time constraints in terms of that.

655. I have been asked how PIRC ensured that investigators without backgrounds in the police, such as Irene Scullion, were trained. That was purely by experience and calling on others who were round about her. It's this dichotomy we face, isn't it? "Don't employ police officers, not independent."

Signature of Witness [REDACTED]

“Don’t employ anyone else because they don’t have the skills.” I think if you had two or three years’ notice when you were setting up an organisation like that, you would probably be able to employ a wider aspect of where you brought those people from. Irene had been involved in lots of high-level reviews and investigations into the care authorities, so she brought with her a different aspect which was equally as important, in my view.

656. We sent at least a couple of our investigators who did not have a police background to training down south with the IPCC. It would be based very much on the experiences of other organisations and the type of investigations that they had taken on, and maybe where they had identified a weakness or an opportunity to become more skilled, and we would have been keen to buy into that. We had a challenge around the resource numbers and, when people are on training courses they’re not back at the office working and conducting investigations. It was a big balance around upskilling your staff and actually being able to pursue the investigations that you had in front of you.

657. There was a disjoint, and I think the disjoint was because we all found ourselves in the same position, and that was that the pressure of day-to-day work made it very, very difficult to come together as a group and do the type of training which would be suggested and, in any case, I think there was a difficulty in identifying where you could get much of that training from.

658. I have been asked if the training with the IPCC ever touched on issues of race. I do believe that it was discussed in relation to the English and Welsh body, but I cannot be more specific about any discussions. It was difficult. The Sheku Bayoh inquiry in Scotland, from a PIRC perspective, was the only one that I’m aware of where Mr Bayoh’s ethnicity was clear for all to see. I don’t recall another set of circumstances where ethnicity was a challenge.

Signature of Witness 

659. I have been asked how it was decided that investigators required to receive particular training. A number of them had identified that they had an interest. We had two fire investigators who had not had scene management training, but many of the skills that they had would have assisted in understanding the role of a good scene manager, so they were trained in scene management.

660. It was the line managers at each level to look and to be assured that who they had in place were capable, were up to date and had the capacity. Not long before I left, we actually employed for the first time an HR manager, and that whole area of training started to become a discussion with the HR manager to identify what opportunities there were for training.

661. I have been asked what additional training PIRC would have benefited from during the investigation. The obvious one, with hindsight, would be a better understanding around race and what part race could have played in that investigation, but other than that we had a breadth of experience across most, if not all, investigative disciplines.

Signature of Witness



Record keeping

662. I have been asked if I took any notes during the investigation. I used a daybook, a hardback notepad, for notes so that I just didn't forget to pass details onto people, or if I'd been at meetings. I didn't have a daybook specifically in relation to the Bayoh inquiry.

663. I think they were destroyed on my retiral, I could see no point in hanging onto them. They were aide-mémoires for me. They were just notes to remind all sorts of things. There was no legal requirement to hold onto daybooks.

The Inquiry

664. I have been asked if I have been following the Inquiry. I hear it in the media. I'm an avid watcher of the news, so you pick up bits and pieces, but not in any depth.

665. I have been asked if this reporting has had an impact on my evidence within this statement. No, I've really relied greatly on my memory and the documentation

666. I have been asked if I have been in contact with any other person who may be a witness during the Inquiry. No, I've not.

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

Signature of Witness



December 15, 2023 | 3:21 PM GMT
Date