

## ANNEX

### COPFS POST INCIDENT MANAGEMENT

#### AREAS FOR WITNESS STATEMENT

##### MR LESLIE BROWN

Please provide your **full name, date of birth, personal or business address**.

Please provide as much detail as you can in relation to each of the following questions. Please mark on your statement the number of which paragraph of questions you are answering.

If you refer to any document in preparing your statement, please provide a brief description of the document and which page you have referred to.

The Crown Precognition has not been shared with you and your involvement in the drafting of the Crown Precognition may be requested at a later date.

#### Role and experience

1. What was your grade and position in COPFS during your involvement in the (Crown directed) PIRC investigation into the death of Sheku Bayoh (“the Investigation”) and subsequent COPFS Precognition process (“the Precognition”)? How long had you been in this position prior to the date you became involved? What were your duties and responsibilities in this position?
2. When did you first become involved in the Investigation? What were the circumstances in which you became involved?
3. What do you understand to be COPFS’ role in the investigation of sudden, suspicious, accidental and unexpected deaths in Scotland as of the date you became involved? What do you understand COPFS’ duties and responsibilities to be in this regard?
4. Prior to the date you became involved, what experience did you have in investigations of deaths in police custody, or deaths during or following police contact? Please provide details and the outcome of the cases. Was race a factor to consider in any of these cases?
5. Prior to your involvement, what experience did you have in relation to family liaison in deaths cases? Was race a factor to consider in family liaison in any of these cases? If so, please provide examples.

## PIRC

6. What experience did you have in dealing with PIRC prior to the date you became involved?
7. What was your understanding of PIRC's role in an investigation into a death in custody or death during or following contact with the police?
8. To what extent is COPFS' role to provide advice on legal matters to PIRC? How does this differ, if at all, from the advice provided to the police in a deaths investigation in an incident not involving the police? If COPFS does not provide advice on legal matters, where are PIRC expected to seek advice?
9. Was PIRC being directed to investigate Mr Bayoh's death under Section 33A(b)(i) or (ii) of the Police, Public Order and Criminal Justice (Scotland) Act 2006? What are the differences, if any, in COPFS' dealings with PIRC between investigations carried out under part (i) compared to (ii) of this section?
10. What instruction was given to PIRC in the course of your involvement in their investigation? If so, when and why did this occur?<sup>1</sup> To what extent do you agree with the summary of PIRC's instructions on pages 1 and 2 of the Briefing Note to Mr Justin Farrell dated 28 February 2020?<sup>2</sup>
11. Please read the email from Mr Stephen McGowan dated 12 May 2015<sup>3</sup> relating to PIRC's investigative update and his comments on PIRC's document.<sup>4</sup> Did you agree with Mr McGowan's views? How did you respond to this? Were these views ever shared with PIRC? Were you aware of any agreement of standard practice between PIRC and Police Scotland whereby PIRC would approach senior police officers, at Inspector level or above, to obtain statements from the subject officers? If it is established in evidence in the Inquiry that this practice existed and continues to this day, would that concern you?
12. In respect of your instruction letter to PIRC dated 24 August 2015,<sup>5</sup> you instructed PIRC to "*carry out an investigation in relation to the circumstances in relation to attached correspondence from Aamer Anwar*" and enclosed a letter from Mr Anwar dated 31 July 2015. Why did you instruct PIRC in the way? Were you concerned that PIRC's instruction would not be clear? To what extent is this manner of instruction consistent with normal practice? Why instruct PIRC in this way regarding Mr Bayoh's family's interests in this letter but not other letters? Have you instructed PIRC in this way before or since? Do you agree with Mr John McSparran, who stated to the Inquiry<sup>6</sup> that this manner of instruction was "*highly unusual*"?

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<sup>1</sup> Please refer to the list of instructions to PIRC at the bottom of this Annex.

<sup>2</sup> COPFS-02126 (a)

<sup>3</sup> COPFS-03635

<sup>4</sup> PIRC-04043

<sup>5</sup> COP S-02768(a)

<sup>6</sup> SBPI-00361 at para 124. Please note this statement has not been shared with you.

13. What is your understanding of COPFS' role in relation to a PIRC investigation carried out under Section 33A(b) of the 2006 Act? For example, do PIRC have autonomy or do they require the authority of COPFS before taking certain steps? Do COPFS direct the work to be carried out by PIRC as part of their investigation? Do COPFS supervise the PIRC investigation? If not, to what extent do COPFS influence the direction of the PIRC investigation?
14. Mr Bernard Ablett has stated the following position to the Inquiry in respect of COPFS' liaison with PIRC:

*I have been asked whether COPFS supervised or directed the PIRC. Again, because I have no experience of COPFS liaison with the PIRC, I cannot say. In terms of S.33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006 it is a duty of the Commissioner to carry out an investigation where directed to do so by the appropriate prosecutor. The provision is silent as to whether the prosecutor has the authority to supervise the PIRC in its day-to-day investigations. By contrast, the terms of s.17 of the Police (Scotland) Act 1967 make the police subordinate to the prosecutor: "...in relation to the investigation of offences the chief constable shall comply with such lawful instructions as he may receive from the appropriate prosecutor." I cannot comment as to whether this makes a practical difference.<sup>7</sup>*

Please provide your comment on this matter. Do COPFS have authority to supervise PIRC in their day-to-day investigations? Is there a difference, practical or otherwise, between COPFS' role in an investigation carried out by the police and by PIRC? Do you have any concerns in there being a position whereby a police investigation into potential criminality has the guidance and supervision of COPFS whereas a PIRC investigation into potential criminality of police officers and Police Scotland does not? Why would this be the case?

15. Please read page 4 of your notebook,<sup>8</sup> which relates to Mr Bayoh's family solicitor Mr Aamer Anwar's letter dated 31 July 2015.<sup>9</sup> Please explain these notes and set out the background. In particular, please comment on the discussion surrounding PIRC's role, deficiencies in the investigation and the comparisons to the case involving the death of Mr Colin Marr. The notes appear to state the following, please confirm if this is typed accurately:-

*P9 Letter – request to PIRC to analyse test & resolve gaps in evidence. Compare & contrast accounts.*

*Policies & protocols. Compare police actions with relevant section Again a critique of thoroughness of investigation & best practice.*

*Case highlights certain challenges partic in relation to the organ dynamic between Crown & PIRC. Mr Anwar's cases reflects his knowledge of role of IPCC which doesn't replicate PIRC. In this case PIRC are primary*

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<sup>7</sup> SBPI-00370. Please note this statement has not been shared with you.

<sup>8</sup> CAAPD Notebook 12, COPFS-05213

<sup>9</sup> COP S-04726(a)

*investigating body. The investigation has highlighted fact that whilst Crown can direct & instruct PIRC on areas to investigate, the investigative techniques employed are responsibility of PIRC.*

*The PIRC report has highlighted serious deficiencies in the investigation carried out during the removal of Mr B to hospital  
Part 53. Conduct of investigation & investigative techniques are matter for PIRC.*

*If this investigation then will lead to observation that any decision made by Crown in respect of criminal proceedings is flawed on basis of inadequate & flawed investigation that was hampered by degree of non cooperation & failure to follow procedures –  
Initial stages accompanied by a refusal to give statements for some reason, with admitted opportunities for conferring.  
Similarities to Colin Marr case where failure to investigate properly never led at FAI...*

16. How are decisions and instructions communicated to PIRC? Please explain your involvement in communicating decisions during the Investigation.
17. How would you normally go about answering PIRC's questions and providing advice? What, if any, involvement did you have in assisting PIRC with their questions and providing advice? If you had no personal involvement, who did?
18. In your view, were PIRC's instructions sufficient for them to investigate and report on all relevant matters to COPFS? If not, what could have been done differently and why?
19. What offences were PIRC instructed to investigate? Were any other offences discussed with PIRC? Did you consider investigating an offence under Section 22 of Police and Fire Reform (Scotland) Act 2012, "Failure to perform duty"? What was the outcome of this aspect of the investigation? Do you recall a meeting prior to 3 July 2015 with PIRC in which you or a colleague discussed with PIRC the possibility of an offence under Section 22 of the 2012 Act or an attempt to pervert the course of justice?
20. At any stage in the Investigation and Precognition, did you consider investigating potential offences in relation to the drugs Mr Bayoh had consumed, for example identifying and investigating the supplier for culpable homicide or offences under the Misuse of Drugs Act 1971? Would this be a matter for PIRC or Police Scotland to investigate? Who is responsible for instigating this investigation? Please set out the reasoning for your decisions and explain any departures from normal practice.
21. Regarding a possible investigation in respect of the source of the drugs Mr Bayoh had consumed, were you aware of any evidence obtained by PIRC? Please read the statement provided with reference PIRC-00055. Were you aware of the information in this statement? Was this matter raised with PIRC or Police Scotland?

22. Please read the email to you dated 22 February 2018, Ms Fiona Carnan's draft reply<sup>10</sup> and the response from you to Mr Taylor of PIRC on 27 February 2018.<sup>11</sup> What did you understand to be the legal basis for downloading and examining data other than video clips from 3 May 2015 (in respect of which Ms Ashley Wyse had given her express consent)? Did you discuss this with Ms Carnan? What was the advice you were giving PIRC and why? Why did you send a different response to what Ms Carnan was suggesting? Should you have provided advice to PIRC?
23. Please read the email chain between you and Ms Ashley Edwards QC dated 30 January to 6 February 2017.<sup>12</sup> What did you understand to be Ms Edwards' concern relating to PIRC approaching the witnesses directly? What was done about this? Was PIRC's approach to this enquiry an operational matter for them or a matter for COPFS to direct?
24. What was being done by PIRC to investigate race as a factor in the case? What instruction was provided to PIRC in relation to investigating race? Was PIRC's approach to investigating racism in this case sufficient in your view? Was the instruction to PIRC in relation to race sufficient? Did you provide any advice to PIRC about investigating racism?
25. Please read the IPCC guidelines for handling allegations of discrimination originally published in September 2015 and amended to February 2020.<sup>13</sup> In the course of your involvement in the Investigation, were you aware of these guidelines or any previous version? If so, did you make PIRC aware of these guidelines? Would the guidelines be a matter for COPFS' advice or instruction of PIRC or would they be operational matters?
26. Please read page 2 of your notebook<sup>14</sup> under the heading "*Plan of action – issues to be addressed*" which appears to have been written on or around 15 or 25 May 2015, standing a note of one of these dates on page 3. Please explain these notes on page 2 and set out the background. Cause of death and expert evidence appears to be prioritised and there's no mention of analysis of the police officers' accounts or Mr Bayoh's race as a consideration in why the officers took the course of action that they did; was race considered at this point?
27. Please read your file note dated 1 October 2015<sup>15</sup> and provide further details of what was explained to PIRC in this meeting. This appears to be the only typed file note that you prepared in this case, why did you record this discussion in this manner? If there were any other file notes you produced, please provide details.

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<sup>10</sup> COPFS-02772

<sup>11</sup> P RC-02587

<sup>12</sup> COPFS-03834

<sup>13</sup> SBPI-00386

<sup>14</sup> CAAPD Notebook 12, COPFS-05213

<sup>15</sup> COP S-04627(a)

28. Please read the letter from PIRC to you dated 30 October 2015<sup>16</sup> comprising an update on the PIRC investigation. You also forwarded this update to the Lord Advocate on 30 October 2015.<sup>17</sup> Were you and the Lord Advocate satisfied with the approach of PIRC in respect of race as set out in the update?
29. Please read further correspondence between you and PIRC dated December 2015 and January 2016.<sup>18</sup> Were you and the Lord Advocate satisfied with the PIRC's approach to investigating race following the email from Mr John McSparran? Did PIRC's approach take account of the issues you set out in your letter dated 13 January 2016?<sup>19</sup> In particular, please comment on the terrorism aspect of your letter and its relevancy to the PIRC investigation.
30. Please read your notebook<sup>20</sup> at page 8 with the heading "*PIRC Meeting 22/2*". Please explain these notes and set out the background. Halfway down the page is reference to "*26/2/16*", is it therefore correct that this PIRC meeting was on 22 February 2016? There is a note in the middle of the page that appears to state: "*Invest. racism – rates lower than the rest of Scotland.*" Is this note typed accurately? What was discussed with PIRC at this stage?
31. Please read your notebook<sup>21</sup> at page 14 with the heading "*PIRC Meeting 11/3/16*". Please explain these notes and set out the background. At the end of the notes on the page is written what appears to be: "*Enq into lawful purpose – poss of interview under caution*". Is this note typed accurately? Who would be interviewed under caution? What was discussed? What was the conclusion? Was anyone interviewed under caution following this discussion? What would be the benefit in interviewing a person under caution? Was this discussed previously? If not, why?
32. Please read your Minute to the Law Lords dated 21 November 2017.<sup>22</sup> This Minute relates to difficulties PIRC encountered in relation to obtaining information and evidence from Police Scotland. You write in the Minute: "*I regard this situation as highly unsatisfactory and is a sharp example of how PIRC are being frustrated in their enquiry by the attitude of PSoS and that senior officers can control the provision of evidence.*" Is it the position that it is a matter for Police Scotland to determine what information and evidence they provide to PIRC? Did PIRC seek advice from you relating to these matters? What further measures could PIRC have taken to obtain the information and evidence from Police Scotland? Did COPFS have a role in this line of enquiry?
33. With reference to page 7 of Mr MacLeod's summary of the Investigation and Precognition to Mr Farrell,<sup>23</sup> please provide a further explanation to what is said to be the views of the precognoscers:-

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<sup>16</sup> P RC-02088(a)

<sup>17</sup> COPFS-02673

<sup>18</sup> COPFS-02782 (24 December 2015); COPFS-02562 (13 January 2016); PIRC-02091 (18 January 2016)

<sup>19</sup> COPFS-02562

<sup>20</sup> CAAPD Notebook 4, COPFS-05205

<sup>21</sup> CAAPD Notebook 4, COPFS-05205

<sup>22</sup> COPFS-02214 (a)

<sup>23</sup> COPFS-02126 (a)

*The precognoscers found it of interest that the information about the rib fracture which was only made known to PIRC on 29th May 2015 was somehow potentially being explained away by three of the officers when they provided statements on 4th June 2015. After careful consideration of all the evidence there was insufficient evidence to make any more of it other than to say it was suspicious, and potentially called into question the integrity of the PIRC investigation at that point.*

In what respects was PIRC's integrity in question? Was this ever raised with PIRC directly? What was their response?

34. What duties are incumbent on you in relation to PIRC's investigation? To what extent did you fulfil these duties? Insofar as not already covered, to what extent was your involvement in the control, direction and guidance of PIRC's investigation consistent with normal practice? Please set out your reasoning for any departures from normal practice. To what extent, if any, was race a factor for any departures from normal practice?
35. Please read the Memorandum of Understanding between COPFS and PIRC dated 10 and 11 December 2013 (the "MOU").<sup>24</sup> Were you aware of the MOU during your involvement in the Investigation? Were any further duties incumbent on PIRC or COPFS in light of the MOU? If so, how did you satisfy these requirements on COPFS? In particular, at para 7.5 on page 5, were PIRC instructed to report by way of a Full Investigation Report on the agreed template or an SPR together with full statements and productions? What, if any, timescales were determined in the instruction?
36. The MOU<sup>25</sup> at para 12.4 on page 9 provides that representatives of CAAPD, SFIU and PIRC will meet annually on a date agreed in order to discuss the operation of this MOU, issues of mutual interest and any requirement to amend the terms of the MOU; did these meetings take place and what was discussed?

#### Family liaison

37. What is your understanding of COPFS' role in liaison with the deceased's family in deaths cases? How does COPFS' role interact with the role of Police Scotland and PIRC in family liaison?
38. What, if any, duties or responsibilities do COPFS have to the deceased's family during the course of a PIRC investigation? What duties or responsibilities do COPFS have to the deceased's family during the Precognition process? How were these duties or responsibilities fulfilled? Was there a handover of family liaison from PIRC to COPFS?

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<sup>24</sup> PIRC-04453

<sup>25</sup> PIRC-04453

39. Did you or, insofar as you are aware, your colleagues inform PIRC of all meetings and updates you gave to Mr Bayoh's family? Was it incumbent on COPFS to update PIRC in this regard?
40. Do you recall if you discussed the issue at all with PIRC? There is evidence before the Inquiry<sup>26</sup> stated by PIRC's Mr McSporrán that on or around 17 May 2015, PIRC's Director of Investigations Mr John Mitchell spoke with you with concerns that COPFS were providing information to Mr Anwar and Mr Bayoh's family regarding the investigation, post mortem examination and other findings, which PIRC were not aware of and could be undermining and compromising their dealings with Mr Bayoh's family. Mr Mitchell is said to have requested that you ensure PIRC are made aware of all such communications. Following this discussion, Mr McSporrán's position is that COPFS did not change their approach and information was given and meetings held with Mr Anwar without their awareness. To what extent do you agree with this version of events? Please provide your recollection and comment on this matter.
41. What involvement did you have in family liaison in relation to Mr Bayoh's death?
42. With reference to Mr MacLeod's letter to Mr Farrell dated 28 February 2020 page 3,<sup>27</sup> the following summary is made in respect of family liaison: "*From the outset the Anwar & Co were on an exceptional basis provided with significant disclosure. This disclosure was provided solely to enable them to instruct their own medical experts. The family were also from the beginning invited by the Crown to provide input to the Crown investigation and did so by e.g. suggesting particular lines of enquiry and providing the details of a number of expert medical witnesses some of who subsequently provided reports to the Crown.*" Do you agree with this summary? What made the basis of the disclosure "exceptional"? In this regard, PIRC's Mr McSporrán has stated to the Inquiry the following: "*In my experience, it was highly unusual for COPFS to provide such information direct to the family and their solicitor during a live investigation, particularly during its early stages.*"<sup>28</sup> Do you agree with Mr McSporrán? Was this disclosure a departure from normal practice? If so, what was the basis for this departure? To what extent was race a factor in any departures from normal practice?
43. Please read your notebook<sup>29</sup> at page 28 with the heading "*Meeting Family Bayoh 9/5/16*". Please explain these notes and set out the background. What was discussed in this meeting? In particular, there is a note that appears to be "*superhuman strength*", is that correct? What was discussed relating to superhuman strength and how did this factor into the investigation? Are you aware of any race implications for a black man being described as having superhuman strength and how this may factor into how police officers approach him or engage him? Was that a consideration for the Investigation and Precognition?

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<sup>26</sup> SBPI-00361; PIRC-04153. Please note these documents have not been shared with you.

<sup>27</sup> COPFS-02126 (a)

<sup>28</sup> SBPI-00361 at para 91. Please note this statement has not been shared with you.

<sup>29</sup> CAAPD Notebook 4, COPFS-05205



44. Further on page 28 of your notebook<sup>30</sup> is a note that appears to be “*Karen Swan – violence – this happens in all families!*”, is that correct? Does this relate to allegations against PC Alan Paton from members of his family? Who said this? What is the purpose of this note and why is there an exclamation mark at the end of it?
45. Please read page 32 of your notebook<sup>31</sup> with the heading “*Meeting Aamer 1/12/16*”. Please explain these notes and set out the background. In particular what does “*3 stage process*” refer to? Questions on your notes relating to VIA and the possibility of a public inquiry will be set out below.
46. Please explain the background, purpose and your involvement in drafting the Bayoh Family Letter dated 10 September 2018.<sup>32</sup>
47. The Bayoh Family Letter dated 10 September 2018<sup>33</sup> contains the following narrative of events: 
48. The Bayoh Family Letter dated 10 September 2018<sup>34</sup> contains the following summary of the expert evidence: “*A number of experts also considered that as soon as the restraint commenced, the prognosis for Sheku was significantly compromised, irrespective of the actions of police officers. In addition a number of experts were of the opinion that Sheku’s life was in significant danger even before engaging with the Police.*” Please confirm which experts are being referred to in this section. Do you consider this to be a complete and accurate summary of the expert evidence relating to Mr Bayoh’s prognosis at the point the restraint commenced? Was consideration given to alternative viewpoints?
49. What is your understanding of the role of COPFS’ Victim Information and Advice service (“VIA”) in family liaison in a death investigation? Were VIA involved in this case? Insofar as you are aware, what was the basis for VIA involvement or non-involvement with Mr Bayoh’s family? Please refer to the following note at page 32 of your notebook:<sup>35</sup> “*Do family wish VIA liaison officer*”. This note appears to relate to a meeting with Mr Bayoh’s family on 1 December 2016, why did it take this long to offer a VIA liaison officer?

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<sup>30</sup> CAAPD Notebook 4, COPFS-05205

<sup>31</sup> CAAPD Notebook 4, COPFS-05205

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<sup>35</sup> CAAPD Notebook 4, COPFS-05205

## Lord Advocate

50. What is your understanding of the role of the Lord Advocate in the Investigation and Precognition? Please outline the dealings you had with the Lord Advocate during the course of your involvement in the Investigation and Precognition.
51. Did you have any involvement in meetings between the Lord Advocate and Mr Bayoh's family? If so, which meetings did you attend? Who was present? What was your recollection of these meetings? What was the outcome of these meetings and what was your understanding of what the Lord Advocate, and COPFS, had undertaken to do?
52. What, if any, undertakings were given to Mr Bayoh's family by the Lord Advocate? Were these undertakings satisfied? What was done to ensure that these undertakings were recorded and satisfied?
53. Do you recall any undertakings given by the Lord Advocate to Mr Bayoh's family in relation to him contacting PBW Law, the solicitors acting for the SPF, to ask them to refrain from media comment? Please provide details. A statement in the media was given by the Lord Advocate on 22 October 2015<sup>36</sup> calling for restraint from all parties in the provision and publication of information in respect of the death of Mr Bayoh; was this connected to an undertaking to Mr Bayoh's family? If so, why was the statement aimed at all parties?
54. Your Minute to the Lord Advocate dated 13 October 2017<sup>37</sup> suggests an undertaking was given to Mr Bayoh's family that reports instructed by PIRC would be disclosed to them; please set out the background and context to this undertaking. Further, you suggest that undertakings given by one Lord Advocate would not be binding on a successor, although it would be undesirable to explicitly depart from the predecessor's position; do you still understand that to be the correct position in respect of the undertakings of Lord Advocates? Why would you disclose reports instructed by PIRC but not by the Crown? How could this disclosure to Mr Bayoh's family prejudice future proceedings, as you have set out in the above Minute and in the Minutes dated 22 and 28 March 2018<sup>38</sup>? Do COPFS' duties under Article 2 of the ECHR require you to disclose these reports, or is that not necessary for compliance?
55. Do you recall the Lord Advocate having involvement in the choice of instruction of expert witnesses? In particular, do you recall the Lord Advocate's involvement in the decision to instruct Dr Stephen Karch? Please read PIRC's letter to COPFS dated 12 October 2015.<sup>39</sup> The letter suggests the Lord Advocate selected Dr Karch, does this conform with your understanding of the Lord Advocate's involvement? If so, are you aware of the basis for why Dr Karch was selected? As far as you were aware, did anyone at COPFS have any concerns about instructing Dr Karch?

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<sup>36</sup> COPFS-00975

<sup>37</sup> COPFS-03325a

<sup>38</sup> [REDACTED] (22 March 2018); COPFS-03560 (28 March 2018)

<sup>39</sup> PIRC-04246

56. PIRC's letter to COPFS dated 12 October 2015<sup>40</sup> also includes reference to Prof Pounder, who is said to have provided his CV and explained that although clinical forensic medicine was not his primary area of expertise he has a particular interest in alleged human rights abuses, including deaths in custody, and post mortem toxicology. Why was this expert not selected for instruction?
57. Please read your notebook<sup>41</sup> at page 6 with the heading "*Meeting LA 11/2*". Please explain these notes and set out the background. There are notes that refer to another person on this page, are these notes unrelated to the Investigation? Halfway down page 8 is the date "*26/2/16*", is it therefore correct that the meeting on page 6 was on 11 February 2016?
58. Do you recall a meeting between the Lord Advocate, the Bayoh family, Mr Anwar, Ms Erin Campbell and you, possibly in or around November or December 2015? What do you recall from this meeting? Do you recall the Lord Advocate discussing investigation into racial motivation and institutional racism? Do you recall the Lord Advocate providing his views on Dr Stephen Karch having compromised his integrity and impartiality as an expert witness? What was discussed in this regard? Do you recall the Lord Advocate giving his word that he would sit down with Mr Bayoh's family and take them through all of the evidence? Do you recall Mr Anwar raising an issue relating to harassment of the black community in Kirkcaldy, asking whether checks were being made by police officers and the Lord Advocate then suggesting that Mr Stephen McGowan could contact the Divisional Commander in Kirkcaldy? What was the outcome of this? Do you recall the Lord Advocate offering to contact the SPF solicitor Prof Peter Watson in the context of his investigator leaving business cards with potential witnesses? In any event, are you aware if this contact with Prof Watson took place? Do you recall a suggestion from Mr Anwar that an expert, perhaps in behavioural science, could be instructed to investigate the psychology or "pack mentality" of police officers and their mindset that they are believing they are attending a terrorist attack or a "Lee Rigby scenario"?
59. Please read pages 3 to 5 of your notebook.<sup>42</sup> Please explain these notes and set out the background. What issues and reflections were discussed in this meeting? The notes appear to be a meeting you had with the Lord Advocate noted at page 3 on "*22/11*", possibly in 2017 standing there is a meeting on page 5 on "*16/1/18*". The notes include what looks to be the following notes:-

*LA – What lessons for Scotland.*

*Bayoh case*

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*PIRC needs further government thought.*

*Proc given training – refreshed – know what should do & chose not to do it.*

*Contact Dame Elish... on restraint.*

...

*Adopted hybrid firearm procedures – Confirmed*

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<sup>40</sup> PIRC-04246

<sup>41</sup> CAAPD Notebook 4, COPFS-05205

<sup>42</sup> CAAPD Notebook 10, COPFS-05211

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Scottish government

1. *Pre... in police*
2. *PIM – police & PIRC*
3. *Restraint guidance – to reflect Dame E report*

1) *Criminal.... There are issues which look like go beyond FAI  
May well be public inquiry. Response may be affected...how  
criminal prosecution pans out. Systemic issues.*

60. In your experience, in what circumstances does the Lord Advocate meet with the family of a deceased person as part of a COPFS investigation? What difference in approach to Mr Bayoh's family, if any, occurred when Mr Wolffe QC succeeded Mr Frank Mulholland QC as Lord Advocate on 1 June 2016?
61. To what extent was the involvement of the Lord Advocates in the Investigation normal practice or unusual, in your experience? Please refer to your email dated 1 March 2018<sup>43</sup> where, in relation to an upcoming meeting with Mr Bayoh's family, you write: "*Copied to Nick as we will want a press line which we can work up. I know that Ashley is keen to emphasise that it is normal practice for a dedicated AD to meet next of kin etc.*" Do you agree that this is normal practice? Do you know why Ms Edwards was keen to emphasise this? Was it emphasised that it was normal practice for the Lord Advocate to meet with the next of kin?
62. With reference to your Minute to the Law Lords dated 22 August 2018,<sup>44</sup>

Police officers' status

63. What is COPFS' role, if any, in determining if a person's status is that of witness or suspect in an investigation into a death in custody or a death during or following contact with the police? What is the significance for the Investigation of a person's status? In the event that there are no suspects, what is COPFS' role in identifying a suspect?
64. What was your involvement, if any, in determining if the status of the officers who engaged with Sheku Bayoh, or any other persons, was that of witness or suspect in the Investigation? To what extent were your decisions and actions in this regard consistent with normal practice? Was race a factor in any departures from normal practice? In hindsight, are there any aspects of your decision-making or actions in this regard that you would do differently?

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<sup>43</sup> COPFS-04538

<sup>44</sup>

65. What is COPFS' role, if any, in obtaining accounts from officers involved in contact with a deceased person in a death in custody or death during or following contact with the police?
66. What was your involvement, if any, in obtaining accounts from the officers in the Investigation? To what extent were your decisions and actions in this regard normal practice? Was race a factor in any departures from normal practice? With hindsight, are there any aspects of your decision-making or actions in this regard that you would do differently?
67. Can COPFS provide any undertakings to officers involved in a death in custody or death during or following police contact in order to obtain their account of the incident? If so, when are these made and what is their purpose? Were these considered in the Investigation?
68. There is evidence before the Inquiry in a note by PIRC's Mr John Mitchell<sup>45</sup> that he telephoned you on 2 June 2015 at 9:55am to explain that the SPF's Mr David Kennedy and the SPF's solicitor Mr Peter Watson confirmed that the officers would make themselves available for interview if their status was confirmed as that of witness. Mr Mitchell's note states that you agreed to consider the matter and seek further direction from COPFS. Mr Mitchell stated to the Inquiry that you returned his call to explain that the Crown were content for the officers to be interviewed with their status being witness, however if they said anything that would suggest they were suspects they were to be interviewed under SARF procedure from that point. Does this accord with your recollection? Is it not the case that PIRC had already been advised by COPFS that the status of the officers was that of witness? Do you recall discussing this point with Mr Mitchell at all?
69. With reference to the letter from Ms Kate Frame of PIRC to Ms Lindsey Miller dated 22 March 2018,<sup>46</sup> do you agree with Ms Frame's version of events including the meeting where the Lord Advocate provided the instruction to PIRC to consider the officers as witnesses in the first instance? How does that correlate to the telephone call between you and Mr Mitchell?
70. If a person is being investigated in relation to a criminal offence, would this make them a suspect? What advantages, if any, would be gained from charging the officers and interviewing them under caution? What disadvantages, if any, would result from the officers being charged and interviewed under caution? To what extent were your decisions and actions in this regard influenced by reporting, or potential reporting, in the media? Is there a reluctance on you or your colleagues' part to instruct the police or PIRC to charge police officers with criminal offences occurring in the course of their duty that is not apparent when dealing with civilians? If so, what is the reason for this?
71. In a letter to Mr Anwar dated 10 September 2015,<sup>47</sup> PIRC's Ms Frame set out her response to a concern of the family in the following terms:-

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<sup>45</sup> PIRC-03736

<sup>46</sup> PIRC-02465(a)

<sup>47</sup> PIRC-01835(a)

*Firstly, I note that they suggested that the powers available to PIRC had either not been utilised or were lacking.*

*In particular, the family appear to be concerned that the police officers who engaged with Sheku Bayoh in Hayfield Road, were not detained immediately and interviewed.*

*As you will be aware, dependent on the circumstances of any case, a police officer may have the legal status of a witness or a suspect. If they are considered to be a witness, they may have the same rights as any civilian and therefore cannot be compelled to provide a statement. If on the other hand, they are considered to be a suspect, they may be detained for the purposes of giving a statement but cannot be compelled to speak or incriminate themselves.*

*For someone to be considered a suspect, you will appreciate that in terms of Section 14 of the Criminal Procedure (Scotland) Act 1995, there has to be a reasonable suspicion that they have committed a crime.*

*In this particular case, as you know, as it has not been possible (to date) to establish a precise cause of death, it has not so far been possible, in a legal context, to establish that a crime has been committed.*

*Accordingly, the police officers could not be detained as suspects in terms of the Criminal Procedure (Scotland) Act.*

*In these circumstances and in compliance with Scottish Criminal Law, the police officers have been considered meantime as witnesses. As you will know, there is nothing in law which compels a witness to provide evidence to investigators (be they police officers or PIRC investigators) and I am sure you will recognise the importance of my investigators acting within the law, so that any evidence obtained by them, may be admissible in the event of any future proceedings.*

In a further letter to Mr Anwar dated 9 October 2015,<sup>48</sup> Ms Frame states:-

*With regard to your query relating to the detention of police officers in terms of Section 14 of the Criminal Procedure (Scotland) Act 1995, as you know, from the inconclusive Scottish post mortem, it has not been possible to establish a precise cause of death or to establish meantime, that a crime has been committed. In terms of Scots Law, it is not lawful to detain any person (police officer or member of the public) unless it has been established that an offence punishable by imprisonment has been committed. In compliance with Scottish Criminal law, PIRC has not, to date, detained any police officer in respect of this case.*

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<sup>48</sup> PIRC-01849

To what extent do you agree with the position Ms Frame has set out? If your understanding of the law at the time differed from Ms Frame, please set this out. What is it about the cause of death that you understand to be essential to reasonable suspicion, or establishment of an offence punishable by imprisonment? How does this square with COPFS instructing an investigation under Section 33A(b)(i) of the 2006 Act, being investigation of the circumstances in which a police officer may have committed an offence?

72. When the cause of death was established by the pathologists, or at any time afterwards, was the status of the officers reconsidered? If not, why?
73. In any event, in your understanding, is reasonable suspicion a matter of the investigator's decision or objective fact? To what extent is it normal for PIRC to conduct an investigation and prepare a report of findings when there is no reasonable suspicion in respect of any person? To what extent is it normal to draft and submit the Crown Precognition where there is no reasonable suspicion in respect of any person? In light of your answers, please set out why the Investigation and Precognition was conducted in the way it was standing the status of the police officers.
74. Please read the letters between the Lord Advocate and Chief Constable dated 15<sup>49</sup> and 22 May 2015.<sup>50</sup> Were you previously aware of the points raised in this correspondence? Please provide your comment on the issue raised by the Chief Constable and the Lord Advocate's response. Do you agree with the Lord Advocate that there are "*...issues about whether this refusal to provide an operational statement impacts upon the statutory duties of a Constable...*"?

#### Ingathering of evidence and analysis

75. What is your understanding of COPFS' role in investigating a death in custody or death during or following contact with the police? How does COPFS' role interact with the role of Police Scotland and PIRC in investigating?
76. Prior to when you were involved in the Investigation, were you aware of Mr Bayoh's death from the media or word of mouth? If so, what was your understanding of the circumstances in which Mr Bayoh died?
77. After you first became involved in the Investigation, what description of the events leading up to and including Mr Bayoh's death was explained to you? When, how and by whom was this information provided to you?
78. Over the course of your involvement in the Investigation and Precognition, in what ways, if any, did your understanding of the circumstances of Mr Bayoh's death change from the information initially provided to you?
79. In your notebook<sup>51</sup> at page 49 you have written what appears to be the following note:-

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<sup>49</sup> PS08484

<sup>50</sup> COPFS-02855

<sup>51</sup> CAAPD Notebook 3, COPFS-05204

CCTV: - highly significant – I saw it  
Robson Kolberg CCTV –  
She can confirm Bayoh had a knife

....  
Rule out purpose

Are these notes typed above accurately? If not, please set out what you have written in your notebook. Please explain these notes and set out the background. Specifically, why is the CCTV “highly significant”, what does “I saw it” refer to and what do you mean by “rule out purpose”?

80. Please read page 53 of your notebook.<sup>52</sup> Are these notes related to your involvement in the Investigation? If so, please explain these notes and set out the background.
81. At page 16 of your notebook<sup>53</sup> you have written what appears to be the following: “2) Bayoh 1500 & counting. Whether poss to send form of words to share with officers.” Is this note typed accurately? Please explain these notes and set out the background. What does the number relate to? What form of words would be shared with the police officers? Why would this be shared with them? Please comment on the extent to which sharing the form of words would be normal practice. Who were you discussing this with? What was the outcome of this issue? Please confirm if any of the other notes relate to the Investigation or if they are irrelevant.
82. Please explain your involvement, supervision, direction or management of PIRC or COPFS staff, if any, in ingathering and analysing evidence in relation to the response officers’ accounts, including reference to any contradictions you identified between the accounts and any impact on your assessment of the officers’ credibility and reliability. Please read your email to Mr Stephen McGowan dated 24 August 2015.<sup>54</sup> Please set out your recollection of the issue of the understanding of restraint and the discussions surrounding this email. How did this issue factor into the assessment of the officers’ credibility and reliability?
83. Please read your email correspondence with Sgt ██████████ of Police Scotland dated 6 and 7 December 2016.<sup>55</sup> Sgt ██████████ on behalf of DCC Iain Livingstone has requested the Crown’s approach to disclosing the cause of death from the death certificate. You have replied that this would be given to the family and the investigation, and “as the investigation into the death of Sheku Bayoh remains live it would not have been appropriate to proactively disclose information in relation to the contents of the death certificate to any third party while there is an ongoing criminal investigation.” Why would this not be appropriate? Were you aware that information relating to the cause of death not resulting from blunt force trauma was shared with the response officers on

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<sup>52</sup> CAAPD Notebook 3, COPFS-05204

<sup>53</sup> CAAPD Notebook 4, COPFS-05205

<sup>54</sup> COPFS-02035

<sup>55</sup> COPFS-02888



the night of 4 May 2015, prior to their statements being provided?<sup>56</sup> Was this appropriate? If you were aware of this, how was this factored into the assessment of the officers' credibility and reliability?

84. What is COPFS' role, if any, in obtaining accounts from officers involved in contact with a deceased person in a death in custody or death during or following contact with the police?
85. What was your involvement, if any, in obtaining accounts from the officers in the Investigation? To what extent were your decisions and actions in this regard normal practice? Was race a factor in any departures from normal practice? With hindsight, are there any aspects of your decision-making or actions in this regard that you would do differently?
86. Can COPFS provide any undertakings to officers involved in a death in custody or death during or following police contact in order to obtain their account of the incident? If so, when are these made and what is their purpose? Were these considered in the Investigation?
87. Please explain your involvement, supervision, direction or management of PIRC or COPFS staff, if any, in ingathering and analysing evidence in relation to Mr Kevin Nelson's account, including your understanding of his explanation that he did not see part of the engagement between Mr Bayoh. Was Mr Nelson asked to comment on the specifics of the details of the incident from the officers' statements in relation to a stamp by Mr Bayoh on PC Nicole Short? Please read the following notes on page 38 of your notebook:<sup>57</sup> "*Drugs – is behaviour consistent with ingestion of drugs. Orchard – COPFS do same type of analysis.*" This note is under the heading "*Meeting family SB 8/2/17*". Please explain these notes and set out the background. Is this a reference to the Orchard Clinic in Edinburgh? What was discussed?
88. Please explain your involvement, supervision, direction or management of PIRC or COPFS staff, if any, in ingathering and analysing evidence in relation to the accounts of APS Scott Maxwell, PC Ashley Tomlinson and PC Craig Walker regarding the purported stamp on PC Nicole Short by Mr Bayoh, including the extent to which relevant Airwave transmissions were considered.
89. Please explain your involvement, supervision, direction or management of PIRC or COPFS staff, if any, in ingathering and analysing property seized by the police or PIRC from civilians, including the loci seized on 3 May 2015 and personal items seized from witnesses. What involvement did you have in determining the legal basis and reasoning for the continued retention of this property? What was your involvement, if any, in returning property to the civilians at the end of the Investigation and Precognition? To what extent was your involvement consistent with normal practice?

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<sup>56</sup> See the PIM Log at page 18 (PIRC-00387).

<sup>57</sup> CAAPD Notebook 4, COPFS-05205

90. Were you aware at any point of any draft search warrants being prepared in respect of Police Scotland premises? Do you recall any discussions in this regard? Please see the draft warrant prepared by PIRC and confirm if you have had sight of this before.<sup>58</sup> If so, please set out the background and outcome of this warrant being prepared.
91. Please explain your involvement, supervision, direction or management of PIRC or COPFS staff, if any, in gathering and analysing evidence in relation to Ms Wyse's account and related information, including her mobile telephone data and in particular her text messages.
92. Ms Irene Scullion of PIRC produced a telephone note of a call between you on 6 May 2015 at 2:25pm<sup>59</sup> in the following terms: "*Call from Les Brown in response to query from Irene Scullion regarding return of mobile phones. It is Les's view that 'returning the phone prematurely might be viewed in a certain way.' Defence solicitors may wish in future to examine the phone itself + not simply the download.*" Do you recall this telephone call and is the account in the note accurate? Who did you understand to be the "defence solicitors" in this case? If the note is accurate, what did you mean by the phone being returned being viewed in a certain way and by whom? Is this a sound legal basis for retaining the witnesses' property? Would you agree that this telephone call is you providing advice to PIRC on matters that might be considered of an "operational" nature?
93. Please explain your involvement, supervision, direction or management of PIRC or COPFS staff, if any, in gathering and analysing evidence in relation to PC Short's vest, including the instruction of forensic examination of the dark marks on it (both in terms of the shape of the mark and the composition; and a comparison with Mr Bayoh's boots). Please refer to your notebook<sup>60</sup> at page 48 and explain the notes at the top of the page and set out the background, including the purpose of the tick next to "*Forensic Evidence*".
94. Please explain your involvement, supervision, direction or management of PIRC or COPFS staff, if any, in gathering and analysing evidence in relation to biological samples taken from Mr Bayoh's body, including toxicologist expert opinion.
95. With reference to the email from Mr Stephen McGowan to PIRC dated 20 July 2016,<sup>61</sup> would you agree with Mr McGowan that the toxicology evidence relating to Alpha-PVP would not need to go further than research that this drug would make people violent? Was that the approach taken by you, and your colleagues in COPFS, in relation to toxicologist expert opinion?
96. Please explain your involvement, supervision, direction or management of PIRC or COPFS staff, if any, in gathering and analysing evidence in relation

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<sup>58</sup> PIRC-04535

<sup>59</sup> PIRC-03702

<sup>60</sup> CAAPD Notebook 3, COPFS-05204

<sup>61</sup> PIRC-01988

to any belongings seized from Ms Collette Bell, Mr Zahid Saeed, Mr Martyn Dick and Ms Kirsty MacLeod, including the legal basis for their retention.

97. Please explain your involvement, supervision, direction or management of PIRC or COPFS staff, if any, in considering if any of the actions of police officers and civilian staff relating to searches of Mr Bayoh and Mr Aamer Anwar in police databases. What was your understanding of any benefit to the police investigation and legality of carrying out a police database search in respect of a legal representative of a deceased person's family and, separately, the justification in recording intelligence relating to Mr Anwar under a counterterrorism category? How did COPFS take these matters forward, if at all?
98. Please refer to page 5 of your notebook<sup>62</sup> where you have written a note that appears to be: [REDACTED]  
[REDACTED]  
[REDACTED] Please explain these notes and set out the background. Please also refer to your Minutes to the Law Lords dated 22 August 2018<sup>63</sup> and 25 September 2018.<sup>64</sup>
99. Please explain your involvement, supervision, direction or management of PIRC or COPFS staff, if any, in preparing and commissioning the multimedia presentation.
100. Please explain your involvement, supervision, direction or management of PIRC or COPFS staff, if any, in ingathering and analysing statistical data relevant to the issues in the Investigation and Precognition.
101. Please explain your involvement, supervision, direction or management of PIRC or COPFS staff, if any, in ingathering and analysing evidence in relation to training of the officers, including the relevance of this information to investigating any potential offences by Police Scotland.
102. Please explain your involvement, supervision, direction or management of PIRC or COPFS staff, if any, in ingathering and analysing evidence in relation to the extent to which race was a factor in the actions of the police officers engaging Mr Bayoh, including your comment on the relevancy of this issue to the Investigation and Precognition. Was race considered in relation to any offences to investigate? Was race considered as an aggravating factor to any potential offences being investigated?
103. In the IPCC guidelines for handling allegations of discrimination<sup>65</sup> at page 8 summarises possible examples of lines of enquiry to follow when investigating possible discrimination of police officers or police staff. Did you, or as far as you are aware your colleagues, consider any of the following lines of enquiry:

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<sup>62</sup> CAAPD Notebook 7, [REDACTED]

<sup>63</sup> COPFS-04029(e)

<sup>64</sup> COP S-00532

<sup>65</sup> SBPI-00386

consider patterns of behaviour of the officers; use comparator evidence to compare the approach to Mr Bayoh with that of a white man in the same situation; assess the language used by the officers in describing the incident and those involved; or probe the officers' accounts to assess assumptions made by the officers, such as that the incident was terror-related, and the reasons why they made these assumptions? This example summary is more fully explained in the IPCC guidelines at pages 38-54.

104. Did you convey the analysis of all these areas to Crown Counsel or the Lords Advocate? What was the response? Did you receive any advice or guidance from Crown Counsel and take further action accordingly?
105. To what extent was race a factor in your analysis of the actions of the police officers? In your view, was this sufficient to inform Crown Counsel of the impact, if any, that Mr Bayoh's race had on the actions of the police officers who engaged him?
106. Do you recall instances when the family and their legal representatives had proposed or suggested lines of enquiry or potential witnesses? Do you recall those being taken forward?<sup>66</sup>
107. What, if any, consideration did you give to whether there were grounds for a Fatal Accident Inquiry ("FAI")? Did you consider that any FAI would have been mandatory in terms of s1(1)(a)(ii) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976? Please explain your reasoning. If you did not consider the criteria for a mandatory FAI were met, what consideration was given to a discretionary FAI in terms of s1(1)(b)? Was anything done in the Investigation to prepare for an FAI? Who took the decision not to hold a FAI?

#### Post mortem examination

108. What is your understanding of COPFS' role in instruction and attendance at the post mortem examination in the case of a death in custody or death during or following contact with the police? To what extent, if any, does this differ from any other type of death investigation?
109. Please explain your involvement in the post mortem examination and reporting process. To what extent was your involvement consistent with normal practice?
110. Please read page 30 of your notebook.<sup>67</sup> There are notes that appear to state the following, please confirm: "*Questions. Pathologist – injuries consistent with being struck on head with baton & signif of these re cause of death*". Please explain these notes and set out the background. Were these notes questions for you to consider, or was this in discussion or in preparation for a meeting with another person?

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<sup>66</sup> Please refer to the list of letters on behalf of Mr Bayoh's family at the bottom of this Annex.

<sup>67</sup> CAAPD Notebook 4, COPFS-05205

111. With reference to page 13 of the final post mortem report dated 18 June 2015<sup>68</sup> and the SPA Forensics joint drugs report dated 20 May 2015,<sup>69</sup> boxes and bottles of tablets, and loose tablets, were analysed for the presence of controlled drugs. Would this instruction have included the presence of steroids? If not, why was this not instructed?
112. What was your involvement in Mr Bayoh's body being released? Please refer to your email chain with Dr Kerryanne Shearer dated 8 to 29 May 2015.<sup>70</sup> What was the matter you raised regarding the hair samples? Did you or Dr Shearer consider the religious and cultural implications of obtaining hair samples from Mr Bayoh's body? What was the outcome of this discussion?
113. Please read the email from you to Mr McGowan<sup>71</sup> which states "*To note this development; detection of Alpha PVP-obviously final tox report is awaited-I would propose disclosure of this to Mr Anwar immediately on receipt*". When did Mr Anwar receive this report?
114. Please read the email from you to Ms Miller<sup>72</sup> which states "*I am of the view that it would be unwise to decline this invitation and suggest I attend*". Please explain why you were of this view.
115. Please read the email chain between you and Mr Anwar<sup>73</sup> where you state "*I have not been provided with the weight of officer A by PIRC although I understand that it is being sought. I have no objection to you seeking this information directly from PIRC.*" What attempts were made by you or any of your colleagues to obtain this information from PIRC? Did you think it was important for the Crown to have this information?
116. What was your involvement in the release of Mr Bayoh's body to his family? How did your role interact with the role of Mr David Green, Head of SFIU? Please read your email dated 29 May 2015.<sup>74</sup> In the correspondence up to this date it was primarily Mr Green who was liaising with Dr Kerryanne Shearer, why were you now involved? Why were you seeking to release Mr Bayoh's body as soon as possible on this day?

#### Learning from other investigations

117. Prior to and during your involvement in the Investigation and Precognition, what awareness did you have of investigations by the police and/or the CPS into race in England and Wales? What learning did you derive from these investigations? Did anything you learned from these investigations result in any change in approach to your involvement in this case compared with your involvement in prior investigations?

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<sup>68</sup> PIRC-01445

<sup>69</sup> PIRC-04061

<sup>70</sup> COP S-06137

<sup>71</sup> COPFS-04829

<sup>72</sup> COPFS-05057

<sup>73</sup> COPFS-04784

<sup>74</sup> COPFS-06137

118. Please read your Minute to the Law Lords dated 6 November 2017<sup>75</sup> which summarises Dame Angiolini's Home Office Report on Deaths and Serious Incidents in Police Custody in England and Wales. Who asked you to prepare this Minute and why? On page 2 and 3 you set out the Angiolini Report's commentary on restraint on a person suffering from a mental health crisis and how that relates to the Investigation, including Prof Eddleston's report mentioning Police Scotland's Use of Force SOP and "*is critical of its failure to include guidance on dealing with persons who have a drug induced psychosis, as Mr Bayoh had, and that the failure to make reference to or employ de-escalation techniques is of significance in relation to the eventual fatal outcome.*" You go on to conclude at page 4:-

*22. In conclusion it appears that the guidance on restraint that was in force at the time of the death of Sheku Bayoh is open to criticism on the basis of the contents of the sections of the Angiolini report highlighted and that the current guidance is silent on this. There also appear to be issues surrounding the extent to which the contents of the SOPs are embedded in the training delivered to front line officers. It is suggested that Police Scotland require to review the guidance and training to reflect the recommendations made in the report.*

How was this matter taken forward, having now been noted from the Angiolini Report? Which aspects, if any, were relevant to the Investigation and Precognition? Was anything done differently in the Investigation and Precognition in light of this? Please refer to the Minute to the Law Lords dated 21 November 2017<sup>76</sup> where you set out the line of enquiry that is being taken forward.

119. Further in your Minute to the Law Lords dated 6 November 2017,<sup>77</sup> at page 5 you discuss the Angiolini Report's commentary on the structure and reliance on former police officers in the IPCC in the following terms:-

*27. The experience of COPFS to date in relation to immediate PIRC response to deaths in custody is substantially based on the Bayoh case. The perception of those involved was that there was considerable delay in the attendance of PIRC investigators and one of the criticisms of the family in that case was the failure of PSoS to adequately preserve the scene.*

*28. The recommendations and comments in this section primarily impact on PIRC and substantially reflect issues raised by the Bayoh family who have repeatedly stated that they have lost faith in the ability of PIRC to carry out an effective and impartial investigation.*

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<sup>75</sup> COPFS-03998 (a)

<sup>76</sup> COPFS-02214 (a)

<sup>77</sup> COPFS-02526(a)

Were PIRC made aware of these views? Did PIRC have any response? Whose responsibility would it be to share lessons learned with PIRC, in the Investigation or otherwise?

120. Further in your Minute to the Law Lords dated 6 November 2017,<sup>78</sup> at page 6 you summarise the Angiolini's Report's commentary on police conferral and misconduct, noting the following:-

33. *Importantly the report also recommends that*

**'There should be a duty for police officers to provide a full and candid statement at the earliest opportunity and within the specified timeframe unless they are formal suspects.'**

34. *I anticipate that this recommendation will be highlighted and compared to the situation that occurred in Bayoh. Additionally para 13.15 of the report states that*

*'Consideration should also be given to such statements being given to the IPCC in response to questioning by the IPCC investigator rather than written up in private by the officer in his own time.'*

35. *This passage is of particular significance in the context of Bayoh as such an approach would in my view permit PIRC to carry out a meaningful and vigorous investigation, exploring accounts directly and highlighting and attempting to resolve inconsistencies.*

Do you consider that police officers do not have duty to provide a full and candid statement at the earliest opportunity in Scotland? Do you consider that PIRC's investigation was not meaningful and vigorous because they were unable to interview the response officers and obtain a full and candid statement at the earliest opportunity within a specified timeframe? Why were they unable to conduct any interviews with the officers? Are you aware if PIRC or COPFS ever requested an interview with the officers? Was this matter ever raised with PIRC? If so, what was their response?

121. Further in your Minute to the Law Lords dated 6 November 2017,<sup>79</sup> at page 7 you summarise the Angiolini's Report's commentary on ethnicity in the following terms:

*...Para 5.18 onwards focus upon stereotypical assumptions that may influence the use of force and restraint and refers to comments about young black men often being described as having superhuman strength or being impervious to pain thus increasing the likelihood of force and restraint being used. These physical attributes are similar to those used by some of the officers involved in the restraint of Sheku Bayoh and the*

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<sup>78</sup> COPFS-02526(a)

<sup>79</sup> COPFS-02526(a)

*Bayoh family consider that they were also reflected in the contents of some of the comments to the press.*

*38. The report recommends that IPCC investigators should consider if discriminatory attitudes have played a part in restraint-related deaths in all cases where restraint, ethnicity and mental health play a part. It further recommends that the IPCC should ensure that race and discrimination issues are considered as an integral part of its work.*

How was this matter taken forward, having now been noted from the Angiolini Report? Which aspects, if any, were relevant to the Investigation and Precognition? Was anything done differently in the Investigation and Precognition in light of this?

122. Insofar as not covered above, during your involvement in the Investigation and Precognition, to what extent did you consider the investigation into the death of Mr Sean Rigg in assessing the actions of the police officers? Prior to submission of the Precognition in May 2018, had you read the report of the Independent Review of the IPCC investigation into the death of Mr Rigg?<sup>80</sup> If so, at the time you read it, what did you understand to be the issues and learning for the IPCC and CPS resulting from this Review? What did you understand to be the importance of race in issues raised? How did you apply any of these considerations and learning to your involvement in the Investigation and Precognition?
123. Do you recall any meetings with Ms Deborah Coles? These meetings may have included Ms Lindsey Miller, PIRC and the Lord Advocate. What was discussed at the meetings? What points were taken away from the meetings and how did this affect the Investigation and Precognition? Do you recall any of these discussions with Ms Coles involving issues or concerns with the rigour and independence of the PIRC investigation? Do you recall any discussion with Ms Coles relating to the scope of a potential FAI?
124. Insofar as not covered above, to what extent did you consider the approach of the CPS in cases of deaths in custody or during or following contact with the police in which restraint was used? What were you interested in understanding or learning from the approach of CPS?
125. Do you recall any meetings with the CPS in England? What was discussed and how was this implemented into the Investigation and Precognition?

#### Forensic examination

126. What is your understanding of the role of COPFS in relation to SPA Forensics' involvement in the Investigation and Precognition? What is normal practice in involving PIRC in the instruction and findings of SPA Forensics?

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<sup>80</sup> COPFS-02526(a)



127. Did you provide any instructions to SPA Forensics in relation to the incident in which Mr Bayoh died? Please provide full details and the rationale for these instructions. Did you seek any input from PIRC for these instructions? Did you notify PIRC of the terms of these instructions? Did you share SPA Forensics' findings with PIRC? Please confirm the basis for any departures from normal practice.
128. What is the normal process for obtaining Scenes of Crime Officers' ("SOCO") statements? There is evidence before the Inquiry that PIRC had understood that SOCO statements would be provided directly to COPFS; is that correct, or would you expect PIRC to obtain the statements?
129. Were you involved in the direction of SPA Forensics relating to the forensic examination of PC Short's vest? Did you instruct fingerprint examination of the vest? If not, were you aware that the vest was to be examined for fingerprints? If so, what did you understand to be the reason for the fingerprint testing being carried out?
130. The Inquiry instructed a tread mark expert, Mr Paul Ryder. Mr Ryder in his report relating to the vest of PC Short explained:

*28. ... There was black staining to the plastic-coated aspects of the reflective strips and to the police badge on the rear of the vest. I understand that this staining was a result of treating these parts of the vest with a black powder suspension with a view to developing any fingerprints that might be present. As a consequence of this treatment being applied as a liquid and then having to be removed by a washing process, parts of the yellow fluorescent fabric adjacent to the treated areas have been stained black. This includes the part of the vest on which the dark deposits had been observed.*

*29. From reference to the production PIRC-01176 provided to me it was observed that this staining from the fingerprint treatment had obscured parts of the dark staining that had originally been present on this vest.<sup>81</sup>*

Were you aware that the fingerprint testing by SPA Forensics may hinder further forensic analysis being carried out on the vest? Was this a concern for you or, as far as you were aware, any of your colleagues?

#### Expert witnesses

131. What is your understanding of COPFS' role in the instruction of expert witnesses in a death in custody or death during or following contact with the police? How does COPFS' role interact with the role of PIRC in instructing expert witnesses?
132. What involvement, if any, did you have in the instruction of expert witnesses? Please include your involvement in the instruction of experts by both PIRC and

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<sup>81</sup> SBPI-00171 at page 9. Please note this report has not been shared with you.

COPFS separately. Please include your involvement in the following aspects of the instruction:

- (i) the identification and choice of experts (including consideration of their qualifications, expertise and independence), and ensuring they had no conflict;
- (ii) preparation of the letters of instruction, and
- (iii) the information and documentation provided to experts to assist in framing their opinion.

133. With reference to your email to Ms Campbell dated 23 February 2017,<sup>82</sup> please provide further details of the undertaken that was previously given.

134. What involvement did you have, if any, in consulting with expert witnesses? What was the purpose and outcome of each of these consultations?

135. What, if any, analysis did you conduct in respect of the expert witness evidence? What was the outcome of this analysis? Was anything done in light of your analysis?

136. To what extent were the experts provided with a clear and consistent explanation of the engagement of the police officers with Mr Bayoh, in particular a detailed explanation of the restraint of Mr Bayoh? Could anything further have been done before the experts were instructed, or before supplementary instructions, to provide this? To what extent were the experts provided with explanations of any inconsistencies between the accounts of the police officers and civilian witnesses? Was this taken into account by the experts? What impact, if any, would an incomplete or inaccurate account of the engagement and restraint have on the expert reports? Please refer to Mr MacLeod's summary to your successor Mr Farrell,<sup>83</sup> in particular the sections relating to the Investigation.

137. Please read the letter of instruction to Dr John Parkes dated 24 November 2015<sup>84</sup> and his report dated 22 January 2016.<sup>85</sup> On what basis was Dr Parkes selected to comment on the cause of Mr Bayoh's death? Why was he selected? Standing Dr Parkes' qualifications and experience on page 3, would he be qualified to speak to Mr Bayoh's large muscle mass increasing ventilatory demand, the risk caused by the presence of illicit drugs, petechial bleeding demonstrating that it was more likely than not that Mr Bayoh was subject to compression during restraint, that compression would reduce his ability to breathe and what length of time of impaired breathing would be likely to cause harm and directly causing death? Would these matters not be more suitable for a pathologist?

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<sup>82</sup> COPFS-03625

<sup>83</sup> COPFS-02126 (a)

<sup>84</sup> COPFS-06008

<sup>85</sup> PIRC-03423(a) and COPFS-04192(a)

138. Please refer to your emails regarding Dr Parkes' opinion with Ms Edwards QC dated 29 November 2017.<sup>86</sup> Are you aware if any of these further matters were taken forward with Dr Parkes? If not, why?
139. Please read the letter of instruction to Dr Anthony Bleetman dated 24 November 2015<sup>87</sup> and his report dated 12 May 2016.<sup>88</sup> On pages 2 and 3 of the report (pages 25 and 26 of the pdf) he explains the account given to him by the PIRC investigators Mr McSporrán and Mr Billy Little. To what extent is this account a complete account of the incident as known at the time? Are you aware of any inaccuracies or gaps in the description of events that was given to Dr Bleetman? When your colleague Mr MacLeod provided the letter with the missing section from Ms Wyse statement,<sup>89</sup> could more information have been given to the expert from the Investigation?
140. Please read your notebook<sup>90</sup> at page 72 and confirm the background and meaning of these notes. Was Prof David Rees considered as an expert witness and was he instructed? What expertise would he bring to the Investigation and Precognition? What was the outcome of your engagement with Prof Rees?
141. You have been asked above to explain and set out the background of the notes at page 28 of your notebook<sup>91</sup> in relation to family liaison. There is also a note of the name "*Rod Sylvester Evans*". Please read your email exchanges with Ms Miller and Crown Counsel<sup>92</sup> relating to this expert witness. Was this witness suggested by Mr Bayoh's family? What is his expertise and purpose of his instruction? What was the outcome of engagement with this expert?
142. Please read your letter of instruction to PIRC in respect of experts dated 10 November 2015,<sup>93</sup> the letter of instruction from PIRC to Dr Lipsedge dated 19 November 2015<sup>94</sup> and the covering letter to his report dated 18 January 2016.<sup>95</sup> What was the basis for COPFS seeking the following instruction to Dr Lipsedge on page 3: "*(b) any behavioural science aspects of the case including in particular reference to whether the actions of the officers are indicative of particular mind set indicating that the officers were behaving as a group rather than as individuals.*"? Dr Lipsedge in the covering letter to his report explains that this is outside his expertise and that COPFS would need to approach a social psychologist for an opinion; was this taken forward? If not, why?
143. Please read the letter from your colleague Mr MacLeod to Prof Jack Crane dated 21 March 2017.<sup>96</sup> There is said to be an administrative error on the part of PIRC that caused a section of Ms Wyse' statement to be omitted from the

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<sup>86</sup> COPFS-04192; COPFS-04192(b)

<sup>87</sup> COPFS-00138

<sup>88</sup> COPFS-00028

<sup>89</sup> COPFS-02353

<sup>90</sup> CAAPD Notebook 3, COPFS-05204

<sup>91</sup> CAAPD Notebook 4, COPFS-05205

<sup>92</sup> COPFS-03758

<sup>93</sup> COPFS-02547

<sup>94</sup> COPFS-06007

<sup>95</sup> COPFS-00130

<sup>96</sup> COPFS-02362

copy that was shared with the experts. Mr MacLeod provides this missing section in letters dated on or around 21 March 2017 to the experts Drs Lipsedge, Soilleux and Parkes and Prof Crane.<sup>97</sup> The Inquiry and COPFS have been unable to trace a response to this from Prof Crane, are you aware if any response was received from him in any form? If not, why was this not followed up? What was the risk in relying on his opinion if you were not certain that he, an expert pathologist commenting on the physiological effect of restraint and its impact on the cause of Mr Bayoh's death, had considered the full account of the restraint from all witnesses?

144. Please read the letter of instruction to Dr Lawler dated on or around 28 March 2017<sup>98</sup> and his reports.<sup>99</sup> Dr Lawler was asked to comment on 8 body positions, 7 with the deceased being on his side and one in the supine position. Why was this expert not asked to comment on the possibility that Mr Bayoh was in the prone position during restraint? Similarly, in Dr Bleetman's email to you dated 21 May 2018<sup>100</sup> he suggests he was advised by you in a meeting that a reconstruction had shown Mr Bayoh was never in a "*fully prone position*", what does this mean? How were you sure that the deceased was not in a prone position during restraint? Please note the statements of PC Alan Smith,<sup>101</sup> DS Samantha Davidson<sup>102</sup> and Mr Christopher Fenton<sup>103</sup> who all describe Mr Bayoh as being in the prone position during restraint.

145. Please read your notes on page 2 of your notebook.<sup>104</sup> The notes appear to be matters to raise with Dr Lawler with reference to his report dated 22 May 2017.<sup>105</sup> Please explain these notes and set out the background. Please comment on why there was interest in exploring these areas further. In particular, why did you return to this person for his views on matters that he accepts in his report are outside his field of expertise, such as the opinions of Dr Parkes and Dr Karch? The notes appear to state the following, please confirm if this transcription is accurate:-

- 1) *confirm convinced of Sickle Cell Anaemia – what if any is impact.*
- 2) *P11 – Expand on reasoning at point 3 that unlikely on balance of probabilities that petechial haemorrhaging likely to have resulted from compression.*
- 3) *p16 – confirm reasoning and opinion of comment by Dr Soilleux that cannot give definitive comment on whether or not asphyxia occurred*

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<sup>97</sup> COPFS-02355 (Dr Lipsedge); COPFS-02357 (Dr Soilleux); COPFS-02356 (Dr Parkes); COPFS-02362 (Prof Sheppard)

<sup>98</sup> COPFS-04503 (a); COPFS-02343

<sup>99</sup> COPFS-00033 (22 May 2017); COPFS-00034 (13 August 2017); COPFS-00035 (13 March 2018); COP S-00085 (21 May 2018)

<sup>100</sup> COPFS-04239

<sup>101</sup> PIRC-00278 at page 8

<sup>102</sup> PS00379 at page 2

<sup>103</sup> PIRC-00251 at page 2

<sup>104</sup> CAAPD Notebook 9, COPFS-05210

<sup>105</sup> COPFS-00033

*P17 – is it your view if asked that day confirmation would put strain on heart early in any struggle or heightened physical behaviour and that death by heart abnormality could be precipitated quickly – would there be any warning that deceased in difficulties to observer.*

- 4) *p19 re Prof Crane – are you agreeing that it is not possible in this case to determine if positional/postural asphyxia occurred in this case from p11 results – but rather on what enquiry revealed. Reasoning.*
- 5) *p20 – Nat Cary – if asked – is part 6 only stating other possibilities to causes of petechial haemorrhages.*
- 6) *p23 – Are there criticisms of methodology employed by Karch. What is Dr Lawler’s view of conclusions explained by Karch.*
- 7) *p26 – if asphyxia had been significant factor in cause of death would you expect to see more overt signs.*
- 8) *Likely mechanism for fractured rib taking all in... into account – is it likely to be knee in back.*

*Could... alone have caused death – or in combination with stress before restraint commenced – chain reaction – his prognosis was poor as soon as police arrived.*

*On balance how likely is it that asphyxiation materially contributed to cause of death.*

146. Please read the email from Prof Sebastian Lucas dated 4 June 2018 and your email circulating his view on 5 June 2018.<sup>106</sup> Why did you share his view with your senior colleagues? Did you discuss his views expressed in this email? Was there any consideration of partiality in selecting this expert in light of his view that the officers should not be prosecuted?

147. At the point the case was reported to Crown Counsel, were you satisfied with the quality and extent of the expert evidence available? Did you have concerns regarding any of the expert evidence? Did you make Crown Counsel aware of your views?

#### The Health and Safety Executive (“HSE”)

148. Prior to your involvement in the Investigation and Precognition, what experience did you have in investigations involving HSE?

149. In what circumstances would COPFS normally invite the involvement of HSE or engage with HSE where a work-related death has been reported and Section 3 of the Health and Safety at Work etc 1974 is being considered?

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<sup>106</sup> COPFS-03682

150. What was your role, if any, in liaison with HSE in relation to the incident in which Mr Bayoh died? Why did COPFS request HSE's involvement? What benefit to the investigation would HSE have provided had they agreed to assist with the Investigation?
151. Was consideration given to any disparity in resources between HSE and PIRC insofar as it may impact on the investigation into the death of Mr Bayoh? In your view, were PIRC sufficiently skilled and experienced to investigate all matters without the involvement of HSE?
152. Insofar as not covered above, was HSE's involvement envisaged to be in relation to investigating potential offences by the officers, Police Scotland as an organisation, or both?
153. In your view should COPFS have received notification of a work-related death via the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations, also known as RIDDOR? If so, what steps would be taken and how, if at all, would COPFS' response be different to what took place?
154. At page 38 of your notebook<sup>107</sup> you write "*Corporate homicide. Look at all potential criminal charges.*" under the heading "*Meeting family SB 8/2/17*". In the context of your notes on this page, it appears to be a suggestion raised by the solicitor acting for Mr Bayoh's family, for example you have written "*We believe art 2 breached*" further down the page. Is this the first time you had considered potential offences on the part of Police Scotland? If not, what investigations had taken place up to this point in respect of Police Scotland? Please refer to the note further down the same page: "*Training – SOP. Training is an issue. Sandeman. Were officers trained.*" Was this a suggestion or an update? Please explain these notes and set out the background.
155. Please set out the background and purpose of your correspondence and meetings with HSE. What was the outcome of COPFS' liaison with HSE? Please refer to the following letters:-
- COPFS to Mr Alistair McNab of HSE dated 11 January 2016<sup>108</sup>
  - Mr McNab's response to COPFS dated 31 March 2016<sup>109</sup>
  - COPFS to Ms Frame of PIRC dated 5 April 2016<sup>110</sup>
  - COPFS to Mr Barry Baker of HSE dated 13 September 2016<sup>111</sup>
  - Mr Baker's responses to COPFS dated 17 November 2016<sup>112</sup> and 24 January 2017<sup>113</sup>

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<sup>107</sup> CAAPD Notebook 4, COPFS-05205

<sup>108</sup> COPFS-01953

<sup>109</sup> COPFS-01954

<sup>110</sup> PIRC-02047(c)

<sup>111</sup> COPFS-04978(a)

<sup>112</sup> COPFS-01955

<sup>113</sup> COP S-04735(a)

How did this outcome impact the Investigation and Precognition? Were you satisfied with this outcome?

European Convention on Human Rights (“ECHR”)

156. During the Investigation and Precognition, were you involved in discussions in any form relating to COPFS’ obligations under Articles 2 and 14 of the ECHR in respect of Mr Bayoh and his family? If so, what was your understanding of these obligations and how, if at all, did this affect your approach to your work?
157. To what extent was Article 2 of the ECHR considered in respect of the duties of Police Scotland and PIRC?
158. At page 38 of your notebook<sup>114</sup> you have written “*Art 2 – Elish – due to report. Scotland: no procedures... We believe art 2 breached. Officers not separated. No supervising officers to monitor what said. Guidelines lacking.*” under the heading “*Meeting family SB 8/2/17*”. Are your notes typed above accurately? Please explain these notes and set out the background. This appears to be a suggestion from the solicitor for Mr Bayoh’s family, is that correct? Was this point discussed in the meeting, or afterwards? Was a breach of Article 2 in relation to Police Scotland’s post-incident management investigated by COPFS? What is the relevancy of this to any potential offences by the officers or by Police Scotland?

Media engagement

159. What is your understanding of COPFS’ role in engagement with the media following a death in custody or death during or following contact with the police? How does COPFS’ role interact with the role of Police Scotland and PIRC in media engagement?
160. Were you following the media reporting of the matter? To what extent, if any, was your involvement in the Investigation and Precognition influenced by what was reported in the media? Were you aware if any of your colleagues were influenced by what was reported in the media?
161. What involvement did you have, if any, in COPFS’ media engagement? This may include discussing media lines with colleagues, liaison with the COPFS media department, direct contact with the media or providing information to colleagues dealing with the media.
162. On 3 May 2015, Police Scotland prepared the following statement and shared it with PIRC and COPFS for approval:-

*Death in police custody, Kirkcaldy*

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<sup>114</sup> CAAPD Notebook 4, COPFS-05205

*At around 7am this morning (Sunday, May 3) police in Kirkcaldy responded to a number of calls from members of the public reporting a man brandishing a knife in the Hayfield Road area.*

*On arrival the officers encountered the man and whilst attempting the apprehend him, he lost consciousness and a female officer also sustained a head injury.*

*Police officers commenced first aid procedures and the man was taken to Victoria Hospital by the Scottish Ambulance Service, where he sadly died. The female officer was also taken to hospital, and she has now been released.*

*Divisional Commander Chief Superintendent Garry McEwan said: "This is a tragic set of circumstances and my condolences go to the man's family. We currently have officers with them to provide information and support where appropriate.*

*"We recognise that this is an extremely difficult and distressing time for both the family and the officers involved and I have instigated the necessary post-incident procedures.*

*"The investigation of deaths in Scotland is the responsibility of Crown Office and Procurator Fiscal Service, who have instructed the Police Investigations and Review Commissioner to lead on this enquiry. The circumstances into the death will be fully explored and reported to the Crown Office in early course"*

*Anyone with information regarding this incident is asked to contact Police Scotland on 101 or anonymously through Crimestoppers on 0800 555 111.<sup>115</sup>*

Were you aware of this? What was the basis for this statement not being released? Was the narrative of events consistent with what was understood by COPFS at the time? Could this statement have been amended and released? To what extent were your decisions and actions, and those of COPFS generally, consistent with normal practice?

163. Were you aware that a statement was released attributed to Ch Supt Garry McEwan, the P Division (Fife) Divisional Commander, in the Dundee Courier offering condolences to Mr Bayoh's family on 3 May 2015? Was this statement approved by COPFS? Are you aware of why this statement was made but the above statement was refused?

164. There is evidence before the Inquiry<sup>116</sup> that on or before 6 May 2015 PIRC: "...tried to release a statement to media re allegation deceased had been asphyxiated, however the COPFS would not allow the statement to go out."

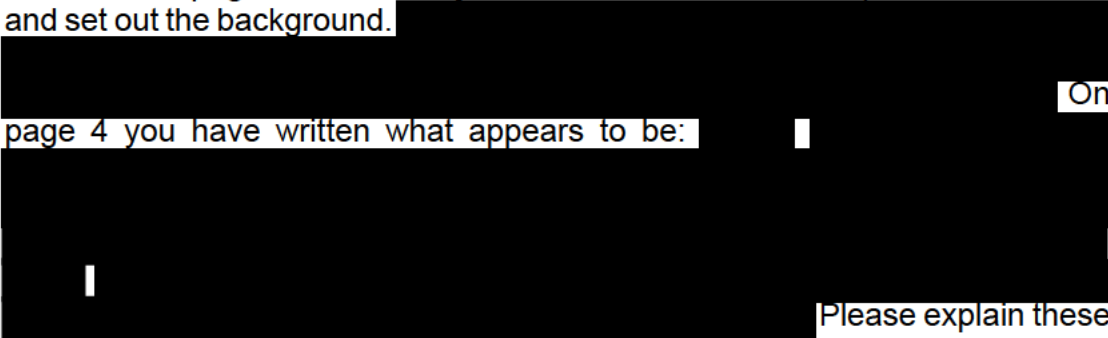
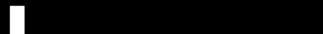
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<sup>115</sup> PS02751

<sup>116</sup> PIRC-04156 at page 6. Please note this document has not been shared with you.

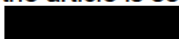


Were you aware of this? What was your involvement, if any, in this decision? What was the reason for the decision?

165. What is your understanding of the SPF's role in Police Scotland's media engagement? What is your awareness of the SPF's approach to media engagement? Do you have any comment on the suitability of the SPF's approach? Do SPF seek COPFS' approval before releasing a statement in the same manner as Police Scotland did? In preventing a statement, such as the above draft, being released by Police Scotland, did you have any concerns that the police officers involved would be unhappy that no comment was being made in response to the speculation in the media about what happened in the incident? Were you made aware of any concerns on the part of the officers involved? What difference, if any, did this or would this have made to your approach to media engagement? Did you expect the SPF to issue a statement on behalf of the officers following the lack of comment from Police Scotland? If a statement had been made by Police Scotland, do you think this would have prevented, or minimised to some extent, speculation in the media of what happened in the incident? In hindsight, would you have made different decisions or acted differently in relation to media engagement?
166. To what extent, if any, did you rely upon Dr Karch's opinion in order to form conclusions of Mr Bayoh's cause of death? Please read the comments attributed to Dr Karch reported in the Sun newspaper on 1 November 2015.<sup>117</sup> When did you become aware of these comments during the course of your involvement in the Investigation?<sup>118</sup> How were they brought to your attention? What impact did these comments have on your assessment of Dr Karch's status as an independent expert witness? Was Crown Counsel made aware of these comments and any concerns you or your colleagues may have had?
167. Were you aware of the Mail on Sunday newspaper article reporting the decision of COPFS not to prosecute any of the officers, prior to Mr Bayoh's family being informed? Were you aware of, and/or did you have any involvement in, any internal investigation within COPFS into the source of the information in the Mail on Sunday's article?
168. Please read pages 4 and 5 of your notebook.<sup>119</sup> Please explain these notes and set out the background.  On page 4 you have written what appears to be:  Please explain these notes and set out the background, including who is discussing this matter and what was the overall outcome.

<sup>117</sup> See a copy of the Sun article under reference SBPI-00216.

<sup>118</sup> See COPFS-05986, the article is sent to COPFS and you shared it with the Lord Advocate.

<sup>119</sup> CAAPD Notebook 7, 

169. With reference to your email to your colleagues on 26 April 2018,<sup>120</sup> please set out your involvement in COPFS' media response to the 2018 Angiolini Report.

#### Parallel investigation

170. Were you aware of an investigation into Mr Bayoh's death being carried out on behalf of the SPF by Mr John Sallens? Did you have any concerns about this? If so, what decisions and actions did you take to resolve the issue?

171. Were you aware of witness accounts that investigators provided them with information from other sources and made them feel uncomfortable?<sup>121</sup> If so, was anything done to address this?

172.



#### Race

173. Do you have any experience of racism being a factor to investigate in an investigation relating to:

- (i) a death in custody or death during or following police contact;
- (ii) the actions of on-duty police officers.

If so, please provide details of the year(s) you were involved, how race was a factor, how you investigated the race aspect and the outcome.

174. Insofar as not already covered, to what extent, if any, was Mr Bayoh's race a factor in any of your decisions and actions?

175. Prior to your involvement in the Investigation, in your experience, did COPFS routinely consider the role of race when dealing with a death in custody or death during or following police contact of a person who was not white? Has that position changed between the time you were involved in the Investigation and now?

#### Handover to Mr Justin Farrell

176. The Inquiry understands on or around 28 February 2020 you were succeeded in your position as Head of CAAPD by Mr Justin Farrell. What was the date your role changed and where did you move to? What was the reason for your role changing?

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<sup>120</sup> [REDACTED]

<sup>121</sup> For example, in Mr Mark Daly's statement to the Inquiry (SBPI-00119 at para 65) he recalls Mr Nelson telling him that investigators saying they were from the Police Federation entered his home and "*they start dripping poison in his ear about Bayoh*".

<sup>122</sup> [REDACTED]

177. Please read the letter written by Mr MacLeod to Mr Farrell dated 28 February 2020.<sup>123</sup> Have you seen this letter previously? Were you asked to comment on the terms of the letter? Insofar as not covered above, to what extent do you agree with the summary provided in the letter?

### Training

178. At the time of your involvement in the Investigation, what training had you completed that was relevant for your role in the Investigation and Precognition? Please provide details of the type of training and explain what you can recall from the session.

179. Insofar as not already covered, what training had you completed at the time of your involvement in the Investigation in relation to the below areas? Please provide details of the type of training and explain what you can recall.

- (i) liaison and instruction of SPA Forensics;
- (ii) instruction of and consulting with expert witnesses;
- (iii) taking precognitions of witnesses;
- (iv) reporting the case to Crown Counsel, including liaison with Crown Counsel and drafting the Crown Precognition;
- (v) family liaison.

180. Insofar as not already covered, what training had you completed by or during the time you were involved in the Investigation in relation to equality and diversity issues? Which aspects of this training, if any, were applicable to your role?

181. What guidance or reference materials in relation to race were you aware of being available to you in the time you were involved in the Investigation and Precognition? Over the course of your involvement, did you make use of any of these materials?

182. What, if any, training do you consider would have assisted you in your involvement in the Investigation and Precognition? This may be training you have carried out since, training you are aware of but have not completed or training that is not, as far as you're aware, provided by COPFS.

### Records

183. Is there a requirement for you to take contemporaneous notes or any other record of your involvement in an investigation? Is there a requirement to retain them? Are there any forms that you must complete in the course of the Investigation for internal record-keeping?

184. What records did you keep in relation to the Investigation? Were these retained and archived? To what extent was your record-keeping consistent with normal practice? Please confirm the basis for any departures from normal practice.

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<sup>123</sup> COPFS-02126 (a)

## Miscellaneous

185. In your experience, was this investigation lengthy? Was it unduly lengthy? What is the reason for the length of time required for the case to be reported to Crown Counsel? Could anything have been done differently to reduce the length of time from Mr Bayoh's death to reporting to Crown Counsel?
186. When did you become aware of the possibility that a public inquiry would be commissioned to examine Sheku Bayoh's death and the Investigation? Was anything done or not done in light of this? Was this a factor in relation to the issue of whether a FAI should take place?
187. Please read the following entry at page 32 of your notebook:<sup>124</sup> "*All options – public enquiry.*" This note is under the heading "*Meeting Aamer 1/12/16*". Please explain these notes and set out the background. Who was suggesting the options and the possibility of a public inquiry? What was being discussed at this point in the meeting?
188. Please read the following entry at page 38 of your notebook:<sup>125</sup> "*FAI not mixed enquiry – can be lengthy.*" This note is under the heading "*Meeting family SB 8/2/17*". Please explain these notes and set out the background. What was being discussed at this point?
189. What is written on page 13 of your notebook<sup>126</sup> on the page with the date "26/2/16"? Please explain these notes and set out the background.
190. On page 16 of your notebook<sup>127</sup> you refer to "*Rose Fitz*". Is this person connected to the Investigation? If so, please explain further.
191. Insofar as not already covered, to what extent was your involvement, decisions and actions in the Investigation and Precognition consistent with normal practice? If there were any deviations from normal practice, please explain your reasoning. In your view was race a factor in any departures from normal practice you have identified?
192. Insofar as not already covered, what significant difficulties or challenges did you encounter during your involvement in the Investigation? Would any changes to practice or procedure would have assisted you in overcoming these difficulties or challenges? To what extent were these difficulties or challenges normal or expected in your role? To what extent was race a factor in these difficulties or challenges?
193. In what circumstances, if any, would COPFS share the findings of (i) a PIRC investigation including the PIRC Report and (ii) the Crown Precognition with Police Scotland? Do COPFS have a role in advising or suggesting if misconduct

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<sup>124</sup> CAAPD Notebook 4, COPFS-05205

<sup>125</sup> CAAPD Notebook 4, COPFS-05205

<sup>126</sup> CAAPD Notebook 4, COPFS-05205

<sup>127</sup> CAAPD Notebook 4, COPFS-05205

proceedings should be taken forward by Police Scotland following an investigation by COPFS? Do you consider any of your findings in the course of the Investigation, or the findings of PIRC, would be of assistance to Police Scotland if they were shared? Did you or, insofar as you're aware, any colleague share these findings with Police Scotland? Did anyone from Police Scotland or SPA request your findings for the purposes of considering disciplinary action?

194. Please state the following in the final paragraph of your statement:-

"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."

195. Please sign and date your statement.

### **Undernoted list of correspondence comprising instruction to PIRC**

COPFS-02539	5 May 2015
COPFS-02833(a)	11 May 2015
COPFS-02769 (a)	18 May 2015
COPFS-02769 (b)	18 May 2015
COPFS-02532	1 June 2015
COPFS-04010 (a)	12 June 2015
COPFS-04010(a)	12 June 2015
PIRC-02759	2 July 2015
COPFS-02768(a)	24 August 2015
COPFS-02557	7 September 2015
COPFS-02556	5 October 2015
COPFS-02547	10 November 2015
COPFS-02546	19 November 2015
COPFS-02562	13 January 2016 ("2015" appears to be a typographical error)
COPFS-02565	29 November 2016
PIRC-01914	5 October 2017
	22 November 2017
COPFS-03744	4 December 2017
PIRC-02719	11 December 2017
COPFS-03820	14 December 2017
PIRC-01951	14 December 2017
PIRC-01953	3 January 2018

### **Undernoted list of letters on behalf of Mr Bayoh's family**

COPFS-04636 (b)	30 September 2015
COPFS-04636 (d)	30 September 2015
COPFS-05984	1 October 2015
COPFS-03486	1 October 2015
PIRC-01849	9 October 2015
AAC-00364	16 October 2015
COPFS-02919	28 October 2015

COPFS-02916	5 November 2015
AAC-00373	6 November 2015
COPFS-02930	22 February 2016
COPFS-02933	25 July 2016
COPFS-06263 (a)	10 August 2016
COPFS-03068	19 August 2016
COPFS-02937	7 February 2017
COPFS-05103(j)	7 March 2017
[REDACTED]	26 September 2017
COPFS-04855 (a)	12 October 2017
COPFS-03424a	9 March 2018
COPFS-02955	9 March 2018
COPFS-03431a	9 March 2018
COPFS-02953	23 March 2018
COPFS-02949	25 April 2018
COPFS-00855 (b)	14 December 2018
[REDACTED]	25 January 2019
COPFS-02112(b)	8 February 2019
[REDACTED]	25 March 2019
[REDACTED]	1 May 2019
[REDACTED]	14 May 2019
[REDACTED]	14 June 2019
[REDACTED]	6 May 2020
COPFS-03338a	21 June 2020
COPFS-03338(a)	21 July 2020
[REDACTED]	12 October 2020