

RESPONSE TO RULE 8 REQUEST FOR STATEMENT – PUBLIC INQUIRY INTO THE DEATH OF SHEKU BAYOH

Fiona [REDACTED] Carnan, born [REDACTED].1962

Procurator Fiscal's Office, Cameronian House, 3/5 Almada Street Hamilton

**1. What involvement did you have in drafting the Crown Precognition Narrative and Analysis of Evidence? Please explain this process.**

I was asked to become involved in the investigation in December 2017. Part of my remit was to assist my colleague Alasdair MacLeod in the preparation of an analysis of evidence for the precognition report to Crown Counsel. By that time, Alasdair MacLeod, who had been involved from an earlier stage, had already started to draft a Narrative of events, which was well progressed by the time I joined the team. He had also prepared a separate timeline which supplemented the narrative. From memory, some parts of the Narrative were contributed by me, such as the complaints history of the subject officers, sections on police training and references to Mr Martin Graves' report, results of analysis of Ashley Wyse's mobile phone, and the section about further investigations – PIRC terms of reference 6 and 7.

Some parts of the draft narrative contained elements of analysis within it, and I proposed, with Alasdair's agreement that I would remove those parts and work on the separate document – the Analysis of Evidence, COPFS-06361 [REDACTED]. I adapted some sections of Alasdair's analysis to inform my analysis but expanded that analysis to the final version that was sent to Crown Counsel. It was an evolving process. We tended to work separately, with Alasdair working chiefly on the Narrative and I on the Analysis of Evidence, although sharing these with each other regularly, discussing, and cross checking with each other at regular intervals. The Precognition report, comprising the Narrative and Analysis of Evidence was signed by me, Alasdair MacLeod and Les Brown and submitted to Crown Counsel in hard copy format along with the volumes of statements, precognitions and associated copy productions.

**2. Were you involved in drafting the Crown Precognition Supplementary Report? Please explain this process.**

Yes, I drafted this document, COPFS-00003. This was done separately and after the precognition report containing the Narrative and Analysis of Evidence had been submitted to Crown Counsel. I was asked to prepare a draft report concerning potential health and safety charges against Police Scotland and to include an assessment of whether there was evidence to support a charge of Corporate Homicide. Unlike criminal allegations against police officers, health and safety law was not an area of work with which I had

recent experience. I sought guidance from colleagues in our Health and Safety investigation unit (HSIU). I was provided with HSE guidance materials, including HSE publications: "Striking the balance between operational and health and safety duties in the Police service: An explanatory note" and "Striking the balance between operation and health and safety duties in the police service". I also accessed the HSE website where further guidance was available. I made some brief notes in my notebook on page 2 of COPFS -05221 and believe these notes were made during a discussion with Mr Brown about preparing the supplementary report.

Unusually, the supplementary report is in draft form and had not been signed by me. This is because I sent this to Mr Brown in an email just before I went on annual leave in June 2015. I learned on my return, having been copied into the email correspondence, that in the intervening period, my draft report had been emailed to colleagues in Health and Safety Investigations Unit (HSIU) for their comment and, at Mr Brown's request, from HSIU directly to Crown Counsel. As this was not the normal process, I queried this with Mr Brown on my return but was reassured by him that HSIU colleagues were content with my approach, agreed with my analysis and, on receipt Crown Counsel was content with the draft report. I was not asked to expand on the report or to formalise it by signing.

**3. What is the interaction between the matters covered in the Narrative, Analysis and Supplementary Report sections of the Crown Precognition? Do you require to offer analysis of all matters in the Narrative? How did you decide what to include in the Narrative, Analysis and Supplementary Report?**

The purpose of the Crown Narrative (COPFS-06360 ) was to provide a factual account of the events, together with relevant background information and provision of other material connected to the investigation that was deemed relevant. The purpose of the Crown Analysis of Evidence (COPFS-06361 ) that accompanied the Narrative was to provide a legal analysis of the available evidence addressing the question of whether the evidence disclosed any criminality on the part of the officers involved in the incident in which Mr Bayoh died. The purpose of the Supplementary Report was to provide a legal analysis of potential criminality Scotland under Health and Safety at Work Act 1974 by any individual officers, or by Police Scotland under that statute and the Corporate Manslaughter and Corporate Homicide Act 2007.

Some matters covered in the Narrative did not require an analysis but were included to provide background and context or to provide an account of matters that had been included in the PIRC investigation. The Analysis of Evidence (COPFS-06361 ), and Supplementary Report (COPFS-00003) contain legal analysis, and both focussed on and addressed questions of potential criminality. The decision about what to include in

each section of the report was determined by the purpose of each section of the precognition and the relevance to the matters being explored.

**4. In the Crown Precognition Supplementary Report, COPFS-00003 to what extent was consideration given to whether Police Scotland had risk-assessed the techniques they taught during Officer Safety Training? Please explain why. Was this a relevant factor in determining whether there was an offence under Section 3 of the Health and Safety at Work etc Act 1974?**

It appeared from my review of the training materials that Police Scotland had risk assessed the techniques they taught during Officer Safety Training. The Use of Force SOP and the training and guidance materials relating to use of force and officer safety training contained numerous references to potential risks or medical implications of using certain techniques and guidance about how to avoid those risks. The Narrative of Evidence COPFS-06360 pages 110 – 114 provides an overview of the content of the training materials reviewed and in particular the Use of Force SOP and the OST Training Manual then in force at the time, with references to risk of the techniques particularly focussing on the risks of restraint, the risks of positional asphyxia in many of the techniques and identifying excited delirium.

Evidence of failure by Police Scotland to risk assess their training techniques would be relevant to an offence under Section of the HSWA 1974.

The Crown Precognition Supplementary Report COPFS-00003 focussed on areas where experts had drawn attention to deficiencies in training materials that they had been shown.

The full suite of training materials that were in place at the time were reviewed by Mr Graves who has expertise in risk assessment. Comment on the efficacy and quality of the training was focussed on those criticisms of training provided by Mr Graves and Professor Eddleston. Where an expert identified that a risk had not been addressed in the training materials this was highlighted.

Mr Graves commented on the lack of information to officers in the OST Manual on potential injury from striking subject on vulnerable areas such as to the head. He also raised the matter of inconsistency between the SPELS Training Manual and the Probationer Training officer Safety Training manual regarding how positional asphyxia could occur. Mr Graves could not point to any significant gap in the training materials on recognising the signs of excited delirium or drug induced psychosis.

Professor Eddleston's criticism of the content of the use of Force SOP was also considered and addressed in the supplementary report. He had not been provided with the full training materials and had not been asked to provide opinion on the training. He had, nonetheless, offered additional comment which I addressed. I considered that it was questionable

whether on arrival the first officers had enough information to identify that Mr Bayoh may have been suffering from drug induced psychosis or acute behavioural disturbance and whether the empathetic approach espoused by Professor Eddleston was reasonably practical in the particular circumstances in which the subject officers found themselves. Such an approach was not without risk for police officers arriving on the scene, in the knowledge that Mr Bayoh had been reported chasing someone with a large knife. Officers called to the scene had to achieve control of the situation. I was mindful of the principles contained in the guidance provided by HSE in their publication "striking the balance between operation and health and safety duties in the Police service" and referred to the competing risks faced by police officers mentioned in this publication, in my report.

**5. At paras 63 to 66 of your Rule 8 statement dated 11 October 2023 SBPI-00379 ("Rule 8 Statement") you answered questions relating to liaison with the Health and Safety Executive ("HSE"). Did the outcome of liaison with HSE affect the quality of the reporting of the case to Crown Counsel? Was this raised with Crown Counsel and, if so, what advice was given and what further actions taken?**

I do not know what effect the outcome of liaison with HSE had on the quality of the report to Crown Counsel. In retrospect it may have been helpful to have had the benefit of HSE input. I did not raise this personally with Crown Counsel as I was not involved in that liaison. I am not aware of what communications others may have had with Crown Counsel about liaison with HSE, prior to my involvement.

**6. To what extent was race a factor in your analysis of the actions of the police officers in the Crown Precognition? 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? At para 45 of your Rule 8 Statement you refer to race being a matter to consider in your analysis in the event that criminality was identified in respect of any of the officers; did you take account of how the officers' perception of Mr Bayoh's race would be a factor in their decision-making and the reasonableness of their actions? COPFS-06360 ; COPFS-06361 ; SBPI-00379**

My focus was on potential criminality. The question of officers' attitude towards Mr Bayoh's race would only be relevant where there was evidence of criminality on the part of any officer. I found no evidence of criminality. In considering the question of criminality, an assessment was made about their perception of the threat posed by Mr Bayoh both to the general public and to themselves. It appeared that the perception of threat was based on a number of factors, including the information provided to them

in advance of their attendance at the scene by way of airwave messages about the male, their own observations and what could and should have been obvious to them at each stage as the incident unfolded. It did not appear that their perception of risk was based on Mr Bayoh's race. In the Crown narrative COPFS -06360 at page 17 Mr Bayoh was described as a 'black male' but the remainder of the airwave message provided that he was "walking along the street with a large knife in his right hand about a nine inch blade." In another message the male was described as "African looking"... "chasing....someone....may be carrying a knife...described as big with muscles" It seemed to me that the perception of the officers attending was informed by all of the information about the male and that his race, whilst an undeniable fact, was of little significance to them in assessing potential risk in light of the description of his physique, the fact that he was chasing someone and the fact that he was carrying a large knife. My assessment of the reasonableness of their actions was informed by the expert opinion of Mr Graves who assessed that the officers were right to take the view that they were dealing with a high-risk situation, per his report (COPFS - 00024 at pages 26 and 38).

**7. Within the Crown Precognition Analysis of Evidence at pages 15 and 16, COPFS-06361 PC Short's account is summarised in parts and analysed:-**

**Short herself claims that her actions were confined to drawing her spray and baton and using them in tactical communication with the now deceased, ordering him to stop. At one point she used her baton to "double strike" towards the male's torso but did not strike him. She justifies taking this stance because Sheku Bayoh was "out of control" and "too aggressive" as he was walking away from them. He was "not the type of person whom you like to allow to walk the streets" and that she felt he was "hell bent on hurting somebody, anybody who came into contact with him"... She found the now deceased to be an "intimidating figure" of very muscular male about 6' tall with hands clenched as if he wanted to fight... Her assessment of the demeanour of the now deceased fits with the impressions of other witnesses, particularly those who had reported him to the police that morning. It also assists in understanding the nature of the perceived threat to these officers.**

**Please explain how PC Short's account assisted you "in understanding the nature of the perceived threat" to the officers, and the significance of the perceived threat to your assessment of the reasonableness of the actions of the police? To what extent did you consider the reasonableness of the officers' perception of threat? To what extent did you consider whether their perception of threat was influenced by Mr Bayoh's race?**

Each officer had their own perception of threat and that perception was taken into account in assessing their own actions. PC Short provided a description of the factors that contributed to her perception and justified her actions, namely tactical communications by drawing her spray and baton, ordering Mr Bayoh to stop, double striking towards his torso. Her observations of his demeanour tied in with those of witnesses who had earlier reported Mr Bayoh to the police as being in possession of a knife. It is my understanding from Mr Graves' report and my reading of the OST manual that Police officers are trained to assess a person's demeanour and make a judgement about the level of risk they pose based on those observations and the knowledge they have from other sources (such as, in this case, airwave messages). Part of the officer's assessment also involves the capacity at that time of other officers, and PC Short had seen both PCs Walker and Paton to have been temporarily incapacitated by the blow back from sprays they had used. In the event, the assessment of risk made by PC Short was borne out when Mr Bayoh turned and chased her, assaulting her and knocking her to the ground.

The question of whether the officers' perception of threat was reasonable was considered and addressed in the analysis of evidence in relation to each officer's actions at each point in the incident. Where officers provided justification for their actions based on their perception of the risk posed or level of force used by Mr Bayoh, care was taken to look for evidence independent of the officers that could either support or refute their perception and this was set out in the report.

I did not find evidence that the officers' perception of threat was influenced by Mr Bayoh's race and therefore did not consider it in my analysis.

**8. At the time of your involvement in the Investigation, were you aware of any racial tropes being used by any of the response officers in their statements? Are you aware of any racial tropes now? Would the use of these tropes be relevant to your analysis in any way? Would these racial tropes factor into the perceived threat to the officers from Mr Bayoh?**

I have made no reference in my analysis of evidence to the use of racial tropes or negative stereotypes being used by any of the response officers in their statements. However, it is unlikely that I would have done so since use of racial tropes is not criminal.

Apart from the statements of PC Paton and PC Good, I have not been provided access to all the police statements so am unable to comment on their content as to whether I am now aware of racial tropes within police statements.

PC Good (PIRC -00274) and PC Paton (PIRC- 00262) both made reference to thinking about the attack on Lee Rigby and I can see now how such reference could, on one view, be interpreted as a racial trope. On another view, their comments reflect their knowledge of intelligence briefings

provided in recent months. As police officers who had been so briefed, they were alive to the possibility of this incident being terrorist related. I would not necessarily view their comments as 'racial tropes'. Evidence about negative attitudes of officers to Mr Bayoh's race would not be relevant to the analysis unless criminality was identified. From re-reading the Crown Narrative and Analysis of Evidence it is my sense that the officers' perception of threat to themselves and the public was based on the reports of Mr Bayoh's knife carrying, chasing someone, his physique, and their observations of his demeanour on arrival. Although the report certainly considered the perceptions of the officers, such perceptions were relevant to the question of whether their actions amounted to criminality. PC Good's actions were very limited. Her role was in assisting in securing leg restraints during the restraint of Mr Bayoh. PC Paton's perception of threat on his approach to the locus in the context of his actions in confronting Mr Bayoh and his subsequent role in the restraint, was examined in the Analysis of Evidence. No criminality was identified in respect of these officers or indeed of any officer involved in the incident.

- 9. PC Paton in his statement dated 4 May 2015 states: "For a number of months checks have also been getting carried out by officers at a number of identified locations in Kirkcaldy due to increased terrorist risk. It also ran through my mind that this male could be part of a terrorist plot." PC Kayleigh Good in her statement of 4 June 2015 states: "I was also thinking at that point of the Lee Rigby incident in London, mainly due to the fact of the coloured male and the potential terrorist connotations." PIRC-00262 at page 4; PIRC-00274 at page 7. To what extent did you consider the views of these officers that a terrorist incident was a possibility and how did you scrutinise this in the evidence and analysis? To what extent did you understand and assess that these views were held by all the officers involved in potentially unlawful actions? Please explain your reasoning.**

Only some of the officers but by no means all of the officers made a potential link to terrorism. At page 53 of the Analysis of Evidence, reference is made to PCs Walker, Paton and Good making such a link. The Analysis of Evidence sought to identify if there was criminality on the part of any officer. It was relevant to their mindset, and therefore the question of *mens rea* that some officers mentioned the potential that what they were dealing with was terrorist related. In terms of scrutiny and analysis of the views of the officers, reference was made to evidence to support the officers' claim that there was intelligence about a potential terrorist attack that had been shared with police officers earlier in 2015 and that the threat level of an attack on police was classed as 'severe'.

In the Analysis of Evidence COPFS-06361 at page 13, reference is made to the discussion between PCs Paton and Walker before they arrived at the locus and at page 12, to the conclusions of Mr Graves who was supportive of the assertive approach by the first two officers on the scene. PC Good's comments about potential terrorist link were not referred to in the report, however her role in the incident was on the periphery of the restraint, in assisting with the application of leg restraints.

I note that at page 22 of the Analysis of Evidence reference is made to heightened tension among 'all of the officers' about a possible terrorist threat in considering the actions of PC Tomlinson. I am not sure that the evidence supports the assertion here that 'all' the officers thought the incident might be terrorist related. There is nothing in the report to suggest that PC Tomlinson himself thought that the incident was terrorist related and there is a detailed consideration of the other factors cited by PC Tomlinson in assessing whether his baton blows could amount to criminality.

- 10. What is the interaction between the matters covered in the Narrative and Analysis sections of the Crown Precognition? COPFS-06360 ; COPFS-06361 Do you require to offer analysis of all matters set out in the Narrative? How did you decide what to include in the Narrative and Analysis?**

Answered in question 3 above.

- 11. In the Narrative at pages 2 to 7 COPFS-06360 a profile of each of the attending officers is set out, including allegations of racism by PC Alan Paton What was the purpose of including the complaint history of the officers and what is the relevancy of the matters set out?**

It is standard practice in CAAPD that reports to Crown Counsel addressing potential criminality contain the complaints history of the potential 'subject officers'. This provides context to Crown Counsel in considering whether to instruct proceedings where there is evidence of criminality.

- 12. Are the profiles of any of the officers covered in the Analysis? COPFS-06361 Why? To what extent is it normal to include analysis of the subject officers' profiles?**

The profiles including the officers' complaints history is not addressed in the Analysis of Evidence. Given that the analysis of evidence concluded that there was no criminality on the part of the officers there was no requirement to address this history in this section of the report. The profile of each officer, including their complaints history, would be relevant to Crown Counsel in assessing whether to instruct criminal



proceedings. This applies to any case in which there is a sufficiency of evidence. Information about potential accused is always relevant to the decision making about proceedings. However, the question of sufficiency of evidence comes first. Had there been sufficient evidence of criminality of any of the officers, their profile including any previous complaints or convictions would be one of many factors taken into account in making a decision about prosecution.

**13. What was your understanding of how PCs Walker and Paton interpreted the incident that they were attending? Was this understanding set out in the Crown Precognition?**

My understanding of the way PC Paton and PC Walker interpreted the incident they were attending is that this was a high-risk incident of a knife wielding man, who could, in light of recent briefings, be a terrorist. I understood from their statements that they formed the view before they even reached the locus that they felt they had to deal with the man robustly in order to stop him and disarm him of the knife that he had been reportedly carrying.

In the narrative (COPFS 06360 ) on page 20, reference is made to PC Paton's reasoning for having CS spray and shouting to Mr Bayoh to get down on the ground was because he was not taking any risks.

The analysis of evidence (COPFS-06361 ) contains reference to the information available to the officers at the point when they first attended the scene (page 9) referring to the airwave messages of an ongoing disturbance, an African looking, large, muscular build male chasing someone and who may be carrying a large knife with a 9 inch blade. I discounted the additional information that PC Walker provided in his statement that the knife was described as a sword and that the male appeared to be under the influence of some substance and had been attacking passing cars, since there was no evidence that PC Walker had such information at the time. PC Walker provided a number of factors justifying his use of PAVA spray that imply that same interpretation, namely CS spray deployed by PC Paton had been ineffectual, instructions to 'stop' and 'drop all weapons' were ignored, other officers had not yet arrived and Mr Bayoh could have had the knife concealed on his person.

I believe the Crown Precognition report provides this information to Crown Counsel.

**14. Prof Eddleston in his report COPFS-00038 opines on the circumstances of the incidents and how it relates to the Police Scotland Use of Force Framework:-**

**21) The situation in Kirkcaldy on the morning of the 3rd May was stressful for the police officers. They believed that it might be a terrorist attack targeting them during their work. SB had already attacked ones of his friends and been seen with a large knife while attacking cars.**

**However, SB is not reported to have been aggressive towards, or attacked, any of the police officers until he had been sprayed three times (a level 5 response to level 3 resistance, Use of Force Framework, p 13)) and had three police officers facing him in a group. At that point, he seemed to believe that he was being threatened and then unfortunately attacked Officer D. He was not seen to be bearing a knife, although it was not possible for the police to exclude the possibility that he had it hidden on his body. COPFS-00038 at page 7.**

**This section of Prof Eddleston's report is copied into the Supplementary Report at page 3. To what extent is this consistent with your understanding of PCs Walker and Paton's views when approaching Mr Bayoh?**

This section of Professor Eddleston's report is partially consistent with my understanding of PCs Paton and Walker's views. My understanding was that the incident was stressful to the officers involved. PC Paton in particular referred to being in fear for his life (page 20 of Crown narrative). Reference is made at page 13 of the analysis (COPFS 06361 ) to a discussion en route about a possible terrorist incident but also to the full range of information provided to the officers. Professor Eddleston does not provide a wholly accurate picture of the information known to the officers at the time via the airwaves messages as they did not know at the time about the earlier attack on one of Mr Bayoh's friends nor of the attack on cars.

It is my understanding that Mr Bayoh was not aggressive towards any of the police officers, but they referred to him ignoring their commands to get down. I understand that he was sprayed three times. I have no information that the officers thought Mr Bayoh felt threatened. The Crown Analysis COPFS-06361 at page 9 provides that (PCs) Walker and Paton's position that neither saw a knife in the possession of Mr Bayoh but were aware and risk assessed that he could still have had the knife in his possession was reasonable and in line with their training.

**15. Please read the Analysis COPFS-06361 at pages 53 and 54 as it relates to intelligence about a terrorist attack. Page 54 concludes: "[The "stay safe" memo] could be what the subject officers are referring to when they talk about their anxiety over a potential attack on the police." What impact, if any, did the**

**officers' anxiety of an attack on police have on the analysis [REDACTED]  
[REDACTED] of their decision-making and actions?**

The paragraphs on pages 53-54 of the Crown analysis under the heading 'Intelligence about a terrorist attack' sets out what factual information was obtained in the course of the investigation that could either refute or support claims by PCs Paton, Walker and Good that there had been warnings of a terrorist attack on the police. Two briefings were found. One in January 2015 was issued by DCC Iain Livingstone was to the effect that (there was intelligence of) a terror threat specific to police personnel, such threat classed as severe (an attack on police is highly likely). A second memo 'stay safe' was issued in February 2015 by ACC Ruairaidh that the threat level remained severe and referenced Islamic extremist groups or individuals. The Crown Analysis ought to have been worded more clearly by me to reflect that these two warning memos (rather than simply the second memo) could be what the subject officers were referring to in connection with their anxiety over a potential (terrorist) attack on the police.

The question of reasonableness of the police decision making and action was considered at each stage against their state of knowledge, their perception of risk and their training. Had I considered that their perception that the call to the locus could have been terrorist related was unreasonable, I think I would have said so in the Analysis of Evidence. I considered that, given the recent memos, their speculation en route to the scene of the knife carrying male being a terrorist was not outwith the realms of possibility and therefore not unreasonable.

**16. Is there a difference between the analysis of the decision-making and actions of an officer who is attending a terrorist knife attack compared to attending any other knife incident? Was it accepted in the Analysis that there was a risk of a terror attack and the officers were entitled to act accordingly in this incident? Was the connection between PCs Walker and Paton's approach to Mr Bayoh and their perception of him as a terrorist explored in the Crown Precognition? Would analysis of the complaints and allegations against PCs Paton [REDACTED] have been appropriate to consider in relation to their position that they believed they were attending a terrorist incident? Please explain your reasoning.**

I do not believe that there is a difference between the analysis of the decision making and actions of a police officer attending a terrorist knife attack compared to one attending any other knife attack. There is nothing in the police training materials to suggest that should be so. Rather, the police training emphasises the assessment of threat and risk. For the first officers, that assessment of risk was heightened by the possibility that

they may be en route to a terrorist incident in the accounts provided by PCs Walker and Paton. That does not entitle them to act differently but indicates their heightened state of awareness to the risk to their own safety and that of the public and would inform their choice of approach and 'tools' to deal with Mr Bayoh.

It was accepted in the Analysis that the police officers who referred to being aware of a severe risk of a terrorist attack on the police had a factual basis for saying so.

The Crown analysis of evidence assessed the use of and level of force used by each officer against the assessed risk at every stage of the incident based on

- what they were told in advance that informed their assessment of risk,
- their own stated perception of risk and the reasonableness of that perception;
- the description of events provided by all of the witnesses and
- all other available evidence about the level of force used.
- The officer safety training the officers had received and whether they had acted within the scope of that training.

In connection with the perception of risk by PCs Paton and Walker that they could be dealing with a terrorist incident, that perception was included in the Analysis and explored to the extent that there was consideration of whether there was a factual basis for what they said. The Analysis of Evidence at page 54 goes on to say that nothing could be found to support PC Paton's assertion of specific checks at Kirkcaldy police office due to an increased terrorist risk.

The information provided in the Narrative about the complaints history of each potential 'subject officer' is standard for all CAAPD reports to Crown office.

There would be no reason to analyse the complaints history in connection with evidence of the officers' belief that they may have been attending a terrorist incident as no criminality had been identified. As explained in the response to question 12, the complaints history would have been relevant to Crown Counsel's decision- making about proceedings in the event that criminality was established. The appropriate place to discuss previous complaints history would be at the conclusions and recommendations section of the analysis, in the event that there was sufficient evidence of criminality, when recommending criminal proceedings.

- 17. On page 54 of the Analysis COPFS-06361 a "stay safe" memo by ACC Ruairidh Nicolson dated 19 February 2015 is referred to, including the threat level being severe and referring to Islamic extremist groups or individuals; what was it about the**

**incident involving Mr Bayoh that related to Islamic extremist groups or individuals? Was the analysis that, because he was a black man and was reported with a knife in public, the police officers were entitled to draw a connection to Islamic extremism and approach the incident accordingly? Was there a concern that the attending officers were associating a black man with a knife in public as being a terrorist incident?**

I have explained (in response to question 15) that my reference on page 54 "this could be what the subject officers are referring to when they talk about their anxiety over a potential attack on the police" relates to two police memos and not exclusively the second memo by ACC Nicolson. I no longer have access to the case materials to provide a fuller description here of the content of those memos but I understood the officers' perception to be broadly terrorist related rather than confined to any specific references to Islamic extremism.

The Analysis of Evidence acknowledged that the police officers who mentioned it were aware of a potential terrorist threat. That did not entitle them to act in any way that was different to anyone of any colour or creed who was presenting a threat to the public or to them.

I did not have a concern that some officers were speculating that they could be dealing with a potential terrorist attack following the report of a black male with a knife. They had received intelligence briefings in the previous months and were on high alert for potential terrorist attacks. Such an attack was not outwith the realms of possibility. The fact that they made an association between the report of a black male with a knife and recent memos warning of a threat of a terrorist attack was not, of itself, of concern in the context of assessing criminality, which was the focus of the report.

**18. Please read the summaries of PIRC's investigation into racism covered in the Narrative COPFS-06360 at pages 123 and 124. Was this explored in the Analysis? Please explain your reasoning.**

As explained in response to previous questions, the complaints history of the officers would be a factor to be considered in the event that Crown Counsel was considering instructing criminal proceedings but otherwise of no evidential value in terms of assessing evidence of criminality of the officers in this case.

**19. Was the reason race was covered in the Crown Precognition because it was raised by Mr Bayoh's family? Would it have been covered at all if Mr Bayoh's family had not raised it as a concern?**

PIRC was instructed by the Crown to investigate issues of race in connection with the death of Mr Bayoh at the outset. I was not involved in discussions about the strategic direction of the investigation by PIRC. However, I would expect that concerns raised by the family in any death would be considered and investigated, where appropriate. The Crown precognition sought to address the matters investigated by PIRC with the focus on whether criminality could be established.

**20. Mr Zahid Saeed's allegation of assault is covered in the Narrative at page 123. What was the purpose of including this matter in the Crown Precognition?**

The allegation of assault made by Mr Zahid Saeed was covered in the narrative as it was one of the matters raised by Mr Anwar in his correspondence to the Crown and investigated by PIRC (PIRC terms of reference 6 and 7).

**21. At para 71 of your Rule 8 Statement you explained how Dr Karch's opinion was considered in the context of the other expert opinion.**

[REDACTED]

**Please read the comments attributed to Dr Karch reported in the Sun newspaper on 1 November 2015; how, if at all, did this factor into the analysis of Dr Karch's evidence in the Crown Precognition? SBPI-00379; See COPFS-06360 at page 78; See a copy of the Sun article under reference SBPI-00216.**

The cause of death was covered extensively in the Narrative where it is reflected on page 96 that Dr Karch's views were divergent from those of other experts, including the pathologists Drs Shearer and BouHaider, Professor Sheppard, Dr Soilleux, Professor Crane and Dr Cary.

At page 1 of the Analysis of Evidence, the view of Dr Lawler was cited that the role of restraint was likely to have been minor [REDACTED]

[REDACTED]

There is no mention in the Crown precognition of the Sun newspaper report.

**22. With reference to the Crown Precognition Analysis of Evidence COPFS-06361 at pages 13 and 14, to what extent was the opinion of Prof Eddleston, noted in the analysis as being**

**that “the police ought to have considered the possibility that [Mr Bayoh] may have been suffering from excited delirium”, taken into consideration by you in your analysis of the evidence? To what extent did you defer to the opinion of Mr Graves to understand what had occurred in the minds of the officers in relation to their assessment of Mr Bayoh on arrival?**

Professor Eddleston’s opinion that the police ought to have considered the possibility that Mr Bayoh may have been suffering from excited delirium was considered and addressed on pages 13- 14 of the Crown Analysis of Evidence COPFS-06361. Professor Eddleston based his view on certain information with which he had been provided when instructed, some of which was not available to the officers who first confronted Mr Bayoh. It was important to assess the police response based on the actual information at their disposal and the extent to which their police training equipped them to make an assessment. Professor Eddleston’s view was based on knowledge that included Mr Bayoh’s prior confrontation with his friend and attacking passing cars with a knife. He had also been informed of the drugs ingested by Mr Bayoh. It was pointed out on page 13 of the Analysis of Evidence that this information was not known to the initial attending officers. On the same page of the Crown Analysis, reference is made to the fact that Professor Eddleston was giving opinion as an expert in the field (Clinical toxicology) and that it was not at all clear that police officers had the skill and knowledge to recognise the signs of ABD at that early part of the incident.

I did defer to some extent to the opinion of Mr Graves who could draw on his own police operational experience and, in my view, had a better understanding of the police training in this matter as he had been provided with all of the training material. Mr Graves was not critical of the decision taken by the first two officers at the outset to adopt a ‘hard’ approach to Mr Bayoh in light of the information provided to them. He was not convinced that a ‘softer’ approach would have altered the response to the police from Mr Bayoh. Reference was made on page 14 of the Analysis of Evidence to paragraph x. at pages 33 – 34 of his report. However, Mr Graves provided at page 25 of his report COPFS-00024 ) that he did not believe there was on arrival of the first officers, any direct evidence to point towards Mr Bayoh suffering from ABD and that the fact that he was apparently walking down the middle of the road was insufficient to raise such alarms. He considered that the first signs that could have been picked up by the officers that Mr Bayoh may have been suffering from excited delirium were the ‘impaired thinking’ (lack of response and “crazy” look) and apparent ineffectiveness of the incapacitant sprays. However, in his view the officers were probably still focussed on the report of a knife and would have been anxious to stop him (and search him) for this. Mr Graves described in his report and at precognition that the officers

involved were given incremental signs of excited delirium (or ABD). Some of these were only evident after they had engaged with him and more so when Mr Bayoh had been brought to the ground.

**23. Why was Prof Eddleston provided with a copy of the Use of Force SOP? Was Prof Eddleston a suitable expert to opine on officers' use of force? Did you query his expertise in this regard? What was the basis for considering Prof Eddleston's opinion on these matters in the Crown Precognition?**

I did not instruct Professor Eddleston and cannot comment on the rationale for providing him with the Use of Force SOP. I am referring to the letter of instruction to Professor Eddleston dated 26<sup>th</sup> April 2017 (COPFS-02360) in which my colleague, Mr MacLeod advised that he sought to ascertain the behavioural impact of the drugs taken by Mr Bayoh. Professor Eddleston was asked to provide a general opinion on the individual and any synergistic effects of MDMA and alpha-PVP on the brain. "In particular the Crown are seeking to establish what effects the levels and combination of these two drugs may have had on the deceased's mood, cognitive ability and behaviour." Professor Eddleston does not appear to have been asked to provide an opinion on the officers' use of force but commented at page part IX, paragraph 16 of his report that he wanted to make additional comment on the Use of Force SOP which might be relevant to this case. He states that the document was provided to him as background reading for his opinion.

I did not query his expertise in offering the additional opinion.

Professor Eddleston may not have had expertise to comment on the police use of force, but his opinion had been provided, nonetheless, on the police response to the behavioural impact of the drugs ingested by Mr Bayoh and as such it was appropriate that his comments should be considered and addressed.

Professor Eddleston also offered some comment on the guidance set out at section 8.7.2 of the SOP and how that mirrored standard clinical advice for the management of psychotic patients. He conceded, however, that there was "little practical guidance (in the SOP) to the police on the diagnosis of...psychosis and it is not clear that police officers will be sufficiently confident of recognising such patients." Professor Eddleston was not provided with other police training materials and was not asked to provide an opinion on the efficacy of them. It was established during the Crown investigation that the Use of Force SOP was not routinely referred to in police Officer Safety Training. The SOP was a document that officers could access on the force intranet. The content of the training materials was therefore of more relevance to the questions of whether the police ought to have recognised the signs of excited delirium.



**24. In the Crown Precognition Analysis of Evidence COPFS-06361 at pages 50 and 51, under the chapter headed "Addressing Concerns Raised by the Family" the following point is made relating to post incident management:-**

**Beyond doubt the officers did confer in the aftermath of this event. While this might be an entirely natural thing to do, officers ought to have been separated and a debriefing exercise carried out so that their initial positions were captured at the earliest opportunity. This was frustrated at the outset by the position of PC Walker who immediately on his return to Kirkcaldy PO sought out the Police Federation Rep and insisted that he would not be providing any statements. His lead on this seems to have been followed by the others and the PIM process was not put in place as it should have been.**

**What is the basis for the statement that it was beyond doubt that the officers did confer in the aftermath of the incident? What is the basis for the assertion that the officers ought to have been separated? What PIM process did you understand should have been put in place? What impact, if any, did the officers not being separated have on your understanding of the incident and the assessment of the credibility and reliability of the officers as set out in the Crown Precognition? (If relevant, please refer to the entries in your notebook (COPFS-05221) at pages 11 and 12; COPFS-06361 )**

The basis for asserting that the officers did confer is that PCs Walker, Good, Tomlinson, Short, Davidson and McDonough all referred to discussion in the canteen at Kirkcaldy police office in their statements (See Page 54 of the narrative (COPFS -06360 ). I understood that a PIM process ought to have been followed whereby all the officers involved in the incident would be asked to provide an initial account. It would be good practice that such an account is taken outwith the hearing of other potential witnesses. There is always the risk, in any situation, that the memories of the witnesses can be affected by hearing accounts from others. It is difficult to assess the extent to which conferring occurred, other than what the officers admitted to discussing.

I made reference to notes on pages 11 and 12 in my notebook (COPFS-05221) in which I noted the content of PIRC production number 325 – ACPO Armed Policing 2013, containing a PIM process. I have made the following bullet points about what the PIM manager's (CI Trickett's) role was as set out in paragraph 07-058 of that document:

- Open policy log, ensure all relevant info recorded
- Considers which officers to be treated as Principal Officers in conjunction with IIO
- Establishes contact with Principal Officers- ensure they get immediate support

- Explain the role of the PIM
- Meet IIO or any rep from indep (independent) inv (investigating) auth (authority)
- Ensure welfare needs met
- Secures early legal advice/ rep (representation) if reqd ( required)
- Advises POs ( Principal Officers) of their responsibilities re discussion of incident with colleagues
- Facilitates the process in which officers provide initial accounts and ensures (where made) these are provided to the investigator

At paragraph 07- 057 the IIO (Initial Investigating Officer) (Pat Campbell/DCI Hardie) role/ responsibilities were:

- Early dialogue with independent investigating authority to agree responsibilities /key actions
- Opens a policy log; ensures all relevant info and decisions logged
- Identifies, preserves evidence
- Effective scene management
- Considers along with PIM (manager) who is a PO
- Liaises with/consults PIM (manager)
- Makes early contact with independent investigating authority
- Carries out those enquiries deemed urgent and those that may assist in the collation of evidence which may be lost prior to arrival of independent investigating authority

The Narrative of evidence COPFS -06360 at pages 51 – 53 provides. The Crown analysis (COPFS -06361 ) sets out at page 7 the circumstances in which the police initial statements to PIRC were provided a month after the events of 3<sup>rd</sup> May 2015.

The PIRC report (PIRC-00002) sets out at page 148 that once the Gold Group meeting at 0930 on 3 May 2015 determined that Post Incident Procedures should be adopted, those procedures should have been strictly followed and accounts and statements obtained from the principal officers. I understand that there was no specific PIM process for the nature of this incident where death had occurred following police restraint, but there was a PIM process for armed policing that could and should have been followed.

It is not uncommon in assessing evidence, to encounter situations where witnesses discuss events afterwards and this is almost inevitable on occasions. The Crown analysis of evidence provides on page 6 that the lack of separation of the officers in the aftermath and the fact that initial accounts were not provided until a month after the events meant that there was the possibility of conferral. The delay may have led to some dilution of memory and the chance for the officers to consider their own

positions. It does not render their accounts unreliable or incredible but does require greater care when assessing their accounts.

I took great care in assessing the accounts of each officer. The analysis (at page 9) identified certain information that the PC Walker provided that he could not have known at the time he attended. Assessment of credibility and reliability was made on the whole body of evidence available, and each officer's account was tested against all the other available source of evidence of the matters about which they provided accounts.

**25. In the Crown Precognition Analysis of Evidence at page 53 the following is noted:-**

**The rib fracture**

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

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

**What is meant by the paragraph at the end of this excerpt? What concerns did you have as to the integrity of the PIRC investigation? What was done about this issue and how did it factor into the analysis of the officers' credibility and reliability? Was the issue regarding the integrity of the PIRC investigation raised with the PIRC? If not, why not? Did Crown Counsel make any comment about the issue? COPFS-06360 COPFS-06361 .**

The rib fracture was one of the issues that Mr Brown briefed me on when I was first involved in the investigation. The suspicion was that information about the outcome of the investigations about the timing of the rib fracture had been leaked to the police. It was no more than suspicion.

The issue was raised in the analysis of evidence by me, reflecting the concerns expressed to me at the outset of my involvement. I am not aware if anything was done at the time when it became known, in 2017 that it was the opinion of Professor Freeman that the rib fracture was

likely to have occurred in life and at least two hours prior to police contact.

As stated, great care was taken to analyse the evidence of the police officers with reference to other independent evidence.

It would have been for my senior colleagues to have raised the matter with PIRC if they had considered this appropriate. I am not aware of Crown Counsel making any comment on the matter.

**26. In your notebook at page 37 COPFS-05220; you list a series of letters from Mr Anwar dated 27 May, 3, 17 June and 31 July 2015. At para 21 of your Rule 8 Statement SBPI-00379 you explain that, to the best of your knowledge, any issues raised by Mr Anwar relating to potential criminality were addressed in the precognition report. To what extent were the issues summarised in your notebook addressed in the Crown Precognition COPFS-06360 ; COPFS-06361 ? If a matter was not covered, please explain why.**

The issues noted on page 37 of my notebook were addressed where they related to the question of potential criminality on the part of the police officers involved in the incident in which Mr Bayoh died.

My notes indicate that Mr Anwar raised in a letter of 27<sup>th</sup> May 2015 that there were inconsistencies between the information provided to the pathologists and that provided to the family, notably about the use of CS spray and batons and that nine officers were involved in a struggle with Mr Bayoh. There was nothing in Mr Anwar's letter in respect of information provided by PIRC to the pathologists that inferred criminality on the part of the police officers.

The narrative of evidence (COPFS-06360 ) sets out at pages 76 – 77 the findings of the pathologists at post mortem. The pathologists made reference to finding areas of bruising that could be in keeping with baton use. The pathologists also referred to their knowledge of CS and pava spray in their report. Although there were potentially up to nine officers directly involved in the incident the pathologists noted that at least four officers were restraining him. This was in keeping with the information obtained during the investigation.

The terms of the letter raised the question of whether the pathologists had based their conclusions on the wrong information. I was satisfied that the pathologists had considered baton use, CS spray and restraint by multiple officers. The figure of four, rather than nine officers was more in keeping with the evidence that I had reviewed about those involved in physical restraint (by means of their body weight) of Mr Bayoh, rather

than the nine officers on the scene who were involved in some way or other.

My notes also refer to the letter requesting that CCTV from Kirkcaldy Police office be reviewed for evidence of the officers involved conferring. The results of the review conducted by PIRC of CCTV at the police station is described in some detail in the narrative at pages 54 – 60 where CCTV picked up some discussion of the incident by an officer who was based in the custody suite that could infer that information was provided by officer(s) on their return to the station from the locus. At page 51 of the Analysis of Evidence, it was assessed that CCTV did not provide any evidence of conferring between the subject officers.

My notebook (COPFS-05220) at page 37 refers to a letter of 3<sup>rd</sup> June 2015 in which Mr Anwar raised concerns re police statements in light of the Memo of 26/03/2015 by DCC Neil Richardson about officers not being required to provide statements if there is the possibility of them being subject to criminal complaints. He asked how that would fit with PIM measures and asked if there was a SOP re death in custody. My notebook refers to a letter of 17th June 2015 in which the issue of police officers refusing to give statements is raised again.

The issue of the initial refusal of subject officers to provide statements to PIRC investigators is set out at length in the Crown Narrative (COPFS-06360) at pages 60 – 63 and in the Analysis of Evidence at pages 6 and 7.

I understood that the question of whether there was a SOP in relation to death in custody was in connection with the post incident management process. That was covered in the Crown Narrative at pages 51 – 54.

I made a note in my notebook about a letter sent to the then Chief Constable of PSOS on 31/07/2015 but did not note the contents of that letter in that note. I have been provided with a copy of the letter of 31<sup>st</sup> July 2015 addressed to Chief Constable Stephen House (COPFS – 02768(a)). Essentially five issues are raised in this letter. They are:

- a. [REDACTED]
- b. [REDACTED]
- c. Allegations that PC Paton and his colleagues regularly accessed police systems to check on personal data of individuals without a policing purpose in contravention of the Data Protection Act 1988; requesting an audit of police systems to ascertain if checks were made by any of the subject officers on a list of persons provided in that letter.

- d. If and when PIRC investigators were present at Kirkcaldy police office, question of whether there was conferral between PIRC investigators and senior police management, the Police Federation and/or Fife police officers.
- e. Asks what guidance or mechanisms existed in Police Scotland to prevent corruption of the evidence gathering stage.

In respect of [REDACTED]

(c) was investigated by PIRC and addressed in the Crown narrative (pages 124 – 126)

(d) and (e) were not directly relevant to the question of criminality of individual officers. Save for the comments already highlighted about the deficiencies in the PIM process these issues were not addressed in the Crown precognition.

27. [REDACTED]

[REDACTED] COPFS-06360 [REDACTED] COPFS-06361 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**28. At para 27 of your Rule 8 Statement SBPI-00379 you explain your analysis of Mr Kevin Nelson's account. To what extent was this analysis, including contradictions in the officers' accounts and your assessment of the officers' credibility and reliability, considered in the Crown Precognition? Please explain what was covered and why. Please note the conclusions relating to conferral amongst the officers at pages 6 and 50 of the Crown Precognition Analysis of Evidence. SBPI-00379; COPFS-06360 ; COPFS-06361**

Paragraph 28, rather than Paragraph 27 of my Rule 8 statement refers to Mr Nelson's account. The Crown narrative COPFS-06361 provides a chronological account of events using the accounts of the witnesses who speak to them. The narrative contains various references to Mr Nelson's account.

In the Analysis of Evidence, all the available evidence about the actions of the police officers from the moment when the first officers arrived until Mr Bayoh was found to be unconscious was examined to identify if there was any evidence of criminality. Mr Nelson was a significant witness in respect of police officer actions (their actus resus) and his evidence was referred to throughout the report.

The Crown narrative COPFS-06360 contains pertinent information about Mr Nelson's observations from two different vantage points.

In assessing the evidence about the initial approach made by PCs Walker and Paton, at pages 9 -10 it was noted that Mr Nelson's referred to seeing one of the officers with a baton. Neither officer referred to presenting a baton at Mr Bayoh at the point when they got out of their van. This initial encounter was not picked up on CCTV and there was no other evidence to support Mr Nelson's account in this respect.

Both officers then gave accounts of deploying their spray but Mr Nelson only saw one officer. It was not possible to identify which of the officers he was referring to when he described the use of spray as both PCs Walker and Paton could fit the description he provided of the officer. The account of spray being blown back into the face of the officer could have applied to either officer. To the extent that Mr Nelson spoke about the deployment of spray, it could have supported the accounts of either officer at that point.

At pages 22- 23 of the narrative, reference is made to witness Nelson's observations of the second police car's arrival, the engagement of the male and female occupants with Mr Bayoh and his response "like something triggered a switch in the guy."

The analysis then considered what evidence Mr Nelson could provide about the actions of PCs Short and Tomlinson. In contrast to civilian witnesses Mullen and Robinson Mr Nelson did not mention seeing PC Short using her spray. This was consistent with PC Short's own position and with the subsequent analysis of the content of her spray cannister, confirming that it had not been used.

It was noted in the analysis that Mr Nelson spoke to seeing Mr Bayoh deliver blows to the female officer's head. This was spoken to by PCs Walker and Tomlinson and the assault on PC Short. It was important to consider what Mr Nelson (and other independent witnesses) said about the attack on PC Short as this provided the justification for their subsequent action in use of a baton (by PC Tomlinson) and bringing Mr Bayoh to the ground by shoulder charging him (PC Walker).

The analysis reflected (page 20) that it was unfortunate that Mr Nelson spoke to leaving his first vantage point after seeing Mr Bayoh strike the blows to the female officer and he was therefore not in a position to see the subsequent events and actions described by PCs Walker and Tomlinson.

Mr Nelson's statement and precognition were then considered in relation to the period of restraint. Mr Nelson provided important evidence about the length of time Mr Bayoh was struggling (and by reference to timing on



CCTV it was possible to link his comment that Mr Bayoh still struggling when he went back indoors), his comments on Mr Bayoh's strength, the number of officers involved in the restraint, what that restraint looked like, how many officers were on top of him, and Mr Bayoh's position during the restraint.

In considering what happened during the period of restraint on the ground, the Narrative of evidence at page 27 noted that, according to CCTV, Mr Nelson arrived at his front gate 17 seconds after the restraint had commenced. The narrative explored his account in his first statement of five of six male officers around Mr Bayoh. He recalled one officer kneeling on the ground using his upper body weight on Mr Bayoh's shoulder and neck area, with other officers lying across him trying to keep him on the ground. At precognition he confirmed that he only saw two officers lying on top of Mr Bayoh. That, and his description of another officer trying to tie cable ties around his legs as he was kicking out, accorded with the police accounts of the restraint.

In the Analysis of Evidence at page 20, Mr Nelson's description of the position of Mr Bayoh during the restraint was considered to be closest to that shown in position 3 in the disc of images of body positions. This description accorded with that provided by PC Walker of taking Mr Bayoh's right arm and bringing it over his body so that he was on his left side.

The Narrative of evidence reflected (page 41) that Mr Nelson could be seen leaving his garden gate and returning to his house. This was 2 minutes and 41 seconds after restraint had begun. According to Mr Nelson the now deceased was still struggling when he went back indoors. At page 30 of the Analysis, it was noted that Mr Nelson remained at his garden gate for 2 minutes 24 seconds. Mr Nelson was considered an important witness due to the length of time he remained watching in contrast to other civilian witnesses who had more fleeting views. He was assessed as both credible and reliable. The analysis reflected that nothing he said was contradicted by CCTV and that much of what he said accorded with police witness accounts.

It was noted on page 33 of the Analysis of Evidence that the position of officers shown in the snapchat photograph as being on their knees at the deceased's back or head and one officer on top of Mr Bayoh was consistent with Mr Nelson's account and with the subject officers.

Reference was made in the Narrative at page 27 to Mr Nelson stating at precognition that Mr Bayoh was kicking his legs "like a toddler having a tantrum". This description was considered at page 36 of the Analysis in

which it was noted that this coincided with the account of PC Tomlinson, who was trying to apply leg restraints at the time.

At page 45 of the Analysis, in considering accounts that there was a 'pile up' on top of Mr Bayoh, it was noted that Mr Nelson, perhaps the most reliable independent witness and in close proximity to events, saw no more than two police officers lying across Mr Bayoh at any one time.

The narrative includes Nelson's comment about how quickly events changed from Mr Bayoh throwing punches, kicking and thrashing about to having CPR performed on him.

Reference is made on pages 6 and 50 of the analysis of evidence to the delays in police officers providing their accounts and to the opportunities for discussion about what occurred. These issues did not render the police accounts untrue but gave cause for careful scrutiny against other available evidence. Mr Nelson's accounts (along with other sources of independent evidence) were considered to provide a reliable check against which the accounts of officers could be compared.

**29. At para 28 of your Rule 8 Statement SBPI-00379 you explain your analysis of Mr Kevin Nelson's account. To what extent was Mr Nelson's full account considered in the Crown Precognition? Please explain what was covered and why.**

I asked to be provided with copies of the statements provided by Mr Nelson in order to answer this question.

The first statement of Mr Nelson (PIRC 00019) contained Mr Nelson's initial account of event on 3<sup>rd</sup> May 2015, provided two days after they occurred.

The second statement of Mr Nelson dated 26/08/2015 (PIRC-00020) relates to a later date when a relative of Mr Bayoh came to his house seeking information from him and handing him a leaflet about the Justice for Sheku Bayoh campaign. The content of this statement was not relevant to the issues being addressed in the Crown precognition report and for this reason his account of these matters was not included in the precognition report.

The third statement was the Crown precognition of Mr Nelson taken on 6th October 2016 (COPFS - 00055) and this was referred to in the precognition report.

I believe I have answered the question about what was considered in the Crown precognition and why, in my answer to question 28.

Where Mr Nelson spoke about the actions of the police or the response of Mr Bayoh, this was covered in the precognition report. The Narrative of the report included Mr Nelson's account of the police engagement with Mr Bayoh, Mr Bayoh's response and subsequent police actions that he observed. It was important to understand the two vantage points from which Mr Nelson viewed events and the fact that he missed some of the action in leaving his first point at the window and going to the second point at his front gate.

30.

[Redacted]

[Redacted]

31. 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.

32. Signed: Fiona Carnan, 12<sup>th</sup> February 2024

Signature of Witness [Redacted]

February 13, 2024 | 11:59 AM GMT  
Date.....