Wednesday, 24 April 2024

(10.02 am)

LORD BRACADALE: Good morning, Mr Logue. Ms Grahame.

Evidence of JOHN LOGUE (continued)

Examination-in-chief by MS GRAHAME

MS GRAHAME: Thank you very much. Good morning.

A. Good morning.

Q. Yesterday, as we were concluding our discussion at the end of the day, we had turned to paragraph 38 of your response, SBPI 00454.

A. Yes.

Q. And we'd look at the first section of that paragraph, here we are, where it talked about the traditional approach to engaging with families in death investigations and how it has evolved since you joined Crown Office and part of that was the recognition of Article 2 and the need to engage with families and you had just finished your evidence and you were talking about Article 2 is a legal requirement and requires the crown to engage with families but you said:

"I think there probably is still some way for us to go to be as transparent as possible. I think there is still a traditional conservatism about the sharing of information simply because there is a concern that that may somehow put an investigation at risk and I think the

organisation is still working to -- I don't think we've yet reached the point that we will get to in terms of transparency. I think there is still work for us to do on that."

And I was interested in your thoughts on the work that you plan to do in relation to engaging with families and how you intend to improve that in the future?

A. Yes. I'd be very happy to explain some of that. I think in covering the answer that I gave last night in talking about the Article 2 issue I don't think I probably described very clearly that beyond the Article 2 aspect of this, my personal view is that it is widely accepted now within the organisation that it just simply is the right thing to do. And the challenge facing us is that on a case-by-case basis we will almost in every case have possession of very, very sensitive information and it is sometimes not easy to make a decision based on guidance and experience as to which information should be shared and should not be shared and that is something that we continue to work on.

And so in terms of looking ahead to the work that we were doing, one aspect of that at the moment is that we are undertaking a review of what I described yesterday as our Victim Information and Advice Service. So we are

looking at the way in which we provide that service, the underlying principles, as well as some of the more practical procedural elements of how the communication with victims and bereaved relatives take place so it's a wide ranging review.

Beyond that, the current Lord Advocate attaches the highest priority to establishing effective communication with victims and bereaved relatives and she has made it clear that, as Lord Advocate, that is a priority for us as prosecution and death investigation service. And so beyond the review programme that I've spoken about, we are generally examining all aspects of our work to find ways in which we can enhance the information we provide, improve the way in which we provide it and ensure that it is as consistent as we possibly can make it in order to give effect to the current Lord Advocate's personal priority.

I have to say she demonstrates that on a personal level. I have been with her when she has met with bereaved relatives and she is very clear that as an organisation we should seek to provide as much information as it is possible to do and so she very much leads by example in relation to that and what we're doing as an organisation now is trying to give effect that that as widely and as consistently as possible.

Q. And the review that's underway at the moment, how long do you anticipate that will take?

A. That review has reached an important point in the last month or so and we've extended that. We anticipate that will take, I think, at least another year to reach its conclusion. That doesn't stop us to make improvements as we continue. We're not waiting until the end of that.

There are other aspects of our work which drive our desire to improve communication with bereaved relatives and victims. Just last week, the Inspectorate of Prosecution published a report in relation to domestic abuse and was critical of our work in the context of domestic abuse and so there will be a body of work now put in place, as a matter of urgency, to accept her recommendations and implement changes to deal with that.

A member of the Crown Counsel team is currently undertaking a review of sexual offences and the way in which they're prosecuted and that I have no doubt -- although it is not concluded and I have not seen it yet, I have no doubt that will lead to similar recommendations about how we can improve our work to communicate with victims.

I suppose the final point I would add is that we know from the information we get from victims or

bereaved relatives, we monitor complaints, for example, we receive correspondence from politicians who speak to the constituents who pass on information on behalf of their constituents and I would say that it is clear to us that victims and bereaved relatives being unhappy with the amount of communication, the way it's communicated is I think the most frequent issue that we face in terms of feedback which we're given about the quality of our work, so that also drives it to be a high priority for us.

Q. So you're listening to complaints and comments being made by families, bereaved families, and victims themselves?

A. Very much, from a wide range of sources, and although I have spoken about that wide range of work that's underway, I should also say I do see examples of people providing positive feedback as well and complimenting individuals who they have worked with, be they prosecutors or staff who provide the victim information and advice service but it's -- that's not a -- we're not in any way complacent in simply saying we're getting some positive feedback and therefore we're achieving what we want to achieve. It's about learning from that and trying to make that as widespread and consistent as possible.

Q. Thank you. Let's go back to paragraph 38 then. I think we had reached the -- do you see the line that says "judgment about what was needed to meet the family's needs"? I think we had got to that part. It's around halfway down the screen.

A. Yes.

Q. The next section says:

"Although I was not involved in discussions with them or their solicitor, my understanding at the time was that they wanted to instruct their own experts."

This relates to Mr Bayoh's family?

A. Yes.

Q. "This in itself is unusual in death investigations and seemed to me to be a reason to justify a broader approach to the provision of information in a way which would not affect the integrity of the investigation."

I'm interested in that part of this paragraph. Obviously you say you weren't directly involved in discussions, but you were aware that they wanted to instruct their own experts and I think earlier in your evidence you did talk about, and we certainly heard other evidence, that Mr Anwar had indicated that they would like to instruct their own expert.

You say it's unusual in death investigations. Why is it unusual in death investigations? Do you know why?

A. I think the simplest explanation I can give is that was the first time I think I was ever aware of a bereaved family asking to instruct their own experts, so I was describing it as unusual in that sense. Now, that's not to say that it had never happened before, but I think it was the first time I was ever aware of it. I'm not aware of it since, but, again, it may well have happened, but it was not -- it was not a routine part of every death investigation to, for example, invite bereaved relatives to consider instructing their own experts.

Q. Right. And you said:

"It seemed to me to be a reason to justify a broader approach to the provision of information."

Can you help us understand what you mean by that?

A. Yes, my recollection is that in order to assist with that we recognised that we would need to provide, for example, perhaps more detailed information about the postmortem at a much earlier stage than we might otherwise have done. We would routinely in death investigations share information about the postmortem, for example, including a copy of the postmortem report. We would try to do that in as sensitive a way as possible, but it was clear that much more detailed information would need to be provided at an earlier

stage around the forensic examination, postmortem pathology, and I think, I could be wrong, but I think as the investigation progressed that expanded beyond the forensic pathology and forensic evidence to also include expert witness who were required to look at issues of, for example, of police restraint.

Q. And having experienced this with the family for Mr Bayoh, has that given you pause to reflect on whether that's something you would roll out on a broader basis to give other families more disclosure?

A. It was certainly something that I don't think any of us at the time thought was incorrect or improper in any way. It was simply regarded as being unusual. I can't say that in every single investigation that it would be something that every bereaved relative -- set of bereaved relatives would want to do, but I have no issue in principle with it being done and if there's a way in which we can facilitate that or support it, then I would be very happy to look at that.

Q. And do you envisage this being the position, the more expansive disclosure, if you like, only if the family wish to instruct their own experts or would you consider it even if they didn't wish to instruct their own experts?

A. I think the answer to that I would rely on the principle

I was trying to describe yesterday that we would try to meet the needs of individual bereaved relatives on a case-by-case basis and that would really be the guiding principle. And so some bereaved relatives may not want as much information. I have experience in other investigations where there was a strong sense that they did not perhaps want immediate contact from the crown in the very early days in the way that Mr Bayoh's family did and I have had experience in some cases where families felt that was intrusive to have that early contact.

So I think my own experience tells me that you really have to judge it on a case-by-case basis and try to meet the individual needs of bereaved relatives in each case. The important thing from your point of view would not be to approach that understanding with any preconceptions or limitations.

Q. And is that the approach that is taken in Crown Office now, to treat each family as according to their own needs?

A. So there are a wide range of death investigations and, as a general principle, that would be -- that is my understanding of how we consider and implement in particular the procedural aspects of Article 2 and there is very detailed guidance which has been prepared in

relation to Article 2 within the SFIU team that we talked about yesterday. So they have prepared guidance on what Article 2 means for death investigations and they have for example different -- difference pieces of guidance for different types of investigations so for example, death investigations involving the death of a child or death investigations involving a death in custody. But I'm confident in saying at the heart of that there is a clear understanding in the team that meeting the needs of the family is an important part of the investigation.

Q. And the Article 2 guidance that's been prepared by SFIU, has that been rolled out beyond the four walls of SFIU to other teams such as CAAPD?

A. I couldn't say whether it's been shared with CAAPD, but one of the consequences of moving, as I described yesterday, from a model where investigations were carried out in local procurator fiscal's offices and there was a need therefore to have standard guidance that was available to the whole service on every aspect of our work, because anything could arise in any office at any moment.

Now that we have dedicated teams, that has changed. I think the nature of our guidance 0the guidance is now more specific, in particular for the specialist teams.

They will develop and build their own guidance and part of doing that is cross-checking, for example, with our policy team and with other operational colleagues in the organisation as they do it. So I know, for example, the guidance I looked at in relation to SFIU was on our3 knowledge bank that you were asking about yesterday and to that extent therefore it's available for anyone in the organisation to find and it can be found by searching in relation to Article 2 or by searching in relation to SFIU. There would be a number of ways in which you can find it so I don't think it's guidance that would be restricted or unavailable to other teams.

Q. And when was that guidance prepared?

A. The particular guidance I was looking at recently I think was prepared in the last few years, so it's perhaps two or three years old.

Q. So after 2015?

A. I think so, yes, yes.

Q. You've mentioned Article 2, is there similar guidance that's available in relation to Article 14?

A. No, there isn't and that's one of the things I'm reflecting on as a result of my involvement in the Inquiry is the extent to which we need to consider other issues, particularly Article 14.

What I should say is that very extensive guidance

was introduced by the service with the incorporation of the Convention in 1999. And mandatory training was delivered to all prosecutors, detailed guidance was provided both in hard copy and then ultimately available digitally. That guidance is no longer available on our knowledge bank because I think in developing our knowledge bank and moving to a point where the Convention had been incorporated for such a long time, guidance which was prepared for a number of people who had no previous real understanding of the Convention and had to adapt it to it I think may have been -- it's not available on our knowledge bank and I can't explain why, but I'm making an assumption that in upgrading, as we did a few years ago, a decision was perhaps taken that that guidance from 1999 perhaps was out of date and needed to be removed.

But on a general point, guidance on ECHR compliance is available across the organisation. It features in the training for new prosecutors. It features heavily in relation to the work of the appeals unit and so it's more mainstream, I think, rather than having dedicated guidance about the incorporation of the Convention, which was the previous guidance. The reason I'm mentioning that is I would need to check, but I think that may have still been available in 2015 because it

was routinely available to the whole organisation for many years, but would need to double-check on that to be absolutely sure.

Q. Right. Thank. Just to be clear, now is there guidance available if someone is seeking guidance, not just on Article 2, but Article 14, would that be available in the knowledge bank?

A. So specific guidance in relation to Article 14 in our work I don't think is part of our knowledge bank. Article 14 and legal material is available to prosecutors in the organisation. Every prosecutor has access to the LINETS network which is an online legal database and therefore I would expect prosecutors in the organisation to be able to access research and keep themselves up to date in relation to legal developments through Westlaw, through that portal. So that's another source of information which is available.

But specific COPFS guidance in relation to Article 14 I don't think we have that in our guidance at the moment. We do have a large body of guidance in relation to our qualities duties, but I don't think that has a specific section in relation to Article 14 and how that impacts on our operational work.

Q. So for a precognoscer, for a depute who is involved in a crown investigation, into the death of someone like

Mr Bayoh, a death in custody, where would they now look to get guidance about how to make sure that investigation was not just Article 2 compliant, but Article 14 compliant?

A. Well, I would them to expect to be accessing -- they would be part of the SFIU team and I would expect them to be able to access the specific guidance I referred to earlier. There is more general guidance available. We have other key documents in our guidance and my view is that our ECHR guidance is now mainstream throughout those, rather than stand-alone guidance. So for example, there's a Precognoscer's Handbook which is a source of guidance for case preparers and people carrying out precognitions and I would expect that, therefore, to contain mainstream guidance in relation to Convention duties.

Q. In relation to SFIU, will they always now deal with deaths in custody? I think you talked about a specific unit.

A. Yes, as time has passed, having created a specialist team called SFIU, we have learned that actually within that broad specialism of death investigations there has been a need to create an even more specialist team, so we now have a dedicated team that deals with deaths in custody and that's part of the later stage SFIU team but

they focus on deaths in custody.

Q. And they've recently prepared Article 2 guidance that's available to that team in SFIU?

A. Within SFIU there is a version of the Article 2 guidance which relates to deaths in custody, yes.

Q. And in relation to Article 14, I think a moment ago you said you were reflecting on whether that should perhaps also be included?

A. Yes, that's correct.

Q. Right, thank you. Going back to paragraph 38, you then turn to agreeing with Mr McSporran. We've heard he was the lead investigator with PIRC:

"... to the extent this made the coordination with family liaison between different organisations more important and potentially more challenging."

And I'm interested in any thoughts or reflection you had. We've heard there were Police Scotland's FLOs, there were PIRC FLOs. You told us yesterday about Crown Office and VIAS. Can you talk about the sort of the challenges and how those challenges have been addressed?

A. Yes. They -- what I've described at the beginning of that paragraph and what you asked me about yesterday as the traditional approach, you might describe that as being a linear approach to an investigation where one

organisation is taking the lead with the contact with the family at a particular time because it relates to that stage of investigation.

In the circumstances I've described to you a few moments ago where we, for example, see the need to provide more detailed information direct to a family, then that brings us into direct contact in this case with the solicitor acting on behalf of the family and so therefore you have the family and and their solicitor engaging with different organisations and that's what I meant what I said it makes the coordination more important. That places a responsibility on all of the organisations who are in contact with the family to coordinate that and to understand what each other is doing and to make sure that we are not creating a situation where we're causing any confusion for the family and that's what my reference to potentially more challenging is describing.

In terms of what we have done about that, the answer to that is simply good working relationships right from the very beginning and clarity about the purpose of each person's role and the -- who will be engaging with the family and sharing that information.

Q. So from what you've said, you place some emphasis on coordination between different organisations. It's --

to understand, it's not your position that it should be the responsibility of someone else?

A. No, I think it would be very difficult, for example -- if we take what I've described in relation to the early days of this investigation, it would be very difficult if we felt the right thing to do was to share detailed information about postmortem or our arrangements on instructing experts. It would be very difficult, I think, for us to pass that to another organisation and then expect them to pass it on to the family. That introduces scope for misunderstandings, miscommunications, passing information through another party. So I think the better course of action is for the relevant organisation to conduct its own communication but to bear in mind that responsibility of coordination and clarity.

Q. Thank you. And then moving owner, if we could move up the page, we see:

"Race was a factor in the investigation in my view only to the extent that it was known and understood that the developing understanding of institutional racism and previous examples of failures to meet the needs of members ethnic minority communities in investigations in Scotland and in the UK meant that it was an important objective of that investigation to maintain the

confidence of Mr Bayoh's family in its thoroughness and independence. Meeting their needs as individuals was a justifiable basis of doing things differently."

I wonder if you could expand on that part of paragraph 38. Was your view that race was limited to the significance of engaging with the family to maintain their confidence?

A. I think from the point of view of our engagement with the family that that was where there was an intersection between the question of race and that communication with the family. I think it was also going to be a critical element of the investigation to understand the circumstances in which Mr Bayoh died and whether race was a factor in those.

So I think there was another element that I don't think -- I think my answer to this paragraph is really focused on communication with the family, but I think there's a broader element to race and I'm simply here trying to describe the impact of that on the confidence of Mr Bayoh's family in the investigation.

Q. So the Chair is not to understand this part of your statement as saying race is excluded from any other consideration, but simply that it's relevant in relation to engagement with the family and their confidence?

A. Yes, of course, yes, absolutely.

Q. Thank you. And can you explain to us what your understanding was of the significance of race to the investigation as a whole, not just specifically in relation to your dealings with the family?

A. I can only do that in relation to my early involvement in the first few days at a point when it was not clear what had happened, but given the circumstances, it was obvious to me when I was first advised that a black man had died early in the hours of Sunday morning in the course of being restrained by a number of police officers. It was clear to me that this was an investigation which would need to carefully consider the element of race in what had happened.

I don't remember the details but I have a -- I have a memory that as I was being told about this, and I can't remember -- as I said yesterday, I can't remember. I think I was called to update me that this had happened. I have a clear memory that I immediately was thinking of there had been a recent incident in the United States where a young black man had been shot I think and killed by police officers and I mention that because the issue of the confidence of minority ethnic communities in policing was a high profile international issue and therefore that was an important piece of context in understanding the nature of the investigation

that we were dealing with, but also, as I have already spoken about this morning, how that would impact on the confidence of Mr Bayoh's family in the investigation.

Q. And you talk about the international context and the importance of understanding that on 3 May 2015. When did you become aware that in fact it was an issue of concern for Mr Bayoh's family?

A. So I think in some of the documents you showed me yesterday I think I refer to being aware I think perhaps in the update I provided to the Lord Advocate on the Tuesday morning. I think I had been advised that the -- there were difficulties in establishing effective communication with the families because the families did not -- I'm generalising here -- my impression was they had -- they did not trust the police.

Mr Bayoh had died at a point where he was being restrained by the police and that distrust of the police seemed to me to extend to others in positions of authority who had responsibility for the investigation. So that was my general understanding within those first few days.

Q. And you say the Tuesday, would that be Tuesday, 5th?

A. Yes. I think that was the email that you showed me yesterday sent on about half past 8 on the morning of Tuesday, 5th.

Q. Yes, that's correct.

Can I ask you about some other evidence that we've heard. We've heard about the approach to race that was taken in -- specifically in relation to the investigation into Mr Bayoh's death and we've heard from Les Brown who was the head of CAAPD in this regard.

Now, I don't have it on the play list for today so it won't come on to the screen, but I asked for a hard copy of a statement from Les Brown to be put in your folder and it's SBPI 00419 for those listening behind me, but I'm going to read something out to you and it's about what we heard from Les Brown about an incremental strategy that was adopted and I would like to then ask you for some comments on that.

So you'll see paragraph 105 of the statement which is probably on page 2 of the hard copy in front of you:

"A key element of the incremental strategy approved by the Lord Advocate was to separate out and resolve the issue of potential criminality and to get to a point where Crown Counsel could take a decision in this regard with the necessary confidence, thus permitting the investigation to move forward to other areas in anticipation of an Inquiry whose forum had yet to be determined. It had been hoped initially that the necessary further inquiries could be completed

relatively quickly."

So this was described as an incremental strategy and during his evidence, Les Brown explained to the Chair, who asked him to give a little more information about this concept of an incremental approach, and he said:

"If we had moved on post that decision, the criminality decision, we would be looking at the wider issues that could be explored at a fatal accident inquiry and I was of the view that that could include factors such as race and exploration with the officers with their considerations so wider than that, so anything relevant to a fatal accident inquiry.

"In essence what we were doing here was trying to reach as quickly as possible a stage where Crown Counsel were able to exclude or otherwise criminality and then allow the wider investigation to move forward in relation to issues that were considered relevant to a fatal accident inquiry."

And on further questioning he explained that the further issues that would be looked at later would be race issues.

So this incremental approach or this incremental strategy appeared to be very much focusing primarily on criminality and we've heard from Fiona Carnan, the precognoscer, that her approach to the analysis was to

seek to identify criminality and the plan was that once a decision had been taken by Crown Counsel on that issue that later, at some point further down the road, then issue of race would be looked at.

I'm interested in any thoughts that you have in terms of policy or otherwise where that type of incremental strategy, which separates out criminality and leaves race to a later stage, is something that you are aware of being adopted in Crown Office?

A. My -- so in terms of -- in terms of policy as you describe it, my view of the normal approach in an investigation which is complex like this and raises a number of questions is that there is a need to progress through the investigation in a way which deals with each of the individual elements, but my own experience of those is not -- I don't -- this is the first time I've seen the reference to "an incremental strategy". That's -- but I can offer you an interpretation of what I think that is from my own experience, but I can't speak from how it was done in relation to this particular investigation.

But what I would expect to happen is that an investigation would identify a number of issues which needed to be considered and I said yesterday that it was clear, I think, to all of us who were involved in those

initial days that the question of criminality was an immediate or was an obvious issue which would need to be explored in the investigation and, in simple terms, was an immediate priority. There may be wider issues which relate to broader learning which could come out of a fatal accident inquiry or an inquiry of this nature, but the priority would be to reach a decision on the criminal aspects as quickly as possible.

I would not expect that that would mean that those individual elements would be isolated off from each other and dealt with one at a time. The investigation I would expect would have an understanding of all of them, and be trying to make progress on all of them at the same time as perhaps identifying particular priorities, so I'm not -- I'm not aware of an investigation where we would take a compartmentalised approach and say, well, we're only going to look at this and we're not going to look at anything else until we've finished look at this. I think our approach as much as possible is to progress the whole investigation.

One of the challenges we've found in recent years has been that with creating the specialist units we may find ourselves with an investigation perhaps where more than one team is involved and therefore there needs to be coordination. We have learned that it -- you may

need to progress parallel investigations in two separate teams at the same time, rather than allowing one team to reach a conclusion before the other team then takes over. That just simply builds in delay into the process. So for example you wouldn't -- you wouldn't want a team looking at a criminal investigation and no one else dealing with the broader aspects that I've referred to until that team had finished. You would try to make -- make sure that there was sharing of information and progress on all aspects at the same time.

Q. So in terms of the approach that you're describing, there's not a compartmentalisation where one thing is dealt with and then a delay until a second thing is dealt with but there is progress made -- a continuous progress on every aspect?

A. Yes.

Q. So they're working -- I think the word you said was they're working in parallel?

A. Yes.

Q. And in terms of two units, are they communicating with each other to see if perhaps one team have discovered something of assistance or useful and the other team find out about it as well?

A. Yes, I would expect the teams to be in touch with each

other, to be sharing information and to be assisting each other so for example to illustrate we may have a case where our health and safety team is investigating it as a potential criminal matter because it appears to relate to health and safety legislation and the other -- there may also be a broader death investigation which we expect to lead to an FAI in due course. And so because of those different elements of specialisations we may have the same broad investigation, different aspects of it dealt with by two different teams, but because they sit in two different teams that doesn't prevent us a single organisation doing all we can to make sure they work together.

Q. So you're getting the benefit of this specialisation but also ensuring that nothing is missed by either team?

A. Exactly, and that's -- that can be a challenge sometimes, but that's the priority in -- in relying on a strategy of specialisation.

Q. And in terms of thinking back to the five procedural obligations under Article 2, you mentioned delay and there will be a desire to avoid delay, for things to be done as quickly as they can be. Does that also avoid deferring or delaying looking at something that can be significant?

A. Indeed, yes, that's correct.

Q. And allows both sides of the investigation to proceed at a reasonable pace?

A. That's correct.

Q. Thank you. Thank you very much. Can I ask you now about some further paragraphs that you've given us in your statement and the first of these is 104. You've talked about your experience dealing with complaints of criminal allegations against the police, but you can't remember if racism was a factor in any of those investigations or in any death investigations for which you were responsible.

I think I may have touched on this yesterday actually. On reflection, can you think of any actual cases that you've dealt with where race was a factor and looking primarily at criminal allegations against the police?

A. Not in the context of criminal allegations of the police. Overnight I reflected and I do remember, at the point where I became the Procurator Fiscal in the east of Scotland, and I was based in Edinburgh, there was a homicide case in Edinburgh at the time where a young man had been killed in Edinburgh and he was the member of a minority ethnic community and had been killed as a result of violence in the street, but that case did not -- although there were issues there of confidence

amongst the minority ethnic community in the investigation, it was not a case that involved an allegation of criminality on the part of the police.

Q. Was that Mr San?

A. Yes, that's correct.

Q. We've heard some evidence in the past about that situation and that was a -- race was a factor in relation to that?

A. So at the point where I became Procurator Fiscal for the east of Scotland, I could be wrong, but I think the High Court case may have concluded by that stage or was just about to take place, so I took up post just at the point where the case was coming to trial or had reached a conclusion. I'm afraid my memory of it isn't significant, but I do remember concerns on the part of his family and in the wider community about the issue of racial violence in Edinburgh.

Q. All right. Thank you. Can we look at paragraph 106. We've obviously considered -- sorry, I should have said 105:

"Mr Bayoh's race was a factor to the extent that COPFS had learned from its experience in the early 2000s of the mistakes which were made in the investigation and prosecutions connected to the death of Surjit Singh Chhokar."

And I think we briefly mentioned that yesterday, so you have an awareness of Chhokar and you've said that Crown Office learned from mistakes made in relation to that case?

A. Yes.

Q. "Two reviews had been carried out and lessons had been learned which led to a strong corporate commitment to promoting equality, diversity and inculsion in all aspects of our work, including our operational activities."

Can you explain to us in relation to lessons learned how that was implemented across the wider organisation?

A. Yes. I'll perhaps start by just explaining that my recollection of the Chhokar case is from the perspective of someone who had been in the organisation for a number of years by that point. I was not directly involved in the cases, but I therefore was very aware, as I think everyone in the organisation was, of this very high profile case and the reviews and the reviews -- there were two reviews as I remember.

One looked at the manner in which the case had been prosecuted and one considered the question of how the organisation had treated Mr Chhokar's family and the Lord Advocate at the time, Colin Boyd, personally led a very significant piece of work across the organisation

to make sure that the lessons from those reviews were understood by all staff, because some of the messages were very difficult to hear. As a member of staff in the organisation, it was a very difficult time to hear what had happened, to understand the consequences for Mr Chhokar's family and to reflect on how you as an individual and the organisation had worked in a way that produced that outcome for his family and so it was direct and individual for all of us.

My memory of it is it consisted in training and issues equalities which I think we talked about yesterday. The principal lesson I've always taken away from it was the learning point that if you treat everyone the same then you are not meeting people's needs and you are not therefore -- by treating everyone the same you create circumstances where people cannot partake or cannot understand and their needs will not be met by the investigation. And so that's been the principal lesson I think that I have taken away from that over a number of years.

It's still a case which is talked about in the organisation. In my position I have spoken about the importance of that case and the reviews which followed to new staff who joined the organisation, because in our induction training to this day we include an element of

awareness raising of the importance of equality to the work that we do that the -- how it is embedded into the framework of the organisation.

As time progressed beyond the Chhokar investigation, we also then adopted wider lessons, for example, from the equalities legislation which was passed by the UK Government and the Equalities Act and so a number of that -- that has led to -- there are a number of structural elements to this. So we have -- we have an equalities board in the organisation which oversees the work that we continue to do to this day. We have a senior equalities champion who is responsible for ensuring that there is an understanding -- the lessons that we learned and the understanding in response to the Chhokar reviews continue to be relevant and known about within the organisation.

Q. Thank you. Following on it says:

"Speaking for my own personal decisions and actions, I was conscious that black, Asian and ethnic minority individuals may not have had confidence in the criminal justice system because of previous mistakes, such as in the Chhokar investigation."

I think that's what you mentioned earlier. You were aware that there might be issues with the Bayoh family not having confidence in the criminal justice system,

for example.

A. Yes, and I think the other element I would add to that on reflection is that their own personal lived experience, prior to any involvement with the crown, may also have caused them to have a lack of confidence in authority and beyond their own individual experience, it is frequent to see media reporting, for example, of issues involving discrimination, be it individual or constitutional, across the UK as well and so it continues to be a high profile issue and something that everyone is aware of.

Q. Thank you.

"It was therefore important that our engagement with the Bayoh family should focus on building and maintaining their confidence in the independence and thoroughness of our investigation. I cannot recall a particular decision in which this was a factor which led me to a particular conclusion or action, but I was aware of it throughout my involvement in the early stages of the investigation."

So it was something that you were conscious of at that time?

A. That's correct.

Q. But as I think you said yesterday, you were involved between 3 and 7 May in this matter?

A. Yes.

Q. Can we move on to 106:

"My view as described in my previous answer is that COPFS had happened great progress since the early 2000s in learning and changing to reflect a better understanding of equality, diversity and inculsion. My experience was that any case in which the deceased was not white would involve consideration of the factors learned from the Chhokar inquiries."

And you have already told us about those factors. Was it your expectation that all members of staff in Crown Office would be in the same position as you and remember learnt lessons from Chhokar and be able to implement those lessons in their daily work?

A. So I think I can answer that question in relation to the group of people with whom I was working in the early days of this investigation and we were all at a relatively senior position in the organisation with a large amount of experience and I think I'm right in saying that all of us were members of the organisation at the time of the Chhokar case and I have no doubt that all of us carried that with us and remembered the key lessons from that.

The challenge in the organisation as time has moved on has been to ensure that people joining the

organisation understand our values, understand the importance of equality and understand something of the history of where we've come from and why we give this priority.

Q. And in terms of the people you were working with at that stage, can you tell us their names?

A. Yes, so I would start with the Lord Advocate, who was Frank Mulholland at the time. He wasn't directly involved in those first few days. I had detailed discussions with Stephen McGowan. I don't remember having personal discussions with Les Brown or with David Green, but I was in email contact in particular with David Green and there were others that -- I think Bernard Ablett attended the postmortem on the Monday.

I don't remember if I had any particular discussions with Lindsey Miller in those first few days, because I'm not sure that in her role she had any direct involvement in the investigation at that time. Most of them my I think was with Stephen McGowan. I think I also would of -- I can't remember whether I did it by email or had a discussion, but I would have also briefed the crown agent at the time, who was Catherine Dyer.

Q. Thank you. Can I go back, we can still see it on the screen, to you say:

"It was important our engagement with the Bayoh

family should focus on building and maintaining their confidence in the investigation."

Can you explain to us how -- what your expectations were and how you envisaged that building and maintaining of confidence to be achieved?

A. It can be very challenging in general terms. You are in contact with people who are suffering a bereavement and dealing with the consequences of that and you are therefore on top of that having to communicate with them in relation to an official investigation, so it can be very, very challenging and there is no simple, I think -- there is no simple way that can be applied as a template to every single case.

It to my mind is about trying to assess and understand the right time to open the communication. It's about the way in which the communication takes place. My view is it should be as much personal as possible. It's not the sort of relationship I think you can just build up through documented communication. There may be a need for some formality and some people may prefer information to be given in writing, but my working assumption would be that as much of the attempt to build confidence should be done on a personal basis.

In some cases, families have legal representatives and that introduces a different element into the

relationship and they prefer contact to come through their legal representative and so you therefore rely on the professional relationship between yourself and any lawyer acting on their behalf. So it can be done in a number of different ways.

I should also say in relation to my description of doing this and meeting the needs of the families that can be your objective, but it's not something that -- you can do your very best to achieve it, but it's not that you can guarantee. We could -- it is possible we could do everything and there may be an aspect of a death that someone feels they just simply -- they remain unsatisfied with the investigation for some reason. I'm talking in general terms here, not about in particular investigation.

I would always want to understand that view and to see if there is anything I could do about it, but sometimes, unfortunately, there are cases, death investigations in particular, where there may be nothing more that we can do as part of our investigation, but the bereaved relatives remain dissatisfied with the outcome of the investigation as a whole.

Q. And would part of building and maintaining confidence also include listening to the family and having regard to issues that are of concern to them?

A. Very much so, and I think that's -- an example of that is what we talked about earlier this morning about the provision of information. In this particular case, there was a desire to instruct separate experts. It seemed to me they did not want to rely on any experts that the crown instructed, so that was an example I think of the sort of listening and taking account of that you've described.

Q. And would it also include, as you said, the family's concerns about race and racial motivation, whether that was a factor in the death? Is that the type of thing you would want to have regard to as part of building and maintaining the confidence of the family?

A. Yes.

Q. Thank you. First of all, can we look at COPFS 04923 and this is an email that you sent to Les Brown on 6 May 2015. So COPFS 04923. And just to go towards the bottom, if we can see where it starts, sometimes these are quite complicated getting to the bottom of the thread.

So you'll see initially there's an email from Irene Scullion, who we have heard is from PIRC, to Les Brown, head of CAAPD, regarding a query and talking about productions. Then if we can move up, he acknowledges that, and then Irene Scullion sends an

email on 6 May 2015; do you see that?

A. Yes.

Q. She sends this to Les Brown:

"See attached press release for your consideration. This is in response to a request from the media in particular The Scotsman and a request if Crown Office is content with this."

Moving up, a response from Les Brown on the same day sent to the private secretary of the Lord Advocate and you were cc'd into this email:

"Please see attached draft press release prepared by PIRC for approval."

And Les Brown says:

"I would prefer that it simply specifies that further forensic examination is being undertaken in an attempt to ascertain the cause of death and that there is ongoing liaison with COPFS and that the family of the deceased are being fully informed on the progress of the investigation."

And then if we can see the response to that. This comes from you:

"Les, can you call me? I have a couple of questions about contact with the family."

And if we can move up, you'll see this is your email on the same day to Les Brown, various people copied in,

and you say:

"Les, I've dropped the Lord Advocate out of this just now. I would like to make some changes to the PIRC line so that it reads as follows."

And then in a different font:

"Inquiries by the PIRC continue into the circumstances leading to the death of Mr Bayoh on 3 May. The postmortem examination has been carried out and further specialist forensic examination continues in order to identify the cause of his death.

"A meeting was held with the family and their solicitor today and they have been updated with the progress of the investigation. Liaison with the family will continue. PIRC investigators are continuing with house-to-house investigations in Hayfield Road.

"The response for information from the local community has been heartening, but it is important that anyone else with information about the incident which occurred ... contact PIRC investigators."

And then if we can move back down to see the end of that:

"Les, can you call me, I have a couple of questions about contact with the family."

And if we can to the response from Stephen McGowan, "call to AA fine". That will be Aamar Anwar?

A. That's correct.
Q. And then if we can look to the top, please, email from you to Stephen McGowan on 6 May 2015:
"Great, well done. He knows we are playing it straight."
So that seems to be a reference to Mr Anwar --
A. Yes.
Q. -- and the call or the conversation that Mr McGowan has had with Mr Anwar. Can I ask about the use of that phrase "he knows we are playing it straight"; can you expand on what you meant then?
A. Yes, I was asked about that in my statement and I just -- I can't quite find the answer now, but I think what I was trying to convey there was --
Q. It could be paragraph 69. Would it help if we put that on the screen paragraph 69?
A. Yes, that's correct.
Q. I think you said you didn't recall the conversation at that stage and I'm wondering if you have had an opportunity to reflect on it. This is where you were asked to comment on the email.
A. Yes, so I'm afraid I still don't recall any of the detail about the phone call and if there was a phone call, I was certainly asking Les Brown to call me to discuss what was going to be said. But the particular

terms that I've used there was in a sense I think my view at that stage that the issues we've just spoken about in terms of being able to build and maintain confidence that from my understanding, and as I've said I hadn't had any direct conversations with Mr Anwar myself, from my understanding it appeared to me the reference to the call being fine was an indication that Mr Anwar understood that we were doing our best to assist him in his responsibilities as solicitor for the family and that there would be hopefully no question of any distrust which the families might have towards authority in general, as I have described it, that they would see that we were doing our best to operate an independent and thorough investigation.

Q. Right. And did you see that as an important aspect of your engagement with the family to have a good working relationship with Mr Anwar?

A. I did, and I was reflecting back to Stephen McGowan that I thought that that was a positive outcome to the phone call.

Q. Thank you. Can we look at paragraph 58 of your statement since we have it on the screen, and this is something noted about language. I think it's towards the bottom. You'll see "I intervened to point out to the officials"; do you see that?

A. Yes, I do.

Q. "To point out to the officials who were involved in this issue that the word 'Imam' appeared to me to be a mistake, perhaps a spelling error on the part of the author. My understanding of the Islamic faith was and is limited, but I understood an Imam to be a faith leader in a community and Imam to refer to an aspect of the Islamic faith. On that basis, I wanted to ensure that the error was acted upon by officials to ensure that the Lord Advocate was aware of it and that it did not feature in any subsequent communications."

Do you understand the importance of accurate language?

A. I do and that was why I was making this point. I did not want the what I regarded as spelling mistake to be perpetrated or repeated by anyone and it came in the context, I think if I remember correctly, that the Lord Advocate was seeking to personally have a meeting, if I remember correctly, brokered through our set-up by with the assistance of a local MSP in the area and the Lord Advocate was offering or responding to a suggestion that he could have a meeting with members of the local community, community representatives, and I had spotted that there was what appeared to me on the face of it to be a spelling mistake and I was concerned that that

might, if it wasn't picked up, could be repeated in any media communication or anything that was said by someone else who would be supporting the Lord Advocate and that that -- it would be a mistake and that would be very unfortunate and could damage the confidence building I described.

So although on one view it was a small point for me to be pointing a spelling error in an email, I regarded it as important that it should be corrected.

Q. And in light of what you said earlier about it's important to deal with individuals and address their specific needs and not to make assumptions that may not meet their needs, can I ask, was it checked with Mr Bayoh's family whether making contact with a religious leader would be something that they would have found helpful?

A. I don't remember whether there was any discussion with the family through Mr Anwar or -- I can't help you with that, I'm sorry.

Q. Right.

A. I just remember that it was -- I don't even know actually whether the meeting took place or not. I just -- this email exchange was about the possibility of a meeting that was about to happen, so I would need to either check records or you would need to speak to

anyone who was there.

Q. Would it have been your expectation that that's something that would have been checked with the family or through Mr Anwar in relation to whether this would be something the family would wish?

A. I think it would be -- it would be important to share with the family that any wider attempt at addressing wider community concerns, I think it would be helpful and proper to share with the family that that would be done.

Q. Thank you. Can I ask you finally about COPFS 05061, which is an email dated 26 May, and I think you were asked about this in answer -- your answer is at 54, but if we go through this I'll -- I think this is -- no, this is -- this is the one that we've just discussed. Sorry, I don't need to go back over that. Could you give me just one moment, please?

A. Of course.

Q. Thank you. Sorry, one last thing, to go back to something that you have already spoken about, and that relates to the incremental approach.

A. Yes.

Q. If the plan was that CAAPD and the head of CAAPD Les Brown would have oversight of the investigation into Mr Bayoh's death and if their intention was to focus

primarily on criminality, what unit or department or organised people in Crown Office would take forward issues of race if that was to be progressed at the same time, would that be SFIU or would it be someone else?

A. The -- to the extent that Mr Brown's team was considering the question of criminality, the wider issues of the investigation, all the aspects of the investigation would have been with SFIU.

Q. All right. Thank you very much. I have no further questions for this witness.

LORD BRACADALE: Thank you. Are there any rule 9 applications? Ms Mitchell. Mr Logue, would you make withdrawing to the witness room, please, for a moment while I hear a submission. Yes, Ms Mitchell.

Submissions by MS MITCHELL

MS MITCHELL: Just two issues, my Lord. One is the question that was asked of the same witness yesterday: Is there any review process to see whether or not the crown complied with their duties as a public body at the time of the death of Mr Bayoh? Again this witness explained that he would expect people to keep up to date with the law, to know it and to understand it, but it's just to see whether or not there was an audit process and whether or not he would consider that that would be a thing the public body should do in these circumstances.

The next issue is about the leaks in Crown Office. The witness gave evidence yesterday as to where he thought leaks or otherwise not leaks may have come from and what I would like to put to this witness is that over the past few years there have been a number of leaks within Crown Office including, and I simply look at a public document the BBC website, a Crown Office employee was found guilty of breaching the Official Secrets Act on 5 September 2014 in respect of I think it was nine breaches of the Data Protection Act and perhaps more recently also that --

LORD BRACADALE: Can I just check what you're saying here. You said he was found guilty of breaching the Official Secrets Act?

MS MITCHELL: Yes.

LORD BRACADALE: And that's separate from issues of data protection, is it?

MS MITCHELL: Well, what I am reading from the -- I'm reading from a website, if the Inquiry will allow me a minute. The article reports that a Crown Office employee has been found guilty of breaching the Official Secrets Act and Data Protection Act by leaking information about court cases and that person was found guilty at Edinburgh Sheriff Court. I can name the person but it doesn't seem relevant for the purposes.

It is just highlighting that there have been breaches of data protection and Crown Office employees giving information albeit it doesn't actually identify who the information exactly was given to.

LORD BRACADALE: Did the witness not say yesterday that in fact he had experience of where employees had been prosecuted and that he cited that as an example of how they did seek to investigate and prosecute people if they had material to do so?

MS MITCHELL: Yes, my Lord, but my question is: What practices and procedures are put in place to ensure that that doesn't happen? What appeared yesterday, my Lord, was that if such a leak were to occur they would simply check with the official -- the official routes that they could, ie with telephones and computers, they wouldn't go as far as taking statements unless they were satisfied that something required them to do and even in the circumstances that we have in this case, that didn't meet whatever test it was to require them to do that so the question is, what is there in Crown Office about that that might give people guidance other than the fact of course they shouldn't be breaking the law. Are there any -- you know, are there any practices or procedures around working out how one goes about those investigations and what the test is to be?

LORD BRACADALE: What was lacking in his evidence yesterday that you would be filling in?

MS MITCHELL: Simply to ascertain whether or not there were or are any practices or procedures that can be implemented. It seemed that it was simply an ad hoc approach that was taken to the internal investigation of this matter. And the test as to when one moved from interrogating the electronic items, which they were allowed to, to asking people whether or not they had been involved in giving any information to anybody didn't seem to exist, it was just decided that it was insufficient for the purposes but I wasn't able to identify what the test was. Given the circumstances of this case we have only a limited number of people knowing about the offence -- knowing about the decision itself, the timing of the decision, the detail supplied about the Lord Advocate's decision-making process, ie the two factors which were cited.

LORD BRACADALE: I would like to adjourn to consider the submissions.

(11.16 am)

(A short break)

(11.41 am)

LORD BRACADALE: I shall allow Ms Mitchell to ask questions on her first matter, but not on the second matter

relating to leaks. I don't think that would assist further. So we can have the witness back, please.

Mr Logue, Ms Mitchell, senior counsel for the families of Sheku Bayoh, has a matter to ask you about.

A. Thank you.

Questions by MS MITCHELL

MS MITCHELL: Just one issue I would like to ask you about and that's in relation to Article 2 and Article 14 and you have explained to us as a body how Crown Office tried to integrate human rights into its learning processes and you would expect people to know and understand these basic human rights and you said you would expect people to keep up to date with perhaps cases or law in that regard.

What I would like to ask you is at an institutional level, was there anybody in charge of assessing or auditing whether or not the crown was complying with its duties as a body in respect of Article 2 and 14?

A. We complete a review in terms of all of our equalities duties, which would include Convention rights compliance, but specifically tailored towards the Equalities Act and that's published every two years. I don't think -- I don't think within that there is specific focus on Article 2 and Article 14. I think it is broadly framed in terms of the Equalities Act and the

range of duties that applied to us, but I can't think of anything else that we have that would match the description that you're looking for.

Q. You spoke about learning lessons and you spoke about the Chhokar Inquiry. Would having such a process in place, a review of the crown's duties under that, on an ongoing basis, on an annual basis, would something like that assist in ascertaining whether or not the crown was complying as a body and whether or not there would be lessons to be learned going forward in respect of whether or not it was complying with its duties?

A. I think because we have sought to mainstream both our general equalities duties and also we have sought, as far as we can, to make sure that Convention compliance is embedded into all of our operational work, rather than have one person review whether the entire organisation with the complexity and the range of people and the volume of work is complying with particular Convention rights, I think we would rely on the leaders in the individual parts of the organisation to identify from the case work that they have control over whether or not they were seeing any indications that there were issues to do with Convention compliance. And that could come through their own supervision of their teams and the case work, it could come through comment from the

Appeal Court, for example, in relation to any particular case or it could come through supervision from our inspectorate, or broader political interest in the organisation. So I think -- I think because we've mainstreamed our responsibilities, I think that's the way we've chosen to deal with this, rather than ask one individual to do the exercise that you're describing, if that helps.

Q. Really what I'm asking more about is whether or not there is any ability for outsiders or someone in Crown Office themselves to assure themselves that particular rights, particularly these rights that we're talking about, but even in more general human rights, are being complied with by the Crown Office?

A. Yes, I think I see the point and I think we rely in terms of external assurance primarily on the work of the inspectorate. Now, of the top of my head I can't -- the inspectorate has been in existence in one form or another for almost 20 years and, in fact, I think the existence of the inspectorate, if I remember correctly, was a specific recommendation from the Jandoo Inquiry. That's why we set up an independent inspectorate which was eventually legislated for. So I think that's the primary method by which we would rely on external assurance that we are performing our work effectively

and complying with any obligations.

Q. And would it assist then if we take up your example of asking the heads of all groups to provide, for example, an assurance or documentation or an end of year document to say here are the issues that have arisen in relation to these things and put them forward for learning purposes?

What I'm really thinking about is it shouldn't take inquiries for the crown to reflect upon whether or not it's obtempered its duties properly. So going forward would there be a way of an institution having a more reflective process to allow reflexion on how work has been done, how it can be done better and to maintain an institutional knowledge bank and history so that people move or go different places you still have that available to you?

A. Yes, no, I understand the point. I think -- I would hope that it's not an organisation that waits for an inquiry such as this in order to reflect and learn. I think the process I have tried to describe whereby we make sure that every senior leader has responsibility for the effectiveness of their teams that requires leaders to reflect on issues such as equality.

So, for example, we have a range of activities across the organisation that maintain a very high

profile of equalities priorities work. So I would expect leaders therefore to be conscious of that as a priority and Convention compliance, although I'm talking equalities work, Convention compliance, particularly in relation to Article 14, is I think part of that. And so I think we would very happily consider anything else that anyone would suggest that we can do to improve how we do that beyond the mainstreaming that I have described.

I would have a reluctance, and I've always had a reluctance, to rely on something that involves -- and I don't mean this to be critical in any way of the suggestion, but something that relies on filling out a particular form at a particular point of the year and gathering forms together just simply to provide a record of -- in my own experience is that's less than effective in terms of building up the sort of assurance that you're looking for in your question.

I think it's much more effective I think to make sure that it's understood on a day-to-day basis that managers have the responsibility. They're understood -- they're trusted by the organisation to act on anything they see and to deal with it accordingly.

Q. Just one last question on that. So would you think that it would be helpful if managers are acting in that way

for there to be some way that they were able to record their views on these issues so that there could be reflection upon them, for example?

A. I can certainly have -- I'm certainly very happy to think about that as a proposal and the best way of doing that but --

Q. Just --

A. If I understand the question, what you're asking about is how does the organisation gather information to show that this has been done and what the lessons have been learned and I think I'm happy to take that on board as something else to reflect about in the way that I mentioned this morning that I thought perhaps specific guidance in relation to Article 14 might be something we need to think about.

MS MITCHELL: No further questions.

Questions by LORD BRACADALE

LORD BRACADALE: Mr Logue, I wonder if you could help me in relation to the last answer that you gave to Ms Grahame. She asked if the plan was that CAAPD and the head of CAAPD Les Brown would have oversight into the investigation of Mr Bayoh's death and if their intention was to focus primarily on criminality, what unit or department or organised people in Crown Office would take forward issues of race, if that was to be

progressed at the same time? Would that be the SFIU or would it be somebody else? And you said:

"To the extent that Mr Brown's team was considering the criminality, all the wider aspects of the investigation would have been with the SFIU."

Now, my understanding of the evidence of Mr Brown was that was not the case, that was not happening, and that the approach was that they would concentrate on criminality and then come back after that, after a decision was made, on the question of prosecution and look at what he described as wider aspects in relation to an FAI, including the issue of race.

Do I take it that you were not aware then that that was the approach that was being taken?

A. No, because I was not involved in the investigation at that stage and so I'm afraid I was offering a view that -- what was a general view on what might happen in terms of structuring the investigation, but I can see that I spoke this morning about sometimes there is challenge in having specialist teams that you have to guard against the risk of an investigation becoming fractured by being divided between different teams and it may be in this case that a decision was taken to avoid that that it was better that Mr Brown's team would continue with the investigation.

LORD BRACADALE: In relation specifically to the issue of race, would you agree that in the circumstances of this case the issue of race might have a bearing on the question of criminality.

A. I would agree that you could not consider the question of criminality without considering the question of race.

LORD BRACADALE: Yes. So to that end, would you be expecting CAAPD to be investigating the issue of race as part of their exercise of investigating criminality?

A. Insofar as it was relevant to the question that they were dealing with. If they were dealing with it in a -- I talked earlier about the number of different issues in that case. If they were dealing with the question of criminality, I would expect them to consider the question of race at that stage. There are other broader questions of race, as it seems to me looking out from the inside of the investigation, that would need to be considered at a -- in looking at different issues in the investigation but, yes, race was an issue that would need to be considered at the criminal stage.

LORD BRACADALE: You would have to look at race in order to ascertain whether there was any evidence that did have a bearing on criminality relating to race.

A. Yes.

LORD BRACADALE: And would you see that as part of a

thorough investigation of the kind that you referred to earlier?

A. Yes.

LORD BRACADALE: And that a thorough investigation of that kind would in turn inspire confidence in a family?

A. That would be the hope, yes.

LORD BRACADALE: Thank you. And thank you very much, Mr Logue, for coming to give evidence to the Inquiry. I'm very grateful for your time. I'm going to adjourn now and you'll be free to go.

A. Thank you.

(The hearing was adjourned to 10.00 am on Thursday, 25 April 2024)

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