

ANNEX

COPFS POST INCIDENT MANAGEMENT

AREAS FOR WITNESS STATEMENT

MS LINDSEY MILLER

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

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

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

Role and experience

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

The Police Investigations and Review Commissioner (“PIRC”)

6. What experience did you have in dealing with PIRC prior to the date you became involved?

7. What is your understanding of the relationship between COPFS and PIRC in the Investigation? What is the interaction between COPFS and PIRC, for example do PIRC require to follow COPFS' direction? To what extent is this interaction the same as that of COPFS and Police Scotland in a criminal investigation?
8. What involvement did you have with PIRC in relation of the Investigation?
9. What was your involvement, if any, in relation to whether anyone from COPFS should attend Kirkcaldy in person on 3 May 2015? Did you consider whether a colleague should attend to assist PIRC in the initial stages of their investigation and to attend meetings with PIRC and Police Scotland in person? What benefit could have been gained by PIRC and Police Scotland if someone from COPFS had attended? Why was Mr Bernard Ablett requested to attend the post mortem examination but no-one from COPFS attended any other aspects of post incident management, for example Police Scotland Gold Group meetings? To what extent was it consistent with normal practice for no-one from COPFS to attend Kirkcaldy in person on 3 May 2015? Insofar as you were involved, please explain the basis for any departures from normal practice.
10. Were you aware that Mr David Green, Head of the Scottish Fatalities Investigation Unit at COPFS, was personally attending a scene following a light aircraft crash reported in the late afternoon/evening of 3 May 2015? Were you involved in deciding that he should attend for the day on 4 May 2015? If so, what was the basis for this decision and why was Mr Green attending this scene but no-one from COPFS had attended Kirkcaldy following Mr Bayoh's death on 3 May 2015?
11. To what extent do you agree with Mr Alasdair MacLeod's summary of PIRC's instructions on pages 1 and 2 of the Briefing Note to Mr Justin Farrell dated 28 February 2020?¹ Please see the PIRC instructions listed at the bottom of this Annex.
12. On page 7 of Mr MacLeod's summary of the Investigation to Mr Farrell,² the following is said to be the views of the precognoscers:-

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

¹ COPFS-02126 (a)

² COPFS-02126 (a)

Were you aware of this view? If so, did you agree with this and in what respects was PIRC's integrity in question? Was this ever raised with PIRC directly? What was their response?

13. What duties are incumbent on you in relation to PIRC's investigation? To what extent did you fulfil these duties? Insofar as not already covered, to what extent was your involvement in the control, direction and guidance of PIRC's investigation consistent with normal practice? Please set out your reasoning for any departures from normal practice. To what extent, if any, was race a factor for any departures from normal practice?
14. Please read the Memorandum of Understanding between COPFS and PIRC dated 10 and 11 December 2013 ("the MOU").³ Were you aware of the MOU during your involvement in the Investigation? Were any further duties incumbent on PIRC or COPFS in light of the MOU? If so, how did you satisfy these requirements on COPFS? In particular, at para 7.5 on page 5, were PIRC instructed to report by way of a Full Investigation Report on the agreed template or an SPR together with full statements and productions? What, if any, timescales were determined in the instruction?
15. The MOU⁴ at para 12.4 on page 9 provides that representatives of CAAPD, SFIU and PIRC will meet annually on a date agreed in order to discuss the operation of this MOU, issues of mutual interest and any requirement to amend the terms of the MOU; are you aware of these meetings taking place? What was your role, if any, in this aspect of COPFS liaison with PIRC?
16. What role, if any, did you have in any quarterly meetings with PIRC? Please set out the dates of these meetings and what, if anything, was discussed that relates to the Investigation.

Lord Advocate

17. What is your understanding of the role of the Lord Advocate in the Investigation? Please outline the dealings you had with the Lord Advocate during the course of your involvement in the Investigation.
18. Please detail the meetings you attended with the Lord Advocate and Mr Bayoh's family. Who was present? What was your recollection of these meetings? What was the outcome of these meetings and what was your understanding of what the Lord Advocate, and COPFS, had undertaken to do?
19. In your experience, in what circumstances does the Lord Advocate meet with the family of a deceased person as part of a COPFS investigation? What difference in approach to Mr Bayoh's family, if any, occurred when Mr Wolffe QC succeeded Mr Mulholland QC as Lord Advocate on 1 June 2016?

³ PIRC-04453

⁴ PIRC-04453

20. To what extent was the involvement of the Lord Advocates in the Investigation normal practice or unusual, in your experience?

Family liaison

21. What is your understanding of COPFS' role in liaison with the deceased's family in deaths cases? How does COPFS' role interact with the role of Police Scotland and PIRC in family liaison?
22. What, if any, duties or responsibilities do COPFS have to the deceased's family during the course of a PIRC investigation? What duties or responsibilities do COPFS have to the deceased's family during the Investigation? How were these duties or responsibilities fulfilled? Was there a handover of family liaison from PIRC to COPFS?
23. What involvement did you have in family liaison in relation to Mr Bayoh's death? What was your involvement, if any, in deciding what to disclose to Mr Bayoh's family?
24. With reference to Mr MacLeod's letter to Mr Farrell dated 28 February 2020 page 3,⁵ the following summary is made in respect of family liaison:

From the outset the Anwar & Co were on an exceptional basis provided with significant disclosure. This disclosure was provided solely to enable them to instruct their own medical experts. The family were also from the beginning invited by the Crown to provide input to the Crown investigation and did so by e.g. suggesting particular lines of enquiry and providing the details of a number of expert medical witnesses some of who subsequently provided reports to the Crown.

Do you agree with this summary? What made the basis of the disclosure exceptional? In this regard, PIRC's Mr John McSporran has stated to the Inquiry the following: "*There was the potential for PIRC FLOs and COPFS to be providing different information to the family and their solicitor, which would undermine confidence in the PIRC FLOs and the overall investigation. In my experience, it was highly unusual for COPFS to provide such information direct to the family and their solicitor during a live investigation, particularly during its early stages.*"⁶ Do you agree with Mr McSporran? Was the disclosure in this manner a departure from normal practice? If so, what was the basis for this departure? To what extent was race a factor in any departures from normal practice?

25. What is your understanding of the role of COPFS' Victim Information and Advice service ("VIA") in family liaison in a death investigation? Were VIA involved in this case? Insofar as you are aware, what was the basis for VIA involvement or non-involvement with Mr Bayoh's family?

⁵ COPFS-02126 (a)

⁶ SBPI-00361 at para 91. Please note this statement has not been shared with you.

Police officers' status

26. What is COPFS' role, if any, in determining if a person's status is that of witness or suspect in an investigation into a death in custody or a death during or following contact with the police? What is the significance for the Investigation of a person's status? In the event that there are no suspects, what is COPFS' role in identifying a suspect or suspects?
27. What was your involvement, if any, in determining if the status of the officers who engaged with Mr Bayoh, or any other persons, was that of witness or suspect in the Investigation? To what extent were your decisions and actions in this regard consistent with normal practice? Was race a factor in any departures from normal practice? In hindsight, are there any aspects of your decision-making or actions in this regard that you would do differently?
28. Can COPFS provide any undertakings to officers involved in a death in custody or death during or following police contact in order to obtain their account of the incident? If so, when are these undertakings made and what is their purpose? Were these undertakings considered in the Investigation?
29. What advantages, if any, would be gained from charging the officers and interviewing them under caution? What disadvantages, if any, would result from the officers being charged and interviewed under caution? To what extent were your decisions and actions in this regard influenced by reporting, or potential reporting, in the media? Is there a reluctance on you or your colleagues' part to instruct the police or PIRC to charge police officers with criminal offences occurring in the course of their duty that is not apparent when dealing with civilians? If so, what is the reason for this?
30. In a letter to Mr Aamer Anwar dated 10 September 2015,⁷ PIRC's Ms Kate Frame set out her response to a concern of the family in the following terms:-

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

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

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

⁷ PIRC-01835(a). Please note this document has not been shared with you.

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

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

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

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

In a further letter to Mr Anwar dated 9 October 2015,⁸ Ms Frame states:-

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

To what extent do you agree with the position Ms Frame has set out? If your understanding of the law at the time differed from Ms Frame, please explain why. What is it about the cause of death that you understand to be essential to reasonable suspicion, or establishment of an offence punishable by imprisonment? How does this interact with COPFS instructing an investigation under Section 33A(b)(i) rather than (ii) of the 2006 Act, being investigation of the circumstances in which a police officer may have committed an offence? In your view was there reasonable suspicion in relation to any of the officers at this point in the Investigation? Was this decision a matter for COPFS or PIRC?

31. The Lord Advocate in his letter to the Chief Constable dated 5 June 2015⁹ sets out the following position:

⁸ PIRC-01849

⁹ COPFS-02844

The discussions between Crown Office officials and Professional Standards Department did not in any event cover investigations conducted by PIRC on the instructions of the Lord Advocate. The concerns about compelling officers suspected of committing a crime to provide a statement only apply to investigations about police officers carried out by the police themselves. They do not apply to PIRC who when investigating allegations of criminality against police officers must make their own operational judgements as to who is a suspect and who is a witness.

Do you agree with the Lord Advocate's point that determining whether a police officer is a witness or a suspect is a matter for PIRC's own operational judgement? How does this fit with what Ms Frame has stated in her above letters to Mr Anwar and your views on what she has explained?

32. In your understanding, is reasonable suspicion a matter of the investigator's decision or objective fact? To what extent is it normal for PIRC to conduct an investigation and prepare a report of findings when there is no reasonable suspicion in respect of any person? To what extent is it normal to draft and submit the Crown Precognition where there is no reasonable suspicion in respect of any person? In light of your answers and to the extent that you were involved, please set out why the Investigation was conducted in the way it was standing the status of the police officers.
33. With reference to the letter from Ms Frame to you dated 22 March 2018,¹⁰ do you agree with Ms Frame's version of events including the meeting where the Lord Advocate provided the instruction to PIRC to consider the officers as witnesses in the first instance?
34. Please read the letter from Ms Frame to you dated 23 March 2018¹¹ which states "*With regard to publicly expressed concerns that the police officers were treated as witnesses, I appreciate that you recall that John Mitchell, the Director of Operations and I met with the Lord Advocate, yourself and Les Brown in the early stages of the investigation, when we discussed at length, the status of the police officers involved. The specific instruction provided by the Lord Advocate at that meeting was that the police officers were witnesses, interviewed as such and in the event that they said anything, which could point to them incriminating themselves, they should be cautioned and treated as suspects at that juncture. That instruction was followed.*" Do you agree with the position that Ms Frame set out? Please explain why.

Ingathering of evidence and analysis

35. What is your understanding of COPFS' role in investigating a death in custody or death during or following contact with the police? How does COPFS' role interact with the role of Police Scotland and PIRC in investigating?

¹⁰ PIRC-02465(a)

¹¹ PIRC-02465(a)

36. After you first became involved in the Investigation, what description of the events leading up to and including Mr Bayoh's death was explained to you? When, how and by whom was this information provided to you?
37. Over the course of your involvement in the Investigation, in what ways, if any, did your understanding of the circumstances of Mr Bayoh's death change from the information initially provided to you?
38. At any stage in the Investigation did you consider that COPFS should investigate potential offences in relation to the drugs Mr Bayoh had consumed, for example identifying and investigating the supplier for culpable homicide or offences under the Misuse of Drugs Act 1971? Would this be a matter for PIRC or Police Scotland to investigate? Who is responsible for instigating this investigation? Please set out the reasoning for your decisions and explain any departures from normal practice.
39. Please read the email from Mr Les Brown dated 24 August 2015.¹² Please set out your recollection of the issue of the understanding of restraint and the discussions surrounding this email. Is an assessment of the officers' credibility and reliability in their accounts a matter to address in the Investigation? If so, are you aware if this issue in Mr Brown's email was addressed in the Investigation? In your view, should it have been?
40. Please read the email from you to Les Brown dated 8 December 2016¹³ whereby you state *"Also I'm not sure how in the collapsing timeframe of a confrontation with an individual suspected to be under the influence of "something" [NFD] there is going to be the opportunity to differentiate between illicit substances in determining how best to de-escalate the situation."* Please explain why you were of this opinion.

Post mortem examination and the release of Mr Bayoh's body

41. What is your understanding of COPFS' role in instruction and attendance at the post mortem examination in the case of a death in custody or death during or following contact with the police? To what extent, if any, does this differ from any other type of death investigation?
42. Please explain your involvement in the post mortem examination and reporting process. To what extent was your involvement consistent with normal practice?
43. Please read the email from the Lord Advocate and Mr Logue's response dated 26 May 2015.¹⁴ Mr David Torrance MSP is said to have spoken with the Lord Advocate and raised the issue of the release of Mr Bayoh's body. The Lord Advocate indicated to Mr Torrance that Mr Anwar may now be giving the go ahead for release of Mr Bayoh's body and that the Lord Advocate offered

¹² COPFS-02035

¹³ COPFS-03997

¹⁴ COPFS-05061

to go to Fife to meet local Imams to explain the process. Were you involved in this decision for the Lord Advocate to visit Fife to speak with Imams? What was the basis for doing so? Was this a request from Mr Bayoh's family or their legal representatives? Mr Logue raised the difference between an Iman and an Imam in his email; what is your understanding of an Iman and do you recall where you became aware of this? Did these meetings take place? If you were involved, what was discussed and explained in these meetings?

European Convention on Human Rights ("ECHR")

44. During the Investigation, were you involved in discussions in any form relating to COPFS' obligations under Articles 2 and 14 of the ECHR in respect of Mr Bayoh and his family? If so, what was your understanding of these obligations and how, if at all, did this affect your approach to your work?
45. To what extent was Article 2 of the ECHR considered in the Investigation in respect of the duties of Police Scotland and PIRC?

Media engagement

46. What is your understanding of COPFS' role in engagement with the media following a death in custody or death during or following contact with the police? How does COPFS' role interact with the role of Police Scotland and PIRC in media engagement?
47. Were you following the media reporting of the matter? To what extent, if any, was your involvement in the Investigation influenced by what was reported in the media? Were you aware if any of your colleagues in COPFS or the Lord Advocate were influenced in their actions and decision-making by what was reported in the media?
48. What involvement did you have, if any, in COPFS' media engagement? This may include discussing media lines with colleagues, liaison with the COPFS media department, direct contact with the media or providing information to colleagues dealing with the media.
49. On 3 May 2015, Police Scotland prepared the following statement¹⁵ and shared it with PIRC and COPFS for approval:-

Death in police custody, Kirkcaldy

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

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

¹⁵ PS02751

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

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

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

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

Anyone with information regarding this incident is asked to contact Police Scotland on 101 or anonymously through Crimestoppers on

[REDACTED]

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

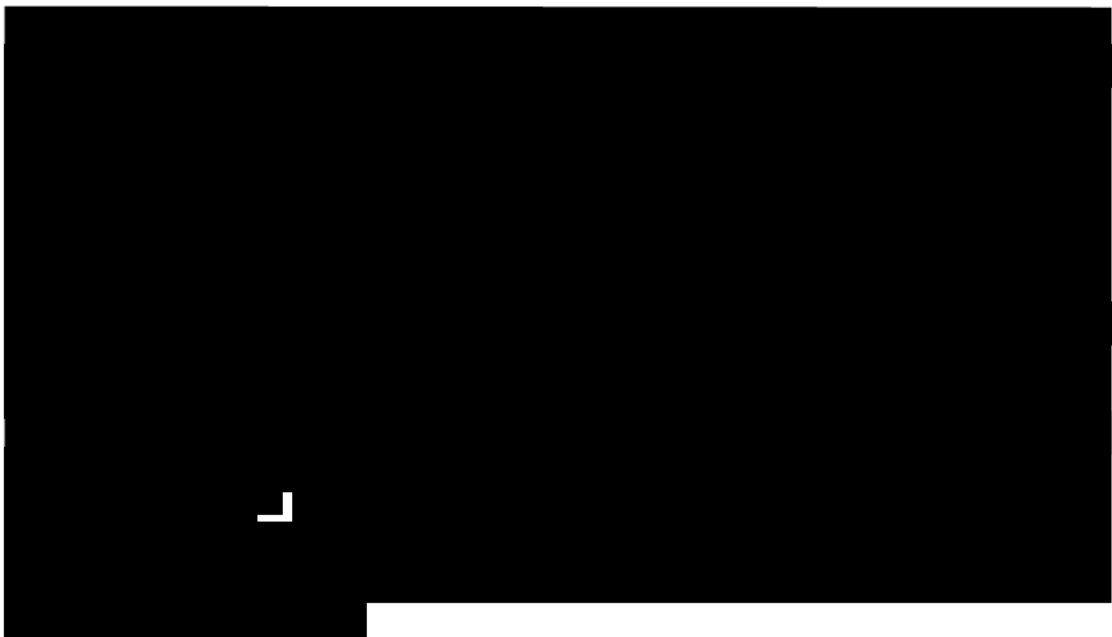
50. What is your understanding of the SPF's role in Police Scotland's media engagement? What is your awareness of the SPF's approach to media engagement? Do you have any comment on the suitability of the SPF's approach? Do SPF seek COPFS' approval before releasing a statement in the same manner as Police Scotland did?
51. In preventing a statement, such as the above draft attributed to Ch Supt Garry McEwan,¹⁶ being released by Police Scotland, did you have any concerns that the police officers involved would be unhappy that no comment was being made in response to the speculation in the media about what happened in the incident? Were you made aware of any concerns on the part of the officers involved? What difference, if any, did this or would this have made to your approach to media engagement? Did you expect the SPF to issue a statement on behalf of the officers following the lack of comment from Police Scotland? If a statement had been made by Police Scotland, do you think this would have prevented, or minimised to some extent, speculation in the media

of what happened in the incident? With hindsight, would you have made different decisions or acted differently in relation to this?

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

53. There is evidence before the Inquiry¹⁷ that on or before 6 May 2015 PIRC: "*...tried to release a statement to media re allegation deceased had been asphyxiated, however the COPFS would not allow the statement to go out.*" Were you aware of this? What was your involvement, if any, in this decision? What was the reason for the decision?

54.



55. Please read the note of quarterly meeting with PIRC dated 16 March 2017 which states "*LRM undertook to discuss with media relations*".²⁰ Please expand on what was discussed with media relations and what the purpose of your role was.

Parallel investigation

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

¹⁷ PIRC-04156. Please note this document has not been shared with you.

¹⁸

¹⁹

²⁰ COPFS-04024(a)

57. Were you aware of witness accounts that investigators provided them with information from other sources and made them feel uncomfortable?²¹ If so, was anything done to address this?
58. Were you aware of a report of findings of the SPF's investigation being sent to PIRC?²² Did you have sight of this report? To what extent, if any, did this report affect the approach of COPFS in the Investigation?
59. Please read page 1 of your notebook²³ which relates to a meeting with the Lord Advocate and the Bayoh Family. Your notebook states "PIRC Report "piece of rubbish". Do you recall who made this comment regarding the PIRC report, and why? Was anything else discussed at this meeting in relation to the PIRC report?

Investigation into the purported leak to the Mail on Sunday of the decision not to prosecute

60. What is normal practice for COPFS in a situation where there is a possible unauthorised release of information about an investigation to the media by a COPFS official? What breaches of COPFS policies and protocols may occur if a COPFS official releases information about an investigation to the media without authorisation? What is usually done in response to the release? What is the difference between situations where the investigation considers that it is a certainty that there is an unauthorised release of information from COPFS and a situation where it is not certain? What is normal practice for determining whether it is a certainty that the release of information is from a COPFS official? What difference, if any, is there between an investigation into the unauthorised release of information and the unauthorised release of documents by a COPFS official?
61. When did you become aware of the Mail on Sunday newspaper article dated 23 September 2018²⁴ reporting the decision of COPFS not to prosecute any of the officers, prior to Mr Bayoh's family being informed? Were you aware of this article prior to its publication? If so, what was done in advance and who made the decisions? What was done on the day of the publication?
62. What was your role and involvement in the investigation within COPFS into the source of the information in the Mail on Sunday's article?²⁵
63. Please read the email chain involving you and Mr Logue dated 24 September 2018.²⁶ You state in your email at 15:14 that you spoke to Mr Logue and you

²¹ For example, in Mr Mark Daly's statement to the Inquiry (SBPI-00119 at para 65) he recalls Mr Nelson telling him that investigators saying they were from the Police Federation entered his home and "*they start dripping poison in his ear about Bayoh*".

²² [REDACTED]
²³ COPFS-04610

²⁴ PS18106

²⁵ PS18106

²⁶ COPFS-03988

discussed how difficult it may be to investigate this purported leak. What do you recall from these discussions and what were the difficulties?

64. [REDACTED] emailed the following to you and Mr Logue at 16:01 on 24 September 2018:-²⁷

Thanks Lindsey, the source is allegedly within the Justice System, but I believe that I would be able to give you a report that would cover the COPFS side with enough to say that checks have been made and we are satisfied that the leak did not come from us. Obviously we can only work with what we have.

If you are in agreement, I can do some background on the reporters social media presence, I would need the names of all our staff who were in both the discussions and the E Mail chain with their desk phone numbers. To start I will check if there has been any traffic either by E Mail or telephone to the reporter or the News desk at the paper. I will check on any friends within social media for any connections.

Whilst I appreciate this is a lot of ticking the boxes it may give the LA a bit of reassurance

At this stage, were you satisfied that COPFS was not the source of the Mail on Sunday's article? What made you sure of this? [REDACTED] proposal is to create a report to show COPFS are satisfied that the leak did not come from COPFS; did you have any concerns about an investigation into the source being concluded before it began? Do you have any concerns in light of [REDACTED] following point: "Whilst I appreciate this is a lot of ticking the boxes it may give the LA a bit of reassurance"? Was the Lord Advocate aware at this point that this is how the investigation into the source was proceeding?

65. Further in the email of 24 September 2018,²⁸ [REDACTED] suggests that he "can do some background on the reporters social media presence", check for email or telephone traffic with the reporters or news desk at the Mail on Sunday and check for social media connections. You reply to this to explain there are HR implications and that you would speak to Mr Logue further the next day. What did you and Mr Logue discuss following [REDACTED] email? What were the HR implications? Which of [REDACTED] suggestions were taken forward in your investigation? If any were not taken forward, why?
- [REDACTED]

66. Mr Logue emailed you at 16:40 on 24 September 2018,³⁰ Mr Logue states:-

My real concern is that this is not the normal sort of "leak" which generates a leak inquiry. We should really only undertake such an

²⁷ COPFS-03988

²⁸ COPFS-03988

²⁹ [REDACTED]

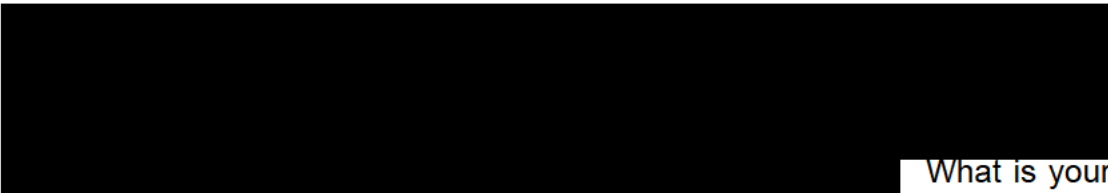

³⁰ COPFS-03988

inquiry where we can establish there has been a leak. Nothing about the story allows us to do that – there are only two possible decisions and the family were aware they were coming to a meeting in ten days to be told the decision. It could easily have been a guess on the part of the journalist, written up as a “leak”.

At that time, were you of the same view that the source of the Mail on Sunday article was not a leak? Did you take sufficient account of the terms of the Mail on Sunday’s article that states “a well-placed source in the justice system”³¹ had provided the information?

67. In your email to Mr Logue at 16:59 on 24 September 2018³² you explain that the matter may be raised at “LOB”. What is this and why would it be raised? What was discussed the next day and with whom?

68. Please read the Lord Advocate’s email to you dated 23 September 2018 and your response on 26 September 2018.³³ The Lord Advocate explains that “Subject to your advice... we will need immediately to commence an investigation into this leak” and you state “At the very least Law Officers will require reassurance that this is being taken seriously by COPFS and that they can have confidence in the discretion of officials and counsel.”; how were these considerations taken into account in the investigation? Your view was that “there is no leak of documents as such at the moment” and that you would oversee whether there has been inappropriate sharing of information within COPFS, suggesting that you were expecting an investigation into a possible leak of information within COPFS but that there was no suggestion of a leak of documents. To what extent was an investigation of release of information but not of documents in line with the investigation that you were carrying out?

69.  What is your understanding of how Mr Bayoh’s family were affected by the publication of the decision not to prosecute the officers and consequently how your actions and decisions in the investigation would be perceived by them? Was this a consideration for the investigation? If it was, please confirm what discussions took place and how you took account of how Mr Bayoh’s family would perceive the investigation and its conclusions. How did this factor into your analysis? Was there a concern that COPFS’ relationship with Mr Bayoh’s family would be adversely affected in the process you adopted in the investigation, or by carrying out an exercise in “ticking the boxes”,³⁴ as  put it?

³¹ PS18106

³² COPFS-03988

³³ COPFS-03571

³⁴ COPFS-03988

70. Please read the email from you to [REDACTED] dated 2 October 2018³⁵ which states *"In terms of the focus on the "leak", I think that we should push back quite hard on that. I think that there has to be a recognition in the meeting that we have had discussion with other parts of government for the purpose of paving the way for planning for every eventuality, including the holding of a public inquiry, and that while you have asked for certain work to be carried out internally for reassurance in terms of the potential for inappropriate information sharing, we should be careful not to characterise it as a leak or an investigation and if there is the opportunity then we should confirm that the feedback from the media is that they are aware that the information did not come from Crown office or Crown officials."* Please explain why you said *"we should be careful not to characterise it as a leak or an investigation"*.
71. To what extent was COPFS response, and your involvement in it, consistent with normal practice? Please explain any departures from normal practice and the reasons why this action was taken. Insofar as not covered above, to what extent, if any, was race a factor in your actions and decisions in the investigation into the purported leak to the media of the decision not to prosecute? In the other long running high-profile investigations in which you stated in your email to the Lord Advocate that a journalist guessed the outcome,³⁶ insofar as you are aware, did COPFS conduct their investigations in the same manner as in this case?

Learning from other investigations

72. Prior to and during your involvement in the Investigation, what awareness did you have of investigations by the police and/or the CPS into race in England and Wales? What learning did you derive from these investigations? Did anything you learned from these investigations result in any change in approach to your involvement in this case compared with your involvement in prior investigations?
73. Insofar as not covered above, to what extent did you consider the approach of the CPS in cases of deaths in custody or during or following contact with the police in which restraint was used? What were you interested in understanding or learning from the approach of CPS?
74. Do you recall any meetings with Ms Deborah Coles? These meetings may have included Les Brown, PIRC and the Lord Advocate. What was discussed at the meetings? What points were taken away from the meetings and how did this affect the Investigation and Precognition? Do you recall any of these discussions with Ms Coles involving issues or concerns with the rigour and independence of the PIRC investigation? Do you recall any discussion with Ms Coles relating to the scope of a potential FAI?

³⁵ COPFS-04140

³⁶ COPFS-03939

75. Please read the advice to ministers³⁷ relating to the Angiolini report which states *“The Angiolini report was published on 30 October 2017 at the same time as the UK Government’s response. The perceived delay in the publication of the report had been the subject of some adverse media comment. Copies of both the report and response are attached at Annexes B & C. The Home Secretary appointed Deborah Coles of the INQUEST group as expert advisor to the Inquiry. She has also advised the family of Sheku Bayoh and has met both Les Brown and Lindsey Miller. Many of the observations and recommendations in the report have relevance to that ongoing investigation.”* What was discussed at your meeting with Mr Brown and Ms Coles? What observations and recommendations in the report were discussed as being of relevance to the Investigation? How did you apply any of these considerations and learning to your involvement in the Investigation?

Race

76. Do you have any experience of racism being a factor to investigate in an investigation relating to:
- (i) a death in custody or death during or following police contact; or
 - (ii) the actions of on-duty police officers.
- If so, please provide details of the year(s) you were involved, how race was a factor, how you investigated the race aspect and the outcome.
77. Insofar as not already covered, to what extent, if any, was Mr Bayoh’s race a factor in any of your decisions and actions?
78. Please read page 6 of your notebook³⁸ which relates to the meeting you attended with the Lord Advocate, Mr Brown and the Bayoh Family. Your notebook states *“Question of race – these elements should be looked at by [P]”*. Please confirm the missing word(s). Who was to look at the elements of race?
79. Your notebook³⁹ at page 6 then goes on to say *“you know me on this race stuff”*. Please explain what this comment was in relation to. Who made this comment, and why. What was discussed at this meeting in relation to the question of race.
80. Prior to your involvement in the Investigation, in your experience, did COPFS routinely consider the role of race when dealing with a death in custody or death during or following police contact of a person who was not white? Has that position changed between the time you were involved in the Investigation and now?

³⁷ COPFS-03998(a)

³⁸ COPFS-04609

³⁹ COPFS-04609

Training

81. At the time of your involvement in the Investigation, what training had you completed that was relevant for your role in the Investigation? Please provide details of the type of training and explain what you can recall from the session.
82. Insofar as not already covered, what training had you completed by or during the time you were involved in the Investigation in relation to equality and diversity issues? Which aspects of this training, if any, were applicable to your role?
83. What guidance or reference materials in relation to race were you aware of being available to you in the time you were involved in the Investigation? Over the course of your involvement, did you make use of any of these materials?
84. What, if any, training do you consider would have assisted you in your involvement in the Investigation? This may be training you have carried out since, training you are aware of but have not completed or training that is not, as far as you're aware, provided by COPFS.

Records

85. Is there a requirement for you to take contemporaneous notes or any other record of your involvement in an investigation? Is there a requirement to retain them? Are there any forms that you must complete in the course of the Investigation for internal record-keeping?
86. What records did you keep in relation to the Investigation, for example notebooks? Were these retained and archived? To what extent was your record-keeping consistent with normal practice? Please confirm the basis for any departures from normal practice.

Miscellaneous

87. In your experience, was this investigation lengthy? Was it unduly lengthy? What is the reason for the length of time required for the case to be reported to Crown Counsel? Could anything have been done differently to reduce the length of time from Mr Bayoh's death to reporting to Crown Counsel?
88. When did you become aware of the possibility that a public inquiry would be commissioned to examine Sheku Bayoh's death and the Investigation? Was anything done or not done in light of this? Was this a factor in relation to the issue of whether a FAI should take place?
89. Insofar as not already covered, to what extent was your involvement, decisions and actions in the Investigation consistent with normal practice? If there were any deviations from normal practice, please explain your reasoning. In your view was race a factor in any departures from normal practice you have identified?

90. Insofar as not already covered, what significant difficulties or challenges did you encounter during your involvement in the Investigation? Would any changes to practice or procedure would have assisted you in overcoming these difficulties or challenges? To what extent were these difficulties or challenges normal or expected in your role? To what extent was race a factor in these difficulties or challenges?
91. In what circumstances, if any, would COPFS share the findings of (i) a PIRC investigation including the PIRC Report and (ii) the Crown Precognition with Police Scotland? Do COPFS have a role in advising or suggesting if misconduct proceedings should be taken forward by Police Scotland following an investigation by COPFS? Do you consider any of your findings in the course of the Investigation, or the findings of PIRC, would be of assistance to Police Scotland if they were shared? Did you or, insofar as you're aware, any colleague share these findings with Police Scotland? Did anyone from Police Scotland or SPA request your findings for the purposes of considering disciplinary action?
92. Please read the email from you the Lord Advocate to David Harvie dated 27 November 2017⁴⁰ which Mr Harvie forwards to you: *"The Lord Advocate been reflecting on the discussion about Sheko Bayoh last week. He has indicated that he is more than a little disappointed that progress with this significant and sensitive criminal investigation has been held up, as he understands it, because the compilation of video and telephone evidence - a version of which he saw many months ago - has not been completed. Equally, he believes it should not take a meeting with him for a programme of work to be put in place with a view to a decision as soon as reasonably practicable. Therefore, the Lord Advocate would like the outcome of that meeting to be recorded, in the form of a plan of work which should, unless there is some significant supervening difficulty, take us to a decision in the timescale discussed."* You reply *"I am not typing any more for fear of breaching the IT code of conduct"*
93. Please state the following in the final paragraph of your statement:-
- "I believe the facts stated in this witness statement are true. I understand that this statement may form part of the evidence before the Inquiry and be published on the Inquiry's website."
94. Please sign and date your statement.

Undernoted list of correspondence comprising instruction to PIRC:-

COPFS-02539	5 May 2015
COPFS-02833(a)	11 May 2015
COPFS-02769 (a)	18 May 2015
COPFS-02769 (b)	18 May 2015
COPFS-02532	1 June 2015
COPFS-04010 (a)	12 June 2015

⁴⁰ COPFS-05280

COPFS-04010 (a)	12 June 2015
PIRC-02759	2 July 2015
COPFS-02768 (a)	24 August 2015
COPFS-02557	7 September 2015
COPFS-02556	5 October 2015
COPFS-02547	10 November 2015
COPFS-02546	19 November 2015
COPFS-02562	13 January 2016 ("2015" appears to be a typographical error)
COPFS-02565	29 November 2016
PIRC-01914	5 October 2017
[REDACTED]	[REDACTED]
COPFS-03744	4 December 2017
COPFS-02781	11 December 2017
COPFS-03820	14 December 2017
PIRC-01951	14 December 2017
PIRC-01953	3 January 2018