

## Transcript of the Sheku Bayoh Inquiry

Thursday, 15 February 2024

(10.00 am)

LORD BRACADALE: Good morning, Mr McSporran. Would you take the oath.

MR JOHN MCSPORRAN (sworn)

LORD BRACADALE: Ms Grahame.

Questions from MS GRAHAME

MS GRAHAME: Thank you. Good morning, Mr McSporran.

A. Good morning, ma'am.

Q. You are John McSporran?

A. Yes.

Q. What age are you?

A. I am 65.

Q. To go through just some of your background experience, you joined the police in 1982?

A. Yes.

Q. You have given a detailed history of your career in paragraph 1 of your Inquiry statement that we will come to in a moment.

A. Yes.

Q. And the Chair can reflect on that at some point.

I think by about 1992 you were a sergeant and then a detective sergeant in Glasgow?

A. Yes.

Q. In 1996 you joined Special Branch?

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1 A. Yes.

2 Q. In 2000 you were promoted to detective inspector in  
3 charge of Scotland's police counter terrorism  
4 surveillance capability and led surveillance operations?

5 A. Yes.

6 Q. In 2004 you were promoted to detective chief inspector  
7 in charge of Special Branch?

8 A. Special Branch Special Operations.

9 Q. You were then seconded in work for the UK Government to  
10 work in Africa, and in early 2005 you were posted to  
11 Sierra Leone?

12 A. Yes.

13 Q. In 2006 you returned from Sierra Leone and you were  
14 promoted to detective superintendent in charge of CID in  
15 Ayrshire division?

16 A. Yes.

17 Q. That included, as I understand it, being SIO in murder  
18 investigations?

19 A. Yes.

20 Q. You had completed the SIO course and the review of major  
21 investigations course?

22 A. Yes.

23 Q. You were later transferred to take charge of covert  
24 special operations targeting terrorist and organised  
25 crime groups, and supporting murder investigations?

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- 1       A.   Yes.
- 2       Q.   You were a technical firearms commander and you were  
3       policy lead for UK policing on data communications?
- 4       A.   Yes.
- 5       Q.   You also undertook sensitive enquiries directed by the  
6       Crown Office into allegations of racism and religious  
7       abuse by members of football clubs?
- 8       A.   Yes.
- 9       Q.   You have been involved with enquiries into allegations  
10      of racism?
- 11      A.   Yes.
- 12      Q.   In 2009 you were transferred to take charge of what was  
13      then a newly established major investigations team and  
14      you were SIO in category A murder enquiries and complex  
15      crimes?
- 16      A.   Yes.
- 17      Q.   You retired from the police in 2012?
- 18      A.   Yes.
- 19      Q.   And then you were recruited, along with another, to the  
20      police complaints commission Scotland and that was the  
21      predecessor to PIRC?
- 22      A.   Yes.
- 23      Q.   PIRC -- it was created on 1 April 2013?
- 24      A.   That is correct.
- 25      Q.   Have you had the chance to watch any of the other

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1 evidence in the Inquiry at all?

2 A. I have.

3 Q. So you will know that in front of you there should be

4 a folder, and this contains a number of documents

5 including statements and suchlike. If you prefer to use

6 hard copies those are there and available for you. But

7 my plan today is to put things on the screen in front of

8 you, and as we are going through pages of documents,

9 they will be on the screen, and if you are happy to do

10 so, you can simply look at the screen and I will ask you

11 questions in relation to what we see.

12 A. Thank you, ma'am.

13 Q. If there is anything that you think we should have or we

14 should have available, we will try and find it. If

15 there is an issue with that or we can't immediately lay

16 our hands on it we will be able to get it at the next

17 break. So if there is anything that you are aware of

18 that you think might help us understand the position,

19 please let me know and we will do our best to get that.

20 A. Thank you.

21 Q. Can we put your Inquiry statement on the screen. This

22 is actually a written response prepared by you in

23 relation what is known as a Rule 8 request from the

24 Inquiry team.

25 A. That is correct.

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1 Q. But to make it easier, for me primarily, I am calling  
2 these Inquiry statements, and this is your Inquiry  
3 statement if I can call it that.

4 A. Yes, ma'am.

5 Q. So your name is at the top, and it is 57 pages long. It  
6 has been signed by you on every page; is that correct?

7 A. That's correct, ma'am.

8 Q. If we look at the last page we will see that it was  
9 signed on 16 August 2023. Your signature is redacted,  
10 you can see it on the screen, we have the final page on  
11 the screen now. So you can see that, signed on  
12 16 August?

13 A. Yes, ma'am.

14 Q. We have redacted your signature, but the copy that you  
15 have just looked at has your actual signature showing on  
16 it.

17 A. That's correct, ma'am.

18 Q. Just above that signature there is a paragraph that  
19 says:

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

24 You knew that when you signed it?

25 A. Yes, ma'am.

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1 Q. As we mentioned a moment ago you retired in 2012 and  
2 were recruited by the then PCCS and then joined PIRC,  
3 when it became PIRC, you were part of it on  
4 1 April 2013.

5 A. Yes.

6 Q. How soon after you had retired from the police did you  
7 join PCCS?

8 A. Approximately three months.

9 Q. There is other evidence available to the Chair that  
10 a number of people were employed prior to PIRC formally  
11 commencing. And part of their role was to help set  
12 things up, and get the team established. Was that part  
13 of what you were doing at the time?

14 A. Yes, initially there was only one person to set up  
15 investigations, that was Mr John Mitchell, who  
16 I understand you will see later. I was the second  
17 person recruited to do that.

18 Q. Sometimes with the microphones, they are not as loud.  
19 Perhaps the person sitting next to you could assist and  
20 maybe bring that slightly closer and we will see if that  
21 helps, because you are quite quietly spoken and everyone  
22 in the room needs to hear.

23 A. Sorry.

24 Q. That is a lot better. That is perfect. Good. We may  
25 be hearing from Mr Mitchell later in the Inquiry that he

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1           helped set up. Was he there when you joined?

2           A. Yes.

3           Q. Thank you. I think in your Inquiry statement you say  
4           that PIRC were funded by the Scottish Government?

5           A. Yes.

6           Q. And there was sufficient monies to set up a team, to  
7           recruit a team of investigators, and that there were  
8           around 20 people or so to cover Scotland?

9           A. Initially there was 20 investigators, a head of  
10          investigations, who was Irene Scullion, and a director  
11          of investigations, John Mitchell. So 22 in all but the  
12          investigations were 20 people.

13          Q. This was a new team, investigations was then brought  
14          into a new organisation called PIRC?

15          A. Yes.

16          Q. And as I understand it, that was partly to take account  
17          of Article 2 of the European Convention on Human Rights?

18          A. Yes. I think I mention it in my statement, that -- and  
19          you went over it previously during the Inquiry, the five  
20          principles for independent investigation when Article 2  
21          and Article 3 are engaged.

22          Q. Thank you. We will come on to that again. Then, as  
23          I understand it, you were initially  
24          a senior investigator with PIRC?

25          A. Yes.

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1 Q. We've already heard evidence from Mr Keith Harrower and  
2 Mr Billy Little, who were deputy senior investigators?

3 A. Yes.

4 Q. And they have said you were more senior than they were?

5 A. Yes, initially there was two senior investigators,  
6 myself, and I think it has been mentioned before,  
7 Mr Casey.

8 Q. Yes. We have heard about Richard Casey, I think known  
9 as Ricky?

10 A. Yes.

11 Q. Then since 2017 am I correct in saying you have been  
12 their head of investigations.

13 A. Yes, since 2017. I retired on 31 August last year.

14 Q. So you were head of investigations from 2017, up until  
15 the end of August last year?

16 A. Yes.

17 Q. And you are now retired?

18 A. Yes.

19 Q. Thank you. I think in your Inquiry statement you say in  
20 your role within PIRC you have directed or overseen over  
21 200 death investigations?

22 A. Yes, I did the maths when I committed it to paper, so  
23 overall 271 death investigations.

24 Q. Is there a distinction between directed and overseeing,  
25 that you could explain to us?



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1       A. Yes, so there are two types of death investigations,  
2       there's Crown-instructed death investigation and there  
3       is a police-referred death instruction. So if Crown  
4       instructs we must investigate. If police refer we don't  
5       necessarily have to investigate, it will be dependent on  
6       the circumstances. So in a police-referred one you will  
7       do an assessment to determine whether you need to  
8       investigate or are required to investigate.

9       So the number of investigations or number of  
10      referrals does not necessarily equate to the number of  
11      actual investigations, because of that assessment  
12      process. So when the referral comes in you will assess  
13      it, you will ask for additional material, potentially  
14      statements, etc, to undertake that assessment to decide  
15      whether you are going to investigate it.

16      So that is the assessment phase. I was engaged in  
17      most assessments, or the signing off of a lot of  
18      assessments. Equally, I would take part in the  
19      investigation or I would lead the investigation. So  
20      there's various stages across that, that is why 271  
21      sounds a large number but the actual number of  
22      investigations would be less than that.

23      Q. Of the 271 how many were Crown-led investigations, which  
24      had to be investigations and how many were referrals  
25      from the Chief Constable?

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1       A. That varies. Initially there were more referrals from  
2       the police. Now I think the majority tend to be Crown  
3       directed. Equally where we get a referral in from the  
4       police, and we think it should be investigated, what we  
5       may do is actually notify Crown and see whether they  
6       then wish to direct. If they don't, we can proceed to  
7       investigate anyway, but a Crown direction always trumps  
8       a police-referred investigation.

9       Q. If the Crown sends you an instruction, you have to  
10      investigate?

11     A. Yes.

12     Q. So of those 271 referrals or investigations, how many  
13      were actual investigations that you were involved in?

14     A. I can't say precisely. What I did do in the preparation  
15      of my Rule 8 statement was examine how many I had been  
16      involved in since PIRC came into being on 1 April 2013  
17      up to 5 May, the date of Mr Bayoh's death, and I think  
18      there was about~... just over 50. That is assessments,  
19      referrals, and investigations. The actual number of  
20      investigations that I had been involved in up to that  
21      point was 22 death investigations.

22     Q. Of those death investigations -- 22 death investigations  
23      that you were involved in, how many involved deaths in  
24      police custody or deaths following police contact?

25     A. I don't think I broke it down in my Rule 8 statement so

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1 I couldn't give you a precise number. Deaths in custody  
2 are twofold, so what most people would understand is  
3 a death in a police cell and then as soon as somebody is  
4 arrested or restrained or whatever they are actually  
5 in effect in custody, and therefore if that person dies  
6 that is a death in custody. Then you've got death  
7 following police contact. So I don't think I broke it  
8 down, I didn't undertake that analysis when preparing my  
9 Rule 8 statement.

10 Q. I appreciate you can't give us a precise figure. From  
11 your recollection now, are you able to give us  
12 an indication?

13 A. Probably half and half, about 50/50. That is a rough  
14 estimate.

15 Q. So of the 22 deaths, about half were deaths in custody?

16 A. Yes.

17 Q. And half were deaths following police contact?

18 A. Yes.

19 Q. And as you have said, were some deaths in cells?

20 A. Some deaths are in cells but it's considered as soon as  
21 a person is arrested or restrained, they are actually in  
22 custody, they are no longer free to go about their  
23 business, so that is the definition of in custody.  
24 Therefore, if the person then dies, that is a death in  
25 custody.

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1 Q. So if around 11 were deaths in custody or thereabouts?

2 A. Yes.

3 Q. Can you, again reflecting back, indicate how many were  
4 deaths in cells, and how many were not?

5 A. That varies year-on-year. Some years you can get four  
6 deaths in police cells, some years you might just get  
7 one. Going back to 2013, 2014, 2015, I couldn't give  
8 you a precise number.

9 Q. Do you have an impression now of whether there were more  
10 deaths in cells than deaths during a restraint or  
11 involving officers?

12 A. I think certainly things have progressed and advanced.  
13 That is one of the roles of PIRC is to identify  
14 challenges, procedural problems, where things can be  
15 improved, and to make recommendations to the police.  
16 Some of that may arise from the investigation of deaths  
17 in custody. So, for example, high risk prisoners are  
18 put on constant observations, we've made a number of  
19 recommendations to improve how constant observations are  
20 undertaken, so that the officers doing the constant obs  
21 don't miss something and place the person at increased  
22 risk because they are a high risk prisoner. So that is  
23 part of the role of PIRC is learning and improvement,  
24 and also making recommendations to Police Scotland so  
25 that they can develop and improve and lessen the risk

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1           that these things happen.

2       Q.   So in that period between 1 April 2013 when PIRC was  
3           created initially and 3 May 2015, so in that period  
4           prior to the death of Mr Bayoh, can you help us  
5           understand how many involved deaths where the police  
6           were involved in a restraint that you had been involved  
7           in?

8       A.   I can't give you a precise figure. I think part of the  
9           challenge when I was doing my Rule 8 statement was going  
10          back over the statistics, and a lot of the statistics  
11          from that period the numbers existed but the actual  
12          circumstances were no longer recorded and that is  
13          the difficulty I have in being precise about this.

14      Q.   All right. Thank you. But you were involved with the  
15          investigation into the death of Mr Bayoh?

16      A.   Yes.

17      Q.   You were also involved at a later date into the fatal  
18          shooting of an asylum seeker in the hotel in Glasgow?

19      A.   Yes.

20      Q.   And you have been involved in other major PIRC  
21          investigations, you have said?

22      A.   Yes, ma'am.

23      Q.   Your statement indicates you were a trained  
24          post-incident manager?

25      A.   Yes.

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1 Q. Was that prior to May 2015 or after?

2 A. Prior to it.

3 Q. Prior to it. And we have heard that some of the PIRC

4 investigators were what they call PIM-aware but you were

5 actually a trained post-incident manager yourself?

6 A. Yes, I went down to an English force, from memory

7 I think it was Bedfordshire, what -- between PIRC and

8 Police Scotland, who run the PIM course, we organise one

9 day's training for PIRC investigators, to raise their

10 awareness of the post-incident procedures, the PIM

11 process.

12 Q. You have attended numerous post-incident procedures

13 following deaths in custody, you said?

14 A. Deaths in custody, deaths following police contact,

15 fatal shootings, other police shootings.

16 Q. Then you have also told us that you were asked to

17 undertake a review of the -- what is now the IOPC in

18 England and Wales and you also investigated the

19 Hillsborough Inquiry?

20 A. The IOPC or the IPCC, as it was at the time, asked PIRC

21 to undertake a review of their Hillsborough

22 investigation to see what lessons or improvements could

23 be made, so myself, John Mitchell, Brian Dodd, and

24 I think Billy Little, we went down. I authored the

25 report which was submitted to the IPCC now the IOPC,

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1 identifying various -- providing recommendations for  
2 areas that they may wish to consider to improve the  
3 investigation.

4 Q. Do you recall when that was?

5 A. I have it in my head it was 2014 but it might have  
6 been ... 2014, 2016, round about that time period.

7 Q. Was it before or after Mr Bayoh's death?

8 A. I can't recall.

9 Q. I would like to ask you about three documents, and you  
10 have mentioned Article 2 and the importance of that to  
11 PIRC.

12 A. Yes.

13 Q. I would like you to look at three documents, which  
14 I have referred Mr Harrower and Mr Little to, so you  
15 probably have seen me do that.

16 A. Yes, ma'am.

17 Q. These will come up on the screen. The first is  
18 PIRC 04446. You will see that this is dated  
19 12 November 2012. It is entitled.

20 "Police Investigations and Review Commissioner.  
21 "Operational model.  
22 "Response to Article 2 investigations."

23 A. Yes.

24 Q. Do you recognise that document?

25 A. I do.

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1 Q. Was this a document that was in place by the creation of  
2 PIRC in April 2013?

3 A. Yes.

4 Q. Had you had any training or guidance in relation to this  
5 document?

6 A. Not so much training or guidance but certainly I had  
7 read the document, and I also researched the stated  
8 cases by the European Court in relation to Article 2 and  
9 Article 3 matters.

10 Q. Thank you. Just in general what was the importance of  
11 Article 2 to PIRC?

12 A. I think it's one of our primary functions because there  
13 have been -- as you are well aware, ma'am, you are more  
14 schooled in the law than I am -- but since 2007 and  
15 before that, there has been decisions by the  
16 European Court that the police cannot investigate  
17 themselves in respect of a death in police custody or  
18 death following police contact. That investigation  
19 needs to be independent, effective. I think the key  
20 decision was from memory *Ramsahai v Netherlands* in 2007,  
21 and in 2009 you had decisions by the European Commission  
22 for Human Rights in respect of Article 3 investigations  
23 and then in 2010 you had the paper you have referred to  
24 throughout this Inquiry, the recommendations and the  
25 five principles from the European Commissioner for



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1 Human Rights.

2 Q. Thank you. Let's go on to page -- page 2, paragraph 5  
3 I am interested in. We have heard some evidence about  
4 this document so I won't take you to every paragraph but  
5 you will see paragraph 5 says:

6 "The Human Rights Act 1998 and obligations imposed  
7 under Article 2 apply equally to the [police,  
8 Crown Office] and PIRC. Where Article 2 is engaged the  
9 Police Service have a duty to ensure that they conduct  
10 themselves in a manner that is consistent with the five  
11 procedural obligations that the courts have held to  
12 exist.

13 These are then listed in bullet points and the first  
14 is:

15 "The investigation must be independent insofar as it  
16 should have no hierarchical or institutional connection  
17 to those implicated."

18 A. Yes.

19 Q. The second is:

20 "The investigation must be effective."

21 Now, these are in bold in this document.

22 A. Yes.

23 Q. You will see that in the paragraph under it, it says:

24 "So far as this document is concerned it is the  
25 first two obligations that are relevant and which must

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1           be observed by the [police] and PIRC under direction of  
2           [the Crown]."

3           We have heard that those were very significant  
4           obligations on PIRC but that wasn't to say the other  
5           three should be ignored?

6       A. No.

7       Q. Do you agree with that?

8       A. I do agree with that. Part of it, if we look at the  
9           fourth bullet point:

10           "There must be a sufficient element of public  
11           scrutiny."

12           Of course, in respect of a Crown-directed  
13           investigation we refer all matters to Crown, we don't  
14           publish those sort of details, so that is  
15           the restriction there. If it is a police-referred  
16           matter we can publish. And involvement of the next of  
17           kin, that is key.

18       Q. Why do you say that is key? Because obviously I didn't  
19           read the final three:

20           "The investigation must be reasonably prompt.

21           "There must be a sufficient element of public  
22           scrutiny."

23           And it says:

24           "The next of kin must be involved to an appropriate  
25           extent."

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1                   Why do you say that is key?

2           A.   Because they are the relatives of the deceased.

3                   Invariably they are traumatised by the death, hugely  
4                   upset, and you need to involve them, you need to inform  
5                   them. That is why we have the whole family liaison  
6                   officers, to support the family of the deceased. It is  
7                   key.

8           Q.   Thank you. Can we look at page 8 now. Just very  
9                   briefly. We see here, "Additional advice for staff".  
10                  This is in a section called:

11                         "PIRC investigators guidance note. Referrals  
12                         involving the police use of firearms."

13                         Page 8 says:

14                         "If the indications are that the guidance is not  
15                         going to be complied with we should explain to officers  
16                         that, in relation to the use of lethal force they should  
17                         record their honestly held belief why they used the  
18                         force and we should make it clear that conferring is not  
19                         necessary when recording their own belief. We must be  
20                         clear that we are not seeking for officers to be  
21                         separated and we understand that they are entitled to  
22                         legal advice."

23                         There is a few matters there.

24           A.   Yes, that is largely coming from the PIP/PIM process.

25           Q.   We have asked some witnesses about what happened to the

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1           officers on 3 May 2015. They were taken back to the  
2           canteen at Kirkcaldy Police Office, but not separated.  
3           There's some guidance within this document about  
4           conferring and separation.

5       A. Yes. The officers -- there has been a debate,  
6       particularly in England and Wales, about separating  
7       officers following death in custody, fatal shootings.  
8       However, I think it has been held that it is very much  
9       a matter for the police. As long as there are processes  
10      in place to ensure that the officers don't confer and  
11      they are given the warning against conferring, and you  
12      are ensuring that integrity of the process, that you  
13      don't leave them alone so they have got the opportunity.  
14      That is part of the PIP process which is -- it's  
15      a police process but you have the post-incident manager,  
16      you have their deputy, you've got support staff or other  
17      officers that come in.

18           I have been involved in -- well, you mentioned the  
19      fatal shooting of the asylum seeker in the hotel in  
20      Glasgow. In that case we had 53 key police witnesses,  
21      so you have got to find accommodation for them, you need  
22      multiple PIMs and support staff, you need multiple PIRC  
23      investigation teams, and right upfront they should be  
24      given the warning against conferring, sometimes that  
25      warning might be broadcast over the radio, sometimes we

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1           are travelling a distance to -- for example, there was  
2           a shooting in Inverness, I was travelling up to  
3           Inverness, I spoke to the post-incident manager,  
4           I said: have you given the warning about conferring yet?  
5           Not yet. Do it. Get it done over the radio. Because  
6           officers were in different stations and record the fact  
7           that it is done.

8       Q. Right. There is a recognition in that paragraph that it  
9       says:

10                "We must be clear that we are not seeking for  
11           officers to be separated and we understand that they are  
12           entitled to legal advice."

13   A. Yes, legal advice is part of the PIM process. Should  
14   they require it.

15   Q. And PIM recognise that that is an option for officers  
16   who may wish to take legal advice?

17   A. Yes. I have been to -- I think sometimes we -- PIP and  
18   PIM become interchangeable, so PIP is the process,  
19   post-incident procedures, PIM is the post-incident  
20   manager. But sometimes people think it is post-incident  
21   management, so it's interchangeable sometimes.

22                So I have been to post-incident procedures following  
23           deaths where there was -- the officers didn't require  
24           and didn't seek legal advice, equally I have been to  
25           post-incident procedures where the officers did seek

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1           legal advice. It is very much a matter for the officers  
2           themselves to decide.

3       Q. It then goes on to say:

4           "Each case will have to be dealt with on its own  
5           merits, the underlying principle will be to ensure that  
6           our investigation is as effective as it possibly can  
7           be."

8           That is one of the five principles that you want to  
9           carry out?

10      A. Yes.

11      Q. Not just an independent investigation, but also  
12      effective or adequate?

13      A. Yes.

14      Q. "If investigators are confronted with an unwillingness  
15      to comply the relevant senior PIRC representative should  
16      be consulted."

17           So there is a recognition that there might be some  
18      unwillingness on the part of officers but the senior  
19      PIRC representative should be consulted?

20      A. Yes. The only example we have is the case of Mr Bayoh's  
21      death, in all other cases we have been involved in the  
22      officers have always given initial accounts or detailed  
23      statements. This is the only one that that has not  
24      happened.

25      Q. Is that your experience throughout your career?

## Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. We've heard that the PIP, the process, envisages  
3 different steps and procedure, and one of them is  
4 initial -- basic facts?

5 A. Yes.

6 Q. Then initial accounts, and then a more detailed  
7 statement which can be taken around 48 hours later,  
8 after the event?

9 A. Yes, and I think that comes from studies to show that  
10 when you have a critical incident, when you are involved  
11 in let's say a fatal shooting or something like that, to  
12 a certain extent sometimes you get tunnel vision because  
13 you are focusing on the emergency in front of you, and  
14 your memory immediately after that is just the focus on  
15 that critical area. But I think studies have shown that  
16 with the passage of 48 hours a lot of memory of other  
17 events comes back and that is why you want the detailed  
18 statement 48 hours later. The initial account is very  
19 much to allow the progress of the investigation, so the  
20 first thing is you have got sit rep, that is stage one.

21 Q. Sorry, I didn't catch that?

22 A. Sit rep, situation report. A lot of times that from the  
23 STORM log, and I think we have heard about STORM logs.  
24 So that is the situation report and the PIM will obtain  
25 that. Next thing is a PIM basic facts. So the

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1 post-incident manager will get an account from one of  
2 the officers, preferably not the key officer that was  
3 involved in the use of force or the discharge of  
4 firearms but one of the other officers, trying to get  
5 basic facts as to what occurred. And then initial  
6 accounts from the officers or staff. The initial  
7 accounts are just very brief, usually no more than one  
8 or two pages, just about. For example: I went, I saw  
9 I did, and this is my honestly held belief of my reason  
10 to use force, of the necessity to use force. And it's  
11 as basic as that.

12 That then gets passed to, for example ourselves, to  
13 allow us to progress the investigation, therefore we  
14 have an understanding broadly of what has occurred. And  
15 that gets handed to us. And then with the passage of  
16 48 hours, the officers supply what they call their stage  
17 four accounts which is their detailed accounts.

18 Q. Thank you. So going back for a moment to basic facts,  
19 you have said it wouldn't be the officers directly  
20 involved. Could that be, for example, the  
21 police sergeant in charge of the response team, who  
22 would go and maybe it's the response team members who  
23 carry out a restraint or use force, but he was not -- he  
24 was not directly involved with the restraint and the use  
25 of force?



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1       A. Yes. So broadly if somebody is hands on, for want of  
2       a better expression, or the persons that has discharged  
3       the shots, the fatal shots, etc, you want somebody that  
4       has not been hands on or discharged the fatal shots.  
5       That usually comes from one of the other officers that  
6       has been there and has observed what has happened.

7       Q. So someone who was maybe standing by and observing, but  
8       not directly involved with what is going on in relation  
9       to the incidents of force?

10      A. Yes.

11      Q. And initial accounts, would the process envisage that  
12      they would be taken from all the officers involved?

13      A. Initial accounts are usually obtained from what they  
14      term key police witnesses, so that is officers that are  
15      directly involved in the incident. An officer that is  
16      not directly involved but may have played a peripheral  
17      role, they are not held to be a key police witness, they  
18      are not part of the PIP process therefore operational  
19      statements could be requested from them immediately, and  
20      that would be full operational statements.

21      Q. So in this scenario involving Mr Bayoh, we have heard  
22      that there were nine officers who attended the scene but  
23      we also heard about other officers who arrived slightly  
24      later, towards the end of the incident, one was  
25      a detective sergeant and one was a detective constable?

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1       A.   Yes.

2       Q.   So they were at the scene but not directly involved with  
3       the restraint itself?

4       A.   I think also Sergeant Maxwell, who turned up, he was the  
5       shift sergeant -- Temporary Sergeant Maxwell as he was  
6       at the time. But he didn't go hands on, therefore  
7       preferable because the two detectives that turned up  
8       didn't see the initial -- what had happened, they turned  
9       up slightly afterwards. So potentially Sergeant Maxwell  
10      would be the best placed to provide that, the basic  
11      facts. Because from my recollection, six officers went  
12      hands on with Mr Bayoh, you had PC Short injured and  
13      going to hospital. So probably Sergeant Maxwell would  
14      be the best person to give the PIM basic facts or to  
15      obtain the PIM basic facts from.

16      Q.   In terms of initial accounts, key officers, would that  
17      be the officers involved in the restraint?

18      A.   Yes.

19      Q.   And then detailed accounts or statements from everyone  
20      present, would that be envisaged at 48 hours?

21      A.   Yes. Of the nine principal officers, you would expect  
22      detailed statements within -- well, with the passage of  
23      48 hours. DC Connell and DS --

24      Q.   Davidson?

25      A.   -- Samantha Davidson, I think they gave accounts,

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1 detailed accounts, shortly thereafter, because I am  
2 aware DC Connell provided a statement to us, I think his  
3 statement was dated the 4th, so that is the next day.  
4 He is the one that actually recovered the knife, but he  
5 hadn't been hands on or involved in the restraint or the  
6 incident therefore he provided an operational statement.  
7 I don't know what is -- the Inquiry reference number is  
8 but from memory it was statement 22A, taken by PIRC  
9 during the course of the Bayoh investigation.

10 Q. We have those numbers but we use our own numbers  
11 unfortunately. Thank you. Let's move on from that  
12 document that we see on the screen and I would like to  
13 refer you to another document please and this is  
14 a memorandum of understanding which is PIRC 04453. If  
15 we can move up the page we see:

16 "Memorandum of understanding between Crown Office  
17 and PIRC."

18 If we go to the very end of this document first of  
19 all -- sorry, there are appendices at the rear, so if we  
20 can move back up, please. We will see that this  
21 document was signed, the actual signatures are redacted  
22 but it was signed for PIRC on 10 December 2013, and  
23 signed on behalf of the Crown Office on  
24 11 December 2013. So this document had been signed and  
25 agreed prior to the events in May 2015?

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1       A. Yes. It has been revised a few times, and developed as  
2       familiarity with PIRC and our role -- and our role has  
3       expanded so it has been revised over -- a few times.

4       Q. We understand this is the document that was --

5       A. In force at the time.

6       Q. -- in force in May 2015?

7       A. Yes, ma'am.

8       Q. Let's go to the top. We noticed the first page. If we  
9       could start looking at the next section. Memorandum of  
10      understanding, and you will see on page 2 which we are  
11      on, if we move down:

12             "Role of Crown Office~..."

13             And then it says:

14             "PIRC statutory responsibilities."

15             I think you have spent some time in your Inquiry  
16      statement explaining the statutory responsibilities and  
17      how the statute worked in practice?

18      A. Yes. The legislation, I think as I have said later on  
19      in my Rule 8 statement, is incredibly complex and not  
20      easily understood. As you are aware, dependent on the  
21      nature of the referral to PIRC, if it comes from Crown  
22      we have certain powers, if it comes from the police we  
23      have slightly different powers. And it is difficult to  
24      disentangle all this because it is really quite complex.

25      Q. We see at the bottom of that page, if we can just move

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1           down slightly, you can see that we have heard there can  
2           be referrals from the Chief Constable?

3       A.   Yes.

4       Q.   And there are Crown-led investigations?

5       A.   Yes.

6       Q.   And we can see here -- if we can just see the numbers,  
7           it's section 2.1 of this document and it refers to  
8           section 33A of the 2006 Act, and if we look at (b) this  
9           relates to where it's direct -- where PIRC is directed  
10          by the appropriate prosecutor, so this would be the  
11          Crown-led element of the statute?

12      A.   Yes.

13      Q.   And there are two paragraphs. The first we can see here  
14          which is (b)(i):

15                "To investigate any circumstances in which there is  
16                an indication that person serving with the police may  
17                have committed an offence."

18                I think that is what other witnesses have described  
19                as investigating alleged criminal allegations or  
20                a potential crime?

21      A.   That is right.

22      Q.   So that is Crown-led, into a potential crime?

23      A.   Yes.

24      Q.   And then (b)(ii), which others have referred to, is  
25          about investigating:

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1                    "... the circumstances of any death involving  
2                    a person serving with the police~..."

3                    And that is an investigation into circumstances of  
4                    a death --

5                    A. Yes.

6                    Q. -- where there has been police involvement?

7                    A. Yes.

8                    Q. So (b)(i) is the criminal allegations and (b)(ii) is  
9                    investigating circumstances?

10                   A. Yes.

11                   Q. And I think you have spent time explaining that in your  
12                   statement?

13                   A. Yes, ma'am.

14                   Q. Thank you. So again, you are familiar with this  
15                   document, are you?

16                   A. Yes.

17                   Q. Again, was this something that was trained to PIRC  
18                   investigators when PIRC came into -- when this document  
19                   came into force or is it something that you were  
20                   expected to read and understand?

21                   A. I am not sure whether it was trained but certainly staff  
22                   were informed of it, they were expected to read it. It  
23                   is the basis of our agreement between PIRC and Crown.  
24                   Also to a certain extent it explains the legislation,  
25                   the different types of investigation we do, so

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1           investigative staff would need to be aware.

2           Q.   If we stay -- can have a look at page 4, section 5.1.

3           This sets out the role of PIRC in investigations and  
4           talks about the different powers and 5.2 makes it clear  
5           that:

6           "During the course of an investigation PIRC  
7           investigators will have the powers of a constable."

8           A.   Yes.

9           Q.   But we have heard that unlike a constable those powers  
10          will end at the end of the working day?

11          A.   Yes.

12          Q.   It sets out at 5.3 that:

13          "The PIRC is independent from any policing body  
14          operating within Scotland."

15          A.   Yes.

16          Q.   And I think Mr Little gave evidence that it is not just  
17          Police Scotland that you are potentially investigating,  
18          there's other bodies that you could investigate?

19          A.   That's correct, so Ministry of Defence Police, British  
20          Transport Police, Civil Nuclear Constabulary,  
21          Her Majesty's Revenue and Customs, Borders, Immigration;  
22          anybody that really has enforcement or policing powers  
23          comes under the remit of PIRC in Scotland. So you have  
24          got these national agencies, the National Crime Agency,  
25          for example, they are operating both sides of the border

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1 but if the incident happens in Scotland to do with these  
2 agencies, PIRC investigation. If the incident happens  
3 in England or Wales, then it is IOPC that investigates.

4 Q. Thank you. Then 5.4:

5 "In order to provide effective investigations,  
6 particularly those requiring specialist skills, the PIRC  
7 may second officers, or members of staff from police  
8 forces operating in Scotland or elsewhere within the UK.  
9 Officers on secondment will be directly supervised and  
10 instructed by senior PIRC investigators during the  
11 course of investigations. Any decision to second  
12 specialists will require careful consideration about  
13 independence in particular in relation to obligations  
14 under ECHR Article 2 and 3 investigations."

15 A. Yes.

16 Q. So we have heard that it is envisaged that PIRC may not  
17 have all the skills that are required in any individual  
18 investigation, but you have the authority to second the  
19 people who do have the skills?

20 A. We have -- we have never seconded anybody to ourselves  
21 from a policing body. When we were setting up PIRC we  
22 certainly had a seconded officer but that officer's  
23 secondment ceased before PIRC came into being. But we  
24 have never seconded anybody because, as you point out  
25 here, there is potential -- particularly because it



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1           is -- you know, the largest policing body in Scotland is  
2           Police Scotland, and therefore when it's an Article 2  
3           matter potentially there is a real conflict there  
4           seconding people from Police Scotland to PIRC.

5           What we can do is direct them to undertake certain  
6           functions on our behalf, particularly you've got the  
7           geographic nature of Scotland and PIRC covers the whole  
8           of Scotland, 24/7, 365. We have had incidents happening  
9           in the Orkney Islands, Shetland Islands, the  
10          Outer Hebrides, Thurso, Inverness. It is going to take  
11          us a number of hours or a day to get to those locations,  
12          therefore you cannot simply freeze everything. You may  
13          have to task people in Police Scotland -- for example  
14          scene managers, various other specialists -- to  
15          undertake functions on your behalf. You will examine  
16          what they have done once you get there to make sure they  
17          have ticked all the right boxes, certainly a few times  
18          when we are travelling to an incident you are speaking  
19          to the specialists, and saying: look, have you done  
20          this, have you done that, can you do this on our behalf?  
21          Because you simply can't hit the pause button due to the  
22          practicalities until we get there, so we can direct them  
23          to undertake functions on our behalf and we can then  
24          check that they have done that effectively.

25          Q. So you or PIRC can take steps to preserve the evidence

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1 in relation to any aspect of an investigation, pending  
2 your arrival, depending on the geographical limitations?

3 A. Yes. If it is a death in custody in a police cell, you  
4 can just lock down that cell. We have had before where  
5 we have locked down an entire wing of a cell block. But  
6 if the death in custody occurs outside in the street,  
7 for example, the practicalities of freezing everything  
8 at that point just don't exist. You know, you've got  
9 a person dead in the street, you are not going to wait  
10 five, six, seven, eight hours for us to turn up, you  
11 need to move on that.

12 Equally there if there's evidence lying around,  
13 sometimes it is practical it protect it by putting  
14 a cordon around the scene. But equally you've got to  
15 take into account weather conditions. If you take  
16 for example the death of Mr Bayoh, that Sunday morning  
17 it was raining heavily, so the practicalities of  
18 protecting a scene when you've got inclement weather,  
19 you have really got to move quite quick on it and we  
20 will then come along later on and just check what they  
21 have done.

22 Q. Is there an expectation in the situation you are  
23 describing that police officers will preserve the  
24 evidence in a forensic way or that they will install  
25 tents over items, or do you have any direction to

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1           provide in relation to that?

2           A. We do have some direction. I go back to an example we  
3           touched on earlier, which was the fatal shooting of the  
4           asylum seeker in the hotel in Glasgow. After the  
5           shooting occurred his body was taken out, it was taken  
6           to a bus stop effectively, where they tried medical  
7           intervention to save his life. That failed, and that  
8           area was then protected until ourselves and  
9           Police Scotland scene managers could get to it and the  
10          body then got transported to the mortuary. So sometimes  
11          it is practical to do it, other times it not practical.

12          Q. In terms of directing the way that a scene is preserved,  
13          is that something that PIRC have input into?

14          A. Yes. Sometimes scenes can be quite complex. And there  
15          can be -- I don't know whether it's the right choice of  
16          phrase, the division of the spoils. So for example --  
17          and I will go back to the shooting of the asylum seeker  
18          in the hotel in Glasgow. He had stabbed five people.  
19          Up to that point -- now we can't investigate the  
20          actions -- his actions in stabbing those persons. That  
21          is an enquiry for Police Scotland. Police Scotland then  
22          discharged Tasers and discharged firearms, we can  
23          investigate those incidents because we are investigating  
24          the actions of the officers. But frequently what you've  
25          got is -- sorry about that, I keep hitting that, I speak

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1           with my hands, so forgive me.

2           But sometimes those scenes are like dual scenes, so  
3           we are investigating one aspect of what happened at that  
4           the scene and the police might be investigating another  
5           aspect, so what you have got to do is get the scene  
6           managers to co-ordinate, and sometimes prioritise who is  
7           doing what first to achieve the best outcome.

8       Q.   So there can be parallel investigations, if you like,  
9           going on at one scene?

10      A.   Yes.

11      Q.   One aspect being investigated by the police, the other  
12           aspect being investigated by PIRC?

13      A.   Yes, and that happens more than you would think. There  
14           was a shooting up in Inverness, I think it is -- the  
15           whole thing is concluded now, the person has been -- not  
16           so much found guilty but remanded to the state hospital.  
17           But you have a whole series of incidents leading up to  
18           the shooting by the police so the police will  
19           investigate the series of incidents leading up to it and  
20           we will investigate the shooting. But both occurred at  
21           the same location so you've got a dual location to  
22           examine.

23      Q.   Does that involve communication, effective communication  
24           between the police and PIRC in those situations?

25      A.   Yes.

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1 Q. Can I go back to the paragraph we were looking at, 5.4.

2 You said that PIRC have never seconded anyone but we've  
3 also heard that PIRC may require to rely on support from  
4 Police Scotland officers, and you have talked about  
5 a scenario where geographically PIRC are going to take  
6 some time to arrive at a scene and officers will assist  
7 in preserving the evidence at that scene.

8 A. Yes.

9 Q. Can you explain a little about the rationale between --  
10 the difference between seconding someone to PIRC, which  
11 has never been done and there are concerns about  
12 independence, but relying on the support of police  
13 officers?

14 A. I think because you are then checking their work, so you  
15 have -- particularly outwith office hours, for want of  
16 a better expression, we have small teams on call  
17 therefore you don't have all the specialisms. Therefore  
18 you are asking for the assistance of Police Scotland to  
19 deploy some of their specialists, but you are then  
20 checking their work. You might be speaking to them as  
21 you are travelling towards that location, when you get  
22 there you say: what have you done? I have done X, Y, Z.  
23 Okay, can you also do A, B and C.

24 So you are checking that that work and making sure  
25 that they have completed that task. You would certainly

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1 not be asking one of the principal officers involved to  
2 do anything like that. It would be staff brought in  
3 that were not involved in the incident itself.

4 Q. Would that be for a minimum period or a distinct task  
5 rather than bringing them into PIRC on secondment?

6 A. You wouldn't bring them in on secondment. Usually it is  
7 within the first 24/48 hours they are doing those tasks  
8 on our behalf because we simply don't have the  
9 resources, and we need to muster resources, we need to  
10 get them to the location. There is a lot of logistics  
11 involved so if you are going up to Inverness for  
12 a large-scale enquiry you simply just don't go. If you  
13 know it then it's like we need to book hotels, we need  
14 additional vehicles, staff need to take a change of  
15 clothes, there's logistics involved in trying to achieve  
16 that, which is also another factor that comes into play.

17 Sometimes you might be on the road and you  
18 just: right, fine I am going and you will travel and it  
19 might take three or four hours to get there. You then  
20 might manage the initial response or oversee what the  
21 police are doing, knowing that the next morning you are  
22 going to have additional officers, additional PIRC staff  
23 in who have those specialisms so you are trying to  
24 manage that in that interim period by gaining assistance  
25 from specialists within the police.

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1 Q. So is it envisaged that although you may require to  
2 initially rely on support from the police, whether  
3 managing the scene or holding the fort if you like until  
4 PIRC arrive, is that seen as a temporary arrangement,  
5 temporary support from Police Scotland?

6 A. In most instances, yes. That is why PIRC has employed  
7 people with various specialisms, so previous experience  
8 in scene management, you spoke to Mr Lewis, he worked in  
9 roads policing, he was involved in road crash and deaths  
10 investigations in that regard, people with firearms  
11 experience, people with experience of custody, family  
12 liaison. So people with those experiences. But  
13 we don't have all the specialisms, it's a small  
14 organisation, so for example we can't undertake cyber  
15 matters, we just don't have that capability, so you will  
16 rely on cyber crime in Police Scotland because you  
17 simply don't have those specialisms, we are not large  
18 enough and we are not funded to do that.

19 Q. Any other areas where you don't have specialist staff to  
20 assist?

21 A. I think because of our restricted role in undertaking  
22 death investigations or other such things, most of the  
23 specialisms that we require we have. There's all sorts  
24 of diverse specialisms within the police because they  
25 have so many other purposes other than PIRC, therefore

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1           they have a lot of additional specialists. And that --  
2           we may never get involved in that type of investigation.  
3           So we focus on the key areas that matter to ourselves,  
4           which is the ones I have highlighted.

5       Q. Thank you. Then going back to this memorandum, do you  
6       see 5.5 on the screen. It says:

7           "PIRC investigations are intended to comply with the  
8           five principles of effective investigation outlined by  
9           ECHR, namely; independence, adequacy, promptness and so  
10          far as possible public scrutiny and victim involvement."

11      A. Yes, ma'am.

12      Q. So again this is mirroring the previous document we  
13      looked at with the five principles?

14      A. Yes.

15      Q. So that is integral to the work of PIRC and the  
16      investigations that are carried out?

17      A. Yes.

18      Q. Is that something that is trained to staff when they  
19      join PIRC?

20      A. I don't know whether you would actually call it trained  
21      to staff because we have an induction process for all  
22      new staff but that is largely to teach them the way PIRC  
23      operates, HR, all that sort of stuff. But if they join  
24      investigations if they do not have previous experience  
25      certainly we walk them through our processes and the



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1 reasons for it. A lot of it becomes on-the-job  
2 training, but they certainly become aware of it very  
3 quickly.

4 Q. Thank you. Can I ask you to look at a third document,  
5 please, which is PIRC 04438. There is no date on this  
6 actual document, it's not signed but the Inquiry has  
7 been advised by PIRC that this was dated 17 June 2014.  
8 So prior to Mr Bayoh's death and after PIRC had been  
9 created. You will see on page 1:

10 "This paper [was designed] to take cognisance of  
11 the report by His Honour Judge Keith Cutler  
12 Assistant Coroner on the 29th May 2014 in respect of the  
13 shooting of Mark Duggan by the Metropolitan Police."

14 Do you see that?

15 A. Yes.

16 Q. You do recognise this document?

17 A. I think so. I don't know who authored it. It might  
18 even have been me.

19 Q. All right.

20 A. Because it certainly -- I was aware of the Duggan thing  
21 and I had researched the decision in Duggan. I can't  
22 remember who drafted it but I certainly wrote quite  
23 a few of these. Whether I wrote this one I don't  
24 remember, but I certainly remember this report itself.

25 Q. Excellent. So there has been a number of concerns

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1 raised by the IPCC and it says in the final sentence:

2 "The purpose of this document is to identify  
3 learning opportunities and give clear guidance of what  
4 is expected of the PIRC Investigation Team following  
5 such a shooting by officers of Police Scotland."

6 So this was a document designed to identify learning  
7 opportunities and give guidance. Was that something  
8 that was done in PIRC before May 2015, documents were  
9 prepared for that purpose?

10 A. Yes. Because sometimes I think we described it as  
11 learning the lessons so if there was a significant case  
12 from England and Wales that could potentially occur in  
13 Scotland we would learn those lessons and we would  
14 cascade some of that learning. But equally there was  
15 the transition to post-incident procedures which prior  
16 to 2014/2015 were solely for firearms incidents in  
17 Scotland. There was that gradual transition to them now  
18 being applied to potentially any serious incident,  
19 particularly a death. So I think the first time it was  
20 used or attempted to be used was in relation to  
21 Mr Bayoh's death, but prior to that it was only for  
22 police shootings.

23 Q. Thank you. The next section is, "Investigative  
24 function". And again this talks about the initial  
25 stages after the discharge of a police firearm. It

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1           says:

2           "... Police Scotland must in line with the  
3           European Convention on Human Rights ... Article 2, take  
4           all appropriate steps to reduce any possible risks of  
5           the investigation being undermined by any deficiencies  
6           such as failing to secure all available evidence."

7           Then it says:

8           "The responsibility for securing evidence and taking  
9           appropriate action in an Article 2 investigation remains  
10          with Police Scotland until such time as the PIRC has  
11          taken over conduct of the investigation."

12          Is that what you were talking about a moment ago --

13       A. Yes.

14       Q. -- where police continue to preserve a scene for the  
15       purposes of preserving the best evidence, until PIRC  
16       arrive in the location and are able to take control?

17       A. Yes. Sometimes if you've got complex scenes you lock  
18       down the scene, you will ask that police officers stand  
19       by on the cordon, lock it down where potentially  
20       possible. So, again I will use the example of the fatal  
21       shooting in the hotel in Glasgow. That scene was locked  
22       down because it was going to be a complex scene to  
23       examine. We had to cut walls apart trying to recover  
24       bullets, etc, so there was a whole range of complexities  
25       that -- and that could take place over a number of days

## Transcript of the Sheku Bayoh Inquiry

1           so if you can lock it down and secure it sometimes that  
2           is the best approach, sometimes it is not always  
3           possible.

4       Q.   I am interested in this phrase:

5           "... until such time as the PIRC has taken over  
6           conduct of the investigation."

7           Is that -- that point where PIRC take over conduct  
8           of the investigation, is that from the moment PIRC  
9           receive the call from Crown Office saying: do  
10          a Crown-led investigation, or is it from the point that  
11          PIRC arrive at the scene?

12       A.   No, it's from the point that we get the instruction from  
13          Crown.  Equally, if we go into the practicalities  
14          sometimes what will happen is the police will refer  
15          a death or serious incident to PIRC, we might examine  
16          it, we might notify Crown, and Crown say: fine, we're  
17          now directing to you investigate.  Equally we might go  
18          back to police and say: Crown are not directing us but  
19          we have decided to investigate.  So it's at the point of  
20          notification to the police, not at the point of our  
21          arrival.  At the point of notification this is now  
22          a PIRC investigation.

23       Q.   And that is in a referral scenario.  In a Crown-led  
24          investigation, is it the point at which the Crown send  
25          you the instruction?

## Transcript of the Sheku Bayoh Inquiry

1       A. We can -- frequently what you get is a verbal  
2       instruction and that is then backed up by a letter of  
3       instruction maybe next day, a couple of days later,  
4       dependent on whether it's during office hours, etc. And  
5       usually that letter of instruction, the actual letter of  
6       instruction will give the terms of reference, what they  
7       are directing that we investigate. But outwith office  
8       hours or even during office hours, quite frequently we  
9       get a verbal instruction from Crown and it will then be  
10      backed up by a letter.

11      Q. So in terms of that paragraph, the responsibility for  
12      securing evidence and taking appropriate action in  
13      an Article 2 investigation remains with Police Scotland  
14      until effectively PIRC have had the call from  
15      Crown Office?

16      A. Yes.

17      Q. Thank you. Then at that point responsibility passes to  
18      PIRC?

19      A. Yes.

20      Q. Then:

21             "Police Scotland use of firearms."

22             If we look at that:

23             "Police use of a firearm can be defined as:

24             "Discharge of a firearm."

25             But it can also include Taser or discharge of CS

## Transcript of the Sheku Bayoh Inquiry

1 gas.

2 A. Yes. So you have conventional firearms and what might  
3 be considered conventional firearms, so that's guns,  
4 shotguns, etc, you've got Taser obviously. But it's  
5 an anomaly within the legislation, again CS gas or PAVA  
6 as it is, falls within section 5 of the Firearms Act  
7 1968, it's the definition of what is a prohibited  
8 weapon, and it includes anything designed to discharge  
9 a noxious liquid. So potentially whoever was drafting  
10 the legislation missed the fact that CS/PAVA actually  
11 constitutes a firearm and therefore all these get  
12 referred to PIRC.

13 I am not aware of a similar requirement in England  
14 and Wales, unless of course there is further like  
15 serious injury or death or whatever. So again there is  
16 a slight anomaly within there. But certainly discharge  
17 of a conventional firearm nearly always leads to  
18 investigation.

19 Q. In terms of the events involving Mr Bayoh in May 2015 we  
20 have heard evidence there was a discharge of CS gas.  
21 Would that have meant that this document would be  
22 applicable in relation to the events at Hayfield Road on  
23 3 May?

24 A. I think the Crown instruction to investigate trumps any  
25 police referral. So the PIRC have instructed us to

## Transcript of the Sheku Bayoh Inquiry

1           investigate a death, consequently the police need to  
2           refer. Discharge of CS gas falls into abeyance really  
3           because the Crown direction will include us  
4           investigating all aspects of what occurred, which will  
5           include the discharge of CS and PAVA.

6       Q. If we look back to the top of the page, this is:

7           "PIRC independent investigative processes following  
8           police use of firearms."

9           Right at the top, please. It's PIRC independent  
10          investigative processes after the police have used  
11          a firearm which can include circumstances involving  
12          discharge of CS spray. When you mentioned it a moment  
13          ago you said a Crown-led investigation trumps  
14          a referral.

15       A. Yes.

16       Q. This doesn't seem to be restricted just to referrals.  
17          So would this document apply to either investigation,  
18          whether it's a Crown-led investigation or arising out of  
19          a police referral?

20       A. Yes, certainly the way the legislation is framed is the  
21          police need to refer to PIRC all incidents where  
22          firearms are used or discharged, and that includes  
23          CS/PAVA. So that is a requirement in law. But the fact  
24          is Crown have then instructed: investigate the death,  
25          investigate all the circumstances. So you will examine

## Transcript of the Sheku Bayoh Inquiry

1           automatically what has occurred, including the discharge  
2           of CS and PAVA.

3           It is my opinion, and I'm not a legal expert I am  
4           not a lawyer, but there is still a requirement for  
5           Police Scotland to notify us that CS/PAVA has been  
6           discharged. Now, that did occur, because my  
7           understanding is that Keith Harrower got told on day one  
8           when he turned that up CS and PAVA had been used, so  
9           they did fulfil their legal obligation. The standard  
10          method is they actually commit that to paper and send us  
11          a form, which is usually completed by the officers that  
12          discharged it or their supervisor. But the legislation  
13          doesn't say you must fill out the paperwork or complete  
14          a form, just you must notify PIRC.

15        Q. So to go back to the first point, even if there hadn't  
16        been a discharge of CS spray in relation to  
17        Hayfield Road, the minute Crown said you've to  
18        investigate, that was the point at which PIRC would  
19        investigate regardless?

20        A. Yes.

21        Q. Although it was still important for -- it was still  
22        required for Police Scotland to intimate that spray,  
23        CS spray has been discharged?

24        A. Yes.

25        Q. And that was then told to Keith Harrower --



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1 A. Yes.

2 Q. -- on the day, he became aware of that on the day and  
3 that was sufficient to comply with their legal  
4 requirements under the legislation?

5 A. Yes, and usually when CS/PAVA has been discharged and we  
6 are investigating we will ask that the CS or PAVA  
7 canisters are then weighed. They should be weighed at  
8 the start of a shift to know how much liquid is within  
9 them, and if they are discharged they should be then  
10 weighed following the discharge, so that we can tell how  
11 much liquid has actually been used during the incident.

12 Q. We heard some evidence from Mr Little about this, that  
13 also the canisters are allocated to individual officers.

14 A. Yes.

15 Q. And I think to summarise my understanding of his  
16 evidence, that then allows you to see who has used  
17 a canister that was attributed to them, and how much  
18 liquid or spray was discharged from that canister?

19 A. Yes, officers are based at police stations. Usually you  
20 have a cabinet at the police station that you are based  
21 in, in which is your CS/PAVA spray and you have a key  
22 that unlocks it. And at the end of your shift you put  
23 it back into that cabinet. Part of the challenge is  
24 that take for example officers that are getting drafted  
25 in from different divisions to assist Glasgow policing

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1 division, they might not start at their home station  
2 therefore they might not get access to their own  
3 individual CS or PAVA, they might need to be supplied  
4 with it at the station that they are attending,  
5 therefore there are spare supplies kept. So it's not  
6 always on an individual basis, it depends on the nature  
7 of -- the favourite one is football, you know, big games  
8 either in the west of Scotland or east of Scotland, you  
9 might get officers drafted in from wherever to assist  
10 with the policing of that event. But the officers might  
11 be told: well, don't go to your home station, report to  
12 this station and start there. Therefore they won't have  
13 access to their individual CS/PAVA.

14 Q. But if they are given a CS spray to go to the football  
15 match, would there be normally a record kept of who has  
16 been given a CS spray?

17 A. There should be. I am not certain it always occurs.  
18 But then I have not examined that.

19 Q. So in terms of gathering in evidence that might assist  
20 an investigation where there has been a discharge, the  
21 forms are only one element of evidence that could be  
22 recovered. There's the weighing and determination of  
23 has the spray been used, how much does it weigh now,  
24 how much did it weigh earlier and what is the  
25 difference?

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1 A. Yes.

2 Q. So there are two different avenues of investigation open  
3 to PIRC potentially there?

4 A. Yes. For example each year there is usually 200 to 300  
5 referrals of CS/PAVA. There is not a lot of  
6 investigation into them because it gets used most days.

7 MS GRAHAME: I wonder if you could just give me a moment,  
8 please.

9 I wonder if it would be possible to adjourn slightly  
10 early, if that is a possibility?

11 LORD BRACADALE: Certainly. We can stop now and take  
12 a 20-minute break.

13 (11.17 am)

14 (A short break)

15 (11.45 am)

16 LORD BRACADALE: Ms Grahame.

17 MS GRAHAME: Thank you. Just before the break we were  
18 talking about the discharge of CS spray. You explained  
19 that there are different elements of evidence that might  
20 be available, both the weighing of the canister, the  
21 comparison with the records of what it weighed  
22 originally, how much liquid has been used, that type of  
23 thing.

24 A. Yes.

25 Q. But there was also the form, the forms that were

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1 completed?

2 A. Yes.

3 Q. You spoke about how on 3 May Keith Harrower was advised  
4 that CS spray has been discharged or became aware that  
5 CS spray has been discharged?

6 A. Yes.

7 Q. I am interested in looking at that in a little bit more  
8 detail, if I may.

9 A. Of course.

10 Q. We have heard evidence that police officers, they can  
11 use force, but if they do use force operationally, that  
12 they must justify that.

13 A. Yes.

14 Q. That is in relation to every single use of force --

15 A. Yes.

16 Q. -- that is adopted. So that means as we have heard  
17 evidence, if they strike a baton three times, they have  
18 to justify every individual strike of that baton?

19 A. Yes.

20 Q. Is that right?

21 A. I think the one exception is handcuffing. So  
22 handcuffing has the effect -- it is sometimes a use of  
23 force, but you don't need to report that.

24 Q. Thank you. We have heard of that use of force, in order  
25 to justify it, and in order for that to be legal, it has

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1           to be reasonable and proportionate and necessary?

2       A.   Yes.

3       Q.   And we've also heard evidence about something called  
4           preclusion, where you have to use the absolute minimum  
5           force so you have to have either ruled out a lower level  
6           of force before you adopt a higher level, or take the  
7           view that from the circumstances it wouldn't be  
8           worthwhile using that lower level of force?

9       A.   That's correct.

10      Q.   Is that correct?

11      A.   Sometimes that is a very quick process, the officer  
12           could look at a set of circumstances and preclude  
13           everything apart from the option that they decide. That  
14           can happen in a matter of seconds. But they have got to  
15           explain themselves, and justify their actions.

16      Q.   That justification has to be provided for that use of  
17           force to be deemed legal?

18      A.   Yes, well, I -- I am not sure I would describe it as  
19           legal, but it's a requirement within Article 2 and  
20           within Article 3. If they overstep the mark, that could  
21           cross into criminality, in which case we would be taking  
22           the matter to Crown.

23      Q.   In terms of the completion of the form, is it right to  
24           say that there's actually more than one reason why those  
25           forms should be completed? One is formal notification

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1           in terms of the legislation?

2       A.   Yes.

3       Q.   There has been use of an item, a spray, which is

4           classified as a firearm?

5       A.   Yes.

6       Q.   And so there has to be that notification to PIRC?

7       A.   Yes.

8       Q.   And we have heard it is done through officer safety

9           training and an email address that then comes to PIRC

10          within 24 hours, I think?

11       A.   Normally.

12       Q.   Normally. The other element in terms of completing the

13          form is to justify why that use of force was adopted,

14          why that spray was discharged?

15       A.   That's correct.

16       Q.   So in terms of the notification to Mr Harrower on 3 May,

17          although there may have been notification or he was

18          advised spray had been discharged, what about the

19          justification part, if the forms were not completed?

20       A.   Yes, well I think I would split that into two areas, so

21          legislative-wise Police Scotland are required to notify

22          us of the discharge of CS/PAVA. Then you you've got

23          second element which is the officers themselves must

24          justify why they considered it necessary, and we then

25          look at necessity, proportionality etc. So you've got

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1           the legal requirements on Police Scotland, moving down  
2           below that level is the officer then must justify that.

3       Q.   So it's not for Police Scotland to create  
4           a justification, it's for the individual officer and  
5           it's their responsibility --

6       A.   Yes.

7       Q.   -- to provide justification?

8       A.   Yes.

9       Q.   Regardless of any notification requirements under the  
10          legislation?

11      A.   Yes.

12      Q.   Thank you.  Is that part of what you said before  
13          the break, that it could be a line manager or  
14          a supervisor who completes the form notifying PIRC of  
15          the discharge?

16      A.   Yes.  Equally, sometimes the supervisor may obtain the  
17          account from the officers, and then commit that account  
18          on to the form, but he should have spoken to the officer  
19          and obtained the officer's thought processes as to why  
20          he considered the use of CS PAVA was necessary.

21      Q.   Necessary, reasonable and proportionate?

22      A.   Yes.  The vast majority of the officers themselves  
23          complete the forms, but occasionally you will get  
24          a supervisor or somebody else completing it.  That is  
25          rare, but it can happen.

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1 Q. We heard that there can be situations where the officer  
2 is injured or goes off duty immediately afterwards and  
3 isn't in a position to complete the form for some health  
4 reason?

5 A. Yes.

6 Q. In that case a supervisor can carry out the process  
7 themselves?

8 A. Yes, that is largely the circumstances I am describing.

9 Q. We heard evidence from Mr Little that these forms can be  
10 gathered in by PIRC and they are not just left in  
11 a filing cabinet somewhere but actually there is  
12 a process that they go through in relation to PIRC in  
13 terms of assessing the justification that is provided;  
14 is that correct?

15 A. Yes, it applies to all police-referred matters to PIRC,  
16 they undergo that assessment process. There is a huge  
17 number of CS/PAVA referrals to us, they greatly outweigh  
18 any other type of referral, but it does go through  
19 an assessment process. The more complex the incident,  
20 the greater the assessment. Sometimes you might decide  
21 to immediately -- without probing the incident any  
22 further, as soon as the referral comes in you think: no,  
23 this is quite a serious situation, we're moving straight  
24 to investigation without undertaking a detailed  
25 assessment for -- well, what could be described as more



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1           minor matters. So if it is simply they have discharged  
2           CS/PAVA to bring the person under control, they've  
3           justified that in the form, you complete that  
4           assessment, and you decide not to investigate. So there  
5           is a whole range of considerations when you are  
6           undertaking assessment.

7           Q. Is that assessment essentially a preliminary view by  
8           PIRC in regard to whether it appears obviously  
9           a reasonable approach or there may be issues that  
10          require investigation?

11          A. Yes. And we have also got to bear in mind that PIRC are  
12          an oversight body of Police Scotland so we will -- even  
13          though we might consider that the actions were  
14          proportionate, reasonable, necessary, we will examine  
15          a random sample of these and investigate them to ensure  
16          that Police Scotland are and their officers are acting  
17          in accordance with policy and procedure. Because  
18          otherwise, if we don't investigate some of these, they  
19          are not necessarily performing the oversight function  
20          that we are set up to do.

21          Q. So PIRC do not simply just take the forms at face value,  
22          they occasionally dig below the surface?

23          A. Yes. If we pick up something within a form, when doing  
24          the assessment, thinking: hmm, this doesn't sound quite  
25          right, we would move it to an investigation, but equally

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1           we will randomly dip sample some of these and move them  
2           to investigation, just to make sure that Police Scotland  
3           are ticking the right boxes for want of a better  
4           expression.

5       Q.   Thank you.  I was also going to ask you about  
6           an incident which had taken place on 18 October 2014  
7           in Victoria Hospital, where we understand there was  
8           a discharge of CS spray in the Accident and Emergency  
9           department and we heard some evidence about this from  
10          Mr Little.

11      A.   Yes.

12      Q.   He said there was a PIRC investigation into that  
13          discharge.

14      A.   Yes.

15      Q.   And a report had been prepared and some recommendations  
16          were made.  Do you have -- do you know about that  
17          investigation?

18      A.   Yes.  I think Mr Little, he was the lead investigator  
19          for that.  I, as his supervisor, then quality controlled  
20          the report so I was aware of the findings and  
21          recommendations.

22      Q.   Do you remember what the recommendations were roughly in  
23          relation to that?

24      A.   It was primarily surrounding record-keeping within  
25          Fife Division of Police Scotland.  The records were

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1           chaotic for want of a better term, CS/PAVA wasn't  
2           regularly getting weighed so you couldn't tell whether  
3           anybody had used it, how much they had used, etc. It  
4           was chaotic, and the recommendations were primarily, for  
5           want of a better expression: you need to get your house  
6           in order here, you need, you know, proper records,  
7           proper control.

8           Q. When were Police Scotland advised about those  
9           recommendations; do you remember?

10          A. I don't remember. When we issue findings and  
11          recommendations to Police Scotland we usually ask that  
12          they report to PIRC within three months of receiving the  
13          report with the findings and recommendations, as to what  
14          steps they have taken to implement them.

15                 Now, I can't remember when we issued the report in  
16          relation to the Victoria Hospital. What I do know is  
17          that it was I think potentially the November following  
18          the death of Mr Bayoh that Police Scotland came back to  
19          PIRC to say how they had implemented the recommendations  
20          from the Victoria Hospital incident, so several months  
21          after the event.

22          Q. If the event, if you take it from me it  
23          was October 2014, that would be just over a year after  
24          the event?

25          A. Yes.

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1 Q. Mr Little talked about this and he couldn't recall but  
2 thought that perhaps the three-month period would have  
3 gone beyond May 2015. Do you have any recollection of  
4 that?

5 A. No, I don't.

6 Q. No. Thank you. We were on the document from June 2014,  
7 and that was PIRC 04438. I will just complete going  
8 through this at the moment. I won't go into the detail  
9 at this stage. Do we see on page 2 that in relation to  
10 investigative processes, there's mention there of PIRC  
11 investigation at the scene. There is comment  
12 geographical location and how quickly PIRC can arrive at  
13 a scene?

14 A. Yes.

15 Q. There is reference here to the PIRC scene manager, and  
16 that:

17 "A trained and experienced PIRC scene manager will  
18 be appointed."

19 Did you have PIRC trained and experienced scene  
20 managers in place in May 2015?

21 A. Yes.

22 Q. Then it talks about the initial actions to consider the  
23 circumstances, and the consultation to be had. And the  
24 PIRC senior investigator will produce a scene  
25 investigation strategy which they will deliver on behalf

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1           of the senior investigator?

2       A.   Yes.

3       Q.   "The strategy will ensure the locus is

4           photographed/video recorded capturing all evidence

5           in situ and where appropriate aerial and '360 degree'

6           photography should be utilised."

7       A.   Yes.

8       Q.   And:

9            "Any scene entry log already in place by

10          Police Scotland should be discontinued and held as

11          a production. A PIRC scene entry log should be raised

12          and maintained throughout duration of the scene

13          investigation~..."

14       A.   Yes.

15       Q.   Then if we move on to the next page, page 3. There's

16          talk of cordons, there will be a uniform police presence

17          to ensure the security of the outer cordon?

18       A.   Yes.

19       Q.   Although we have heard evidence about the importance of

20          independence, we have heard that in terms of scenes

21          often PIRC will have to rely on the support of

22          Police Scotland officers, who may be uniformed

23          officers --

24       A.   Yes.

25       Q.   -- to secure and preserve the integrity of a scene. Is

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1           that correct?

2           A. That is correct. I think looking at it logically it's  
3           the sight of a uniformed police officer saying to  
4           somebody: sorry, this is taped off, as a member of the  
5           public you cannot get in here. And that is difficult  
6           for PIRC investigators to do, we don't wear uniforms or  
7           whatever, a lot of times members of the public are  
8           completely unaware of who we are and what our functions  
9           are. And therefore that is primarily why you will use  
10          uniformed police officers on the cordon. And you have  
11          seen it on television, we have all seen it on  
12          television, you know, the blue and white tape things,  
13          cordoned off.

14         Q. First of all, would you have the resources to allocate  
15         someone that task of ensuring nobody gets into the  
16         scene?

17         A. No.

18         Q. Do you have any concerns about how this appears to the  
19         public when PIRC are involved in what should be  
20         an entirely independent investigation?

21         A. I think we have to look at the practicalities, which is  
22         PIRC are a very small organisation, we are not funded or  
23         staffed to undertake a lot of these scenes. And I fully  
24         appreciate the -- what you would say is the -- how it  
25         looks. The optics, I meant to say, sorry. I was trying

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1           to remember the word there. The optics. I fully  
2           understand the optics but it is the practicalities that  
3           kick in, in these events.

4       Q. Then it says:

5                 "The PIRC scene manager should liaise with the  
6           Police Scotland scene manager and establish what  
7           Specialist Forensic Services have been requested by  
8           Police Scotland prior to PIRC arrival~..."

9                 Again, is this what you were talking about earlier,  
10           identifying what specialist resources may be required  
11           that may include forensic specialists?

12       A. Yes, invariably if you are going to photograph  
13           an incident scene, that will be the Scottish Police  
14           Authority, SPA Identification Bureau.

15       Q. Thank you.

16       LORD BRACADALE: Sorry to interrupt, I wonder if somebody  
17           could just move the microphone down a bit. I think it  
18           is not quite picking you up. Try that now.

19       A. My Lord, I think I was trying avoid punching it.

20       LORD BRACADALE: I appreciate that but I think it is  
21           probably more important that we hear you rather than --  
22           we can live with the difficulty with the microphone.

23           Thank you.

24       MS GRAHAME: Thank you.

25                 It says there:

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1            "... PIRC will have primacy in relation to  
2            the investigation into the police shooting/discharge  
3            [discharge of spray], Police Scotland may have a duty in  
4            relation to the scene in terms of another criminal  
5            offence, ie the person shot ... is concerned in firearms  
6            offences or has committed another crime at the scene."

7            I think that is what you touched on before the break  
8            where you talked about a scenario where in relation to  
9            the Glasgow shooting the person had allegedly -- or had  
10           stabbed five individuals prior to the police using  
11           force --

12          A. Yes.

13          Q. -- and shooting that person. I think as I understand  
14           your evidence you said PIRC investigate the use of force  
15           by the officers, but the five stabbings would remain  
16           within the purview of the police?

17          A. Yes. But certainly when we are reporting the incident  
18           to Crown, you are trying to put context around why did  
19           the police use lethal force, so while the police are  
20           investigating the initial incidents, the five stabbings,  
21           we have obtained details from Police Scotland of those  
22           incidents because it is like a continuous sequence of  
23           events, you can't just start at this point which is: why  
24           did you shoot him? Well, we shot him because ... the  
25           sequence of events that occurred before that. So there



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1           is an exchange of information frequently between --  
2           between Police Scotland and PIRC. Sometimes -- in  
3           relation to that incident, I think we figured out some  
4           of the attacks were targeted attacks but Police Scotland  
5           were not aware of that, so it's the exchange of  
6           information because it is a continuous sequence of  
7           events, and for both reporting separately to Crown but  
8           drawing a line and saying: well, that is us, that is  
9           Police Scotland. It is then more difficult to  
10          understand the totality of what has occurred so that is  
11          why there is an information exchange.

12        Q. So you are avoiding a sort of artificial separation of  
13          events when they are linked?

14        A. Yes.

15        Q. Thank you. Then at the bottom of the page we see:

16                "PIRC productions officer/s should seize and  
17                accurately record and label all productions from the  
18                scene as directed by the ... scene manager.

19                "A PIRC investigator performing the role of scribe  
20                will shadow the ... [senior investigator] and record all  
21                requests/instructions made by the~...  
22                [senior investigator], capturing the time and date,  
23                details of person requested/instructed and any  
24                reply/comment made in response to the  
25                request/instruction."

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1       A.   Yes.

2       Q.   We have heard evidence from Mr Little that in his role  
3           as lead investigator he may be very busy, there is a lot  
4           happening, but the scribe will note down what is  
5           happening as it takes place. Is that the role?

6       A.   Yes. That is the ideal situation, which is you take  
7           somebody with you. If you are the lead investigator you  
8           have all sort of considerations, you are talking to  
9           a lot of different people, and therefore you want  
10          somebody with you who is going to take notes. That is  
11          the ideal scenario, frequently it does occur,  
12          occasionally it might not occur. I have been to  
13          an incident when I was the first person there and it  
14          took two or three hours for the rest of my staff to  
15          arrive, so you do your best.

16      Q.   In that situation why were you the first person to  
17           arrive and the team didn't arrive for two or  
18           three hours?

19      A.   What had happened was I had finished and was on the  
20           motorway passing Glasgow Airport when I got phone call  
21           saying we have just shot somebody in Inverness. Now, we  
22           work 8 to 4 therefore all the staff had went home, so  
23           I am phoning Crown, Crown are saying -- in this instance  
24           I said to Crown: do you want to instruct? They  
25           said: no, we don't. Therefore I will take it as

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1 a police referral, phoning the office and saying: right,  
2 get the staff back into the office, because they are all  
3 headed home and what I did was simply turned round and  
4 drove straight up to Inverness. Of course they have got  
5 to get back into the office, get all their kit,  
6 notebooks, all that sort of stuff load up the car and  
7 then drive to Inverness. So effectively I was on the  
8 road already, whereas they would have to come back in,  
9 so that is why I would arrive two or three hours before  
10 them.

11 Q. Did you not feel the need to go back to the office and  
12 brief staff or pick up kit?

13 A. It was the practicalities, because those who are  
14 familiar with Glasgow, the Kingston Bridge during the  
15 rush hour is, for want of a better expression,  
16 a nightmare, therefore I headed over the  
17 Erskine Bridge and cut across country because otherwise  
18 it might have taken me 90 minutes to get back to the  
19 office adding additional delays. So again, it was just  
20 the practicalities.

21 Q. So on that occasion you arrived first, on your own?

22 A. Yes.

23 Q. There was no scribe, there was no team with you?

24 A. No.

25 Q. But you were able to go to the scene and take charge at

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1           that point?

2           A. Yes.

3           Q. That was a decision that you made based on  
4           practicalities as well as anything else?

5           A. Yes.

6           Q. Did that hinder your team, the fact that you had not met  
7           them at the office and given them a briefing in advance?

8           A. No, obviously I have hands-free in the car so I could  
9           phone and describe the set of circumstances that was  
10          getting relayed to me. Because I was getting phone  
11          calls from various people within Police Scotland,  
12          including the appointed post-incident manager and  
13          I would then relay that information to the team that  
14          were coming out so that they were briefed on the  
15          circumstances so they could hit the ground running as  
16          they arrived.

17          Q. Did you find that telephone communication with your team  
18          adequate for the purpose?

19          A. Yes. There is always -- as they arrive -- it depends on  
20          the last communication you had with them. If the last  
21          communication you had had with them for example was  
22          an hour before and you had been tied up doing things,  
23          you would want to update them as to what has happened  
24          within the last hour and then get them assigned to their  
25          duties.

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1 Q. Right. Then looking at:

2 "PIRC investigation at the ... (PIM) suite."

3 Post-incident management suite. Is this an example  
4 of what you were saying earlier about the terms being  
5 interchangeable?

6 A. Yes.

7 Q. "The PIRC senior investigator attending at the scene  
8 will deploy a post-incident management ... aware member  
9 of PIRC staff to the Police Scotland post-incident  
10 management suite."

11 Was this also what you were talking about earlier,  
12 where someone who has maybe had awareness training will  
13 be appointed although they may not be a post-incident  
14 manager, a qualified PIM?

15 A. Yes. Because I think we need to remember that PIP or  
16 PIM is a police process, it has a dual purpose. There  
17 is an investigative element of it, and there is also the  
18 welfare element of it. So it's very much a police  
19 process, so certainly we need to understand from our  
20 perspective the four stages within that process.

21 Equally, there are certain functions that we will  
22 want to oversee, so if firearms are discharged we will  
23 want to oversee and video record what is called the  
24 count back, so unload your weapon, drop your weapon or  
25 drop the magazine out of the weapon, count how many

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1           bullets are in, how many bullets did you start with, how  
2           many bullets are left in it, does that equate with the  
3           number of shots fired.

4           So there is quite a lot within that to oversee, so  
5           it is not just the four stages. Equally, you might be  
6           seizing clothing etc. Now, it is not necessarily what  
7           you think because you are not seizing a firearms  
8           officer's clothing for firearms deposit residue because  
9           their clothing has that on it all day, every day. But  
10          sometimes it can be to confirm the actions of the  
11          officers, so police firearms officers are trained that  
12          if they shoot somebody they will immediately go forward  
13          and render first aid. So there might be a transference  
14          of blood and they might tell you: yes, I went forward  
15          and I gave first aid. You examine the clothing, there  
16          is blood on the clothing, that matches their account and  
17          therefore supports their account of events.

18          So there is quite a lot of complexities within these  
19          and considerations. Not all of them apply to every set  
20          of circumstance, it just depends -- each one is unique.

21        Q.   The post-incident manager or post-incident management  
22              aware investigator will also be ascribed a scribe:

23              "Ideally a PIRC investigator scribe will shadow and  
24              record all requests/instructions, timed and dated made  
25              by the PIRC PIM aware investigator."

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1       A. Yes, depending on the nature of incident there is  
2       usually two PIRC staff go, somebody that is PIM aware  
3       and somebody to support them. In large-scale incidents  
4       we can be deploying four, five, six, staff to  
5       an individual PIP suite, we have had incidents where  
6       there has been three different PIP suites dotted across  
7       the country, and we are sending staff to each of them to  
8       oversee that. So it can quickly eat up resources. But  
9       we do need to go and -- we do need to go and we do need  
10      to oversee it and at least two staff go to each one. In  
11      more complex incidents, I think I touched on it before  
12      the break, we have had an incident with 53 key police  
13      witnesses, so that is quite a large amount of people to  
14      manage, with different post-incident suites.

15     Q. It says:

16             "A PIRC scene manager/production officer(s) will  
17             also attend at the PIM suite and seize any  
18             firearms/production identified as relevant."

19             And then it identifies the six PIM suites that are  
20             available around the country.

21     A. There is dedicated PIM suites. These are the dedicated  
22     PIM suites, but a PIM suite can be held in any police  
23     office where it's feasible. So, for example, something  
24     happens in Thurso, you are not removing officers to  
25     Inverness, you know, because it is three hours

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1 northwards. So the PIM suite, if the incident happened  
2 in Thurso, the PIM suite might be in Thurso. We have  
3 had a death in custody in Elgin, the PIM suite was held  
4 in Elgin. Again, ideally you are going to a dedicated  
5 PIM suite but the geography of Scotland sometimes  
6 precludes that.

7 Q. I think we have heard that the officers were gathered in  
8 Kirkcaldy Police Office after Mr Bayoh died?

9 A. Yes.

10 Q. And that was in the canteen area?

11 A. Yes.

12 Q. Is that the type of larger space that can be used to  
13 accommodate a PIM suite?

14 A. Yes. Usually it is one large room. The dedicated PIM  
15 suites have several rooms because also you need office  
16 accommodation for the post-incident manager from  
17 Police Scotland and their staff. If we turn up we are  
18 going to want office accommodation as well. So the room  
19 itself might be where the principal officers are sat,  
20 but we will need to use additional offices just to  
21 manage whatever we are doing.

22 Q. Thank you. Then if we look at the final page it talks  
23 about conferring, officers not conferring with each  
24 other, which you have already spoken about, it's on the  
25 last page. If there is a need to confer:



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1            "... in order to ensure transparency and maintain  
2            public confidence, this must be documented including  
3            time, date, place, issues discussed, by whom and the  
4            reason(s)."

5            And:

6            "The Police Scotland PIM manager should have  
7            reminded the officers involved in relation to  
8            conferring."

9            Then there is a section at the bottom called,  
10           "Minimum deployment of PIRC personnel". It is split  
11           into scene and PIM suite. Do you see that?

12          A. Yes.

13          Q. At "Scene" it says:

14           "Senior investigating officer.

15           "Scribe.

16           "Scene manager.

17           "2 production officers."

18           That would be five individuals?

19          A. That is the ideal. Equally, if you have got multiple  
20           scenes, you know, you are going to have multiple  
21           deployments.

22          Q. So there could be more than that but that says minimum  
23           deployment in relation to the scene?

24          A. Yes, when we are talking scene here we are talking about  
25           the general location, not necessarily to the exact scene

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1           of the incident. Although the scene managers and  
2           production officers might be going directly there, the  
3           PIRC lead investigator might be going to the police  
4           office to find out what has happened.

5       Q. So if we have heard that there were officers in  
6           Kirkcaldy Police Office, and PIRC investigators went  
7           there --

8       A. Yes.

9       Q. -- but there was also a scene at Hayfield Road --

10      A. Yes.

11      Q. -- that wouldn't necessarily require this minimum number  
12           of officers to be at both locations?

13      A. No, I think Garry Sinclair was the person deployed to  
14           Hayfield Road as the PIRC scene manager. And  
15           John Ferguson, who sadly is no longer with us, was  
16           deployed to Victoria Hospital.

17      Q. The senior investigating officer, is that effectively  
18           a lead investigator?

19      A. Yes. The terminology changes. It is like -- you've got  
20           a lead investigator, you've got a senior investigating  
21           officer you've got an initial investigating officer.  
22           Broadly they are all the same -- the same person but  
23           just sometimes the nomenclature slightly changes. But  
24           for PIRC it is either a lead investigator or  
25           a senior investigator, and it's not always the person

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1           with the title of senior investigator, they are the  
2           senior investigator for that investigation.

3       Q.   So you may be within PIRC's hierarchy  
4           a senior investigator, you may be  
5           a deputy senior investigator, or simply an investigator,  
6           but you may be appointed as a lead investigator in  
7           relation to an incident?

8       A.   Yes.

9       Q.   Thank you.  Then the second element there of minimum  
10          deployment relates to the PIM suite.  We have heard from  
11          a PIM, a PIM manager, Conrad Trickett --

12       A.   Yes.

13       Q.   -- about events in May of 2015, and he said that if you  
14          are a suspect, you are removed from PIP?

15       A.   Yes.

16       Q.   Was that correct?

17       A.   That is correct.

18       Q.   So PIP or PIM or a PIM suite, that would contain people  
19          who were witnesses?

20       A.   Yes.

21       Q.   Officers who may have witnessed an event?

22       A.   Yes.

23       Q.   But not suspects?

24       A.   Certainly not.

25       Q.   And the minimum deployment for that area would be

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1           a PIM-aware investigator, a scribe, a scene manager and  
2           a productions officer, so that is four individual roles?

3       A. That is the ideal. There have been incidents where you  
4       don't need four people, you only require two people, so  
5       for example all incidents are managed by control rooms,  
6       we have heard about area control rooms within the  
7       police. But the staff within the area control room that  
8       managed the incident, they could be seen as key police  
9       witnesses.

10           Now, there is no need for forensic examination on  
11          anything like that, you will pick up the Airwaves radio  
12          traffic later, so you might only need to send two people  
13          to the control room where that PIP is being held, and  
14          that is frequently why you have multiple PIPs because  
15          you have the control room controlling the incident, and  
16          I think for Mr Bayoh's death the incident was controlled  
17          at Bilston Glen, which is in Edinburgh, whereas you have  
18          the incident in Kirkcaldy, so you might have two  
19          separate PIP suites.

20           There have been times when we have had three  
21          separate PIP suites: one for the control room, one for  
22          the location and then there has been actions by other  
23          officers at a distance from it, therefore there has been  
24          three post-incident processes run.

25       Q. If you only have one PIM suite and one scene, would you

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1           agree that this is the minimum deployment --

2       A.   Yes.

3       Q.   -- in relation to PIRC personnel?

4       A.   Yes, and that is usually what we do.  We will evaluate

5           it so if there has been a discharge of firearms we will

6           send four to that PIP suite.  But equally, that incident

7           is being controlled by the control room, we will send

8           two additional staff to that location.

9       Q.   That is if there are two PIM suites?

10      A.   Yes.

11      Q.   So that -- looking just that the page of minimum

12           deployment, that would be a total of nine roles, nine

13           PIRC personnel?

14      A.   Yes.

15      Q.   And that would be the minimum deployment that would

16           normally be sent?

17      A.   That is the ideal.

18      Q.   Thank you.  We have heard from Mr Harrower and we have

19           heard from Mr Little that Mr Harrower was lead

20           investigator on 3 May 2015?

21      A.   Yes.

22      Q.   Mr Little took over on 4 May?

23      A.   Yes.

24      Q.   And then that you became involved on Tuesday, 5 May.

25      A.   Yes.

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1 Q. So from your statement I understand you arrived on duty  
2 at 8 o'clock on 5 May 2015 and that is when you learned  
3 about the incident?

4 A. Yes.

5 Q. You hadn't been personally involved in the events on the  
6 3rd or the 4th?

7 A. No. So the 3rd was the Sunday, the 4th was the Monday  
8 but that was the May day public holiday so I was off  
9 that day.

10 Q. When did you first hear about the death of Mr Bayoh; was  
11 it on arrival on 5 May?

12 A. Yes. I think I had actually been away with my wife on  
13 the 4th so I didn't pick up on it until I went into my  
14 work on the 5th.

15 Q. The 5th was the Tuesday?

16 A. Yes.

17 Q. We have heard that at that time Mr Harrower and  
18 Mr Little were deputy senior investigators in PIRC --

19 A. Yes.

20 Q. -- but appointed as lead investigators. We have heard  
21 that at that time you were a senior investigator?

22 A. Yes.

23 Q. And you came in on the Tuesday?

24 A. Yes.

25 Q. I would just like to ask you a little bit about your

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1           role on the Tuesday, because before Mr Little came in we  
2           understood you were appointed lead investigator on the  
3           Tuesday. But Mr Little said that initially he remained  
4           in that role, you came in with oversight but it then  
5           evolved and you were effectively the lead and he was  
6           your deputy. I would like to hear your explanation of  
7           your role on the Tuesday.

8       A. I think initially -- so on the Monday Billy was  
9       appointed as lead investigator. I came in on the  
10      Tuesday and was told: right, provide oversight  
11      and assistance to Billy. As the complexities very  
12      rapidly developed, it was then decided, right, I am now  
13      the senior investigator, and Billy is my deputy. When  
14      precisely that happened, I can't say now but it did  
15      happen fairly rapidly.

16     Q. Mr Little wasn't able to remember a precise moment in  
17     time when you became the lead and he took the role of  
18     your deputy. When you say "fairly rapidly" can you help  
19     the Chair understand when that role evolved that you  
20     were the lead?

21     A. I think it was shortly after the 5th. It didn't happen  
22     on the 5th because I think you will see from my policy  
23     log that at some point I have recorded Mr Little as the  
24     lead investigator with me as the back-up. So it would  
25     have been after the 5th because otherwise I wouldn't

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1           have recorded that on paper. So it was probably from --  
2           in fact it was -- I am quite certain it was the 6th, and  
3           the reason why I say that is because I then decided to  
4           go through to Fife to meet -- along with Billy to meet  
5           with DCI Keith Hardie to do with approaching the nine  
6           principal officers. So I am fairly certain it was the  
7           6th, that is why I say it quite rapidly evolved into  
8           that.

9           Q. And in terms of the practicalities of that role which  
10          you had, did you change your approach from having  
11          oversight on the 5th, to when you became lead  
12          investigator, and if so can you explain how you did  
13          that?

14          A. No, most of the 5th was taken up in understanding  
15          exactly what had happened, getting the PIRC incident  
16          room up and running, allocating roles and  
17          responsibilities. Some of those had already occurred on  
18          the 3rd and the 4th, but getting an understanding of  
19          exactly what had happened. And there is also quite  
20          a lot of information coming in during that sort of  
21          period, some of it conflicting, some it erroneous, so  
22          you are trying to understand exactly the nature of the  
23          incident.

24                 So for me on day one you are getting briefings from  
25          staff, you are reading briefing papers -- I know you



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1           have examined Keith's briefing paper -- and you are  
2           getting a good understanding, you are also -- myself and  
3           Billy are talking all the time, because it is still is  
4           very early doors in the investigation. And we are just  
5           agreeing priorities.

6           Really when you get an Inquiry of this magnitude,  
7           really the lead investigator, the senior investigator,  
8           takes responsibility for policies and strategies, with  
9           the deputy then converting them into practical actions  
10          for staff then to go out and undertake that, to complete  
11          the sort of -- what your policies and strategies are.  
12          But you work seamlessly because you are talking all the  
13          time, and equally if one of you goes off on holiday for  
14          a week the other has to be able to take over. You don't  
15          leave a gap.

16          So there is a really close relationship between the  
17          senior investigator and their deputy, because that needs  
18          to occur. And that occurs whether it's within PIRC, it  
19          occurs within the police, it occurs within other  
20          agencies.

21        Q. I would like -- you have mentioned the policy and there  
22        was a policy log, I would like to come on to that in  
23        a moment. But before I do so, can I ask you some  
24        questions focused towards the independence of the  
25        enquiry. I think in your statement you said that you

## Transcript of the Sheku Bayoh Inquiry

1           knew some of the officers who were involved in the  
2           investigation into the death of Mr Bayoh?

3       A.   Yes.

4       Q.   Police officers from Police Scotland?

5       A.   Yes.

6       Q.   And I would like to ask you particularly about those.  
7           You have said that you knew Pat Campbell, we have heard  
8           he was the SIO?

9       A.   Yes.

10      Q.   And you knew ACC Nicolson --

11      A.   Yes.

12      Q.   -- who was the Gold Commander?

13      A.   Yes.

14      Q.   You have said in your statement you had no relationship  
15           with them in May 2015 but I wonder if you could just  
16           explain in a little more detail how you knew them and  
17           what your relationship had been before?

18      A.   Yes.   So starting with Pat Campbell, I worked in  
19           Intelligence at force headquarters, Pat Campbell worked  
20           in CID Operations.   He was a detective superintendent in  
21           CID Intelligence, Special Operations.   He was  
22           a detective sergeant at headquarters.   So I knew that he  
23           worked at headquarters, I would occasionally pass him in  
24           the corridor but I never worked alongside him.   And in  
25           respect of the Bayoh enquiry I had no contact with him

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1            throughout the duration of the Bayoh investigation. No  
2            contact at all.

3            Moving on to Mr Nicolson, when I was  
4            detective superintendent down in Ayrshire division  
5            Mr Nicolson was my line manager, so he was the Detective  
6            Chief Superintendent, and he line managed the  
7            detective superintendents in each of the geographical  
8            divisions. So I certainly knew him. But when I moved  
9            on to the intelligence side I then had a different line  
10          manager.

11          Now, again I had no contact with Mr Nicolson  
12          throughout the duration of the Bayoh enquiry, so I did  
13          not see those as potential conflicts. I knew of them,  
14          I explained my relationship to them, but I didn't see  
15          any conflict there.

16          Q. Can I ask you a little more about your contact or  
17          relationship with ACC Nicolson.

18          A. Yes.

19          Q. You said he was your line manager. How many other  
20          detective superintendents did he line manage at that  
21          time?

22          A. At that time there was ... I think there was 12  
23          territorial divisions within Strathclyde and each had  
24          a detective superintendent in charge of the CID for that  
25          division. It was slightly unique insofar as the

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1           detective superintendents in the division didn't answer  
2           to the division or the divisional command, they answered  
3           to the Detective Chief Superintendent CID Operations,  
4           who was Mr Nicolson. So he was managing them. There  
5           was also two or three specialist  
6           detective superintendents in charge of specialist areas,  
7           so for example at one point in time the  
8           detective superintendent in charge of the Fraud Squad,  
9           so they would be managed within CID Operations, and  
10          maybe answerable to the detective chief superintendent  
11          CID Operations.

12        Q. So when you were working in Ayr, how regularly did you  
13          have discussions or meetings or contact with Nicolson?

14        A. Usually you would have at the very least weekly contact.  
15          If you were the on-call detective superintendent you  
16          would come out at the weekend, and you would then brief  
17          Mr Nicolson on what had occurred over the weekend,  
18          equally, you went down and you briefed the command team  
19          as to serious incidents that occurred over the weekend,  
20          so you would have fairly regular contact with him.

21        Q. How long were you in Ayr with this regular contact with  
22          ACC Nicolson?

23        A. I think I was there for about six months, and then  
24          I transferred up to Special Operations and that was --  
25          that moved me away from his line management.

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1 Q. I think we were looking at your career earlier. When  
2 exactly did you move to Special Operations of  
3 Special Branch; was this 2000 or was it a different  
4 time?

5 A. So I was DSI in Special Branch Special Operations, so  
6 that is covert investigations into terrorism or  
7 organised crime and support to murder investigations.  
8 On return from Africa I was then appointed  
9 detective superintendent in Ayrshire division. I spent  
10 about six months there and then was transferred back to  
11 what you could call covert operations or covert  
12 specialist operations, again examining terrorist  
13 matters, organised crime, support to murder  
14 investigations and I had various areas of business, some  
15 of them quite sensitive areas of business.

16 Q. I think from your statement you told us that you had  
17 returned from Sierra Leone in 2006 and it was after that  
18 you were promoted and moved to Ayr; is that correct?

19 A. Yes.

20 Q. And you spent six months with ACC Nicolson as your line  
21 manager?

22 A. Yes.

23 Q. How long did you spend in Ayr; was that the six-month  
24 period?

25 A. Yes.

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1 Q. So this was some time after 2006?

2 A. Probably during 2006.

3 Q. Did you have any contact with ACC Nicolson after you  
4 moved and you were promoted?

5 A. Yes, you would see him on a regular basis, not so much  
6 to discuss business because we were in two very  
7 different business areas, I worked on the secret covert  
8 side of policing, dealing with quite sensitive matters.  
9 But I would see him on a regular basis because it was  
10 headquarters and his office was probably -- it was at  
11 the other end of the corridor from where my office was.

12 Q. As well as seeing him in the building, did you have  
13 actual contact with him during that period?

14 A. Occasionally because if the operational arm of CID  
15 required assistance in respect of targeting organised  
16 crime groups or murder enquiries -- and we are now  
17 dealing with highly sensitive matters, so if they  
18 required assistance, they would approach me for such  
19 assistance.

20 Q. But he no longer had line management responsibility  
21 towards you?

22 A. No, and I was also the authorising officer at one time  
23 for a lot of the covert activity under -- it was RIP and  
24 RIPS, it is now the Investigatory Powers Act. Although  
25 the highly sensitive material was required to go to the

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1 Chief Constable, I then acted as effectively the scribe  
2 for the Chief Constable and it then went to the  
3 Surveillance Commissioners, now the Interception of  
4 Communications Commissioner, for authorisation.

5 So therefore Mr Nicolson or one of the other  
6 detective superintendents might say: look, we're hitting  
7 a brick wall with this investigation, we need covert and  
8 sensitive assets deployed, so they would seek such  
9 assistance, and if it was -- if you consider it  
10 necessary and proportionate, you would facilitate that.

11 Q. When did your contact with ACC Nicolson come to an end?  
12 (Pause). When did your contact with ACC Nicolson come  
13 to an end?

14 A. Probably when I retired from the police. Because we  
15 worked in the same building, we worked in the same  
16 corridor, although they are on one side of the building,  
17 we are on the other side of the building. But you would  
18 you see him -- you would pass him on a regular basis.

19 Q. So was that about 2012?

20 A. Probably.

21 Q. So by 2015 -- between 2012 and 2015 had you had any  
22 contact with ACC Nicolson at all?

23 A. Not that I recall, I don't think so.

24 Q. Did you -- we have heard evidence there was a process,  
25 a code of conduct in PIRC, and a process where if you

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1           were concerned about any possible conflict you could  
2           declare a knowledge of someone or awareness or  
3           a familiarity or a relationship.

4       A.   Yes.

5       Q.   Did you feel in 2015 that you should declare your prior  
6           knowledge and awareness and contact with ACC Nicolson or  
7           not?

8       A.   No, because I had no contact with Mr Nicolson during the  
9           Bayoh enquiry, therefore I didn't consider there was  
10          a conflict.

11      Q.   Thank you. I would like to move on and look at your log  
12          that you have already mentioned.

13      A.   Yes, ma'am.

14      Q.   Can we look at a typed version first. The policy log  
15          PIRC 04153. We've looked at this the document with  
16          Mr Little in evidence, and it is a policy log which is,  
17          as I understand it, a typed version of a handwritten log  
18          that you would have prepared.

19      A.   Yes.

20      Q.   So Mr Little said you were the author of the policy log;  
21          is that right?

22      A.   That is correct.

23      Q.   And you commenced that on 5 May 2015.

24      A.   Yes.

25      Q.   This is a typed version of it. I am actually going to



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1           go through the detailed handwritten version with you  
2           today but we can see from this document on the face of  
3           it the incident is 3 May, the senior investigating  
4           officer is named as DSI William Little, who is the  
5           deputy senior investigator. The deputy investigating  
6           officer is given as you, John McSporran, who is the  
7           senior investigator.

8       A. I think that is what we touched on a short while ago,  
9       that that sort of flipped on the Tuesday. Sorry, on the  
10      Wednesday, which would be the 6th. So when I wrote --  
11      initially committed this to paper, the front page is  
12      these roles and responsibilities, but that quickly  
13      flipped on the next day.

14     Q. So on Tuesday 5th you are listed as the deputy --

15     A. Yes.

16     Q. -- to Mr Little, who is the lead investigator. The  
17      following day that flipped, and you became -- you  
18      essentially took the lead --

19     A. Yes.

20     Q. -- from 6th May? You also mentioned earlier that you  
21      were appointed to take oversight. I am interested in  
22      this -- a relationship between someone who is listed as  
23      both the deputy who also has oversight. Can you explain  
24      that, please?

25     A. I think it is just an anomaly because I had to -- I had

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1           to record somewhere that I was involved, and there is no  
2           mechanism -- because it is quite prescriptive describing  
3           the roles here there is no role for oversight or  
4           overseer, therefore the best way I thought I could  
5           record that I was involved was by putting myself down as  
6           deputy. That was on the 5th. And it was a simple  
7           matter of to a certain extent transparency, to show that  
8           I was involved.

9           Q. This role of having oversight, regardless of what is on  
10          that page, what did that role involve? Did you  
11          understand the nature of that role?

12          A. I think it was to support and assist Billy Little. But  
13          as I say, that quickly evolved the next day, and  
14          we don't really have anybody since then appointed as  
15          overseer. You do have -- in my role as head of  
16          investigations for PIRC you will have oversight of all  
17          the ongoing investigations and the reports, but that  
18          doesn't make you the overseer in respect of any of the  
19          specific investigations. So I think it was more  
20          an anomaly in respect of this one, where it was  
21          like: John, you have oversight, you help Billy. And  
22          come my day two, which was the 6th that flipped  
23          so: John, you're now the lead investigator, Billy you're  
24          the deputy.

25          Q. Who was it that ultimately took that decision to make

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1           you lead?

2           A. I think it was Mr Mitchell.

3           Q. From perhaps a slightly different perspective from  
4           someone outside PIRC, someone with the role of having  
5           oversight may be viewed as someone who is sitting above  
6           the lead investigator, and perhaps checking things are  
7           done properly or where things are being missed or not  
8           being done properly they could perhaps direct  
9           a different direction in relation to investigation; is  
10          that any part of having oversight?

11          A. I would say yes, considering what you are saying just  
12          now. But equally, when you are the senior investigating  
13          officer you are checking the statements, checking who is  
14          doing what, all that sort of stuff. So there's a degree  
15          of oversight there of the investigation, you are the  
16          senior investigating officer, you are overseeing that  
17          investigation, you are directing, you are creating  
18          policies, strategies, you are interacting with the  
19          deputy senior investigator, who is translating a lot of  
20          that into actions. Staff go out, they complete the  
21          action, take a statement, get productions, get  
22          documents, whatever, that is brought in, it gets  
23          recorded within the investigation, and you are examining  
24          that and you are reading -- reading a lot of -- a lot of  
25          things, so that you are as aware as possible of

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1 everything that is going on.

2 Equally, you can get information overload so  
3 sometimes the best way to gain an understanding is just  
4 to have staff brief you or you have a daily briefing  
5 where staff impart to you and the deputy the relevant  
6 and salient points from their actions the day before.  
7 Rather than going chapter and verse as to what has  
8 occurred, it's like: tell me the important stuff I need  
9 to know here, I will catch up on the reading when I get  
10 the opportunity.

11 Q. So regardless of your PIRC title or what is said here,  
12 am I correct in saying that you had a contribution to  
13 make to this investigation and you had influence over  
14 the direction of the investigation?

15 A. Yes.

16 Q. Thank you. Let's look at -- just the other names  
17 mentioned, we've heard that -- who is listed as office  
18 manager, Ian MacIntyre, we were told he was one of three  
19 staff involved in the major incident room --

20 A. Yes.

21 Q. -- if I can put it that way, and productions officer we  
22 have heard -- you have mentioned Garry Sinclair, who was  
23 allocated the role of scene manager for Hayfield Road?

24 A. Yes.

25 Q. He was also involved in other matters as well.

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1 A. Yes.

2 Q. Then other relevant staff included yourself,  
3 John Ferguson, who was also a qualified scene manager.  
4 Family liaison involved Alistair Lewis and John Clerkin?

5 A. Yes.

6 Q. But we have heard from Mr Little that there were a large  
7 number of members of PIRC, the PIRC team who were  
8 involved, and in fact all bar one were actively involved  
9 in this investigation?

10 A. Yes. I think we need to remember at that time we had  
11 a total of 22 people. This was a large-scale  
12 investigation, it was very quickly becoming  
13 a large-scale investigation. Now, I have run murder  
14 enquiries where I have had 50 or 60 staff and this was  
15 going to be a highly complex thing and we had to manage  
16 this with effectively 20 deployable staff. So staff are  
17 multitasking, some are doing crime scene management then  
18 as soon as they complete that they will move on to  
19 another role. Quite apart from -- I think we have  
20 touched on Garry Sinclair being crime scene manager  
21 responsible for productions on day one, later on he  
22 became the interview adviser when he was drawing up the  
23 interview for the interview of the nine principal  
24 officers, so sometimes they are performing multiple  
25 roles.

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1 Q. You have mentioned this in your Inquiry statement, but  
2 what were your views about the resources available to  
3 you in this investigation in relation to Mr Bayoh's  
4 death and the adequacy of those resources at that time?

5 A. I don't want to stray into the political sphere.  
6 I don't consider that we were effectively funded or  
7 resourced to undertake the functions. I think probably  
8 Ms Frame might have more to say on that but I don't want  
9 to stray into the political sphere.

10 Q. From your experience -- looking back now and from your  
11 experience of dealing with murder investigations, deaths  
12 in custody, deaths following police contact, leaving  
13 aside political issues, but solely in relation to  
14 the numbers that you had available to conduct this  
15 investigation, do you feel you had adequate resources  
16 available to PIRC at that time?

17 A. At that time, no. Now, what I will add to that is that  
18 following the investigation of the death of Mr Bayoh and  
19 the investigation into the M9, the death crash on the  
20 M9, application was made saying: we are stretched here,  
21 we need additional funding, we need additional  
22 resourcing, and that was forthcoming. But I think it  
23 took the Bayoh investigation and the M9 crash, and our  
24 ever-increasing workload to demonstrate that we were  
25 under-resourced and under funded. Because

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1           potentially -- this is a personal opinion now -- there  
2           should have been more of a scoping exercise undertaken  
3           by Government to measure the scale of the task that PIRC  
4           would have to undertake and that scoping exercise should  
5           then have been used to identify how much funding and  
6           resourcing would be required.

7           I am not sure whether that occurred or to what level  
8           it occurred or what detail it occurred.

9           Q. Thinking about the resourcing, we have heard there were  
10          22 members of staff from top to bottom?

11          A. Yes.

12          Q. That Mr Little on 4th came in and had all bar one  
13          working on this Inquiry. He still required the support  
14          of Police Scotland?

15          A. Yes.

16          Q. Particularly in relation to issues regarding  
17          house-to-house enquiries?

18          A. What I would say there is that, I think as we are aware  
19          and we have discussed, on Sunday, 3rd PIRC were simply  
20          instructed to investigate the incident at Hayfield Road  
21          and the aftermath of that. Whereas Police Scotland were  
22          investigating all the events leading up to the incident  
23          at Hayfield Road. Sorry, I have lost my train of  
24          thought. Can you repeat the question?

25          Q. I was talking about resourcing and the adequacy of

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1           resourcing, and talking about some of the evidence we  
2           have heard from Mr Little, talking about how he used all  
3           but one of the PIRC resources and staff he had at his  
4           disposal on the 4th when he came in. But, in addition,  
5           he talked about still requiring to rely on support from  
6           Police Scotland, and one of the matters I mentioned was  
7           the house-to-house.

8       A. Yes, I think, because of the preceding incidents,  
9       Police Scotland were doing that house-to-house enquiry.  
10       So, as we know, Mr Bayoh had been in the house of  
11       Mr Dick in the early hours of Sunday, 3rd. He had then  
12       left there and returned to his own house. There was  
13       an altercation outside with his friend, Mr Saeed. He  
14       then left that house and then walked along various roads  
15       until he arrived at Hayfield Road in Kirkcaldy. So we  
16       were doing Hayfield Road, the immediate nature of  
17       Hayfield Road, including house-to-house.  
18       Police Scotland were doing all the other house-to-house,  
19       because that is what they had to investigate. Now, that  
20       changed on the 5th where basically Crown said: just do  
21       everything, take over all aspects -- sorry, I am  
22       punching that again -- take over all aspects. At which  
23       point we told Police Scotland: stop the house-to-house,  
24       we are now taking over all aspects of the  
25       house-to-house. But they had already done some of that



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1            anyway. Fine. They had done it. We would examine what  
2            they had done. If we felt it necessary to go back and  
3            see somebody, then we would do that.

4            Q. So thinking about the resources that were available to  
5            PIRC that first week, approximately 21 members of staff  
6            were available. You have said you took the view that  
7            you were not adequately resourced. Can you help the  
8            Chair understand where you felt there was perhaps  
9            a shortfall or further resources would have benefitted  
10           PIRC at that time?

11           A. Where you have limited resources, I think there is  
12           a difference between an effective investigation and the  
13           timeliness of the investigation. Because you can be  
14           effective with limited resources, but it might take you  
15           longer to get there and, therefore, the limitation on  
16           resources will delay the investigation and what can be  
17           achieved within timescales. Part of the challenge, as  
18           we know, if we go back to the five principles, was  
19           promptness. If you have limited resources, it delays  
20           things, it adds to frustration, not just within the  
21           organisation but it leads to frustration by,  
22           for example, the family of the deceased, who consider  
23           that things aren't progressing as quickly as we would  
24           like. You are doing the best with the resources you  
25           have but, if those resources are limited, there is

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1           a limit. I know I have used the word "limited" and  
2           "limit" twice there, but there is a limit in what can be  
3           achieved within reasonable timescales.

4       Q. Looking back now at that early week, those early days,  
5           can you identify in your mind areas where you simply  
6           didn't have any more staff to do a task you would have  
7           liked to have been done?

8       A. I think as the days went on staff began to multitask.  
9           So we are sending out actions: right, let's complete the  
10          house-to-house, let's get this -- you are prioritising  
11          what you are doing. Right, we want the house-to-house  
12          completed as quickly as possible. So it was at that  
13          point, and I think Billy Little touched upon it, I am  
14          saying: I need additional resources here, I have ran out  
15          of staff, and I went to the Commissioner, and she said:  
16          shut down the review section in PIRC, that is the other  
17          side of our business, complaint handling reviews, get  
18          out and help the investigations team, let's complete the  
19          house-to-house at the very least. So they assisted us  
20          with that, to complete that aspect. Because that was  
21          quite important. Because during the house-to-house you  
22          were turning up witnesses who had seen -- or you were  
23          identifying witnesses. I use a lot of colloquialisms,  
24          "turning up witnesses", but you were identifying  
25          witnesses who had seen aspects of it and required

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1 statements taken.

2 Equally it's a thing which frequently occurs --  
3 frequently occurs during murder investigations, there  
4 are other things, you get the revisit of the scene  
5 precisely one week later. So I organised the revisit to  
6 the scene one week later to see if -- because this  
7 occurred 7.20 on the Sunday morning, so we would go  
8 there from about quarter to 7 on that morning through to  
9 the back of 8 and see -- we would stop vehicles with the  
10 assistance of the traffic department or roads policing  
11 in Police Scotland, stop vehicles, and that actually  
12 threw up a couple of additional witnesses that had never  
13 come forward in the first instance. So -- but because  
14 you are doing that, as you are speaking to people, you  
15 require staff to take them aside; who are they? What  
16 did they see? Get statements from them. Sometimes  
17 arrange: well, you can't give a statement just now  
18 because you are on your way to work, because the  
19 hospital is fairly close by and there was a change over  
20 of shift, so you are making arrangements to go back and  
21 see them in the evening. There are all these things to  
22 consider.

23 Q. When was it that you spoke to -- was it Ms Scullion, and  
24 she directed: let's shut down the complaint handling  
25 section and use those staff as well?

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1       A. It was Ms Frame, who was the Commissioner.

2       Q. Sorry. Ms Frame, sorry.

3       A. I think that was within two or three days. Because

4       I know I had those resources by the Sunday, which was

5       the week later, and our priority was completing the

6       house-to-house. So I knew I had those resources come

7       that weekend. Now, those staff did not work at

8       weekends, therefore I must have had them prior to the

9       weekend.

10      Q. So you come back to work on Tuesday, 5th?

11      A. Yes.

12      Q. You've got additional resources at your disposal prior

13      to the weekend. Would that be by the Friday?

14      A. Potentially, yes.

15      Q. The 8th.

16      A. Yes. But I think what we need to remember is that none

17      of those staff were trained investigators. They had an

18      entirely different function within PIRC. But equally

19      legislative-wise PIRC investigators have the powers of

20      a constable, other PIRC staff don't. So they didn't

21      have powers of a constable, because you are designated

22      by the Commissioner and, if you ever look at a PIRC ID,

23      on the back of it there is a statement that states the

24      legislation and confers the powers of a constable on

25      you. So investigators while doing the investigation on

## Transcript of the Sheku Bayoh Inquiry

1           behalf of the Commissioner have the powers of  
2           a constable, other PIRC staff don't. So --

3       Q. Did that then limit the roles or the tasks they could be  
4       allocated?

5       A. Yes, certainly. You wouldn't allocate them a task to  
6       undertake by themselves. Because usually you work in  
7       pairs for the corroboration, what you would do is then  
8       split the investigators and actually give them a member  
9       of the review staff to act as their corroborating  
10      person, and that is how we did it. But we didn't  
11      individually allocate actions for them to go out and  
12      complete. They were there to assist primarily from the  
13      corroboration perspective.

14     Q. I see. Thank you. Can we turn now to the actual  
15     handwritten document. I am going to go through this and  
16     it will be on the screen, and we will be able to go  
17     through it in that sense. You won't have the ability to  
18     flick through pages doing it this way, but if there is  
19     another page you would like to see, we can hopefully  
20     work through that. And I have a hard copy myself.

21     A. Yes, ma'am.

22     Q. So this is, as you can see it on the screen, PIRC 04154  
23     and it says "Management policy file" at the top, and we  
24     see handwriting. Is that your handwriting?

25     A. Yes.

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1 Q. It gives "Date of crime/incident 3rd May 2015".

2 Mr Little's name is there and your own name is there.

3 Do we see this is -- we saw the typed version a moment  
4 ago. Is this effectively what it was typed from?

5 A. Yes. I started completing this on the 5th and that is  
6 why you have got the anomaly where basically Billy and  
7 me flip roles come the 6th. But I had started writing  
8 this on the 5th.

9 Q. Tell us, what is a management policy file? What is it  
10 for?

11 A. It is to basically manage the investigation from  
12 a strategy and a policy perspective. All major  
13 investigations usually have a management policy file,  
14 and it is to record your high level decisions; setting  
15 out the progress of the investigation in a structured  
16 way, your thought processes, why are we doing this.  
17 Now, that translates into a series of actions. So,  
18 for example, you might have a forensic strategy. You  
19 would record your forensic strategy and then that gets  
20 converted into a series of actions by staff which is: go  
21 out and seize productions, submit them to a lab, get  
22 examinations done. So it's quite high level policy and  
23 strategy. It is not a series of actions, but equally it  
24 is to chart the development of the investigation and  
25 record what is your considerations, what your reasons

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1 sometimes for taking the investigation in this direction  
2 or whatever, so it's quite a high level document. Now,  
3 all senior investigating officers, whether they be in  
4 the police, PIRC or wherever, are trained in management  
5 policy files.

6 Q. We obviously know this is your document and you started  
7 it and created it. What role would normally be  
8 responsible for creating and starting a management  
9 policy file?

10 A. It is usually the senior investigator or senior  
11 investigating officer within the police.

12 Q. Would that be like the lead investigator in PIRC or  
13 someone with the title "senior investigating officer"?

14 A. Yes, but usually you only have a management policy file  
15 for those large-scale investigates. You don't have them  
16 for smaller investigations. It is only for large-scale  
17 investigations. Within the police, that is primarily  
18 murders or major enquiries. Let's say, a terrorist  
19 investigation, a terrorist incident. It is quite high  
20 level. But for more general crime you certainly  
21 wouldn't do that and within PIRC it is for the  
22 large-scale investigations.

23 MS GRAHAME: Thank you. That sets us up for this afternoon,  
24 but I am conscious of the time. Would that be  
25 an appropriate moment to rise?

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1 LORD BRACADALE: We will stop for lunch now and sit at  
2 2 o'clock.  
3 (1.01 pm)  
4 (The short adjournment)  
5 (2.00 pm)  
6 LORD BRACADALE: Ms Grahame.  
7 MS GRAHAME: Thank you. We had just turned to your log --  
8 A. Yes.  
9 Q. -- before lunch, and I wonder if we can go back to that  
10 and have it on the screen, please, if we can move to the  
11 second page. We will see at the top of page 2 it says:  
12 "Decision No 1."  
13 A. Yes.  
14 Q. And you said before lunch that this management policy  
15 file is designed to record high level decisions that are  
16 taken?  
17 A. Yes.  
18 Q. Does that involve all high level decisions?  
19 A. Due to the nature of it, a lot of the decisions may be  
20 taken by Crown and then passed to us. Where Crown are  
21 issuing additional instructions I would usually record  
22 it within the policy file, and I think as we move on we  
23 will see that.  
24 Some decisions are natural to any investigation. So  
25 although you may record them, you don't really need to



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1 go into depth because broadly everybody understands what  
2 they are. For example, house-to-house enquiries, you  
3 don't actually need to specify what a house-to-house  
4 enquiry is because everybody involved in  
5 an investigation understands what that is. You might  
6 need to set the parameters for the house-to-house  
7 enquiry, and in this case it was the route Mr Bayoh took  
8 from his home to Hayfield Road. So you would set those  
9 things. So it is quite a high level, you don't  
10 necessarily need to go into detail, because, as I said  
11 earlier, that will translate into a series of actions to  
12 be issued to staff to complete.

13 Q. Looking at that decision number 1, you have  
14 a description of the investigation?

15 A. Yes.

16 Q. If we just move to the bottom of that page for a moment,  
17 I think we will see it says:

18 "Officer making decision."

19 Your signature appears there on the true copy and  
20 the date and time is given 5 May 2015.

21 A. Yes.

22 Q. So before we look through the content of this page, can  
23 you tell the Chair -- obviously this relates to  
24 an investigation that started on 3 May?

25 A. Yes.

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1 Q. You arrive back at work on 5 May and start the policy  
2 log?

3 A. Yes.

4 Q. You are giving a description of the incident here on  
5 5 May. Did you prepare this on 5 May on the basis of  
6 your knowledge at the time --

7 A. Yes.

8 Q. -- or was it prepared retrospectively?

9 A. No, it is prepared at the time. Some entries are  
10 prepared retrospectively, and I think I explained that  
11 in my Rule 8 statement, so you may be away from the  
12 office, at meetings or things like that, so you might  
13 not be able to complete that day or even the next day,  
14 so you would retrospectively complete it. And if I do  
15 retrospectively complete it, I tend to indicate that it  
16 has been retrospective, what has actually happened and  
17 then when I create the entry. Again, that is just for  
18 the purposes of transparency. If I could also say my  
19 habit in every investigation, murder or other  
20 investigation, is always to give a narrative of what my  
21 understanding is in decision 1 as to my understanding of  
22 what happened, albeit sometimes that can be quite  
23 limited.

24 Q. So decision 1 may not necessarily be a decision that has  
25 been taken, but perhaps a summary of your understanding

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1 at that time?

2 A. Yes.

3 Q. If the Chair looks at the date on any of these pages,  
4 and as in here we see it is 5 May, was that the date  
5 that you prepared this summary?

6 A. Yes. It would be late in the day because obviously  
7 I was reading the briefing paper, I was getting briefed  
8 by staff, holding lots of discussions and things like  
9 that, examining some material that had come in. And you  
10 might pick up on it as we go through it. Because we  
11 were aware, for example -- and that is why I referenced  
12 DC Derek Connell's statement which was provided on the  
13 4th and that indicated that the knife had been found  
14 a distance away from where the interaction with Mr Bayoh  
15 took place. Consequently there was no certainty --  
16 I know you have spoken about it during the Inquiry, but  
17 this narrative that was presented on day one that  
18 Mr Bayoh was potentially in possession of the knife when  
19 he confronted the police officers and that indicated to  
20 me probably or possibly he did not have possession of  
21 that knife because it was found a distance away from  
22 where the incident -- I think it was 30-40 yards away,  
23 so that indicated to me that what we knew up to that  
24 stage may not be accurate.

25 Q. That was information that was known to you on 5 May by

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1           the time you prepared this decision number 1?

2           A. Yes.

3           Q. Just to be clear about that, we have heard evidence  
4           about a briefing note --

5           A. Yes.

6           Q. -- which was dated 3 May. Perhaps we could look at that  
7           for a moment. It is PIRC 03694. This will come up on  
8           the screen in a moment. Just to give you some of the  
9           background, we heard from Mr Harrower that he had  
10          prepared this briefing note on 3 May, based on the  
11          information he had at that time.

12          A. Yes.

13          Q. And that was then used and Mr Little saw it on the 4th  
14          and then we may hear that -- am I to understand you saw  
15          this briefing note on the 5th?

16          A. Yes.

17          Q. So that is PIRC 03694. I can summarise this really. We  
18          heard in relation to the briefing note on page 2 at  
19          paragraph 4 that it was reported -- this is on 3 May:

20                 "It was reported that as the officers drove into  
21          Hayfield Road they saw the now deceased coming toward  
22          them as the vehicles came to a halt. They could clearly  
23          see he was in possession of a knife and was making his  
24          way towards them. Some of the officers (unknown how  
25          many at this stage) drew their police issue batons. At

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1           least one of the officers also drew their PAVA spray and  
2           issued a warning to the now deceased, who continued to  
3           come forward."

4           The summary of that I put to Mr Harrower was that  
5           this was describing a subject who was the aggressor in  
6           that situation, and the police had responded to that  
7           aggression using batons and spray?

8       A. Yes.

9       Q. We had asked previous witnesses why in this decision  
10       number 1, which -- we will just keep with this decision  
11       number 1, if we can look at that page, just maybe  
12       further up, we see that you have written here about  
13       events of the early hours, we can move down, please:

14           "On being detained/arrested, Sheku Bayoh struggled  
15           with police officers who physically restrained him.  
16           Officers used CS/PAVA spray during the arrest and used  
17           police batons against the deceased."

18       A. Yes.

19       Q. So we can see clearly that there is no reference there  
20       to what is contained in the briefing note, that the  
21       officers could clearly see he was in possession of the  
22       knife and making his way towards them?

23       A. Yes.

24       Q. That was because you had seen DC Connell's statement by  
25       then?

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1       A. DC Connell's first statement is dated 4 May. As I said,  
2       I don't know what your reference is but it was statement  
3       22A within the PIRC statements. And his attention had  
4       been drawn to the knife lying a distance away from where  
5       the incident occurred. He had then photographed the  
6       knife and then lifted or seized the knife. So  
7       I thought: I need to be cautious about assumptions here  
8       because although we were told on the 3rd, and it's in  
9       the briefing document you referenced, that he was in  
10      possession of the knife coming toward them, well, that  
11      didn't really square with the fact that the knife is  
12      found 30-40 yards away, and that is why I am not being  
13      definitive about that within my narrative.

14     Q. If we can carry on looking at the latter half of the  
15     page, there is then a section for a reason and you have  
16     explained that this technically wasn't reason, it was  
17     a narrative. And it says:

18             "[He] was taken to the ground by police officers  
19     where he was handcuffed to the rear and had leg  
20     restraints applied."

21             That was the information that was available to you  
22     at the time?

23     A. Yes.

24     Q. "[He] lost consciousness and appeared to suffer cardiac  
25     arrest. CPR was administered by police officers and

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1           an ambulance summoned. On arrival Mr Bayoh was placed  
2           in the ambulance and CPR continued. He was taken to  
3           Kirkcaldy Victoria Hospital where he died. Life was  
4           pronounced extinct at 0904 hours."

5       A. Yes.

6       Q. Once you complete these he forms, I think you have said  
7           you sign these pages?

8       A. Yes.

9       Q. Do you check them for accuracy at that time?

10      A. It's as accurate as your knowledge is at that time.

11      Q. Right, so it's -- is it fair to say it is a snapshot of  
12          where you are at that stage, when you sign?

13      A. Yes, obviously as you progress through any investigation  
14          you are gathering evidence, you are gathering witness  
15          statements, so it can be an evolving picture. But it is  
16          as accurate as you know at that time.

17      Q. Let's move on to the next page. It remains decision  
18          number 1, which you have explained, that is  
19          the continuation, and it says:

20                "Police Scotland secured the incident scene and  
21                appointed an SIO [Detective Superintendent]  
22                Pat Campbell~..."

23                There was:

24                "Incident scene protocols to recover evidence and  
25                undertake forensic scene examination were put in place."

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1           You mention Garry McEwan, the divisional commander,  
2           who was appointed the PS incident manager.

3           Now, where was that information from that  
4           Garry McEwan was the Police Scotland incident manager?

5       A. I can't recall that -- excuse me, frog in my throat.

6           I can't remember where that came from but I think it  
7           is more the critical incident manager, he -- the  
8           incident had been declared a critical incident, you have  
9           a police incident officer who is usually a sergeant or  
10          inspector that manages the immediacy of what happened or  
11          the incident scene itself. But because this had been  
12          declared a critical incident, Mr McEwan had been really  
13          I should say there "critical incident manager" but  
14          I have just recorded it as PS incident manager.

15       Q. We have heard Garry McEwan was responsible for declaring  
16          this a critical incident?

17       A. Yes.

18       Q. So that became his responsibility?

19       A. Yes.

20       Q. Thank you. Then it says:

21               "Police Scotland notified the Scottish Fatalities  
22               Investigation Unit ... of [Crown Office] and notified  
23               them of the death. Mr David Green ... instructed that  
24               PIRC would investigate the death with Police Scotland  
25               investigating the incidents leading up to the death."



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1       A. Yes.

2       Q. So even at that stage when you signed this page on the  
3       5th you were aware that there had been -- what has been  
4       called a parallel investigation or a split in the  
5       investigation and I think you have already described  
6       that actually today in evidence. Police Scotland were  
7       doing the lead-up, PIRC were dealing with the events at  
8       Hayfield Road, and at the hospital?

9       A. Yes. I think also on the 5th -- and I can't remember  
10      when the letter from Crown came in, broadening our terms  
11      of reference. Now, I can't remember seeing it on the  
12      5th but I know it was dated the 5th from Crown, and  
13      consequently our terms of reference expanded, probably  
14      from the 6th onwards.

15      Q. We will come on to that in a moment. But my  
16      understanding is that that letter was dated the 5th?

17      A. Yes.

18      Q. So it's at some point on that date the terms of  
19      reference were expanded to cover both the lead up and  
20      the events from the Hayfield Road as well?

21      A. Yes.

22      Q. "About 0935 hours, Sunday 3rd May ... Mr Green contacted  
23      the on-call PIRC DSI Keith Harrower and instructed PIRC  
24      to investigate the death as per above.

25                "PIRC staff were called out and attended Kirkcaldy

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1           where they met with Police Scotland staff, including  
2           their SIO [Detective Superintendent] Campbell. Joint  
3           forensic and incident scene strategies were agreed and  
4           overseen by PIRC investigators."

5           Would you describe this as a high level description  
6           of what was happening?

7           A. Yes.

8           Q. There is no times given there or detailed information  
9           about handovers or information that was provided?

10          A. No, because I think the detail would come slightly  
11          later. This was me recording my understanding of events  
12          up to that point. Some of the detail may have been  
13          lacking, we might not have had that detail, and that is  
14          why I tend to be -- it's quite high level, I am not  
15          going into too many specifics at this point.

16          Q. Is it fair to say -- we have heard evidence that other  
17          officers who were involved on 3 May had their own  
18          notebooks or perhaps daybooks, we have heard about  
19          a policy log from Pat Campbell, so there would be other  
20          documentation available as well as your own log?

21          A. Yes.

22          Q. Thank you. Can we move on to the next page, which again  
23          continues decision number 1:

24                 "PIRC investigators Ferguson and Taylor dealt with  
25                 the hospital scene and arranged the transport of the

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1           deceased to the City Mortuary, Edinburgh. PIRC  
2           investigators Sinclair and Rhodes dealt with the  
3           incident scene at Hayfield Road and productions seized  
4           at Kirkcaldy Police Office including officers' clothing,  
5           PAVA spray, police batons."

6           We have heard evidence from Mr Little about that.

7       A.   Yes.

8       Q.   And then you mention:

9           "A post mortem examination was arranged for Monday,  
10          4 May ... at the Mortuary, Edinburgh."

11          And on to the next section:

12          "PIRC FLOs Alistair Lewis and John Clerkin were  
13          appointed."

14          And then it says:

15          "About 2210 hours 3 May ... PIRC investigators met  
16          with the deceased's family and provided an overview of  
17          the role of the PIRC."

18          Can I ask you, this is obviously describing events  
19          on 3 May?

20       A.   Yes.

21       Q.   Was it your understanding that it was on 3 May that  
22           Alistair Lewis and John Clerkin had been appointed as  
23           FLOs?

24       A.   I think it was the 4th. Because we didn't have any FLOs  
25           on duty or available to us on the 3rd. As we know,

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1           there was a debate about Police Scotland FLOs and  
2           consequently when Police Scotland decided not to deploy  
3           FLOs, Keith Harrower and I think it was Alex McGuire  
4           went to see the family to explain, you know: we're PIRC,  
5           we have been instructed to investigate, and it is our  
6           intention to then deploy FLOs the next day, which would  
7           be the 4th. So that is my understanding.

8       Q.   And that understanding, was that from Mr Little when you  
9           arrived on the 5 May?

10      A.   Yes.

11      Q.   He has given evidence that he contributed information to  
12           you so that you could have it for the log?

13      A.   Yes.

14      Q.   Would you agree with that?

15      A.   Yes.

16      Q.   Did much of the information about the preceding  
17           two days' events come from Mr Little?

18      A.   I would say it came from a combination -- primarily  
19           Mr Little, but it came from a combination, so reading  
20           documents, there was documents starting to arrive in  
21           from Police Scotland, so you read as much as  
22           practicable. You also get briefings from some of the  
23           staff, but up until that point obviously Billy had been  
24           in charge, so primarily from Billy but from some other  
25           sources as well.

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1 Q. "DSI Harrower requested statements from officers  
2 involved as witness to the incident. Status of the  
3 officers is that of witnesses at this stage!"  
4 A. Yes.  
5 Q. Tell us about why you have put that with an exclamation  
6 mark?  
7 A. I think what I have said in my Rule 8 statement is I can  
8 no longer remember why I placed the exclamation mark.  
9 Q. All right. But your understanding at that time is  
10 statements had been requested from the officers as  
11 witnesses and they were witnesses?  
12 A. Yes.  
13 Q. Not suspects?  
14 A. No.  
15 Q. Is there any other possibility between suspect or  
16 witness?  
17 A. No, you are either a witness or you are a suspect. To  
18 be placed into the category of a suspect there must be  
19 some evidence that indicates criminality on the part of  
20 a person. And that is just the way things operate. You  
21 know, you can't treat somebody as a suspect without some  
22 evidence.  
23 Q. We have heard that if you are going to be treated as  
24 a suspect, that that attracts -- that status attracts  
25 certain protections for you. We have heard you might be

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1 interviewed under caution. We have heard evidence from  
2 Conrad Trickett that if you are a suspect you will be  
3 removed from the PIP process entirely?

4 A. Yes.

5 Q. Is that correct?

6 A. Because you are afforded all the legal protection that  
7 any member of the public has, which is the right to  
8 silence, the right to consult a solicitor prior to  
9 saying anything, you've got to administer the caution,  
10 so it's a completely different status from that of  
11 a witness.

12 Q. But regardless of whether you are a suspect or  
13 a witness, you are not compelled to give a statement to  
14 a police officer?

15 A. No, you are not compelled. Largely most people do give  
16 statements, particularly -- I have run murder enquiries  
17 in organised crime and it is incredibly difficult to  
18 actually sometimes get witnesses to speak up. Other  
19 times everybody speaks up. Sometimes you just have to  
20 work around that. I think, as you have explored and  
21 I outlined later on within my rule 8 statement, the  
22 unique nature of police officers where police officers  
23 are allowed to use force up to and including lethal  
24 force, but they must be accountable for the use of that  
25 force. Equally there is there normally within the

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1           legislation where in a Crown-directed investigation PIRC  
2           have less powers than in a police-referred  
3           investigation, where there is a degree of compulsion  
4           that we can apply to police officers in  
5           a police-referred one, where -- and it comes within  
6           Regulation 5 of the 2013 PIRC regulations, where we can  
7           require a police officer to provide us with any  
8           information within their knowledge and we can decide the  
9           format that that should be in, so: I want you to provide  
10          informing in the form of a statement. But we did not  
11          have that power and still do not have that power in  
12          a Crown-directed investigation. The legislation is  
13          complex.

14        Q. I think you have explained earlier there is the  
15          Crown-led investigation and the Chief Constable-referred  
16          that can become an investigation?

17        A. Yes.

18        Q. Although you have certain powers to compel officers to  
19          give statements if it is a Chief Constable referral,  
20          that doesn't exist if it is Crown-led?

21        A. That is correct and I think Dame Elish Angiolini in her  
22          report into police conduct matters has made  
23          recommendations which are within the current Police  
24          Conduct and Ethics Bill, where there should be a duty of  
25          candour placed on police officers to provide an account

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1           no matter what the circumstances.

2           Q.   Is that because of their special states as police  
3           officers?

4           A.   Yes, and I think Dame Elish had identified -- well, it  
5           was certainly brought to her attention and she took  
6           cognisance of it, of the anomaly within the legislation  
7           where the more serious the investigation  
8           a Crown-directed death, PIRC investigators had less  
9           powers than in a police-referred one, it seemed to be  
10          upside down. You know, the more serious the  
11          investigation, the more powers you should have.

12          Now, I know we also heard from Ms Boal, you put the  
13          question to Ms Boal that you cannot actually physically  
14          force a pen into any person's hand, but there has never  
15          been another occasion before the investigation of  
16          Mr Bayoh, or after the investigation of Mr Bayoh's  
17          death, where police officers have refused to provide  
18          statements.

19          Q.   Right. Thank you. I think it is fair to say in your  
20          Inquiry statement you have given some information about  
21          the proposed duty of candour --

22          A.   Yes.

23          Q.   -- that may apply. Thank you. Let's move on to the  
24          next page, please. I think this is when we turn to  
25          decision number 2, and this is also an entry from 5 May?



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1       A.   Yes.

2       Q.   So you were creating this on that date, if I understand  
3           correctly.

4       A.   Yes, Billy had instructed the setting up of the incident  
5           room on the 4th but I thought it important to record  
6           that this was a major enquiry and that is why I made  
7           that entry.

8       Q.   Do you know why Mr Little hadn't created a management  
9           policy file on the 4th, or even Mr Harrower on the 3rd?

10      A.   Probably because they were both active in doing things  
11          and tied up. We know for example Billy Little had the  
12          post mortem to go to on the 4th, and then he had to  
13          travel through to Kirkcaldy, and of course Keith was  
14          very active on the 3rd, the date of incident itself. So  
15          potentially they just didn't have the opportunity.

16      Q.   So decision number 2:

17                "Establish a PIRC major enquiry to investigate the  
18                death of [Mr] Bayoh with appropriate major investigation  
19                roles and strategies."

20      A.   Yes.

21      Q.   We heard evidence from Mr Little, who said he had set up  
22          a major investigations team effectively --

23      A.   Yes.

24      Q.   -- with numerous staff, and he was appointing roles to  
25          individual investigators and allocating tasks?

## Transcript of the Sheku Bayoh Inquiry

1       A. Yes, and I think that is why I am just formally  
2       recording it within the management policy file.

3       Q. When it mentions the word "strategies", could you give  
4       us a summary of the sort of strategies that we may see  
5       in the remainder of the file?

6       A. Yes, well, I think sometimes there is a merging of the  
7       term "policy" or "strategy", so you will have a forensic  
8       strategy, and that is to recover forensic evidence, so  
9       there's the seizing of the productions, the examination  
10      of them at the forensic lab etc, you would hold  
11      a forensic strategy meeting, you would record the  
12      meeting and what was decided at the meeting. So that is  
13      a forensic strategy.

14             You would have -- there is a range of strategies  
15      within all major investigations, so you would have like  
16      a CCTV strategy, you would have a media strategy, and  
17      that is setting out at high level what the intent is.  
18      So the CCTV strategy undoubtedly starts with let's  
19      recover every available CCTV, and that gets translated  
20      into a series of actions allocated to staff to go out  
21      and recover that CCTV. In a high profile event, in this  
22      instance the terrible death of Mr Bayoh, there's a lot  
23      of media attention so you need a media strategy. Now,  
24      primarily that is handled by your media team but you  
25      will record in here that we will have a media strategy.

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1 Q. We may also hear there would be a family liaison  
2 strategy and things like that?

3 A. Yes, so again you would set that at a high level but  
4 primarily family liaison is thereafter managed by the  
5 FLOs themselves who keep a separate FLO log of all that  
6 interaction.

7 Q. And then the reason is given you wish to:

8 "Undertake a comprehensive and thorough  
9 investigation into the death ... to capture and collect  
10 all available evidence [for] Crown Office."

11 A. Yes.

12 Q. Then the next page covers decision number 3 and this  
13 again is prepared on 5 May, and it is headed:

14 "Major investigation - roles and responsibilities."

15 And a list of names and suchlike is given and we  
16 actually looked at that when we looked at the typed  
17 version.

18 A. Yes.

19 Q. You were mentioned there as giving oversight?

20 A. Yes.

21 Q. Which you have explained. The next page is decision  
22 number 4 and this is where we see a reference to the  
23 forensic strategy, and you have said:

24 "Implement a forensic strategy to identify, recover  
25 and examine all relevant material pertinent to the

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1 investigation."

2 If we move on to the next page for a moment, do we  
3 actually see you have helpfully attached a forensic  
4 strategy here?

5 A. Yes.

6 Q. Which is a typed document which you've slipped into the  
7 relevant section of your log?

8 A. Yes. Usually if there's pertinent documents rather than  
9 repeating them within it, I will just attach -- so  
10 simply to say we are having a forensic strategy then  
11 I attach the typed up forensic strategy rather than  
12 having to rewrite it.

13 Q. The forensic strategy lists the policy, the reason and  
14 then the strategy is listed there as bullet points?

15 A. Yes.

16 Q. It covers a large number of areas where forensic science  
17 will be asked to assist in your investigation?

18 A. Yes.

19 Q. And that includes the post mortem but also:

20 "Examination of the knife found at the scene~..."

21 A. Yes.

22 Q. "... for DNA [it says], fingerprints and other evidence;

23 "Comparison of the knife with knives from the home  
24 of the deceased to identify whether they appear  
25 a matching set."

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1           And then other things such as photographs, CCTV,  
2           physical items, recovery of mobile phones and other  
3           articles and examination of vehicles as well. Then  
4           towards the bottom of that page we see:

5           "Examination of officers' clothing, radios,  
6           et cetera, for blood, footmarks and other relevant  
7           evidence."

8       A. Yes.

9       Q. So is this effectively PIRC investigators setting out  
10       the scope of the forensic examination that they wish  
11       carried out?

12      A. Yes.

13      Q. If we can move on to decision number 5 on the next page.  
14       This is dated 7 May, there is obviously a gap?

15      A. Yes.

16      Q. There's no entry, as far as I can see, for the 6th. Is  
17       there an explanation for that?

18      A. Yes, I think I was busy out of the office on the 6th,  
19       I think on the 6th I went to see Mr Anwar and the family  
20       and then from there I then headed up to Kirkcaldy to  
21       meet with DCI Keith Hardie and his deputy, who I think  
22       was Stuart Wilson. By that time Keith Hardie had taken  
23       over from Pat Campbell as the SIO and I wanted to meet  
24       with him and again inform him that I considered the  
25       officers' status to be that of witnesses and I had asked

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1           him to individually approach each of the officers,  
2           notify them that I considered them to be witnesses, and  
3           to request statements from them.

4           I also backed that up with an email and told them  
5           that I wanted an individual response from each of the  
6           officers. So I was basically tied up on the 6th, so  
7           that is why I probably am writing this retrospectively,  
8           because I was out of office doing things.

9       Q.   So out of the office on the 6th, meeting with the  
10          family?

11      A.   Yes.

12      Q.   And was that the first time that you had met with the  
13          family?

14      A.   Yes, we met in Mr Anwar's former offices at  
15          Carlton Place.

16      Q.   You have also said you went to Kirkcaldy and met with  
17          DCI Hardie?

18      A.   Yes.

19      Q.   You described him as the SIO. We have also heard him  
20          described as the single point of contact?

21      A.   Yes.

22      Q.   By that date, 6 May, he had, we understand, become  
23          a single point of contact. Can you explain what an SPOC  
24          is?

25      A.   Yes. So we in PIRC, as I think mentioned by others

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1 including Billy Little, we do not have access to police  
2 systems. So we don't know what duty that officer is on  
3 on a particular day, what shift they are on, whether  
4 they're on annual leave, whether they are sick, whether  
5 they are on a night shift or anything like that. So we  
6 always direct requests for various documentation because  
7 if we try and go and get all that stuff ourselves it  
8 is -- a lot of stuff is scattered throughout  
9 Police Scotland, so STORM material and radios will be at  
10 an area control room, for example -- you will have stuff  
11 scattered all over Police Scotland.

12 Therefore the easiest way, and it's always been the  
13 case, right back since the establishment of PIRC, is  
14 that we operate through a single point of contact, so we  
15 ask Police Scotland to appoint an officer as a single  
16 point of contact and we direct all such requests for  
17 whatever to that single point of contact. It is then  
18 the single point of contact's job to go and obtain that  
19 material because they will have access to police  
20 systems, they will know a lot of the people involved,  
21 consequently that is the most economic way to go about  
22 it, rather than us chasing all over the place trying to  
23 find out what the material is. Single point of contact,  
24 and that is the way it happens. And that is the way it  
25 operates today. For every investigation they appoint

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1 a single point of contact.

2 Q. When you say "they appoint a single point of contact",  
3 who is "they"?

4 A. Police Scotland. Sometimes there can be three single  
5 points of contact -- I know that sounds a bit  
6 contradictory but in some major investigations, so you  
7 might have a single point of contact within area control  
8 rooms to obtain all that material, you might have one  
9 for the general investigation, and you might have one  
10 for specialist areas like firearms or for the more  
11 sensitive side of the business, that the rest of the  
12 police might not have access to.

13 So, as I say, you could have two or three single  
14 points of contact. A lot of times Police Scotland will  
15 come back to you, and say: look, it's not practical for  
16 one person to do all this, can we split it up and we  
17 will tell you who to contact within the various business  
18 areas. Usually we will agree to that. It's preferable  
19 that it all goes through one person but sometimes it is  
20 not feasible. But other times -- I think what we have  
21 also got to remember is that these officers have, for  
22 want of a better expression, their day job to do, so it  
23 is quite a heavy responsibility to run around on behalf  
24 of PIRC. And Keith Hardie is also managing their aspect  
25 of the major investigation at that point, so ...



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1 Q. So for convenience, for questions of economy, ideally  
2 one single point of contact?

3 A. Yes.

4 Q. Is that to do all communications between PIRC and  
5 Police Scotland?

6 A. Largely, yes.

7 Q. Largely. So if you wish something from the individual  
8 officers like a statement, or some sort of account to be  
9 given, would that go through the single point of  
10 contact?

11 A. Yes. We do not directly -- excuse me, we do not  
12 directly approach the police officer, we act through the  
13 single point of contact, they transmit the message  
14 onwards to the officers.

15 Q. So that is the practice. What if you decide you wanted  
16 to go to the officers direct?

17 A. Well, one, as I explained just a short period of time  
18 ago, we don't have access to police systems so we don't  
19 know whether they are on duty, we do not doorstep  
20 officers at their family homes --

21 Q. Would you have access to personal details as to where  
22 they live?

23 A. No, we don't. And that is why we've got to go through  
24 the SPOC. The SPOC will tell us when the officer is on  
25 duty. And the normal practice is to see them when they

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1           are on duty at their place of work. Sometimes we can  
2           ask for their shifts to be changed so that --  
3           for example, if they are night shift but we want to  
4           interview them, they might change their shift to a day  
5           shift so that we can interview them during the day. If  
6           that is not practicable, there have been some occasions  
7           where PIRC staff will come out and do a night shift and  
8           go and interview the officer because they are night  
9           shift.

10          Q. I wonder if you can think of any situation where,  
11           instead of going to the single point of contact or in  
12           addition to that, PIRC have ever made a direct approach  
13           to the SPF or to a lawyer representing officers?

14          A. No, I can't think so.

15          Q. Can you think of any reason why that couldn't be done,  
16           or why it isn't done?

17          A. I think if the officer is a suspect, not a witness, what  
18           happens is we notify Professional Standards Department  
19           that we consider the officer to be a suspect, and that  
20           we want to conduct a suspect interview. That officer  
21           can either request that a member of the Scottish  
22           Police Federation sit in on the interview to support  
23           them or a lawyer is present. That is normal for  
24           a suspect interview.

25           Very rarely -- in fact I can't think of any other

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1           time -- do we approach the officer's solicitor because  
2           they don't need a solicitor, they are a witness. Let's  
3           remember police officers are professional witnesses,  
4           they give statements all day every day, they attend  
5           court to give evidence, part of their duty is to give  
6           an account, so there wouldn't be a need to go to their  
7           solicitor. Particularly in this case, they have been  
8           told on day one, day two, Police Scotland had been told,  
9           the single point of contact had been told, the senior  
10          officer has been told we considered them to be witnesses  
11          day one, day two, day three, day four, all the way up to  
12          day seven, when Keith Hardie started to come back to  
13          say: I have now individually approached the officers and  
14          told them their status as witnesses.

15        Q. Perhaps we can just look very briefly at a statement we  
16        have looked at from Keith Hardie, PS00667. This is  
17        a self-penned statement from DCI Hardie completed on  
18        27 May 2015 but in relation to events from the week  
19        after --

20        A. Yes.

21        Q. -- Mr Bayoh's death. We will look at it in a moment but  
22        in summary on Thursday 7 May he says in the statement  
23        that he:

24               "... received a request from PIRC to make contact  
25        with all officers who were known to be involved in the

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1           arrest of Mr Bayoh and establish whether they were  
2           willing to provide an operational statement."

3           Was that actually at your request on the 6th?

4       A. Yes, so I -- myself and Mr Little physically met with  
5           him on the 6th. I then backed that up with an email on  
6           the 7th, requesting they individually approach the  
7           officers.

8       Q. That was to DCI Hardie?

9       A. Yes.

10      Q. We will get this in a second, PS00667. No? There's a  
11       slight glitch there. But just to summarise, on Thursday  
12       7th May there is a series of paragraphs within this  
13       statement we have looked at with DCI Hardie in evidence  
14       from 1.35 in the afternoon that he and DCI Stuart Wilson  
15       spoke to Craig Walker, then Daniel Gibson, then  
16       James McDonough, then Kayleigh Good, then Alan Smith,  
17       then Ashley Tomlinson, advising them that they were  
18       witnesses, and asking if they wished to provide  
19       a statement. And for those officers the uniform  
20       response was they did not wish to provide a statement at  
21       this time on the advice of their solicitor.

22      A. Yes.

23      Q. Then DCI Hardie goes on to explain in this statement at  
24       9.20 on Tuesday, 12 May that he and DI Wilson spoke with  
25       Temporary Police Sergeant Scott Maxwell, and that he

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1           also did not wish to provide a statement at this time on  
2           the advice of his solicitor. The statement itself does  
3           not indicate that he was advised that his status was  
4           witness but we have heard evidence from DCI Hardie that  
5           that was the message that was communicated?

6       A. Yes.

7       Q. And then on Wednesday, 13 May that Hardie and Wilson  
8           spoke to PC Paton, who was also advised he was being  
9           treated as a witness and PC Paton provided he did not  
10          wish to provide a statement on the advice of his  
11          solicitor.

12      A. Yes.

13      Q. And then on Monday, 18 May, Hardie and Wilson met with  
14          PC Nicole Short. She was advised that she was being  
15          treated as a witness, and PC Short provided that she did  
16          not wish to provide a statement at this time on the  
17          advice of her solicitor.

18      A. Yes.

19      Q. That was an instruction carried out by Hardie, the  
20          single point of contact, in relation to all of those  
21          officers on your and Billy Little's instruction?

22      A. Yes.

23      Q. Thank you. We were on the policy log, PIRC 04154.  
24          Perhaps we can go back to that and look at decision  
25          number 5. This entry is on 7 May:

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1 "CCTV and digital evidence strategy."

2 So this indicates a decision was taken to implement  
3 this type of strategy to identify public and private  
4 CCTV which existed and to capture any material that may  
5 have a bearing on the investigation. And also to  
6 recover evidence from mobile phones or electronic  
7 devices. Am I right in saying at that time that you  
8 were aware that an Ashley Wyse, who lived in the area of  
9 Hayfield Road, had handed over a mobile phone for the  
10 purposes of allowing PIRC to look at Snapchat footage  
11 that she had recorded?

12 A. That is correct. Some of this can be slightly  
13 retrospective but we have also got to consider does any  
14 other member of the public have recorded something and  
15 we are unaware of it, have we identified all CCTV that  
16 might provide views. We also know that one of the --  
17 one of the witnesses that saw Mr Bayoh walking along the  
18 road in the lead-up to the incident had recorded footage  
19 on their mobile phone. So this is a broad strategy,  
20 let's capture everything we can. We have already got  
21 some stuff but this is taking cognisance of everything.

22 Q. Would this include -- we have seen footage from  
23 a dashcam --

24 A. Yes.

25 Q. -- on a vehicle, would that include that type of digital

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1 material that you can gather?

2 A. Yes, I think that was Harry Kolberg and his son.

3 Q. Yes, thank you. Let's move on to the next page,  
4 decision number 6. This is from 7 May also. It talks  
5 about a major incident room:

6 "Establish a major incident room within PIRC  
7 utilising the CLUE 2 operation system, and appropriately  
8 staffed, to manage all aspects of the investigation."

9 We have heard from Billy Little that he did that --  
10 set that up on the 4th and he had three members of  
11 staff --

12 A. Yes.

13 Q. -- manning that with Ian McIntyre, I think involved?

14 A. Yes, I think what I am doing there is formally recording  
15 it into the policy log. Again, it's a bit  
16 retrospective.

17 Q. The next page is also completed on 7 May. And this  
18 relates to family liaison:

19 "Two family liaison officers ... were appointed to  
20 provide information and support to the family of the  
21 deceased.

22 "FLO strategy and recording of contacts will be  
23 documented in the separate FLO strategy logs."

24 And the FLOs were Alistair Lewis and John Clerkin  
25 and they had been appointed. And I think you have just

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1           said a moment ago you thought they were appointed on the  
2           4th?

3       A.   Yes.

4       Q.   So this is a retrospective recording of that?

5       A.   Yes, but I think it is important to record it in the  
6           policy log, and to a certain extent you are playing  
7           catch up a wee bit in the very early stages of  
8           investigations, so sometimes you think: oh, I have not  
9           documented that, I will now place an entry. Because  
10          I know there is -- there is FLOs appointed and there is  
11          a FLO strategy, so in the early stages some of it is  
12          retrospective because you are playing catch up.

13      Q.   In relation to the last couple of items, the CCTV,  
14          digital evidence strategy, the family liaison strategy,  
15          we don't see copies of these strategies in this section  
16          of the log. We have heard part of the evidence of  
17          Mr Lewis, who was one of the FLOs, and my understanding  
18          of his evidence is that there was not a written FLO  
19          strategy.

20      A.   He should record that in the FLO log. The policy is  
21          high level, it's appoint FLOs. Potentially -- what the  
22          FLO does is answer to the SIO but he should be recording  
23          everything within the FLO log. Now, the FLO strategy  
24          has got to be flexible and adapt to the situation of  
25          every family. And it's difficult to take cognisance of



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1           all the factors, that is why it gets recorded in the FLO  
2           log, because as you progress onwards you can establish  
3           like family dynamics, all these various factors and that  
4           should be recorded in the FLO log. Not in the  
5           management policy file.

6       Q.   So in the earlier example where we looked at the  
7           situation where the forensic strategy was copied and  
8           inserted into the log, is there a reason why a FLO  
9           strategy was not copied in and inserted into the log?

10      A.   I can't think of one now. But I am assuming, and we  
11           know what everybody says about assumptions, I expected  
12           that Mr Lewis and John Clerkin would record that within  
13           the FLO log.

14      Q.   Who did you expect to write the family liaison strategy?

15      A.   Normally it's the FLO themselves. They speak to the SIO  
16           and the Deputy SIO, but usually the FLO creates the  
17           strategy. To manage the family -- as I said, every  
18           incident, every death is different, and therefore a lot  
19           of the information that you are getting about the family  
20           is coming from the family to the FLOs and that is why it  
21           is important that they are managing that aspect of it.

22           If they become aware of matters that they think  
23           should be brought to the lead investigator, the deputy,  
24           they would come and tell you. There's got to be  
25           a certain extent -- FLOs are highly trained. PIRC FLOs

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1 do the same training as Police Scotland FLOs, so you  
2 expect them to manage that quite professionally. And  
3 Alistair Lewis is a highly experienced FLO as was  
4 John Clerkin, so you expect them to manage that.

5 Q. In relation to the earlier forensic strategy that we  
6 looked at, who had prepared that?

7 A. I think I typed that up.

8 Q. You typed that. So if you had been typing up the family  
9 liaison strategy would we have seen a copy inside the  
10 log?

11 A. Probably. If I typed up a document -- and you will see  
12 it later on as we come across other things, if I typed  
13 something up rather than then having to rewrite it into  
14 the policy or management file, my habit was simply to  
15 attach that document and say "see attached", so ...

16 Q. Was there any expectation on your part -- having entered  
17 in the log that there is to be a family liaison  
18 strategy, was there any expectation on your part that  
19 Lewis or Clerkin would send a copy to you for insertion  
20 into the log?

21 A. No, because that would be recorded in the FLO log. The  
22 FLO logs are quite large documents, in fact in relation  
23 to the death of Mr Bayoh I think there was three FLO  
24 logs, which are multiple pages, so the practicality of  
25 actually inserting that into this book, it is just not

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1           practical.

2           Q.   Then if we can look at the reason, so if we move that  
3           page up:

4                    "Provide appropriate support to the family of the  
5           deceased, acting as a single point of contact for the  
6           receipt and provision of information to/from PIRC."

7           A.   Yes.

8           Q.   So the idea was that Lewis and Clerkin would be a single  
9           point of contact --

10          A.   Yes.

11          Q.   -- for the family. All the information would flow  
12          through either of those investigators?

13          A.   Yes.

14          Q.   We have also heard that they remain part of the  
15          investigation team?

16          A.   Yes.

17          Q.   They are not simply there to provide support or  
18          emotional wellbeing assistance to the family?

19          A.   No. It's quite a large burden being a FLO but they are  
20          primarily investigators first and foremost. They have  
21          a role in supporting the family and transmitting  
22          information to the family but they also have a role in  
23          acquiring information from the family and feeding that  
24          into the investigation. That happens in most death  
25          investigations, including murder investigations. First

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1           and foremost the FLO is an investigator. But they also  
2           have a role to play in supporting the family.

3       Q. Thank you. Then let's look at decision number 8.

4           I think this is also prepared on 7 May and it refers to  
5           productions being seized by PIRC and they have to be  
6           entered into a productions register and managed. So  
7           again, is this you recording things which are actually  
8           already going on?

9       A. Yes, I can't remember -- we had obviously taken  
10          possession of certain productions, some productions  
11          remained with Police Scotland and we were required to  
12          seize them effectively from Police Scotland. But you  
13          are also, as you move forward you are seizing additional  
14          items. MI stands for major incident production register  
15          so you are recording what the item is, when it was  
16          seized, where it was seized, who it was seized by, and  
17          where it is stored. It's to keep track because  
18          otherwise you can quickly lose track, especially in  
19          a major investigation where you are gathering hundreds  
20          if not thousands of items, it is very important to try  
21          and keep track of that, and this is the major incident  
22          production register, so it starts at production number 1  
23          and runs onwards, sometimes into the -- from the  
24          hundreds sometimes into the thousands. But you have got  
25          to keep track of that.

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1 Q. Do you have an investigator allocated to that role?

2 A. Yes.

3 Q. We can move on to decision --

4 LORD BRACADALE: If I could interrupt, just before you do  
5 that could I take you back to the previous decision, the  
6 one on the family liaison officers. You just explained  
7 a few moments ago that the FLO was first and foremost  
8 an investigator, but also had a function to support the  
9 family.

10 A. Yes, my Lord.

11 LORD BRACADALE: In your experience do these two functions  
12 ever give rise to a degree of tension?

13 A. They can do. I have experienced it. Not only within  
14 this one, I have run murder enquiries where the victims  
15 were figures involved in organised crime. Organised  
16 crime families, they are not particularly trusting of  
17 the police to put it politely. Consequently there can  
18 be a degree of tension between the family liaison  
19 officers and the family of the deceased. But they have  
20 a job to do because it's important that we acquire  
21 information about the deceased, about sometimes family  
22 dynamics, provide them with information, and  
23 particularly where in a murder investigation if you  
24 reach a successful conclusion and arrest people, you  
25 will wish to inform the family of that before it hits

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1 the media.

2 So, as I say, primarily they are investigators,  
3 sometimes there can be a bit of conflict there, I have  
4 experienced it in murder investigations I have ran.  
5 Usually things can be calmed through the FLOs being  
6 sensitive in how they approach the family and try and  
7 build bridges or remove barriers.

8 I hope that answers your question, my Lord.

9 LORD BRACADALE: Thank you.

10 MS GRAHAME: We have heard some evidence from -- just  
11 continuing with this family liaison for a moment, we  
12 have heard some evidence about the role of the  
13 senior investigator --

14 A. Yes.

15 Q. -- in connection family liaison officers. What were  
16 your responsibilities in relation to liaising or working  
17 with family liaison?

18 A. Usually in any investigation where there is a death my  
19 preference as a lead investigator was always to meet the  
20 family at the start, just to introduce myself as the  
21 person in charge of the investigation. The FLO would  
22 thereafter take over that sort of liaison function.  
23 That was my individual preference. I think it is  
24 Billy Little's preference as well, I think he  
25 potentially said so. And it's more as courtesy to

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1           introduce yourself: I'm the lead investigator,  
2           particularly when it comes to PIRC because not  
3           everybody -- there is still quite a lot of members of  
4           the public don't understand who PIRC are and our role,  
5           so you want to make that introduction more from  
6           a familiarity perspective but then the FLOs take that  
7           forward.

8       Q.   Can we move on, please, to decision number 9. This  
9           again is entered into the log on 7 May but it is headed  
10          up, "Post mortem examination". We have heard evidence  
11          that this took place on 4 May.

12      A.   Yes.

13      Q.   And that Billy Little was present at that examination.  
14           It says it was undertaken at Edinburgh City Mortuary at  
15           13.00 hours on Monday, 4 May. We have heard there was  
16           a Quaser examination roughly between 12 o'clock?

17      A.   Yes. If I may, ma'am, I think this is more me putting  
18           a narrative entry rather than a decision entry.

19      Q.   You mention the pathologist who is there from PIRC. You  
20           mention Police Scotland, DC Peter Grady and also in  
21           attendance a number of people there. Peter Gilzean,  
22           Ricky Casey, Billy Little, Stuart Taylor, Keith Hardie  
23           Bernie Ablett and SPA Derek Carroll, who was  
24           a photographer?

25      A.   Yes.

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1 MS GRAHAME: I am conscious we often have a break for the  
2 stenographer now. Would that be an appropriate time?

3 LORD BRACADALE: Yes. We will have a 15-minute break at  
4 this point.

5 (3.01 pm)

6 (A short break)

7 (3.22 pm)

8 LORD BRACADALE: Ms Grahame.

9 MS GRAHAME: Thank you. We were looking at decision  
10 number 9, and this was a narrative prepared on 7 May and  
11 it relates to the post mortem examination. Decision  
12 number 9. It's page 609861 according to the log. You  
13 are narrating there that there has been a post mortem.  
14 We have heard evidence that was on 4 May.

15 A. That is right.

16 Q. So you are preparing this around three days later. Was  
17 this prepared after a discussion with Mr Little, because  
18 we have heard he attend the post mortem?

19 A. Its would have been. And of course you want to record  
20 that the cause of death is unascertained pending further  
21 investigation, as there will be further investigation  
22 thereafter. So Billy Little went to the post mortem, he  
23 would have informed me, I would have recorded it in here  
24 so there is a record within the policy file of the  
25 post mortem.



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1 Q. So there is something recording that there has been  
2 a post mortem and what the preliminary cause of death is  
3 at that stage?

4 A. Yes.

5 Q. We have heard evidence from Mr Little he prepared a note  
6 regarding the post mortem, who was in attendance,  
7 matters of that sort. Did you have sight of that note?  
8 I can let you see it. It's PIRC 04148.

9 A. To be honest I can't remember at this stage  
10 whether I had sight of it or not.

11 Q. We won't go into that in detail. I want to ask you  
12 about the people who were in attendance. You may have  
13 seen me ask Mr Little about this, if you have been  
14 observing any of his evidence. But there are three  
15 police officers in attendance at the post mortem:  
16 DC Peter Gilzean, DCI Keith Hardie, and  
17 a DC Peter Grady.

18 A. Yes.

19 Q. We have heard evidence that the Crown have instructed  
20 PIRC to investigate the incident at Hayfield Road, and  
21 effectively the cause of death of Mr Bayoh.

22 A. Yes.

23 Q. PIRC are attending the post mortem, we have heard that  
24 that is arranged under instruction of the Crown?

25 A. Yes.

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1 Q. But the cause of death is something that is within the  
2 term of reference of PIRC?

3 A. Yes.

4 Q. We see that three police officers are present at the  
5 post mortem.

6 A. Yes.

7 Q. We asked Mr Little about that, and I would like to ask  
8 you, although you were noting this on 7 May, do you have  
9 any views on police officers attending part of what is  
10 supposed to be an independent PIRC investigation?

11 A. I think what we have got to remember in this case, and  
12 it's happened in other cases, is that the police are  
13 part of the investigation. We have the investigation of  
14 the death but at that stage, at the time of post mortem,  
15 the police were investigating the incident in  
16 Arran Crescent outside the deceased's home, where he had  
17 a violent confrontation with his friend, Mr Saeed. So  
18 potentially he may have picked up injuries at that.

19 Now, I am presuming that is potentially why the  
20 police were at this post mortem. I have seen it before  
21 in other post mortems where the police -- as I described  
22 the fatal shooting in the hotel in Glasgow where the  
23 police have got part of the actions, because the  
24 deceased had injured himself while assaulting people in  
25 the lead up to it, so part of those injuries are

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1           pertinent to the police investigation, the majority are  
2           pertinent to the PIRC investigation. It is not usual  
3           but it does occur.

4       Q.   You think that could be an explanation why DC Grady,  
5           DC Gilzean and DCI Hardie were present at the  
6           post mortem?

7       A.   Potentially but I don't know what was in their minds or  
8           the minds of Police Scotland.

9       Q.   In a situation where PIRC are leading the investigation  
10          into the death, would you, if you had been attending,  
11          expect to ask why the police are there?

12      A.   I would want to know why they are there. Because ...  
13          well, why are they there? You know, what role do they  
14          have now that the death investigation has passed to  
15          PIRC? As I have said, it's rare but it does occur where  
16          there has been incidents in the lead up to the death  
17          that the police have got and therefore some injuries  
18          might have been picked up during those incidents that  
19          the police will need to be aware of. Now, there is  
20          nothing to stop PIRC passing that information back to  
21          the police. Particularly because once the post mortem  
22          report itself is issued Crown can give permission for  
23          that to be shared with the police, and that has  
24          occurred.

25      Q.   So the Crown can give permission for that to be shared

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1           with the police?

2           A.   Yes.

3           Q.   Do you think -- are you saying that PIRC can also take  
4           a decision to issue that information to the police?

5           A.   Not without Crown permission.

6           Q.   You have said you would want to know why police officers  
7           were present. How would you have gone about finding out  
8           why the police officers were present?

9           A.   Simply ask them.

10          Q.   I think we have heard evidence from Mr Little that he  
11          didn't ask. In terms of the independence of  
12          the investigation and the Article 2 considerations we  
13          have been talking about, do you have concerns about  
14          a post mortem in the circumstances you were in at that  
15          time, or PIRC were in at that time, where police  
16          officers are present and PIRC don't know why?

17          A.   Yes, I would have concern because I would want to know  
18          why they were there. As I previously said, I am making  
19          an assumption, and we know the challenge with  
20          assumptions, but I would want to know why they are  
21          there, so I would probably just ask them: why are you  
22          here?

23          Q.   If you weren't satisfied with the answer or the  
24          explanation given, what steps would you have taken?

25          A.   You could tell them: I don't think it is appropriate for

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1           you to be here. Particularly in high profile ones you  
2           will you have a Fiscal there, as was the case here,  
3           Bernie Ablett was there. So you can turn to the Fiscal  
4           and say: I don't think this is appropriate.

5       Q.   Would you have felt comfortable raising issues like that  
6           prior to the post mortem?

7       A.   If I see issues I raise them.

8       Q.   Thank you. Mr Little gave evidence that he wouldn't  
9           normally attend a post mortem. He had enough to do as  
10          lead investigator in a big investigation, so he would  
11          normally send someone else --

12      A.   Yes.

13      Q.   -- to attend. But he gave evidence that he had been  
14          advised by Mr Ferguson that there was blood in the ears  
15          of Mr Bayoh.

16      A.   Yes.

17      Q.   To put that in context, Mr Ferguson had been sent to --  
18          tasked with going to Victoria Hospital in Kirkcaldy, and  
19          then he was involved in moving the body to the mortuary.

20      A.   Yes.

21      Q.   And he was also present at the post mortem. Because of  
22          that, as I understand Mr Little's evidence, he had  
23          concerns that the cause of death may have been  
24          blunt-force trauma to the head.

25      A.   Yes.

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1 Q. There was some information available to Mr Little that  
2 batons had been used at the scene.

3 A. Yes.

4 Q. So he went to the post mortem for that reason, because  
5 he wanted to know the cause of death as soon as  
6 possible. I think in summary the potential was that  
7 this -- the outcome of the post mortem, if there had  
8 been blunt-force trauma to the head, could have  
9 potentially changed the status of the officers or  
10 officer -- an officer who had used a baton?

11 A. I am not sure whether it would have immediately changed  
12 the status of the officers because you had -- as I said  
13 earlier, police officers are allowed to use force up to  
14 and including lethal force. You would want additional  
15 information to understand what happened, why it  
16 happened, and that then may change the status of the  
17 officers.

18 Q. There's no reference in the decision number 9 in the  
19 log, no mention at all there of the issue regarding  
20 blunt-force trauma. I am interested in why there is no  
21 reference to that. You do mention cause of death at the  
22 bottom of that page --

23 A. Yes.

24 Q. -- being unascertained and further tests are to be  
25 undertaken. I am interested in why there is no mention

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1           of this blunt-force trauma issue?

2       A. I think because by that stage we knew from the findings  
3       of the -- the initial findings of the pathologist that  
4       blunt-force trauma to the head had not caused the death.  
5       So that is why I wouldn't reference it.

6       Q. You knew that how?

7       A. Through feedback from Billy Little. Obviously he was at  
8       the post mortem, he spoke to Dr Shearer, Dr Shearer  
9       would inform him: look, at present I cannot establish  
10      a cause of death therefore there needs to be additional  
11      examination but certainly blunt-force trauma to the head  
12      did not cause the death.

13      Q. I asked Mr Little about whether he had spoken to the  
14      pathologist about any other potential causes of death,  
15      to get a preliminary view from her, if that was  
16      possible, available. I asked him about the possibility  
17      of positional or mechanical asphyxiation contributing to  
18      the death, he hadn't spoken to the pathologist about  
19      that he said. Is that something you would have  
20      discussed with the pathologist?

21      A. I think really we present what is known up to that stage  
22      to the pathologist. We then await what the  
23      pathologist's findings are. What we don't want to do is  
24      colour the judgment of the pathologist because they are  
25      independent. If you are saying: well, I think

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1           positional asphyxia, you are putting an idea into the  
2           pathologist's mind. No, let them do their job, provide  
3           their findings.

4           Now, there are some indicators where you may have  
5           positional asphyxia petechial haemorrhages in the eyes,  
6           which could be indicative of positional asphyxia. It is  
7           not necessarily the case because there are other reasons  
8           for it, so CPR -- and we know CPR occurred -- can  
9           sometimes produce small petechial haemorrhages. So it  
10          is very much let the pathologist do their job,  
11          communicate to us their findings but let's not pre-judge  
12          matters.

13        Q. Are you suggesting that asking about blunt-force trauma  
14        to the head would be putting ideas into the  
15        pathologist's head?

16        A. Certainly there was injuries to Mr Bayoh's head. We  
17        know now and we knew then that batons had been recovered  
18        at the scene and that officers had used batons on  
19        Mr Bayoh, so that was a matter of fact and you are  
20        presenting that fact to the pathologist.

21        Q. So you don't consider that to be influential or  
22        potentially influential in any way?

23        A. No, that is a matter of fact whereas the other ones are  
24        hypothesis: could it be this, could it be that? Well,  
25        let the pathologist do their job, report their findings.



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1           If those findings are inconclusive, which they were  
2           here, the pathologist will then undertake in conjunction  
3           with experts additional enquiries: toxicology,  
4           neurological sample etc.

5       Q.   So if you are trying to avoid influencing the  
6           pathologist in any way you don't mention other potential  
7           causes of death?

8       A.   No.

9       Q.   You do ask about blunt-force trauma. The pathologist  
10          gives you a preliminary view. Are you thinking about  
11          any other possible causes of death at that stage or just  
12          keeping a completely open mind?

13      A.   You have to keep an open mind.

14      Q.   Why was there so much interest in blunt-force trauma to  
15          the head if it wasn't going to be a categoric alteration  
16          to the status of the officers; why not wait until you  
17          get the final post mortem?

18      A.   What you do is you present the facts as known at that  
19          time to the pathologist, to inform them. But you don't  
20          stray into the realm of hypothesis. You present the  
21          facts, because what happened -- I think the pathologist  
22          needs an understanding of what happened or potentially  
23          what happened, because they can then examine during the  
24          post mortem well, how did these injuries arise. So is  
25          there a potential explanation for how those injuries

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1           arose, which is why you present the facts to them as  
2           understood at the time.

3       Q.   Why the interest, do you think, in blunt-force trauma to  
4           the head if it wasn't going to alter the status of the  
5           officers; why not simply wait until you get the final  
6           report? Was there a reason you can think of why there  
7           was an immediacy or an urgency to finding out about  
8           the blunt-force trauma to the head?

9       A.   I think it's -- as you have said, John Ferguson flagged  
10          up there was blood in the ears to Billy Little,  
11          Billy Little then -- he knew batons had been used, he  
12          knew Mr Bayoh had been struck with batons, had he been  
13          struck to the head with a baton, now we subsequently  
14          find out that that did occur, but I don't think we knew  
15          exactly. So we are saying he has been batoned, we don't  
16          know whether he has been batoned to the head because the  
17          officers are not telling us until 32 days later, but we  
18          knew batons had been used. That is probably why Billy  
19          has specifically wanted that knowledge. So -- because  
20          having been struck to the head, a strike to the head by  
21          a baton can be a fatal blow. And of course we don't  
22          have the nine officers' accounts of exactly what  
23          happened at that scene, we were still left trying to  
24          piece things together from witness testimony, many  
25          witnesses had only seen partial matters, trying to

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1 figure it out from STORM and Airwaves and all the other  
2 things. So I'm presuming Billy just wanted a quick  
3 answer as to is that a potential.

4 Q. Did that help -- would that help the investigation  
5 knowing blunt-force trauma to the head had not caused  
6 death? Would that allow you to take things forward?

7 A. Yes, it rules out the fact that the blow from the baton  
8 to the head caused death because we are then left with:  
9 okay, so the batons didn't kill him. What was the cause  
10 of death? What caused him to die? And very much the  
11 initial one was unascertained pending toxicology and  
12 neurology, and that takes quite a considerable period of  
13 time because the samples get sent off to the  
14 universities where they get examined and then they come  
15 back and get given to the pathologist who writes up the  
16 final post mortem report.

17 Q. Would it have been helpful to have blunt-force trauma to  
18 the head being excluded noted in the policy log? You  
19 have noted here other matters to do with the  
20 post mortem.

21 A. It might have been but since we knew that it wasn't  
22 a cause of death, I didn't record it. Now, we can argue  
23 the pros and cons as to whether I should have put that  
24 down, but the fact is I didn't.

25 Q. I am wondering if it can be of as much assistance to

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1           know what wasn't the cause as what was the cause?

2           A. Yes, certainly sometimes.

3           Q. In terms of looking at other decisions which have to be  
4           made or explored, could knowing what it wasn't help  
5           narrow down and focus the decisions that you are making  
6           in the investigation?

7           A. It can do. As I said, this was a highly unusual case  
8           insofar as it's the only investigation we have had in  
9           the last 11 years where police officers didn't provide  
10          accounts of what occurred until 32 days later.

11          Q. So looking back now in relation to -- obviously with  
12          hindsight, looking back later to the entry in decision  
13          number 9 in your log, do you think it may have assisted  
14          to have reference to this issue regarding blunt-force  
15          trauma to the head added in here?

16          A. Potentially yes. The fact is we did not. Now, I have  
17          not recorded it in here. Maybe I should have. But  
18          I didn't.

19          Q. Can I ask you about another matter. We have heard  
20          evidence from Billy Little that he authorised disclosure  
21          of that information regarding blunt-force trauma to the  
22          head was not the cause of death to be disclosed to  
23          the police officers who had attended Hayfield Road.  
24          There is no mention of that in the policy file regarding  
25          the post mortem either.

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1       A. Yes. Now, I don't think I became aware until much later  
2       that it was Billy's decision because I knew police  
3       officers had been at the post mortem, I thought it had  
4       been them that had transmitted that information.

5       I didn't realise until much later it was actually  
6       Billy's decision. So at that time, and at the time  
7       that I created this, I wasn't aware of it, no.

8       Q. Mr Little has described this -- we took his evidence in  
9       some detail on this and he described it as  
10      an unprecedented decision that he had taken.

11     A. Yes.

12     Q. He had never taken a decision like that before, he has  
13     never taken a decision like that since. As a decision  
14     and as an unprecedented decision, do you think that is  
15     something that should have been noted in the management  
16     policy file?

17     A. Yes. But I wasn't aware of it at the time.

18     Q. When did you become aware that this had been a decision  
19     by Mr Little?

20     A. Not for a considerable period afterwards. I was aware  
21     of it before the officers gave their statements, which  
22     was on 4 June. But I can't remember exactly when  
23     I became aware it throughout those 32 days.

24     Q. Who was it that told you about this decision?

25     A. I think it would be Billy himself.

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1 Q. Looking back now, do you think this is a decision that  
2 you should have been be told about to insert it into the  
3 policy log?

4 A. Probably.

5 Q. Had you been told about it would you have entered into  
6 the log?

7 A. Yes.

8 Q. And as part of that log entry would have noted down the  
9 explanation for why that decision was made in the reason  
10 section?

11 A. Yes.

12 Q. The other thing I would like to ask you about in  
13 relation to this page --

14 LORD BRACADALE: Just before you do that Ms Grahame, you  
15 said a moment ago that you thought that it was the  
16 police officers who were at the post mortem that had  
17 given that information?

18 A. Yes, my Lord.

19 LORD BRACADALE: Now, given the evidence that you gave  
20 earlier this afternoon about the propriety of the police  
21 officers being at the post mortem at all, did that  
22 impression that you formed about they having  
23 communicated the information give you cause for concern?

24 A. Once I became aware of it, but at the point  
25 that I became aware of it, it was Mr Little or Billy who

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1           had communicated that to me to say it was him that  
2           passed that -- that information. So it was  
3           an assumption on my part that it was the police officers  
4           but it was actually Billy and I found that out I can't  
5           remember when my Lord, but some time before 4 June.

6       LORD BRACADALE: But when you were operating under that  
7           assumption, did the existence of that assumption itself  
8           not cause you some concern?

9       A. I think as Mr Little explained, it was -- his rationale  
10          for doing so was to try and unblock the logjam, I think  
11          is how he described it, of the officers refusing to  
12          provide statements. Chief Superintendent McEwan  
13          transmitted the information because he thought it was  
14          from a welfare perspective of the officers to let them  
15          know because, as I learned, one of the officers was very  
16          upset, thinking that the blows to the head could have  
17          caused the death of Mr Bayoh. So ...

18       LORD BRACADALE: I am more interested at this stage in your  
19          own state of mind --

20       A. Yes.

21       LORD BRACADALE: -- Mr McSporran. Because if you formed the  
22          impression, as you say you did, that this information  
23          had been given to the attending officers by police  
24          officers who were at the post mortem, whose attendance  
25          at the post mortem you had concerns about, then would

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1           that itself not be something that would really exercise  
2           you?

3       A. I think it would. Now, I can't remember my exact  
4       mindset back there, my Lord. I think the challenge was  
5       it had occurred, I didn't know exactly who had done  
6       that. It was an assumption on my part that because the  
7       police officers were there, they would transmit that  
8       information into Police Scotland, and then Mr McEwan  
9       would contact the officers and notify them. I did not  
10      immediately know that it was Mr Little that had passed  
11      that information to break the logjam. But I did become  
12      aware at some point.

13      LORD BRACADALE: Thank you.

14           Ms Grahame.

15      MS GRAHAME: Looking back now, if you were in that situation  
16      today where you find out that officers have been in  
17      attendance at a post mortem, where there is  
18      an expectation PIRC will carry out an independent  
19      investigation, but officers are there, you are not sure  
20      why they are there, and then later you find out that  
21      information has been shared with the nine attending  
22      officers, where no statements had been given, looking  
23      back at that situation now, what would you do?

24      A. I understand the optics surrounding that because it  
25      looks as though we are providing them with something to



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1           try and assuage them, for want of a better expression.

2           And I don't necessarily think that that is proper.

3           I understand Billy's rationale because we had at the --  
4           in the very early days, a complete lack of understanding  
5           as to what occurred, and it's the only time so far that  
6           police officers have refused to provide statements.

7           I understand his rationale. He was trying to break the  
8           logjam. This is the only occasion when it has occurred  
9           because usually we will not pass that information  
10          without Crown's approval.

11         Q. So looking back now, in a situation such as this, if it  
12          happened now where you think this isn't proper, perhaps  
13          you have concerns under Article 2, what steps could you  
14          take as a lead investigator to address those concerns?

15         A. Well, first of all, if there were police officers in  
16          attendance, and there have been cases, I would certainly  
17          be saying: you cannot pass this information on to any of  
18          the principal officers involved, that would be highly  
19          inappropriate.

20         Q. Is that something you would do at the time?

21         A. Yes.

22         Q. Or shortly after the post mortem?

23         A. I would be saying to them shortly after the  
24          post mortem: you cannot pass this -- because you need to  
25          know the result of the post mortem, you cannot pass this

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1           onwards. Equally it is a decision for Crown what gets  
2           released. It is not for me or any investigator to  
3           decide what to pass on to the officers involved.

4           As I say, I understand the rationale why Mr Little  
5           did it. It's the only time it has occurred. If it were  
6           to occur again, I don't think we would.

7       Q. So would you -- you would give an immediate warning or  
8       order to the officers that they shouldn't pass any  
9       information on. Would you then go to the Crown to seek  
10      permission if there was going to be any disclosure of  
11      the preliminary post mortem results?

12     A. I think what we need is a request from Police Scotland.  
13     Not just those that are in attendance, a request from  
14     Police Scotland to say: can we tell the officers the  
15     provisional results? We would then go to Crown and  
16     say: this request has come in from Police Scotland, what  
17     do you want to do? And if Crown say no, then it doesn't  
18     get passed.

19     Q. So you would wait until you got the authority of  
20     the Crown?

21     A. Yes.

22     Q. Thank you. Continuing to look at decision number 9,  
23     there is also a reference here to:

24           "... non-engagement by the family at that time who  
25           declined to attend the PM."

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1           So this is -- just to recap, you are making this  
2           entry on 7 May, regarding the post mortem that has been  
3           carried out on the 4th?

4       A. Yes.

5       Q. Where did that information come from?

6       A. That would have come from Mr Little, and others.

7       Q. So you weren't involved in any way determining whether  
8           there had been engagement or willingness to engage to  
9           any extent with the family?

10      A. No, because I didn't return to duty until the 5th by  
11         which time the post mortem had already occurred.

12      Q. Thank you. Can we move on to page 10, please. Sorry,  
13         decision number 10. You are then talking about  
14         house-to-house enquiries and the work that is being done  
15         in relation to that. Police Scotland had initiated the  
16         house-to-house strategy, but then that had been taken  
17         over by PIRC --

18      A. Yes.

19      Q. -- as the terms of reference from the Crown expanded --

20      A. Yes.

21      Q. -- to include all the events?

22      A. Yes.

23      Q. We spoke to Mr Little about resourcing at this time,  
24         and I asked him about when the terms of reference were  
25         expanded, to what extent did your resources expand. Do

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1           you have a recollection of the resources expanding at  
2           this time?

3           A. The resources -- so the investigative resources did not  
4           expand but we requested assistance from the complaint  
5           handling review side of the business, and that was to  
6           complete the house-to-house. Because if you are  
7           conducting house-to-house enquiries, you are recording  
8           everybody that lives in the house and whether they have  
9           potentially seen anything. If they have seen anything  
10          then you are taking a statement, that is why there are  
11          two of you there. So that is why we wanted those  
12          resources to complete the house-to-house because we had  
13          taken it over on the 5th, Police Scotland had had two  
14          days of doing that. We were -- we had done part of it,  
15          which was the incident scene at Hayfield Road. They had  
16          not completed their house-to-house enquiries so we were  
17          then taking over, that is why we wanted additional  
18          resources from complaint handling reviews to allow us to  
19          do that and complete it.

20          Q. You have entered this entry into the log on 7 May,  
21          Mr Little was unable to remember when he obtained those  
22          additional resources from the case handling staff. Was  
23          it round about 7 May that you obtained those additional  
24          resources?

25          A. Yes, I would think so, because I think as we said

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1 earlier it was later in the week, so Thursday would be  
2 the 7th or Friday would be the 8th but it was certainly  
3 before the weekend.

4 Q. Then decision number 11 is narrative. Where you note on  
5 5 May there was a Crown Office direction that all  
6 aspects of the investigation including preceding linked  
7 incidents would now be investigated by PIRC.

8 So this is where you record the increase in your  
9 instruction?

10 A. Yes.

11 Q. If we move on to the next page, we can see that letter  
12 of instruction has been inserted into the log at this  
13 point.

14 A. Yes.

15 Q. If we look down we can see that it is 5 May, 2015.  
16 There are two areas which require investigation, and  
17 this is the circumstances leading up to the incident,  
18 prior to contact with the police, and also the incident  
19 itself with Mr Bayoh. This was official authorisation  
20 from Crown Office?

21 A. Yes.

22 Q. Turn back, please, to decision number 11 we see you have  
23 also noted Police Scotland were notified and instructed  
24 to cease any investigative actions not already in  
25 progress.

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1           So once you received that letter from the Crown on  
2           the 5th, that was then when Police Scotland were  
3           notified at that point that they should cease their  
4           investigations?

5       A.   Yes.

6       Q.   So did Police Scotland's actions continue until the 5th?

7       A.   Yes.

8       Q.   Then you have noted there that this was a wholly -- if  
9           we can look at the reason:

10                "Wholly independent investigations into all the  
11           circumstances of the death."

12               And that was the point at which PIRC were in charge  
13           of everything?

14      A.   Yes.

15      Q.   Thank you.  Then if we can move on to decision number  
16           12.  Again, this is said to be a narrative, again dated  
17           7 May.  It says:

18               "From witness statements.  On the evening of  
19           Saturday 2nd May the deceased and his friends ..."

20               Then you start to give an explanation of the  
21           preceding events?

22      A.   Yes.

23      Q.   So you have received the letter of instruction from the  
24           Crown, you are looking at everything and is this  
25           information that has been given to you by

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1           Police Scotland --

2       A.   Yes --

3       Q.   -- in regard to their part of the investigation?

4       A.   Yes, because they had taken statements from Mr Saeed,

5           Mr MacLeod and his girlfriend -- sorry, Mr Dick and his

6           girlfriend Ms MacLeod, who I think is now his wife, so

7           they were transferring those witness statements to us,

8           and of course we were reading those witness statements,

9           which gave -- because these are the preceding events so

10          they simply transferred that material to us.

11       Q.   So they have delivered these statements to you and

12          handed that over, was there a handover also or was it

13          simply PIRC investigators reading the statements?

14       A.   I think from recollection Police Scotland had been

15          recording matters into the HOLMES incident room but they

16          would also have the statements themselves which would

17          also get typed up, so we would go and physically collect

18          them or collect them in electronic format.

19       Q.   How quickly are police statements typed up and available

20          to PIRC?

21       A.   Usually pretty quickly. Now, it's not that day but it

22          can be within a day or two, depending on the

23          circumstances. Sometimes it can take a longer period of

24          time. It can vary depending on the officers' duties,

25          there is no set timeframe for it. But it is better that

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1           we get them as soon as possible because it gives us  
2           a good picture of what occurred.

3       Q.   So a statement will be taken by a police officer, and  
4           then within a day or two that should be available on the  
5           system for PIRC investigators?

6       A.   As the investigation was transferred to us, all of the  
7           investigation was transferred to us, we would say: hand  
8           over everything you have got so far.

9       Q.   So it would be immediately available at that point?

10      A.   Yes.

11      Q.   Then if a statement is taken by a PIRC investigator, not  
12           a police officer, how quickly are those statements  
13           available to PIRC?

14      A.   They are available immediately because usually what  
15           happens is these will be manuscripts, written  
16           statements. They come back to the office, they will  
17           photocopy it, that will go into the incident room, it  
18           can be photocopied a couple of times because myself as  
19           SIO or Billy Little might say we want to read that now.  
20           But it would also be passed then to our administrative  
21           staff who would type that up. And that is to allow it  
22           to be entered into our CLUE 2, as it was, operations  
23           management system so that it can be searched and the  
24           contents can be searched.

25      Q.   So if an investigator comes back to the PIRC offices,



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1           they can photocopy a handwritten statement and hand that  
2           straight to you?

3       A.   Yes.

4       Q.   Was there an expectation that key witnesses or important  
5           witnesses would -- their statements would be handed  
6           direct to you?

7       A.   Yes, and you would also want the investigator to come  
8           and brief you, saying: look, I have interviewed this  
9           person, I consider this a key piece of information. So  
10          not all witness statements get drawn to your attention  
11          because they might not be of particular pertinence or  
12          high profile to the investigation, but you would  
13          certainly expect if somebody comes across key  
14          information that adds value to the investigation, that  
15          they flag that up to you and then show you the  
16          statement.

17      Q.   Would that be done on the day or the next day after they  
18          have taken the statement, depending on timing?

19      A.   Yes.

20      Q.   So obviously if a statement says "I didn't see  
21          anything", or "I have nothing to say", that wouldn't  
22          necessarily be drawn to your attention?

23      A.   Yes.

24      Q.   But if there is information from a witness who has seen  
25          something, you would want to know about it straightaway?

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1 A. Yes.

2 Q. In addition to that, do we see at the bottom of this  
3 page -- I don't need to go through the entire narrative  
4 with you -- there is reference to:

5 "Several members of the public observed the deceased  
6 walking along the road carrying a knife and telephoned  
7 police."

8 By the time this is written up, 7 May, had you been  
9 able to gather in the STORM records? We have seen STORM  
10 records in the Inquiry with information about phone  
11 calls made by the public. Was that available to you?

12 A. I think so because that is where we would get the  
13 detail. Equally, those were witness that needed to be  
14 seen, either initially by the police or by PIRC. Those  
15 are obviously key witnesses, because they described the  
16 events in the lead-up to the incident.

17 Q. So by 7 May PIRC are in charge of the entire  
18 investigation?

19 A. Yes.

20 Q. The police have delivered statements that they had  
21 taken. You have your own investigators carrying out  
22 work?

23 A. Yes.

24 Q. And by this stage are you effectively the lead  
25 investigator?

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- 1           A.   Yes.
- 2           Q.   And you are also providing information in the management  
3               policy log?
- 4           A.   Yes, there is a lot of reading to be done during initial  
5               stages, it is almost information overload. But you just  
6               have to knuckle down and get on with it, read as much as  
7               possible. But, as I said earlier, if there is a key bit  
8               of information you would expect the investigator to flag  
9               that up to you.
- 10          Q.   Can we look at some of the information you may have had  
11               available. I would like first of all to look at -- we  
12               have heard evidence that there were two eyewitnesses to  
13               the events in Hayfield Road.
- 14          A.   Yes.
- 15          Q.   And these were key witnesses, Ashley Wyse and  
16               Kevin Nelson.
- 17          A.   Yes, I think there were other people who saw bits of  
18               what happened. I know there was -- I can't remember the  
19               witness's name but he saw the struggle on the ground  
20               with the police officers.
- 21          Q.   We have heard a lot of evidence from passers by, people  
22               who made telephone calls in relation to all of the  
23               incidents.
- 24          A.   So it wasn't just Kevin Nelson and Ashley Wyse, there  
25               were other people who witnessed some of the actions. So

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1           they were also key witnesses.

2       Q.   We have heard from people who were perhaps driving by or  
3           in the vicinity who maybe saw things; is that the type  
4           of people you are thinking about?

5       A.   Yes, I know there was one witness, I can't remember the  
6           witness's name, that saw the struggle on the ground.

7       Q.   In relation to events in Hayfield Road, we have heard  
8           that Ashley Wyse and Kevin Nelson, at that time at  
9           least, lived in the vicinity and saw parts of the events  
10          as they panned out?

11      A.   Yes, Kevin Nelson was a ground floor flat. Ashley Wyse  
12          was a first floor flat.

13      Q.   So can I ask you about -- Ashley Wyse gave a statement  
14          to officers on 3 May.

15      A.   Yes.

16      Q.   But we are aware that an investigator from PIRC went to  
17          speak to Ashley Wyse on 5 May at 19.20 hours.

18      A.   Yes.

19      Q.   Can I ask you to look at this statement and say when you  
20          saw that. So it's PIRC 00043. You will see that this  
21          is a statement, we will see it is taken on 5 May at  
22          19.20 by investigator Alex McGuire from Ashley Wyse.  
23          This contained information, if we look at page 2,  
24          please, look at paragraph 5 which is about halfway down.  
25          Here we are:

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1 "I saw a black man in the street."

2 Do you see that paragraph there?

3 A. Yes.

4 Q. "I saw a black man in the street. He was nearly down on  
5 the ground. He was surrounded by police officers.  
6 There was at least six police officers surrounding him.  
7 I saw the police officers all over him. What I mean is  
8 they were holding him on the ground."

9 Then if we skim down to the final three paragraphs  
10 on that page you can see:

11 "When the man was on the ground I heard him  
12 screaming. It was a horrible sound."

13 Then:

14 "I think the black man was on his back when lying on  
15 the ground. I'm not sure if he was moved whilst on the  
16 ground. I saw him lying on the ground. I could see  
17 that his wrists were restrained. His hands/arms were in  
18 front of him. The police officers were still lying on  
19 top of him.

20 "There then seemed to be a pause, a break. The man  
21 had been quiet for a little while. In this period the  
22 police officers appeared to be speaking with him.  
23 I could not hear any of his responses~..."

24 On to the next page:

25 "... but it appeared that the police officers were

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1           having a conversation with him.

2           "I think the police officers were lying on top of  
3           him a long time. I think it was at least five minutes  
4           they were lying on top of him. It may have been about  
5           ten minutes. This includes the time when he was being  
6           taped to his legs. At all times he was surrounded by  
7           Police Officers. There were at least six Police  
8           Officers around him at all times."

9           So that is just a glimpse of the type of information  
10          that was contained within Ashley Wyse's statement to  
11          Investigator McGuire.

12       A. Yes.

13       Q. Now, this was taken at 19.20.

14       A. That would be when it started.

15       Q. That is when it started, so when would you have heard  
16          about the information contained within this statement?

17       A. Probably the next day because she was a key witness. As  
18          we know, she had also recorded part of the interaction  
19          on her mobile phone. So if they've started that at  
20          19.20, I don't know how long it took them to take that  
21          statement but then they have got to travel all the way  
22          back from Kirkcaldy so they are maybe getting back to  
23          the office 10/11 at night and therefore it would be the  
24          next day that you would become aware of it. Because we  
25          knew she was a key witness.

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1 Q. And you would expect Mr McGuire to speak to you about  
2 it?

3 A. Yes.

4 Q. Provide you with a copy of that statement?

5 A. Yes.

6 Q. So that would be the following day, which would be  
7 6 May?

8 A. Yes, I would think so.

9 Q. Sorry, I missed out a section that I should perhaps have  
10 read to you. Let's look at page 2. It is paragraph 6  
11 and it's the final sentence. The paragraph begins:  
12 "What it looked like to me was ..."  
13 Do you see that paragraph?

14 A. Yes.

15 Q. And the last sentence of it is:  
16 "It looked like one officer was using a baton to  
17 hold the man down. It was on his upper chest towards  
18 his throat."  
19 So that is another element of the information that  
20 was provided --

21 A. Yes.

22 Q. -- to PIRC. Did you read this statement on the 6th?

23 A. I presume I did.

24 Q. Did you have a conversation with Mr McGuire about it?

25 A. I can't remember, but since this is key information,

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1 I would expect it would have been flagged up to me and  
2 Mr Little.

3 Q. Let's look at another statement that I understand was  
4 taken on 5 May. PIRC 00019. You will see that this was  
5 a statement taken from Kevin Nelson?

6 A. Yes.

7 Q. On 5 May 2015 and this one was taken at 1900 hours, so  
8 again taken in the early evening?

9 A. Yes.

10 Q. Taken by investigator Kareen Pattenden. Do you see  
11 that?

12 A. Yes.

13 Q. It was also in the presence of DSI Brian Dodd. So  
14 I understand that is investigator Dodd?

15 A. Yes.

16 Q. So two PIRC investigators have taken this statement.  
17 Again, would you have had the opportunity to -- well,  
18 let's look at this statement first. If we can look at  
19 page 2, first of all, and I am looking towards the  
20 bottom of that page, the third paragraph from the  
21 bottom. It begins:

22 "When this male ..."

23 Do you see that on the screen?

24 A. Yes.

25 Q. "When this male started walking along the road he



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1            appeared to be acting as if the police were not talking  
2            to him. He ignored everything that was being said. My  
3            view was clear. I would say the male was about 30 yards  
4            from me and at this time he did not appear to be  
5            carrying anything in either of his hands."

6            A. Yes.

7            Q. I think you said earlier that it was your understanding  
8            by the time you wrote your initial narrative that  
9            a statement had been obtained which cast doubt on the  
10           suggestion that appeared in the briefing note that  
11           Mr Bayoh had a knife in his hand and was approaching the  
12           officers?

13           A. Yes, and I think that was the statement of DC Connell  
14           which was provided on the 4th, because he recovered the  
15           knife and we knew that the knife had been recovered.  
16           I know we have seen photographs and video of  
17           the incident scene, but it was recovered near the  
18           roundabout whereas the incident had occurred further  
19           along near where the bus stop was. So there was  
20           a distance between them.

21           Q. So you are adding this information from Kevin Nelson to  
22           the information you already have about the location of  
23           the knife when it was found from DC Connell?

24           A. Yes, and it is helping to build the picture. Because  
25           the knife is found here, the incident happens here, here

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1           is somebody telling us: I didn't see him with anything  
2           in his hands. And of course that changes the narrative  
3           because the initial narrative was that he had been  
4           carrying a knife when the confrontation occurred.

5       Q. Then there is comment that:

6           "I could hear the male police officers shouting at  
7           him. The only words I could make out were 'get down'."

8           Then if we move on to page 3, again I am really just  
9           taking a snapshot of some of the entries in the  
10          statement. Paragraph 5, please, "The black male ...",  
11          there we are:

12          "The black male then stepped forwards towards the  
13          female officer and appeared to lunge at her with his  
14          left fist towards her face/head area. I believe he  
15          struck at her with his closed fists at least three  
16          times. I heard her scream out, so I cannot be positive  
17          but I believe that at least one of these fists struck  
18          her."

19          Then he says:

20          "At this point I decided to go into the front garden  
21          to have a closer look. I do not know why I did this  
22          other than being curious. I believe it may have taken  
23          me between 10 and 20 seconds to do this. I exited my  
24          house via the front door and stood looking over my  
25          gate."

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1                   Then:

2                   "In this time the black male now appeared to be face  
3                   down on the pavement to the left of my house on my side  
4                   of the street. I could no longer get a clear view of  
5                   this male. There appeared to be five or six male police  
6                   officers attempting to restrain him. All of these  
7                   officers were dressed in uniform. I observed one  
8                   officer appeared to be kneeling on the ground with the  
9                   weight of his upper body by use of his arms to the black  
10                  male's shoulder or back of neck area."

11                  Do you see that?

12           A. Yes.

13           Q. "I would not be able to describe this police officer.  
14                  The other police officers appeared to be laying across  
15                  the black man's body."

16                  So again in terms of this statement and the  
17                  information that is contained in that, when would this  
18                  have first been brought to your attention?

19           A. I believe early doors, because I do remember being told:  
20                  look -- and probably the next day. Because if this  
21                  starts at 1900, by the time they complete it and travel  
22                  back through, so here's two key witnesses, Ashley Wyse  
23                  and Kevin Nelson. This would have been flagged up to us  
24                  as quickly as possible, which is probably the next day.  
25                  Because we are trying to build a picture of what

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1           occurred in the absence of the accounts of the officers  
2           and, therefore, it's almost like a jigsaw where you are  
3           taking as much relevant information as you can and  
4           trying to complete the picture.

5       Q.   So we've got nothing from the officers?

6       A.   No.

7       Q.   No basic facts, initial accounts or statements of any  
8           description.  You've got no use of force forms  
9           completed, no use of spray forms completed?

10      A.   Yes.

11      Q.   And by 6 May you've got two statements from  
12           eye witnesses.

13      A.   Yes.

14      Q.   Containing the information we have looked at and you've  
15           got DC Connell's statement indicating that a knife was  
16           found at a distance away?

17      A.   Yes.

18      MS GRAHAME:  I want to move on and ask you some questions  
19           about that scenario, but it is quarter past 4.  I wonder  
20           if that would be an appropriate time?

21      LORD BRACADALE:  We will continue with your evidence  
22           tomorrow morning at 10 o'clock, Mr McSporran.  The  
23           Inquiry will adjourn.

24      (4.15 pm)

25           (The Inquiry adjourned until 10.00 am on Friday,

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