

The Sheku Bayoh Public Inquiry

Witness Statement

Kate Frame

**Taken by [REDACTED] via Microsoft Teams
on 7, 8, 9 and 28 November 2023**

Witness details

1. My full name is Kate Frame. My date of birth is in 1960. My contact details are known to the Inquiry. I am retired.
2. I have been asked if I have been contacted by any member of staff at PIRC before providing this statement. Yes, I was advised that a member of the Inquiry Team would be in touch in relation to providing this statement.

Professional background

3. I worked in the Crown Office and Procurator Fiscal Service (COPFS) for 28 years as a Procurator Fiscal in a number of offices. In that capacity, I received crime and death reports from reporting agencies, assessed the evidence and instructed the police on any further investigation that was required and prepared and presented cases in court. I latterly held the post

Signature of Witness

DocuSigned by:
[REDACTED]

of Head of the Criminal Allegations Against the Police Division (CAAPD). I held the post of the Police Investigations & Review Commissioner (PIRC) between August 2014 to August 2019.

Commissioner role

4. The term of office as the PIRC was for a period of five years. I took up post in August 2014 and left in August 2019 at the conclusion of the appointment.
5. The appointment followed an application process to the Scottish Government. It wasn't a Crown appointment. It was a ministerial appointment and, as such, I was answerable to the Scottish Ministers through the Cabinet Secretary for Justice. I attended various committee meetings, and regularly met with the Scottish Government sponsor team in relation to various matters, such as the level of PIRC business and resourcing.
6. The legislation disqualifies anyone who has held a position within a policing body from applying for the position. That measure was to provide a separation between policing bodies and the PIRC.
7. Ultimately, I was responsible for the work of the entire organisation. My role was to provide a strategic oversight of the organisation's work through strategic planning and direction - by reviewing and monitoring the internal and external challenges facing the organisation to allow it to respond to those challenges and deliver its objectives. Part of that related to the organisation's resources and powers. Resourcing was a matter of concern, which I regularly raised with the Scottish Government.

Signature of Witness

DocuSigned by:
[Redacted Signature]

Initial level of funding

8. From the outset there appeared to have been an underestimation of the level of work that would be directed to the PIRC. The Investigation Team was constructed very quickly, following Scottish Ministers' decision to form the single Police Service of Scotland. In the months prior to the organisation's launch the Scottish Government's project board endeavoured to anticipate the volume of investigations that may be directed to the PIRC, based on what appeared to be limited historical data. In the first year of PIRC's existence it became apparent that the workload of the Investigations Team, which was the new section of the organisation, significantly exceeded the projections that the project board had anticipated.
9. In that first year, my predecessor, Professor John McNeil, submitted a bid to the Scottish Government detailing concerns regarding the PIRC's capability and capacity to meet the realised demand. In response he received some limited additional funding.
10. I think Professor McNeil sought funding for six further fixed-term investigators, and the Scottish Government released funding for three and required that the PIRC find funding for the other three investigators from within its existing budget. Additionally, at that time, the Scottish Government officials advised the PIRC that it would be unlikely there would be any additional increase to the PIRC's grant in aid for the ensuing two years.
11. I have been asked if I know where the historical data upon which the prediction of PIRC's caseload was based came from. I'm not sure where all of the data was gathered from but think that the police and Crown Office contributed to the process. I understand that Crown Office projected that there would be in the region of five Crown Office referrals per year. It was significantly more. In 2018 -19, PIRC undertook at least 36 Crown-directed investigations.

Signature of Witness

DocuSigned by:
[Redacted Signature]

12. I have been asked if between starting my role as the Commissioner and 3 May 2015 I had any discussions with Scottish Ministers about PIRC's level of resources. Yes. There were regular discussions around that. The sponsor team's view was that it regarded the first few years of the organisation's existence as an opportunity to assess the consistency of the level of demand on the Investigation Team before committing additional resources to it. However, information on the volume and the level of complexity involved in the investigations undertaken was regularly provided to the sponsor team every few months, demonstrating a sustained upward trajectory which, in my view, indicated that additional resources were required to keep pace with demand. Despite that, the organisation was constantly called on to look for savings and regularly reminded that there was little opportunity to provide additional funding.

Categorisation of investigations

13. The constrained resources made it difficult to balance how quickly those investigations could be undertaken. Given the volume of investigations being referred, we applied a categorisation system to give priority to serious and complex cases. Initially this operated informally and was managed by the Director of Investigations. Subsequently, the categorisation system was implemented on a more formal basis, dividing the investigations into Category A, B and C cases.
14. A Category A case was regarded as a major investigation generating significant interest, and the associated response was such that normal staffing levels were not adequate to keep pace with the investigation, or it was a major investigation which was of public concern, where it was not immediately apparent what happened, and the investigation and the securing of evidence required significant resource allocation.

Signature of Witness

DocuSigned by:
[Redacted Signature]

15. A category B investigation was an investigation where it may be apparent what happened, however, the enquiry or securing of evidence could only be achieved through protracted investigation.
16. A Category C investigation was regarded as investigation where it was apparent from the outset what happened and the investigation or securing of evidence could be easily achieved.
17. I have been asked if PIRC's level of resources had any impact on the speed of completing Category A investigations. Not usually, as those cases were prioritised over Category B and C cases. They always were dealt with first and the resources were allocated accordingly. That meant that when the need arose investigators who were working on Category B or C cases would be reallocated to work on the Category A case.
18. I have been asked if PIRC had a number of Category A cases at the same time how that impacted on the speed at which investigations could be completed. That was challenging. The higher the volume of simultaneous Category A cases, the less capacity there was, which impacted on the speed. In the year 2015, I think there were three Category A investigations undertaken. Fortunately, they were not all received together, so we were able to stagger the resources allocated to each of those investigations.
19. I have been asked who was responsible for determining the categorisation of an investigation. The Director of Investigations, Mr Mitchell and the Head of Investigations, Mrs Scullion, managed the process.
20. I have been asked if, as at 3 May 2015, there was a formal mechanism for the categorisation of incidents. No. The formal process was not in place then. However, a death in custody would always be regarded as a priority case, due to its serious nature.

Signature of Witness

DocuSigned by:
[Redacted Signature]

21. The formal categorisation process was not put in place until around 2017 – 18, after Mr Mitchell and Mrs Scullion had retired. Whilst they did not categorise cases as As, Bs or Cs, they allocated resources according to that type of prioritisation. The clearly defined categorisation of cases was helpful in measuring the level and complexity of business. My recollection is that the formal categorisation system was introduced as part of the process to support our budget bids to the Scottish Government in an effort to demonstrate resource implications.
22. I am unaware of whether the categorisation process is contained in a Standard Operating Procedure (SOP), but it was defined by the Head of Investigations, Mr McSporran and approved by the Senior Management Team.
23. I have been asked if the Bayoh investigation was a Category A investigation. It was. My recollection is that this case was the only death in custody case at the time, so all resources were prioritised to that case and devoted to it without any detracting of resources initially.

Oversight

24. As regards investigations, the structure was that I had the strategic overview, the Director of Investigations and the Head of Investigations held the day-to-day operational lead responsibility in investigations. They were assisted by senior investigators, deputy senior investigators and investigators.
25. There was regular discussion in relation to various aspects of the Bayoh investigation, and those discussions took place frequently throughout the working week. Some of those meetings would be informal discussions relating to challenges which arose as the investigation progressed. Mr Mitchell would usually draw those to my attention.

Signature of Witness

DocuSigned by:
[Redacted Signature]

26. I have been asked how I would become aware of particular challenges if Mr Mitchell did not draw them to my attention. I would learn of them through discussion with members of the Investigations Team and through attending briefings in relation to the investigation itself. The Investigations Team held briefings on a daily basis. I usually attended the weekly operational briefings to be brought up to date with the current investigations and have an understanding of any issues that were arising in those investigations and, where required, to provide an input. If any issue arose, where there were various views on the way forward, I generally discussed those with the Director of Investigations before we agreed a way forward.
27. I did not expect to be copied into every e-mail in each investigation but occasionally would be copied into some emails. It would really depend on the level of seriousness of the issue, and relied on the senior investigator's discretion. I have asked to see particular statements in certain investigations. I recall asking to see some civilian witness statements as I wanted to consider independent eye-witness accounts.
28. I have been asked if I reviewed statements to assess the investigators' work, or to understand the witnesses' evidence. I reviewed statements for both aspects, where I felt it was appropriate.
29. I have been asked if I identified anything of concern in relation to the performance of the investigators who took those statements. No, I didn't.
30. It would have been impractical for me to be involved in every operational investigative decision and I relied on Mr Mitchell and Mrs Scullion, who were two senior civil service level members of staff, to bring to my attention any areas of concern as they arose. I met with them generally on a daily basis when they provided updates in relation to various investigative matters, and could bring areas of concern to my attention. If they identified issues, we discussed potential solutions. Where necessary, I was able to escalate those

Signature of Witness

DocuSigned by:
[Redacted Signature]

matters to other senior stakeholders. I would seek out information if there were matters that came to my attention or that I became aware of from other stakeholders or internally.

31. As well as the business of the Investigations Team, I also had responsibilities for the Review and Corporate Services Teams.
32. I have been asked who, ultimately, was responsible for the successful completion of the Bayoh investigation. The day-to-day responsibility for the investigation, lay with Mr McSporran, the lead Senior Investigator, under the supervision of Mr Mitchell, the Director of Investigations. As the Commissioner, I was responsible for the work of the entire organisation.
33. I am aware that there was a handover of lead investigators due to annual leave commitments. I am aware that whilst Mr Harrower initially attended, he had leave commitments which resulted in the lead being transferred to Mr Little and, thereafter, Mr McSporran.
34. I have been asked if senior investigators would have oversight of multiple investigations at any one time. Yes, they would usually have responsibility for a number of investigations.

PIRC workload in 2015

35. In the year 2015 – 16, there were 29 investigations undertaken by the Investigations Team. Twenty-one of those investigations were directed by Crown Office. In addition, the Investigations Team undertook 263 firearms assessments. The Review Team separately received 310 complaint handling review applications.

Signature of Witness

DocuSigned by:
[Redacted Signature]

36. In relation to the organisation itself that year, I commissioned an internal review of the complaint handling review business and also an independent structural review of the entire organisation.
37. I prepared and submitted several budget bids to the Scottish Government in relation to funding. I undertook policy work; stakeholder engagement with Scottish Government officials, His Majesty's Inspectorate of Constabulary in Scotland (HMICS), Police Scotland and the Scottish Police Authority (SPA); prepared and submitted the Annual Report to Scottish Ministers; and compiled business and strategic plans. We also embarked on an awareness-raising programme for the organisation through media engagement.
38. We received the outcome of an external review of an SPA-referred investigation. When I took up post in 2014, I was made aware of a complaint relating to a PIRC investigation and considered that it was appropriate for it to be externally reviewed. The review took place in 2014 and the report was received in the summer of 2015 with some recommendations.
39. I have been asked if this external review took up a lot of the Investigations Team's time during this period. It took up some investigators' time during 2014 and some of mine in 2015.

Working relationships

40. I have been asked which staff reported directly to me. The Director of Investigations and the Heads of the Review and Corporate Services Teams. I met regularly with those staff and reviewed their performance against objectives.
41. I have been asked how I dealt with staff who were not meeting their objectives. I reviewed their progress against performance plans. As regards investigations, I had no concerns in relation to the work that was being

Signature of Witness

DocuSigned by:
[Redacted Signature]

carried out by the Director of Investigations. He was a highly skilled and experienced investigator.

42. I have been asked how I would describe my relationships with other colleagues at PIRC. We enjoyed good working relations.

Liaison with external organisations

43. There was liaison between the PIRC and Crown Office, Police Scotland, the SPA, the Scottish Government at various levels and regular meetings with each of those organisations.
44. At meetings with Crown Office staff, the scope, progress and challenges of the Crown-directed investigations were discussed and guidance sought.
45. I also met with staff from the Independent Police Complaints Commission (IPCC), the Police Ombudsman for Northern Ireland (PONI) and the Garda Síochána Ombudsman Commission (GSOC) on an ad hoc basis when we discussed our various operating models and any shared challenges.
46. I can remember discussions with the Chair of the IPCC around the power to compel officers to attend for interview. Those discussions took place before and after 2015.
47. I was specifically interested in whether the IPCC considered there was benefit in having the power to require police officers to attend for interview with the IPCC. I recall that the chair, Dame Anne Owers, referred to the Mark Duggan investigation in which the officers involved opted to only answer questions in writing, causing a delay to the IPCC investigation of around a year. Following that, the law in England and Wales changed, and the IPCC was provided with the power to compel the officers to come in for an interview. However, the IPCC recognised that even then, officers could and

Signature of Witness

DocuSigned by:
[Redacted Signature]

did attend but then refused to answer questions and it appeared that the IPCC questioned the overall value of the process.

48. In terms of Regulation 5 of the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 (the 2013 Regulations), whilst the PIRC can require police officers and staff to co-operate with PIRC investigators and provide information when undertaking investigations at the request of the SPA or the Chief Constable, it specifically does not provide those powers in relation to Crown directed investigations. In this investigation, I considered that it was unacceptable that, where someone had died following police contact, the officers involved did not provide an account of what had happened. I was very disappointed, very surprised and frustrated that police officers who had been involved in an episode where someone had died, chose not to provide information promptly about that incident.
49. This was the first time that I was aware that this had happened in Scotland, and it highlighted a weakness in the provision of PIRC powers. I understand that this matter had been raised with Scottish Ministers right from the outset of the PIRC and that Scottish Ministers were sighted on the fact that Regulation 5 of the 2013 Regulations did not provide the power to compel police officers to cooperate with PIRC investigators in Crown-directed investigations.
50. This was a matter which I and the Director of Investigations raised with Scottish Government officials, but their view was that the early years of PIRC was a period in which to test the powers that had been provided and that it was neither a suitable or convenient juncture to amend them. It was expressed that there was no intention to open up the Police and Fire (Reform) Scotland Act 2012 for amendment, as that would expose the legislation surrounding the formation of Police Scotland to unwelcome scrutiny and that, in any event, no legislative vehicle or space in the

Signature of Witness

DocuSigned by:
[Redacted Signature]

legislative timetable could be found to facilitate it. No time frame was ever specified for the period described as 'the early years'.

51. The 'unwelcome scrutiny' appeared to relate to the creation of Police Scotland as a single police service.
52. I have been asked if I can recall any other discussions I had with the IPCC, PONI and GSOC. I had discussions with them on a variety of police scrutiny topics, but do not now remember the specific discussions.

PIRC as an organisation

53. I have been asked what involvement I had in the establishment of PIRC on 1 April 2013. Before that date, I attended two meetings at the Scottish Government in relation to the formation of the PIRC as the head of CAAPD. By that stage, the legislation was underway and my input related to the interface between the PIRC and CAAPD.
54. Following 1 April 2013, CAAPD and the Scottish Fatalities Investigation Unit (SFIU) regularly met with representatives of the PIRC and referred investigations to the PIRC. Various policy documents were formulated as to how investigations would progress.
55. I have been referred to a memorandum of understanding (MOU) between PIRC and COPFS, dated 10 and 11 December 2013 (PIRC-04453). I have seen it and was aware of its contents. It details both organisations' roles and responsibilities.
56. I have been referred to paragraph 12.4 within the MOU (PIRC-04453), which refers to representatives of PIRC, CAAPD and the SFIU meeting annually to discuss "*the operation of this memorandum and issues of mutual interest*".

Signature of Witness

DocuSigned by:
[Redacted Signature]

Meetings were held between both SFIU and CAAPD and the PIRC. I don't recall how regularly they were held.

57. I have been asked if any changes in practice resulted from these meetings. I don't recall whether any changes were proposed or implemented.
58. As the volume of business increased, particularly the volume and complexity of investigations, I submitted numerous requests for funding to the Scottish Government throughout my tenure to address the increasing demands on the organisation.

Equality and diversity

59. I have been asked how diverse PIRC was as an organisation at the start of my tenure. It was not very diverse. The Investigations Team was predominantly white and male. Effectively, the profile of that team had been set from the outset in 2013 and, due to the constrained resources, more or less remained static.
60. Efforts were made when funding became available to encourage applications from a broader range of diverse communities who held the appropriate skills and experience, but it did prove difficult to attract applications from candidates within those communities.
61. I have been asked if I am referring to communities in the sense of individuals from particular professional backgrounds, or in relation to ethnicity. Both ethnicity and non-policing backgrounds.
62. We looked closely at where adverts were to be placed and advertised vacancies in publications and other media outlets in which we considered those communities would potentially be looking for employment.

Signature of Witness

DocuSigned by:
[Redacted Signature]

63. I have been asked if I recall which publications these were. I don't. The recruitment exercises were handled by HR staff.
64. I know when PIRC was formed originally, efforts were made to recruit from non-policing communities as well as those from different ethnicities. Some of the investigators had been recruited from the Fire Service, the military, the Trading Standards Department and other organisations. One of the Senior Investigators was an Austrian national.
65. I have been asked how many members of the investigations team were from an ethnic minority. I don't think there were any.
66. I have been asked if the diversity of PIRC's investigations team had changed by the end of my tenure. I don't think it was significantly different - there possibly were more females.
67. The lack of diversity did not provide a broader cultural understanding within the organisation. If there were particular cultural sensitivities within investigations it would have been advantageous to have had a greater understanding of those.
68. I have been asked who was responsible for diversity and inclusion matters at PIRC during my tenure. The Head of Corporate Services.

Diversity training

69. Prior to my tenure, I am not aware that there had been any diversity or equality training within PIRC. I asked that it be introduced on a mandatory basis. The training was delivered by an external organisation. It comprised presentations, interactive sessions and discussion groups.

Signature of Witness

DocuSigned by:
[Redacted Signature]

70. I have been asked if I recall when the training would have been introduced.
No, I don't.
71. I have been referred to a note of a meeting between PIRC and Mr Bayoh's family on 3 September 2015 contained within PIRC's Family Liaison Log Number 3 (PIRC-04152, page 32): "*Commissioner assured family all investigators are diversity trained*". I think I was referring to the sessions that I described earlier or my knowledge, from previous discussions, that a number of the investigators had received diversity training previously within their former roles either as police officers or within other organisations. At the training sessions held within PIRC a number of staff confirmed that they had previously received diversity training.
72. I have been asked if I recall what the diversity training would have comprised when the investigators were police officers. No, I don't.
73. I can't remember when the diversity training sessions within PIRC commenced, but I understood that those at the meeting had received diversity training.
74. I'd received diversity training at Crown Office and when I was at PIRC.
75. I have been asked what the training within COPFS comprised. It comprised presentations, interactive sessions and discussion groups covering all protected characteristics.
76. I have been asked what matters were covered in relation to race within the training. General discrimination issues towards people with different characteristics was covered with a view to providing a greater awareness and understanding of those issues.

Signature of Witness

DocuSigned by:
[Redacted Signature]

77. I have been asked what the training in relation to equality and diversity within PIRC comprised. It covered the same issues.
78. I have been asked if any of the training I received covered the topic of unconscious bias. Yes, that was covered in the presentation sessions and discussion groups. I understand that unconscious bias is where someone behaves differently to others with different characteristics without doing so consciously.
79. I have been asked, in my role as Commissioner, how I benefited from the equality and diversity training that I received. I received a heightened awareness of treating everybody equally and a broader understanding of cultural differences.

Public sector equality duty

80. I have been asked what steps PIRC took to comply with the public sector equality duty during my tenure. I discussed that with the Head of Corporate Services shortly after I took up post and he advised me that it did not apply to the organisation.
81. I have been referred to The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (the 2012 Regulations), which impose "specific duties" on certain public authorities for the better performance of the general public sector equality duty. I have been referred to the fact that, within the 2012 Regulations, PIRC is not listed as being subject to those specific duties. I do not know why PIRC was not listed.
82. I have been asked if I recall any steps being taken to address this. I don't.

Signature of Witness

DocuSigned by:
[Redacted Signature]

83. I have been asked if PIRC, despite not being subject to the 2012 Regulations, voluntarily carried out impact assessments for its policies and procedures. I'm not aware of any impact assessments being carried out.

Training

84. Training at Commissioner level was fairly limited. I kept up-to-date with amendments to the legislation that impacted on the role and attended related training sessions as they were available. They would have been recorded on my training record.
85. I have been asked if I recall any specific training in which I participated. Yes, I attended training on the introduction of the Criminal Justice (Scotland) Act 2016.
86. I didn't take a directing role in relation to training sessions for investigators. Line managers in PIRC held responsibility for the training requirements of their team members to ensure that they held the necessary skills to perform their duties, and those requirements were reviewed and assessed as part of the staff appraisal process.
87. I have been asked if the provision of training would be instigated by a line manager, or at the request of an investigator who was subject to the appraisal. It could be either.
88. I have been asked what training was received by PIRC's investigators. They attended various training sessions relating to both operational policing and relevant legislation. Some training was delivered by policing bodies, some by Crown Office and others by other external organisations. For example. Investigators attended Officer Safety training sessions, which provided them with an awareness of the practices that police officers were trained in. They also attended training on Family Liaison matters.

Signature of Witness

DocuSigned by:
[Redacted Signature]

89. I have been asked what reliance was placed on training that investigators had obtained previously as police officers. Mr Mitchell as the Director of Investigations had a good knowledge of the skill sets, experience and training of most of the former officers within the Investigations Team and deployed them according to their strengths.
90. I have been asked if different training was provided to investigators who did not come from police backgrounds. A broader range of training was provided to those investigators in recognition of the fact that they may not previously have had experience or have been trained in various aspects of the role. Additionally, there were investigators who wanted to specialise in particular functions, such as Family Liaison so they too would seek different training from what could be regarded as core training.
91. I have been asked what training family liaison officers (FLOs) received. They received national training, which I think it was delivered by Police Scotland.
92. I have been asked if there is any additional training that would have assisted PIRC's investigators during the Bayoh investigation. Not that I can think of.

Standard Operating Procedures

93. SOPs and policy documents for investigators were in place when I took up post. I do not know who drafted them.
94. I have been asked who was responsible for reviewing and updating SOPs during my tenure. I think that Mrs Scullion held that responsibility, but I don't know who took on that responsibility after she retired.

Signature of Witness

DocuSigned by:
[Redacted Signature]

95. I have been asked if my discussions with other organisations, such as the IPCC and PONI, led to changes in PIRC's policies and SOPs. There were none that I can recall.
96. I have been asked how the content of PIRC's SOPs was communicated to PIRC staff. They formed part of the induction process and ongoing training.
97. I have been asked if, in 2015, I was aware of any gaps in PIRC's SOPs. No.

Awareness of PIRC's role and powers within Police Scotland

98. Some sectors within Police Scotland had a good understanding and awareness of PIRC's role and responsibilities however some were less informed in relation to our role and responsibilities. The Professional Standards Department (PSD) and Executive level within Police Scotland were well aware of our functions. As a result of awareness-raising sessions with new police recruits I consider that the younger, less experienced officers had a better awareness of the role and functions of PIRC than a lot of those with longer service, who perhaps had not had the benefit of those sessions nor been involved in a PIRC investigation.
99. I have been asked if this lack of awareness had any impact on PIRC's work. Yes. I think that those with longer police service were perhaps nervous and unsure of engagement with PIRC.
100. It appeared that there were some elements within Police Scotland that were reluctant to fully engage and support independent investigations. The Executive Team however were supportive and promoted the role of the PIRC.
101. I think there was a degree of resistance to PIRC's work. It was a new organisation providing scrutiny, which was not always welcome. We had

Signature of Witness

DocuSigned by:
[Redacted Signature]

various discussions over the years with Police Scotland in relation to some cases which we considered should have been referred to the PIRC. In particular, there were several discussions around potential Article 3 issues.

102. The resistance appeared to be in relation to whether or not those matters were referred to an external organisation.

103. I have been asked if, at times, there was a reluctance by Police Scotland to make PIRC aware of certain incidents that I would have considered PIRC should have been investigating based on its statutory obligations. Yes, I consider that there may have been some instances but obviously unless we were subsequently made aware of them, it was not possible to know how many there were.

104. I have been asked what steps PIRC took to increase awareness of PIRC within Police Scotland. PIRC staff regularly provided awareness-raising presentations to various ranks of Police Scotland staff and probationary officers and through joint attendance on courses shared knowledge of the role. There was also a section on the PIRC website which was specifically designed to provide information to officers and explanatory leaflets were provided to Police Scotland to raise their awareness.

105. I have been asked if I would have regarded there as being a responsibility on senior officers to cascade information about PIRC down to the officers for whom they are responsible. I would, and expected that at their management meetings they could have promoted a clear understanding of our role.

Public and press awareness of PIRC

106. Following the introduction of the PIRC in 2013, there appeared to be a limited understanding of PIRC's function. I'm not sure that a large percentage of the public were aware that the body had been created or, indeed, why it had

Signature of Witness

DocuSigned by:
[Redacted Signature]

been created. However, as a result of various high-profile and serious matters that awareness began to grow and develop.

107. I think that the name of the organisation itself gave rise to some confusion about whether PIRC was part of the police. That was also raised with Scottish Government officials but the view taken was that as the organisation had only recently been created it was too early to consider any changes to its name.
108. We presented various awareness-raising events at colleges and other educational establishments. We also distributed leaflets providing information on our function at these events. That material was also delivered to police stations so that it was available to members of the public and contained details of how to contact PIRC.
109. I have been referred to Chief Superintendent Garry McEwan's evidence to the Inquiry (day 64, page 115, line 17): *"I might be doing the communities a disservice but Police Scotland and PIRC, I don't think the majority of the public would have noted a difference between the two organisations."* I would have hoped that the public might have recognised that there was a distinction between those organisations but appreciate that in 2015 there still was a limited awareness as the new policing landscape in Scotland was still settling.
110. I have been referred to the *"opinion piece"* for the Sunday Mail dated 25 July 2015 (PIRC-03925, page 27). I have been asked what the purpose of this article was. It was to raise awareness of the PIRC as an organisation and provide an understanding of our function to the general public.

Signature of Witness

DocuSigned by
[Redacted Signature]

PIRC independence

111. I have been asked if, prior to 3 May 2015, I had had any contact with or knowledge of the officers involved in the arrest of Mr Bayoh. No.
112. I have been asked if, prior to 3 May 2015, I had had any contact with or knowledge of the Police Scotland officers involved in the investigation following the incident involving Mr Bayoh. I had met ACC Ruairidh Nicolson, DCS Lesley Boal and DS Patrick Campbell. I may have met Ch Insp Conrad Trickett, before but I haven't met, Ch Supt Garry McEwan, no.
113. I had previously met ACC Nicolson, DCS Boal and DS Campbell through COPFS / Police Scotland business, and that was the extent of my contact with them. I'd worked with them individually on separate, particular investigations. I have not worked with any of them on a regular basis.
114. I have been asked if I would regard them as personal or professional relationships. Professional.
115. I have been asked if, in May 2015, there was any PIRC policy or guidance for staff who had a personal relationship with an officer who was the subject of a PIRC investigation. Yes, there was guidance to the effect that if staff became aware of any potential conflict of interest, they had to declare that to their line manager. A decision was then made by me or the Director of Investigations as to whether it was appropriate for the member of staff to be deployed in that particular investigation.
116. If a conflict of interest was identified steps were taken to ensure that the member of staff had no contact with the investigation. That policy mirrors that in other like bodies.

Signature of Witness

DocuSigned by:
[Redacted Signature]

117. I have been asked if this was more challenging for senior members of the investigation who were responsible for oversight of the investigation, for example John Mitchell, as Director of Investigations. It was more challenging as due to his length of service and wide experience, he would previously have had exposure to a greater number of police staff.
118. I have been asked if it was an advantage or a disadvantage for PIRC to have a number of investigators with backgrounds in the police. There were both advantages and disadvantages. The former officers brought highly relevant skills and experience to the job. Most if not all of the former officers that were recruited when PIRC was formed, had at least 30 years of investigative experience, which was critical in getting the organisation up and running quickly. As there was such a short window in which to form the organisation, staff who had skills and experience in serious investigations, and matters such as deaths in custody were required. Those skills and experience were clearly an advantage. However, the other side of the coin was that the public may have questioned whether those staff were more sympathetic to former colleagues due to their background in policing.
119. One of the significant benefits that the former officers brought was that they were well aware of where to look for the evidence and knew their way around the processes. Given the short window that was available to form the organisation, I'm not sure that there was much by way of an alternative. However, in an ideal world, it would be good to have an entire team of investigators who had never served as police officers and who were both skilled and experienced in investigating serious crimes.
120. I am aware there has already been a recommendation from the Angiolini review around other senior staff within the PIRC being disqualified from applying for posts if they have previously held police positions. I think that's a sensible recommendation. I think it's worth noting that it was my view and also my predecessor's view that over time the reliance on the employment of

Signature of Witness

DocuSigned by:
[Redacted Signature]

retired police officers should reduce as the organisation developed, and it has to some extent been managed down, through the recruitment of investigators from other backgrounds and as well the continuation of the trainee programme whereby staff are recruited with no investigative skill but are brought on and developed by the experienced staff, so there should be a pipeline of investigators from non-policing backgrounds, who have been trained and gained experience in relevant matters available for the future.

121. The PIRC operates a trainee scheme which was targeted generally at younger people who usually were just leaving education and didn't have police backgrounds. I am not aware that any of the PIRC trainees have ever served as police officers.

122. As part of the trainee programme, recruits were required to perform and successfully complete various modules throughout their trainee period before they could be certified by their line manager as holding the necessary skills. The trainee programme was a formal system that was documented and performance-appraised in relation to each of the various modules. I think that Mrs. Scullion managed that process.

123. As very few investigator vacancies arose within the existing budget, the other way to increase the number of non-police staff was to await the opportunity for a new recruitment round when funding was made available.

124. I have been asked if, when recruiting additional investigators, restrictions were imposed to ensure that applicants were not from police backgrounds. I don't recall any restrictions being placed in the adverts but HR staff would know. My recollection is that there was a mixture of former police officers and non-police officers who applied for those posts.

125. I have been asked if PIRC ever seconded staff from Police Scotland during my tenure. Whilst the legislation permitted that I don't think that it happened.

Signature of Witness

DocuSigned by:
[Redacted Signature]

126. I have been asked if it is possible for PIRC to run a large-scale investigation entirely independently of Police Scotland. I think there was a recognition from the outset that PIRC would never be equipped with a number of specialist skills that Police Scotland held and that there would always require to be a level of cooperation between Police Scotland and the PIRC.

127. In the initial stages of any investigation where the police are likely to be the first on the scene, there will be a period of time in which police cooperation will be required to preserve the scene and evidence. PIRC Scene Managers will then take over the scene and direct search activities. However, as the police are usually the first responders it is vital that they preserve the scene.

128. I have been asked what impact that might have on the public perception of a PIRC investigation. I think that potentially muddies the waters.

129. I have been asked if there was any way to avoid that impact on public perception. No, I don't think so, because of the way that crime is reported. The police are always contacted first to respond to incidents, before any assessment can be made whether or not to contact COPFS and make them aware of the circumstances. It is only at that stage that consideration is given to whether PIRC should be deployed. The police are always on the scene first and will need to take the initial steps until PIRC investigators can take over.

130. I have been referred to Chief Superintendent Garry McEwan's evidence to the Inquiry (day 63, page 98, line 1), which refers to PIRC's investigation:

A. It's not a true independent enquiry, it is conjoined but for me with PIRC as the lead agency, is probably a better description, back in 2015.

Signature of Witness

DocuSigned by:


Q. When you say not a true independent matter, what would you – if you were looking to create a true independent enquiry or review into the actions of the police that day, what would you have expected.

A. Yes, so if it was a true and independent enquiry, then PIRC would come in at whatever time, let's just say 11.30, they would rightly be afforded a brief then they would take control, oversight, of all aspects of the investigation but they would have the resources to fulfil that obligation, and they didn't in 2015.

131. I don't think there ever has been an expectation that the PIRC would have the level of resource that would be required to provide full critical incident coverage. The funding simply was not there for that.

132. I have been referred to the fact that, when leading a PIRC investigation, a PIRC investigator with a background in the police may be required to liaise with and direct police officers of a rank senior to that which they achieved. I have been asked what impact, if any, this has on their ability to lead a PIRC investigation and provide direction to officers from Police Scotland. I am not aware, nor has it been brought to my attention that any investigator has experienced such difficulties. I would expect that there would be a recognition that the Senior Investigator's role is entirely distinct from the one that the investigator previously held and that that distinction would be respected.

133. I have been asked if I was ever aware of this being an issue in a PIRC investigation. I was never aware of that being an issue.

134. I have been referred to Chief Superintendent Garry McEwan's evidence to the Inquiry (day 63, page 103, line 20):

Signature of Witness

DocuSigned by:
[Redacted Signature]

Q. You've talked about the rank and experience of Campbell and Robson and Dursley. Did you – in terms of your impression of the staff that came from PIRC that day, do you feel they matched that rank or experience?

A. So I genuinely, hand on heart, don't think they did and it is not a criticism of – they just didn't have that currency of experience. We had, as I say, Pat Campbell who was dealing with the most serious crime on literally a daily basis. Now, there is probably no one else anywhere that you could get that would have that same level and currency. And Colin and DS Dursley, they are in exactly the same boat. I would never even compare myself at that point to their level of current experience.

135. I would disagree with that assessment. A significant proportion of the investigators who dealt with the investigation had 30 years' experience investigating a wide range of matters. They had a particularly high level of capability and commitment to the investigation and were a very experienced team in dealing with deaths and criminal matters at all levels.

136. Whilst I recognise that in 2015 they were not dealing with those matters on a 'daily basis', up until 2013 they had significant regular exposure to them. Obviously, with the greater passage of time that experience would diminish.

137. I have been asked if PIRC was sufficiently independent from Police Scotland. Yes. There was no chain of command to any policing body or, in other words, there was no chain of command between any PIRC employee and the Chief Constable. They were employed by and accountable to the Commissioner. The test, which has been recognised, requires there to be no hierarchical or institutional connection or practical connection between those carrying out an investigation and those who were implicated in events. Not only were the investigators not in a chain of command to any policing body, in the Bayoh

Signature of Witness

DocuSigned by:
[Redacted Signature]

investigation, I'm not aware that any of the investigators had, in fact, even worked with the officers involved.

PIRC powers

138. PIRC investigators had the powers of police officers in relation to arrest, search, and suchlike so that they could exercise those functions when required in investigations. The powers related to PIRC investigations.
139. I have been asked how PIRC's powers differ within COPFS-directed investigations from those within investigations requested by Police Scotland or the SPA. In terms of Regulation 5 of the 2013 Regulations, the powers were different. PIRC investigators could require police officers and staff to cooperate and provide information when undertaking investigations under Section 33A(c) and (d), which were investigations at the request of the SPA or the Chief Constable, whereas in relation to Crown-directed investigations under Section 33A(b), which were those relating to criminality and death, they did not have that power to require police officers to cooperate. I don't know why that legislation was framed in that way.
140. Up until this particular investigation, investigators hadn't encountered any difficulties in relation to obtaining statements from police officers. To the best of my knowledge this was the first case where that resistance had been encountered.
141. I have been asked, in a Crown-directed investigation, what recourse PIRC has if information or evidence is not provided when requested. I can't recall any particular recourse provided for in the Act in relation to Crown-directed investigations.
142. I have been asked if I consider that PIRC had sufficient statutory powers during my tenure to carry out its investigations. Generally, I think it did.

Signature of Witness

DocuSigned by:
[Redacted Signature]

However, I do think there were some weaknesses in the legislation which would have benefitted from being strengthened. The Regulation 5 issue in this investigation sharply focused the weakness in the powers available to PIRC investigators to secure statements from police officers in Crown-directed investigations.

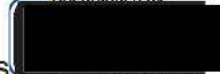
143. I compiled papers for the Justice Committee and Dame Angiolini's review on the powers which I thought it would be beneficial for the PIRC to hold. The Regulation 5 issue was one of those issues. I don't know if any changes have now been made.

144. I have been referred to the minutes for a morning briefing on 11 June 2015 (PIRC-04156, page 49), which note that John Mitchell "*provided an update on the press and TV yesterday. There was a lot of discussion surrounding PIRC powers.*" I don't remember that briefing, however, I think that would be just around the time when the police officers involved in the investigation provided their statements. There was a lot of negative commentary around the lack of early provision of those statements to the PIRC and whether PIRC had powers to compel officers to provide statements.

145. This matter had been raised regularly with Scottish Government officials. Even in the first year of PIRC's existence it was known to Scottish Ministers and the Cabinet Secretary for Justice. When matters relating to the amendment of PIRC's powers were raised, Scottish Government officials repeatedly made it clear that this was a period in which to test those powers and considered that it was neither a suitable or convenient juncture to amend them.

146. I have been asked if this meant that nothing was being done to address these issues. Despite it regularly being raised with Scottish Government officials, no progress was made.

Signature of Witness

DocuSigned by:


147. I have been referred to the minutes for a morning briefing on 12 June 2015 (PIRC-04156, page 52), which, within an update that John Mitchell provided, note: *"There have been quite a few discussions surrounding Scottish Government contact and legislation issues."* Yes. Mr Mitchell and I had discussed with the Scottish Government Sponsor Team what legislative amendments should be sought, particularly in light of the Regulation 5 issue. Eventually, they determined that before there should be any further consideration, they would require to hold a meeting with Crown Office staff to discuss the issue. They did arrange a meeting, but Crown Office staff cancelled it on the day. No replacement meeting was fixed.

Article 2 investigations

148. I have been referred to a memorandum of understanding (MOU) between COPFS and PIRC from 2013 (PIRC-04453), which states, at section 5.5: *"PIRC investigations are intended to comply with the five principles outlined by the ECHR namely independence, adequacy, promptness and so far as possible, public scrutiny, and victim involvement."* The investigation was assessed as it was going along in relation to those five principles.

149. In relation to independence in this particular investigation, both COPFS and PIRC are independent organisations. The investigation remained under the direction and control of the Lord Advocate who is responsible for the prosecution of crime and investigation of deaths in Scotland, and their independence is enshrined in statute. The PIRC in law is bound to follow the Lord Advocate's instructions. In relation to PIRC's independence, all PIRC staff were accountable to the Commissioner and had no hierarchical or institutional connection to the police generally or the subject officers in this investigation in particular. They were also practically independent. They're employed by the Commissioner and had no chain of command to the Chief Constable.

Signature of Witness

DocuSigned by:
[Redacted Signature]

150. My understanding in relation to adequacy is that the investigation requires to be capable of gathering evidence to determine whether behaviour is unlawful. The PIRC's role in this investigation was to gather the evidence under the direction of the Lord Advocate within the provisions afforded by Scottish Ministers. The investigators traced and took witness statements from members of the public and police officers, ingathered the forensic and medical evidence for analysis and pursued the investigation under the direction of the Lord Advocate.

151. The PIRC investigation was conducted as quickly as possible, having regard to the size and scale of the investigation and its complexity, and also the availability of witnesses. The first report containing statements from members of the public who witnessed events that morning, the statements of the police officers who interacted with Mr Bayoh and the witness statements of the pathologists who conducted the post-mortem were forwarded to Crown Office with the initial report, around 7 weeks after the post-mortem report was made available. That was approximately in the same time scale that Solemn custody cases would normally be reported to Crown Office. Following additional Terms of Reference being supplied by the Lord Advocate to investigate several additional issues, further work was undertaken to gather statements and productions from domestic witnesses and witnesses outside Scotland and that additional material with the report was submitted to COPFS in August 2016. In total, hundreds of witness statements were taken and around a thousand productions seized. Due to the nature of the investigation, it was prioritised over other investigations which allowed the Investigations Team to progress the investigation as quickly as possible.

152. Public scrutiny is achieved through this Inquiry. Whilst the legislation does not permit public disclosure of Crown directed investigation reports they were forwarded to the Lord Advocate for independent scrutiny. The PIRC Audit and Accountability Committee provided further scrutiny and published minutes of those meetings, which were available externally. As part of the

Signature of Witness

DocuSigned by:
[Redacted Signature]

Audit and Accountability Committee's scrutiny, various audits were undertaken of various aspects of the PIRC's work. I recall that there was an audit of the decision-making within the Investigation Team when the decision-making was audited. That audit provided a strong reassurance and endorsement of the procedures.

153. These audits were ad hoc projects carried out by the auditors and were not a rolling programme of continuous assessment. My recollection is that the auditors chose a selection of investigations. I don't think that this investigation was part of that audit.

154. I have been asked if the auditors ever found a PIRC investigation not to be sufficiently thorough or not being in compliance with Article 2. I don't think they did.

155. I have been asked how the principle of victim involvement was ensured within PIRC investigations. This was usually achieved through the family liaison function and engagement with victims and families.

156. I have been asked what level of awareness there was within PIRC about the requirement for investigations to comply with the principles of Article 2. These principles often featured as part of the recruitment process and formed part of the induction process and ongoing training. They also formed part of the awareness raising presentations, which were delivered by a broad range of Investigation Team staff. The senior members of staff in particular, such as Mr Mitchell, Mrs Scullion, Mr McSporran, Mr Harrower and Mr Little had a good level of awareness of them.:

157. I have been asked if training was provided to PIRC staff in relation to the principles of Article 2. Yes. It formed part of the induction process and several other internal presentations.

Signature of Witness

DocuSigned by:
[Redacted Signature]

Previous experience of deaths in custody

158. I'd been involved in deaths in custody cases where individuals died in police stations or on their way there during my time at Crown Office. I received the reports; directed any further investigation required; assessed the evidence; and then, if there was to be a fatal accident inquiry, undertook that.
159. I have been asked if any of those previous cases were similar to the incident involving Mr Bayoh. No. This was different as the incident took place outwith the normal custody environment. I dealt with a number of cases where prisoners had taken unwell and died either in police cells or within a police station rather than the circumstances here, where there had been active engagement with police officers in a public place.

Initial involvement in the investigation

160. My first knowledge of the incident was through the media that morning, that an officer had been injured in the course of her duties and taken to hospital. I don't recall what the injuries referred to were and I don't think at that time there was any mention that there had been a death in custody. Through the media it wasn't readily apparent that the matter would, in fact, be referred to PIRC. At around lunchtime that day, Mrs Scullion phoned me to let me know that Crown Office staff had directed the PIRC to investigate the circumstances which related to a death in custody. I was on annual leave at that time, and she said that she was simply providing me with a courtesy call because she thought that there was considerable press interest in it.
161. I can remember saying that I had heard reporting of the incident involving a policewoman several hours earlier, and she said that the incident was related. She told me that a male had died following his arrest in Kirkcaldy and provided some information about the events preceding the arrest. She told me that the man had been at a party and at a friend's house to watch a

Signature of Witness

DocuSigned by:
[Redacted Signature]

boxing match, that he'd assaulted one of his friends and that there had also been a disturbance at the man's own house where property had been damaged. She said that she didn't know how that had happened nor was sure of the sequence of events.

162. She then said that the man had been seen chasing after cars with a knife, that the police had been dispatched and that Police Scotland had considered that it might be a terrorist incident. Against the backdrop of the information that she'd provided, I didn't understand why it had been considered to be a terrorist incident and asked why. She said it was because the man was what she described as "a coloured gentleman," and I asked her what she meant by that and whether there was anything else to point to it being a terrorist incident, as I still found it quite difficult to understand what would cause the police officers to think that the incident was terror related. She said that his actions in chasing after and striking out at cars with the knife may have contributed to that belief, and she referenced an attack in England.

163. Mrs Scullion informed me that "Police Scotland" and not the individual officers had considered that it might be a terrorist incident.

164. I have been asked where Irene Scullion obtained the information that Police Scotland had considered that it might be a terrorist incident. I don't know but I would assume that she spoke to Mr Harrower or someone within Police Scotland.

165. I have been asked if I specifically recall Mrs Scullion using the term "a coloured gentleman" to describe Mr Bayoh. Yes, because I remember not understanding what she meant when she said that it had caused the matter to be thought of as a terrorist incident. I did ask her what she meant by it and asked her a variety of questions around the ethnicity of the person. I don't recall her informing me that Mr Bayoh was black.

Signature of Witness

DocuSigned by:
[Redacted Signature]

166. I have been asked if I considered using the term “a coloured gentleman” to describe Mr Bayoh to be appropriate. No.

167. I have been asked if I mentioned that I found it inappropriate to Mrs Scullion. I did not raise that with Mrs Scullion on the call but did informally discuss the use of that phrase with her sometime later and she acknowledged that it was inappropriate.

168. I have been asked if I ever considered it necessary for there to be any formal disciplinary proceedings as a result of the language used by Mrs Scullion. No, I didn't. At the time I was more focused on understanding why the incident was being considered as a terrorist incident.

169. I have been asked if I ever came across other instances of colleagues at PIRC using inappropriate language regarding Mr Bayoh's race or ethnicity. I don't think so.

170. Mrs Scullion went on to say that when the police came in contact with the man, that he'd assaulted the female officer, who had been taken to hospital, and during his arrest, he'd become unconscious and had died. She confirmed that Mr Harrower and the on-call team were either already at Kirkcaldy or on their way there. She said that Crown Office had directed that the PIRC investigation was to be confined to the area where Police Scotland had arrested the man, and his house and his friend's house were to be the subject of an investigation by Police Scotland. She said that she did not know why Crown Office had directed Police Scotland to investigate at those houses. I found it strange that they'd been separated into PIRC and Police Scotland investigations and felt that if PIRC was investigating the incident, that it may have been better that PIRC assumed responsibility for the entire sequence of events rather than Police Scotland investigating part of the same incident.

Signature of Witness

DocuSigned by:
[Redacted Signature]

171. Mrs Scullion said that Mr Harrower had discussed with Police Scotland what their responsibilities would be until the PIRC investigators took over the scene, and her understanding was that Police Scotland were already protecting the scene where the man had died and had initiated the post-incident management (PIM) process.
172. I can remember asking her whether Crown Office had provided any guidance on whether the officers were to be treated as witnesses or suspects, and she said that they were being treated as witnesses. I also asked her whether the officers had been separated as I had previously indicated that that would be an appropriate step in such circumstances. She said that she understood they hadn't been and that she didn't expect that to happen because the Authorised Professional Practice (APP), which governed the PIM process, did not require it. I also asked if Mr Harrower had sufficient resources, and she confirmed that he had.
173. I didn't instruct Mrs Scullion to direct that the officers be separated as she had already confirmed that the PIM process was in place and having raised the question of separation of the officers with her, she made it clear that from previous discussions with Police Scotland that it was unlikely that separation would take place. I'd previously expressed my view to her that in those circumstances officers should be separated.
174. I understood what the PIM process was. I thought it was entirely sensible for it to applied in this incident. I do recall that Mrs Scullion said the officers had been taken back to Kirkcaldy Police Office, and we had some discussion around the whereabouts of the PIM suite because I wasn't aware if there was a dedicated PIM suite at Kirkcaldy Police Station.
175. From what Mrs Scullion said I understood that Mr Harrower considered the PIM process to be in operation.

Signature of Witness

DocuSigned by:
[Redacted Signature]

176. I have been informed that the Inquiry has obtained evidence from Mr Harrower that he was unaware that a PIM process had been put in place and that a post-incident manager had been appointed on 3 May 2015. I don't know what information had been provided to Mr Harrower, I'm referring to the information which Mrs Scullion gave me.
177. I can specifically remember that because, as part of the discussion with Mrs Scullion, she said that as the PIM process was in place there was little point in anyone else attending as access to the PIM suite would be restricted. Mr Harrower, as the lead PIRC investigator would have been able to gain access, but it would have been a fairly restricted process for others.
178. I consider that, unless there had been a pressing operational reason, the officers involved should have been separated and not allowed the opportunity to remain with each other prior to producing their initial accounts. As it turned out, it would appear that they had been gathered together for some time before the PIRC had even been informed, so any benefit of a PIM process had potentially been lost by the time Mr Harrower was contacted.
179. I have been asked if, in my view, DSI Harrower should have instructed DS Patrick Campbell to ensure that the officers were separated during their first telephone call at 1022 hours on 3 May 2015. If Mr Harrower was aware that the PIM process had not been installed, notwithstanding the fact that the officers had been gathered together for approximately 3 hours by that time, it would have been good practice for Mr Harrower to consider that step.
180. I have been asked whose responsibility it was to ensure that the officers did not confer on 3 May 2015. The agreed arrangements between PIRC, Police Scotland, and Crown Office for the initial operational response required Police Scotland to consider installing the PIM process immediately to ensure non conferral. In the absence of separation, another method to ensure non conferral would have been for a senior officer or the post incident manager to

Signature of Witness

DocuSigned by:
[Redacted Signature]

sit with the officers involved, and ensure that there was no discussion around the events.

181. I have been asked if PIRC became responsible for ensuring that there was no conferral from the point PIRC took over responsibility for the investigation. Yes, the PIRC had that responsibility, from the point of instruction.

182. I asked Mrs Scullion if she intended to attend and when she said that she wasn't going I suggested that I would attend. She told me that there was little point in going as the scene was being protected by Police Scotland, that the officers were already subject to the PIM process; that they'd been asked for their initial accounts and that Mr Harrower and the team were already there or just about there. She reassured me that Mr Harrower had everything, as she described it, "under control."

183. I said to her that I would try to reschedule my existing arrangements to go to the briefing the following morning to get a clearer picture of events and I managed to do that. Mr Little led the briefing and agreed various actions.

184. I have been asked if I had ever attended an incident before. Whilst I did not attend any incidents as the PIRC, I regularly used to attend unexplained or suspicious deaths as a Fiscal.

185. I have been asked what led me to offer to attend the incident in this case. The nature of the incident and the fact that it was a death in custody.

186. I have been asked if Mr Bayoh's race impacted on the consideration I gave to attending the incident. No.

187. I have been asked if it was commonplace for me to be made aware whilst I was on annual leave that a PIRC investigation was commencing. Yes. I was regularly contacted in relation to high-profile matters out of hours.

Signature of Witness

DocuSigned by:
[Redacted Signature]

188. I have been asked if I had any further involvement with the investigation on 3 May 2015. No, I don't recall having any further involvement that day.

189. I have been asked if I was aware of the steps that were taken to progress the investigation later on 3 May 2015. No.

Reports on 3 May 2015 that officer had been stabbed

190. I don't recall specific details of the original media release other than the information being that an officer had been injured in the course of her duties and taken to hospital.

191. I have been asked if I played any role in a subsequent investigation by PIRC about the source of reports that an officer had been stabbed during the incident on 3 May 2015. No.

On-call system

192. The PIRC operated a 24/7 on call rota system where a team of investigators were on call and available to attend incidents out of normal working hours. I understood that in selecting the groupings of on call members, staff with various skill sets were available.

193. I have been asked who was responsible for creating the rota for the on-call system. The rota was organised and held within the Investigations Team. I don't know whether it was Mr Mitchell or Mrs Scullion who managed it.

194. I have been asked if it was common for staff who were not on call to be contacted and asked to deploy immediately to participate in a PIRC investigation. I don't know how regularly that happened.

Signature of Witness

DocuSigned by:
[Redacted Signature]

Resources on 3 May 2015

195. I have been referred to Detective Superintendent Patrick Campbell evidence to the Inquiry, which refers to the level of PIRC's resources on 3 May 2015 (day 47, page 128, line 23):

A. ... I had slight concerns round about their awareness of capability and also the capacity round about the number of resources that turn up at that time to take on an investigation such as this, which was gathering pace, there was significant media attention around it. So it wasn't just investigative side, there were other areas that were playing out at that time.

Q. When you say you had concerns about their capacity, what do you mean by that?

A. Resources-wise. I think we had about – I recall at one time we had probably about 20, 22 resources on it at one time from Police Scotland, detective officers involved in the investigation. I think at that day, I think they turned up with four or five PIRC.

196. I have also been referred to DS Campbell's evidence on a subsequent day in this regard (day 49, page 174, line 5):

A. ... it's clear it was insufficient for the job on 3 May, and that's why from a Police Scotland perspective we'd significant resources pulled from all over the country, as well as from the Major Investigation Teams, to support the PIRC in respect of the investigation.

197. Clearly the number of available PIRC staff on call outwith normal working hours on a Bank Holiday weekend was significantly less than would have been available during normal business hours. Even within business hours,

Signature of Witness

DocuSigned by:
[Redacted Signature]

the complement of PIRC investigators is significantly less than is likely to be on shift in Police Scotland's Major Incident Teams. As Mr Campbell identifies, Police Scotland was able to divert a significantly larger pool of staff from their existing duties. I understand that there were approximately 6 on-call staff available that day to Mr Harrower.

198. I have been asked if I have any view about the sufficiency of PIRC's level of resources on 3 May 2015. I'm sure it would have been easier if more staff had been available. I think Mr Harrower would have found it helpful to have had as many staff as possible to assist him. Clearly, if there had been FLOs available on the day, that would have been preferable too.

199. I was not provided with any information on the day as to whether or not FLOs were available. I had asked Mrs Scullion on the telephone if Mr Harrower had sufficient resources and staff available and she confirmed that he had everything he required.

Views on actions taken on 3 May 2015

200. PIRC assumes responsibility for an investigation when instructed by Crown Office, but because the police are likely to be first responders and the PIRC doesn't have immediate nationwide coverage, it relies on Police Scotland's cooperation. In this case, PIRC assumed responsibility for the investigation, when Mr Harrower was contacted by Mr David Green, COPFS, but the police were responsible for continuing to preserve the scene and the evidence until PIRC took over responsibility for that on their arrival.

201. Once COPFS instruct PIRC to investigate, PIRC have responsibility for the investigation and are able to direct the investigation after the police have initiated the operational response in relation to the scene and the securing of evidence.

Signature of Witness

DocuSigned by:
[Redacted Signature]

202. I have been asked if PIRC will be in charge of a scene from the point it is instructed to investigate by COPFS, albeit reliance is placed on Police Scotland from that point to carry out certain actions at the direction of PIRC. Yes.

203. I have been asked how feasible it is for PIRC to direct an investigation remotely, without being at the locus. They're able to provide direction based on the information that is provided to them through communication between the Police Scotland SIO and the PIRC lead investigator. They rely on the cooperation that's afforded to them. It is preferable for the PIRC investigative team to be there as quickly as possible. However, the practicalities of calling a team in, briefing them, travelling to the locus and then receiving a full briefing on the circumstances takes time. I would expect that the PIRC investigators travelled to Kirkcaldy as quickly as they could.

204. I have been asked if it was standard practice for PIRC investigators to meet at PIRC's office in Hamilton, prior to deployment to a scene. Yes, that was the standard practice and I understand that process allowed the team to be briefed on the known circumstances before leaving.

205. I have been asked what the rationale was behind this practice. That practice allowed them to be collectively briefed and provided with the necessary instruction before deploying. Whilst that could have taken place in Kirkcaldy, that would have depended on accommodation being made available for such a briefing and Mr Harrower would still have had to provide that briefing, guidance and allocation of duties before the team commenced the investigation.

206. I have been referred to Detective Chief Superintendent Lesley Boal's evidence to the Inquiry (day 65, page 98, line 25), which refers to PIRC's arrival at 1330 hours and receipt of a briefing thereafter:

Signature of Witness

DocuSigned by:
[Redacted Signature]

Q. Thinking about that now, the event involving Mr Bayoh at Hayfield Road had taken place between about 7.20 and 7.30 in the morning, and there has been contact with PIRC and Pat Campbell the SIO during that day. They arrived at 13.30, did you have any concerns about the period – the period that had taken place between the events actually at Hayfield Road and the arrival of PIRC in the afternoon?

A. I thought there was a time delay. Although it was maybe not significant, I would have expected them to arrive some time sooner than they did, given the circumstances and their appointment by Crown Office at 9 o'clock or around about then.

207. I have also been referred to DCS Boal's evidence later on that same day (day 65, page 99, line 20):

Q. You say there was a time delay. Did you have concerns about that at the time, about this period that had elapsed before they arrived?

A. Yes. I suppose my concerns were the reason and rationale for PIRC being appointed. Independent investigators was absolutely crucial, and their speedy response to that for me was important for that independence. Both in terms of Pat Campbell's role, and importantly that message to the public that the Crown had asked for independent investigators and that they were now leading the investigation.

208. I agree that the sooner the PIRC investigators could have been there, the better. However, the practicalities were that Mr Harrower required to obtain information from Police Scotland, call in a team, provide them with a briefing and appropriate instructions, provide Police Scotland with appropriate instructions around the preservation of the scene and evidence and then travel through to Kirkcaldy, which is at least an hour's drive away, recognising that PIRC is not a blue-light service.

Signature of Witness

DocuSigned by
[Redacted Signature]

209. I have been asked if I agree with DCS Boal that there was a delay in PIRC's arrival in Kirkcaldy on 3 May 2015. I agree that there was a gap there of a number of hours between 0930 and 1330 hours but I do not know if there was any delay in the on-call team getting there.

210. I have been asked if PIRC could have arrived in Kirkcaldy earlier than 1330 hours on 3 May 2015. I don't know.

211. I have been referred to the fact that Police Scotland held a Gold Group meeting at 1130 hours in Kirkcaldy on 3 May 2015. I have been asked if I consider that it would have assisted the response to the incident for PIRC to have attended that meeting, either in person or remotely. Yes, I think it would have been helpful, if the full circumstances could have been shared as soon as possible so that Mr Harrower and the team had a clear understanding of the situation and any developing issues. I don't know if the information that was shared at that meeting matched with the information that Mr Harrower was given. It's not clear to me why Police Scotland felt the need to hold a Gold Group at that time, knowing that PIRC had been instructed.

212. I have been asked if PIRC's presence at the meeting would have benefited PIRC's ability to direct the investigation. Yes, it would have ensured that Mr Harrower had all relevant information that had been gathered by that time and any new emerging issues.

213. I have been asked if I have any view on SI Richard Casey, as the senior investigator on duty on 3 May 2015, remaining in Hamilton that day, rather than deploying to Kirkcaldy. I was unaware of that. I don't know what reasons were identified for him remaining in Hamilton. I think, given the circumstances, it would have been preferable if he had attended to provide further resilience to the team. As a Senior Investigator, his experience would have been of benefit.

Signature of Witness

DocuSigned by:
[Redacted Signature]

214. I have been asked if the handover process from Police Scotland to PIRC following a death in custody is covered by any sort of SOP or policy. Yes. The initial operational response in the event of a death in custody had been agreed between PIRC, Police Scotland and COPFS since the inception of PIRC. Details of that agreement were captured in SOPs, MOUs and policy documentation. It was very clearly laid out in a flowchart which was attached to those documents. The flowchart clearly showed each organisation's responsibilities through various stages of investigations such as this. During the period which COPFS assessed the circumstances and determined the mode of investigation, it was detailed that the police would continue to preserve the scene and evidence and would initiate the investigative response, specifically in relation to PIM, the scene and the forensic capture. Once COPFS had instructed a PIRC investigation, it was agreed that the police would continue to preserve the scene and evidence until PIRC took over the scene.
215. I have been asked what the standard practice around the deployment of PIRC's FLOs was following a death in custody. The standard practice in such circumstances was that FLOs would have been deployed fairly quickly. If any had been available, on the day of the incident, I would have expected them to have been contacted.
216. I have been asked if I have any knowledge of how FLOs are assigned to an investigation by PIRC and whether consideration is given to sensitivities such as religion and gender. I had no role in assigning FLOs but would expect consideration to be given to particular sensitivities.
217. I have been referred to PIRC's Family Liaison Policy (PIRC-04460, page 14), which refers to considerations when deploying FLOs:

Signature of Witness

DocuSigned by:
[Redacted Signature]

On occasions, gender may be a critical factor both for cultural reasons and operational factors. Where the victim is from a minority group or particular lifestyle diversity, consideration should be given to the deployment of a FLO with specific knowledge and experience of that community. Such consideration should be balanced against the impact that any previous relationship between the officer and the family might have on the professional objectivity of the officer and the exit strategy.

218. I have been asked which minority groups and “lifestyle diversities” PIRC’s FLOs had specific knowledge and experience of in 2015. I don’t know the extent of each individual FLO’s knowledge and experience.

219. I have been referred to the fact that I have identified that I don’t think there were any investigators from ethnic minorities in 2015. I have been asked what impact this would have on PIRC’s understanding of different communities and minority groups, as referred to within the SOP. Other than training that they had received on those matters or any previous knowledge they had obtained in other roles there may not have been a FLO who had specific knowledge and experience of those communities and potentially there could be a lack of understanding of particular cultural sensitivities and background.

Involvement in investigation on 4 May 2015

220. I attended the early morning briefing in the expectation that Mr Harrower would have been present and it was at that stage that I learned he had leave commitments. My recollection is that Mr Little led the briefing.

221. At that briefing, Mr Little was able to provide further information on the circumstances and advise that the officers involved had declined to provide their statements. It was agreed that efforts should urgently be made to secure those statements. I was particularly concerned and surprised that the

Signature of Witness

DocuSigned by:
[Redacted Signature]

statements hadn't been provided the previous day. It was clear at the briefing that that efforts to obtain the officers' statements had to be one of the priorities. I was assured that those steps would be taken.

222. I have been referred to a briefing note prepared for PIRC's Director of Investigations in relation to the events of 3 May 2015 (PIRC-03694). Whilst I didn't see it at the time I think Mr Little may have referred to it as part of his briefing.

223. I have been referred to the briefing note (PIRC-03694, page 2), which states: *"It was reported that as the officers drove into Hayfield Road they saw the now deceased coming towards them as the vehicles came to a halt. They could clearly see he was in possession of a knife and was making his way towards them."* From my understanding of the witness statements, that doesn't appear to be accurate. I don't remember whether that formed part of the narrative given at the briefing.

224. I'm not sure that the investigation would have been any different had that sentence been included or not, as further enquiries seemed to reveal fairly early on in the investigation, that whilst a number of witnesses spoke to Mr Bayoh being in possession of a knife shortly before his interaction with the police officers, that a knife was recovered nearby, and not in his possession when he met the police officers

225. I have been asked who made the decision to hand over responsibility for the investigation to DSI Little on 4 May 2015. I don't know who made that decision. Normally, it would have been Mr Mitchell but in his absence I would expect that it would be Mrs Scullion.

226. I have been referred to DS Campbell's evidence to the Inquiry (day 49, page 73, line 5):

Signature of Witness

DocuSigned by:
[Redacted Signature]

A. I think -- sorry, I think the problem with the PIRC deployment at that stage, other than the resources, is that over the course of 24, 36 hours they changed the lead investigator. So Keith had --

Q. What issues did that cause?

A. Just obvious challenges, the fact is you're bringing someone on fresh into the investigation when you've been there for 12, 13 hours at that stage, you know what I mean, before that ... before Billy Little's appointed around that. So again, there was challenges with the fact that the change of a senior investigator from PIRC at such an early stage of a critical investigation would undoubtedly cause challenges.

227. I agree that it was not ideal and, as a result, when I became aware of the matter, I discussed it with Mr Mitchell and asked him to review the on-call rotas to ensure that those who were on-call were available for the days that followed. It would have been better to have had a continuity of senior investigator to avoid the need for there to be a familiarisation of the facts and circumstances by the replacement investigator. The original investigator would have been originally briefed and worked through the circumstances that were presented.

228. I have been asked if this change in practice in relation to PIRC's on-call rotas was implemented. Yes, as far as I am aware it was.

229. On the basis that Mr Harrower was no longer available, the circumstances required that another experienced investigator such as Mr Little who had a significant degree of experience in serious and complex investigations, progress this matter. I was comfortable that DSI Little had the responsibility for progressing the investigation.

Signature of Witness

DocuSigned by:
[Redacted Signature]

230. I have been asked if I left PIRC's offices directly after the morning briefing.

Yes, shortly after it. Monday 4th May was a Public Holiday and apart from the Investigations Team staff who had gathered for the briefing before travelling to Kirkcaldy, no other staff were expected in the office that day. I had rescheduled my existing arrangements to enable me to attend that briefing and had to pick up those arrangements after the meeting.

231. I have been asked if I had any further contact with my colleagues in relation to the investigation on 4 May 2015. Not after leaving the office.

232. I have been asked when I returned to work having left the office on 4 May. I returned in the middle of May. I think it may have been around the 14th.

233. I have been asked what contact I had with my colleagues whilst I was on leave. I spoke to Mr Mitchell on his return to the office, to ensure that he was fully sighted on the details of the investigation. I phoned him sometime during the first week.

234. I have been asked if this was my only contact with colleagues at PIRC whilst I was on leave. Yes, I don't recall having contact with any others.

Post-mortem

235. I have been asked what involvement I had in directing PIRC's involvement in Mr Bayoh's post-mortem. I learned at the briefing that day that PIRC investigators had communicated the family's wishes to Crown Office to delay it until other family members arrived from England and that Crown Office staff had indicated that they intended to proceed with it. That decision rested with Crown Office as it has the sole responsibility in Scotland for the investigation of deaths.

Signature of Witness

DocuSigned by:
[Redacted Signature]

236. I have been asked if I considered speaking to Crown Office about the family's wishes to delay the post-mortem. Yes, I think that I spoke to Mr Green to ensure that he knew about the family's wishes. My recollection is that Crown Office were aware of the family's wishes and their reason for it to be delayed but had arranged that the post-mortem would go ahead that day.
237. I have been asked how much influence PIRC has over Crown Office in relation to the timing of a post-mortem. Little, if any. It is a matter for Crown Office alone.
238. I have been asked if I was involved in arranging post-mortems during by time at Crown Office. Yes, various considerations were taken into account such as the circumstances of the death and the wishes of the family. In an unexplained death, the sooner the post-mortem takes place, the sooner it may be possible to identify the cause of death.
239. I have been asked what is PIRC's normal involvement in a post-mortem following a death in police custody. Investigators would normally be present to assist with any issues raised by the pathologist and to record anything of crucial importance to the investigation.
240. I have been asked if it would be common for police officers to be present at post-mortems following deaths in custody. No, I don't recall that previously happening but the presence of anyone at a post-mortem is determined by Crown Office, if they are instructing the post-mortem.
241. I have been asked if it is standard practice for officers involved in a death in custody or death following police contact to be informed of the deceased's post-mortem results. No, I don't recall that previously happening.

Signature of Witness

DocuSigned by:
[Redacted Signature]

Liaison with Police Scotland

242. I have been asked if I had any contact with officers from Police Scotland on 3 or 4 May 2015. I don't think I did.

243. I was aware that the Crown Office instruction originally was for the PIRC to investigate the circumstances in Hayfield Road, but the other events were to be investigated by Police Scotland. There was a clear demarcation in relation to which organisation was investigating which part. My own view on 3 May was that it would have been preferable for the full circumstances to be investigated by the PIRC. That would have provided an overview of the entire episode and an understanding of how events developed before the eventual incident.

244. I have been asked if I had any concerns about the division of responsibility between PIRC and Police Scotland having an impact on the public perception of the response to the incident. Yes, I thought that it led to confusion about who was investigating what. The public could see that the police were investigating part of the events and the PIRC investigating at Hayfield Road.

245. I have been asked if I communicated this view to Irene Scullion on my telephone call with her on 3 May 2015. I did and she said that she didn't understand why Crown Office had instructed Police Scotland to investigate the other scenes.

246. I have been asked if I am aware whether this was raised with COPFS. I don't know.

247. I have been asked if I became aware at any stage of any concerns raised by Police Scotland in relation to PIRC's handling of the investigation, or the continued involvement of Police Scotland in the investigation. No.

Signature of Witness

DocuSigned by:
[Redacted Signature]

248. I have been asked if I would expect to be made aware of concerns raised about PIRC's handling of the investigation. I would expect to be made aware of such concerns either by senior staff within Police Scotland or through the Director of Investigations if he was aware of them.
249. I have been referred to an "Action" (PIRC-02938), raised on 19 May 2015, which refers to "*adverse comments made in relation to PIRC action*" by Ch Supt Garry McEwan within his operational statement (PS03136).
250. I have been referred to Ch Supt Garry McEwan's operational statement (PS03136), which states, at page 3: "*On arrival, the family were pleased to see me, and they articulated a dissatisfaction with PIRC involvement to date, stating that they had had little contact and not received any information.*"
251. I would have expected them to have been drawn to the attention of the Director of Investigations in the first instance, who, in turn, could have communicated them to me and for the comments to be explored.
252. I have been referred to the statement obtained by PIRC from Ch Supt McEwan on 24 June 2015, subsequent to the Action being created (PIRC-00181). I have been informed that Ch Supt McEwan does not appear to have been asked about the "*adverse comments*" made within his operational statement. I have been asked if I would have expected there to have been some discussion with Ch Supt McEwan regarding the "*adverse comments*" when he provided his PIRC statement. Yes, I would. The benefit would be to allow that matter to be addressed or confirm it had been addressed and, if it had not been addressed, could be addressed.

Signature of Witness

DocuSigned by:
[Redacted Signature]

Legislative basis for COPFS instruction

253. I have been asked upon which legislative basis PIRC were instructed to investigate following the incident involving Mr Bayoh. My recollection is that the Crown Office instruction wasn't defined or tied to either section 33A(b)(i) or (b)(ii) of Police, Public Order and Criminal Justice (Scotland) Act 2006 (2006 Act). How the instruction was drafted was a matter for Crown Office. It may have been drafted in that way because it was unclear, until the investigation was undertaken, which section was appropriate.
254. Either were possibilities then, but initially the investigation was into the circumstances of an unexplained death in custody. That could have changed into a criminal investigation depending on the outcome of inquiries. Irrespective of whether or not the matter changed into a criminal investigation, the entire circumstances would have been investigated. Both would have been treated equally seriously. There would be little difference, insofar that the full circumstances would require to be investigated.
255. I have been asked if the legislative basis for PIRC's investigation of the events at Hayfield Road on 3 May 2015 changed during the investigation. I can't remember any change to the legislative basis for the original instruction. I was aware that additional Terms of Reference were provided in relation to such things as Data Protection Act matters.
256. I have been asked if the legislative basis for the instruction would have had any impact on the categorisation of the officers involved in Mr Bayoh's arrest as witnesses or suspects. If Crown Office had directed an investigation into circumstances of criminality, then the PIRC investigation would explore the circumstances to ascertain whether there were reasonable grounds to suspect that a crime had been committed by the alleged perpetrator and, if that was the case, then that person would be treated as a suspect. Similarly, in a death investigation, the full circumstances would be investigated and if it

Signature of Witness

DocuSigned by:
[Redacted Signature]

revealed that there were reasonable grounds to suspect that a crime had been committed by the alleged perpetrator then that person would be treated as a suspect. Until that suspicion had crystallised, the person would be treated as a witness. Either in a criminal or death investigation, whether the police officers involved in Mr Bayoh's arrest were treated as witnesses or suspects, depended on that suspicion crystalising.

257. If Crown Office had expressed a view that there was criminality and also provided the grounds to suspect that the police officers had committed a crime, then they would have been treated as suspects. Until then, they were witnesses and that position was confirmed by the Lord Advocate.

258. I have been asked if I would attach any significance to the fact that Les Brown, the Head of CAAPD, was the principal point of contact for investigation. No. I didn't attach any significance to that because, throughout the investigation, the view expressed by Crown Office was that whilst the investigation was of a death in custody, it would depend on the outcome of the investigation, whether or not criminality was revealed.

259. I have been referred to an email dated 5 May 2015 at 0845 hours, from John Logue, COPFS (COPFS-02685) in which he states: *"The key issue here is that COPFS has instructed PIRC to investigate the incident in terms of s.33A(b)(i) of the 2006 Act as 'circumstances in which there is an indication that a person serving with the police may have committed an offence'".* That was not the instruction communicated to the PIRC.

260. In terms of the extent of the investigation, I'm not sure that it would have made any difference. If the instruction had been provided under the terms of 33A(b)(i) specifically, I would have expected instruction around what potential criminality was to be investigated.

Signature of Witness

DocuSigned by:
[Redacted Signature]

261. I have been asked if I had been aware of the content of John Logue's email about COPFS instructing PIRC to investigate the incident under section 33A(b)(i) that would have had any impact on the categorisation of the officers as witnesses rather than suspects. No. PIRC would have had to clarify which instruction COPFS expected the investigation to be carried out under. That was an internal COPFS communication which did not replicate the instruction provided to PIRC. At our meeting with the Lord Advocate, who was directing the investigation, he had made it clear that he considered that the police officers should be treated as witnesses.

COPFS instructions

262. I have been asked if I had any discussions with staff at COPFS on 3 or 4 May 2015. I think the only discussion I had was with Mr Green.

263. I have been referred to ACC Ruairaidh Nicolson's evidence to the Inquiry (day 67, page 98, line 15):


Q. And in terms of your understanding on the 3rd, as Gold Commander, was it brought to your attention in any way at any time that day that the remit of PIRC appeared to be just in relation to Hayfield Road and the events at Hayfield Road?

A. No.

Q. How practical would that have been? Would the police have continued with investigating events prior to Hayfield Road and PIRC take over the Hayfield Road investigation?

A. It's just not practical at all.

Signature of Witness

DocuSigned by:


264. It sounds as though the Crown Office instruction in relation to the other incidents does not appear to have been communicated to him. I would expect Crown Office to communicate those instructions to Police Scotland
265. I have been asked if I was content with the direction, instruction and support that PIRC received from COPFS in relation to the investigation. I think the various Terms of Reference in this investigation were generally fine in relation to what they expected to be investigated - apart from the one which simply copied on correspondence from a third party. PIRC would expect to receive direction and guidance from Crown Office in relation to any issues arising in the course of investigations.
266. I have been asked if I was content with the guidance provided by COPFS to PIRC during the course of the Bayoh investigation. Whilst some guidance was received, there were a number of instances of guidance being sought but not provided. For example, when PIRC sought guidance about how to assess whether the officers' actions had been influenced by race. At the original meeting with Crown Office staff about this, we expressed concerns about the feasibility of assessing whether race had any influence on the officers' actions in the absence of any evidence of overt actions and sought guidance. No guidance was provided and it was not until we re-raised this at a subsequent meeting, that the difficulties in making such an assessment were recognised.
267. I have been referred to a letter dated 24 August 2015 from Les Brown addressed to me, instructing PIRC to investigate the circumstances outlined in an attached letter from Aamer Anwar attaching correspondence from Aamer Anwar (COPFS-02768(a)). I have been asked how common it was to be instructed in this way, with COPFS instructing investigation of matters set out in correspondence from a third party. That was unusual and I cannot recall any other instance of that happening.

Signature of Witness

DocuSigned by:
[Redacted Signature]

268. Normally complaints of criminality would be made either directly to the police or to CAAPD. If they had been referred to CAAPD, I would have expected instruction from CAAPD identifying the Terms of Reference for the investigation - rather than simply copying on correspondence from a third party.
269. I considered that Mr Brown required to provide clearer instruction in relation to what investigation of some allegations he wanted carried out. As a result, I wrote seeking that instruction.
270. I have been referred to a letter dated 17 November 2015 from me to Les Brown, in which I sought clarification of COPFS's instructions, following correspondence with PC Paton's solicitor (PIRC-01738): *"As you will appreciate, the instructions in this regard were not forwarded to me in the normal format of a letter of instruction but rather the allegations were contained in letters from Mr Anwar referred to in your correspondence."*
271. I have been asked how common it was for PIRC to require to seek clarification of COPFS's instructions in this way. My recollection is that this was the first time.
272. I have been asked what impact the lack of clarity in COPFS's instructions had on PIRC's investigation. I think that investigation of the issues was delayed until that clarity was received.
273. I have been referred to a letter dated 5 May 2015 from Stephen McGowan to Irene Scullion (COPFS-02539) in which PIRC's terms of reference were expanded. Yes, I have seen that letter.
274. I have been asked if I was involved in any way in discussions around the expansion of PIRC's terms of reference. Not that I can recall.

Signature of Witness

DocuSigned by:
[Redacted Signature]

275. I have been asked if I recall why PIRC's terms of reference were expanded at this point. No, I don't.

276. I have been referred to a letter dated 12 June 2015 from Stephen McGowan addressed to me (COPFS-04010 (a)), in which PIRC's terms of reference were further expanded to cover allegations that the family were provided with misleading and erroneous information concerning the death of Mr Bayoh; concerns surrounding the thoroughness of initial attempts by the police to secure evidence; and that there was inappropriate conferral between police officers. I don't remember whether I was involved in any prior discussions about the expansion of the Terms of Reference. I note from the letter that these were matters which the family had drawn to Mr Brown's attention.

277. I usually had discussions with Mr Mitchell when Terms of Reference in this investigation were received and knew that some of the matters in this letter had already been identified within the investigation. The operational delivery of investigating those matters was his responsibility along with Mr McSporran.

278. I have been asked if I provided any direction in relation to how these aspects of the investigation should be investigated. I don't now recall the precise content of my discussions with Mr Mitchell as I discussed aspects of various investigations with him throughout most working days.

279. I have been asked if it would be common to provide direction to my investigator colleagues following the expansion of PIRC's Terms of Reference. No, it wouldn't be common but I would provide direction when required.

280. I have been referred to the statement obtained by PIRC from Ch Supt Garry McEwan on 24 June 2015, after PIRC's Terms of Reference were expanded on 12 June 2015 (PIRC-00181). I have been informed that Ch Supt McEwan

Signature of Witness

DocuSigned by:
[Redacted Signature]

met with Mr Bayoh's family on 3 May 2015, but the allegations made by the family about the information passed to them on 3 May 2015 do not appear to have been put to Ch Supt McEwan when he was interviewed by PIRC. The allegations only appear to have been put to Ch Supt McEwan in a subsequent statement, obtained in January 2018 at COPFS's direction (PIRC-00182). I have been asked if I would have considered it best practice for the allegations made by the family in relation to the information they were passed to be put to Ch Supt Garry McEwan when he was interviewed by PIRC on 24 June 2015. Yes, I do, as that could have provided an insight into his role in communicating with the family. Responsibility for identifying relevant areas for interview would usually rest with the senior investigator, which in this case was Mr McSporran.

281. I have been asked if I was aware of Crown Office directing that further statements be taken from certain witnesses. No, I don't think I was aware of that.

Relationship with COPFS

282. The dynamic is that Crown Office directed the PIRC in section 33A(b) investigations and the investigation remained under the direction and control of Crown Office. In high profile investigations, there may be meetings between PIRC and COPFS staff to discuss progress, any issues arising, the Terms of Reference, and to provide instructions and guidance.

283. Once the Terms of Reference were received from Crown Office, in high profile or complex investigations, PIRC staff would meet with COPFS staff to provide briefings on the progress of the investigation and any operational issues that presented particular challenges. In most Crown-directed investigations there was limited contact or input from Crown Office from receipt of the Terms of Reference until the report was submitted. After the

Signature of Witness

DocuSigned by:
[Redacted Signature]

report was submitted, the Crown could instruct the PIRC to undertake further enquiries.

284. The medical evidence in this investigation was of significance and, as the Lord Advocate was directing the investigation, his input and view was sought in relation to the further medical experts to be instructed.

285. I have been asked if I can recall any occasions where COPFS provided direction in relation to operational matters within PIRC investigations. I can't recall any specific example of that.

286. I have been asked if, beyond the initial instruction or direction by COPFS, PIRC ever approached COPFS for guidance in relation to specific matters within an investigation. Yes, in this investigation an example of that was guidance was sought in relation to the status of the police officers and what alternative approaches could be adopted to secure their statements.

287. I have been asked if PIRC relied on COPFS to provide legal advice within PIRC investigations. No, it didn't. The preference by both organisations was for PIRC to seek independent legal advice.

288. I have been asked if PIRC requires to comply with instructions or direction provided by COPFS. Yes. The PIRC requires to comply with lawful directions provided by COPFS.

289. I have been asked if, during a PIRC investigation, COPFS will commonly be carrying out its own investigations in the background. My understanding is COPFS would normally wait for receipt of the PIRC report and then, if the precognition process was to take place, that would then follow.

290. I have been referred to an email dated 2 July 2015 from Les Brown to John McSporran (COPFS-04808), which states, at point iv): *"I can confirm that the*

Signature of Witness

DocuSigned by:
[Redacted Signature]

Crown will take responsibility for instruction of appropriate experts in relation to positional asphyxiation. We will however take account of any proposals that you make in this regard."

291. I have been asked if I recall any discussions around this point. No, I don't.

292. I have been asked if it was common for COPFS to take the lead on aspects of an investigation without significant involvement from PIRC. No. It was unusual.

293. I have been asked what sort of analysis of evidence PIRC would include within its reports to COPFS. Generally, in reports on deaths there was no separate analysis included in the report supplied to Crown Office by the PIRC. The narrative section would detail what each witness spoke to. However, in this report, a summary was provided of the witnesses' evidence and an analysis of the evidence relating to the officers' interaction with Mr Bayoh.

294. I have been asked if PIRC would include any analysis of the credibility of witnesses, or inconsistencies between different witnesses' accounts. Not usually in reports on deaths, however in this matter, it did incorporate material on the consistencies or inconsistencies of witnesses to the incident.

Liaison with COPFS during investigation

295. Meetings took place between COPFS and PIRC staff during the investigation to update Crown Office in relation to progress and to receive any further instructions. Their regularity generally depended on COPFS staff's availability. Various staff from each organisation attended these meetings. Sometimes I, Mr Mitchell, or Mr McSporran attended.

Signature of Witness

DocuSigned by:
[Redacted Signature]

296. I have been asked how decisions made at these meetings were communicated to other members of PIRC's investigations team. They were usually communicated by Mr Mitchell directly to Mr McSporran and other senior members of the Investigation Team to allow information to be passed to the individual team members. They were also raised at team briefings.
297. I have been referred to John McSporran's Inquiry statement (SBPI-00361, answer 162), which states:

All correspondence and letters that the investigation was aware of between PIRC and any other party, e.g. Police Scotland, COPFS, etc. was filed in the investigation. From checking, this amounted to over 1500 emails and letters. However, I became aware that on occasion the Commissioner may correspond direct with various parties and the investigation was unsighted in this regard. This said if, for example, a letter from COPFS was received direct by the Commissioner with instructions to investigate anything, she would forward it to the investigation to be recorded.

298. The only occasional items of correspondence that I think Mr McSporran may be referring to is the correspondence to and from the SPF and the family's solicitor, both of which would be logged as correspondence in Bothwell House. Mr Mitchell saw both and I understand sought input directly from the Investigations Team, particularly in relation to the latter. Both were also discussed at team briefings. I am not aware of any relevant correspondence that impacted on investigations which was not forwarded to the Investigations Team and logged on its system.
299. I have been asked how I would communicate with the investigations team if correspondence was received that I felt had an impact on the investigation. I would discuss it with Mr Mitchell and it would be copied to Mr Mitchell or the relevant Senior Investigator.

Signature of Witness

DocuSigned by:
[Redacted Signature]

300. I have been referred to the minutes for a morning briefing on 27 May 2015 (PIRC-04156, page 28) which note, within an update provided by DSI Little: *"Established yesterday that the Crown have passed information to family that they have not provided to PIRC. DoI Mitchell has had discussions with Crown re this.* I don't know what that information was.
301. I have been asked if it was normal practice for COPFS to provide information to a deceased's family without providing that information to PIRC. No. I'm surprised at that. If COPFS provided information to a deceased's family without communicating it to the PIRC, I was unaware of that and am unable to comment on whether that was their normal practice.
302. I have been referred to an email sent to me by Michael Tait on 16 September 2015, in which he shared a link to an article in the Daily Record with the headline *"Sheku Bayoh: Lord Advocate Frank Mulholland promises 'thorough, impartial and objective' investigation into death in police custody"* (PIRC-04566). The subject line of the email reads: *"A bit of freelancing from the LA."* I obviously received it, but I don't remember the article. I don't take anything from the e-mail other than the Lord Advocate must have provided some commentary.
303. I have been asked if I was aware at any stage of COPFS or the Lord Advocate departing from an agreed line in relation to the investigation. I wasn't aware of that.
304. I have been asked if I was aware of COPFS raising any concerns about PIRC's handling of the investigation. No. I wrote to Crown Office expressly asking if there were concerns following commentary by the legal representative of the family.

Signature of Witness

DocuSigned by:
[Redacted Signature]

305. I have been referred to a letter dated 14 February 2017 from me to David Harvie, COPFS, in which I asked if concerns raised by Mr Anwar in relation to the PIRC's compliance with the principles of Article 2 were shared by COPFS (PIRC-02100). I have been asked if this is the letter to which I am referring and, if so, why I considered it necessary to write to COPFS in this regard in February 2017. Yes. I wanted to ascertain if that was their view and if there was anything that we were required to do to address any perceived deficiency, on the basis that it followed on immediately from a meeting which Mr Anwar had had at Crown Office.
306. I have been asked if I was disappointed that COPFS did not clarify publicly that they did not hold the same views as Mr Anwar. It was a matter for Crown Office as to how they responded. It would have been helpful to have had their view so that any required steps could be taken or the press commentary could be addressed.
307. I have been referred to a letter from COPFS dated 15 March 2017 from Stephen McGowan addressed to me (COPFS-02576). I was content that a response had been received acknowledging that it should not imply any criticism of the report that had been submitted to them. I appreciated that their position was that they would not be commenting on the work and that was their right so to do.
308. Given the level of effort and commitment that had been put into the investigation, it was welcome that the Lord Advocate expressed his gratitude for the extensive work undertaken.
309. I have been asked if it would have been helpful for those comments to have been made by COPFS publicly to increase confidence in PIRC's investigation. It would have been helpful if any comments had been provided at the time when the original critical comments had been made.

Signature of Witness

DocuSigned by:
[Redacted Signature]

310. I have been referred to the letter (COPFS-02576), where it states: *“The position of the Crown is that the investigation into the death of Mr Bayoh is live and ongoing and that accordingly it is premature to consider any issue relating to compliance with Article 2 of the Convention.”*

311. I have been asked if this meant that, as part of COPFS’s own analysis of the evidence and PIRC’s report, they would be considering PIRC’s own compliance with the principles of Article 2. It may have meant that. It was open to Crown Office to consider everything in the round.

312. I have been asked if it was standard practice for COPFS to look at PIRC’s compliance with the principles of Article 2 in death in custody investigations. I’m not aware if it was standard practice or not.

313. I have been asked if, beyond this correspondence, I had any further discussions with COPFS about PIRC’s compliance with the principles of Article 2. I don’t remember any further discussions on this.

Requesting officers ’statements

314. The arrangement with Police Scotland was that PIRC investigators would seek statements from the officers involved through a single point of contact (SPOC) at Police Scotland. My understanding is that this process had been agreed and may have been captured in a SOP or a MOU. I understand that the agreement was made at the time that PIRC was set up in 2013 and I was not involved in those discussions. There had been no previous issues with that process.

315. I have been asked if this approach created any issues within the Bayoh investigation. Yes, it meant that the expectation was that investigators requested statements via a SPOC. Whilst PIRC investigators respected that agreement they also requested the statements via the SIO, other senior

DocuSigned by:

Signature of Witness

officers and the police officer's legal representative. They specifically asked for the officers to be approached directly and asked for their willingness to provide those statements.

316. I have been asked if there were any discussions about PIRC approaching the officers directly to request the provision of operational statements. Yes. I discussed that with Mr Mitchell whose preference was to maintain the agreement that had been reached.

317. I have been informed that the Inquiry has obtained evidence from Mr Mitchell that the approach of requesting statements from officers via a SPOC "*will appear in a SOP somewhere, I've no doubts*", but that he is unsure which SOP this is. That was his position to me - that it was documented somewhere. My interpretation was that it would be within a SOP or an MOU. He told me that that process had been an agreed when PIRC was established. As Mr Mitchell had joined PIRC when it was formed, I considered that he would have a good knowledge of the foundation documents.

318. I have been asked if there is any significance to the distinction between a process agreed informally with Police Scotland and a process being documented within a SOP or MOU. If it had been in a SOP or MOU, it may have been less flexible, as parties to the document would require to agree any alteration to terms.

319. It would depend on what the nature of the agreement was because, if Mr Mitchell himself had made that agreement, I would have recognised that he felt bound by it and I wouldn't have wanted to undermine him. We had talked about whether the matter that should be reviewed in the future but in the midst of this investigation we considered that trying to review the agreement at that stage was unlikely to have received any traction after the officers had taken advice on whether to provide statements. Following the Bayoh

Signature of Witness

DocuSigned by:
[Redacted Signature]

investigation, I'm not aware of any further difficulties in securing operational statements. I do not know what process is now followed to obtain operational statements.

320. I have been asked, if the process was not documented formally, whether that would have given PIRC more scope to approach the officers directly to request their operational statements. Yes, I consider that there would have been less of a perceived barrier to doing that. Had I understood that it may simply have been an informal agreement, my preference would have been for the investigators to make requests directly rather than through a SPOC.

321. The investigators nonetheless did explore various other means to obtain the statements outwith the usual arrangement, but the officers declined to provide them. As well as requests via other senior officers, the officers involved were individually asked to provide their statements.

322. I have been asked what involvement I had in the process of obtaining statements from the officers involved in Mr Bayoh's arrest. I discussed with Mr Little, following the briefing on 4th May, the importance of pursuing the request for operational statements. Whilst I was on leave, my involvement was limited but I gathered from media coverage that it was a continuing issue and suggested to Mr Mitchell that there should be a direct approach to the police officers. That was a few days after the officers' initial refusal to provide statements. Mr Mitchell's preference was to maintain the agreement that had been reached and request the provision of statements through the SPOC.

323. I have been referred to two memoranda issued by Police Scotland on 26 March 2015 in relation to the practice of obtaining operational statements from officers subject to 'on duty' criminal complaints (PS10953 and PS10954). I gained an awareness of these memoranda after the issue was raised with Mrs Scullion following the incident involving Mr Bayoh.

Signature of Witness

DocuSigned by:
[Redacted Signature]

324. I have been asked if an awareness of these memoranda prior to the incident involving Mr Bayoh would have made any difference to PIRC's approach to obtaining statements from the officers. I don't think it does as the memos relate to criminal allegations against police, and the officers involved in the Bayoh matter were not subject to on-duty complaints.

Discussions with COPFS regarding operational statements

325. I have been referred to a letter dated 23 March 2018 from me to Lindsey Miller, COPFS, in which reference is made to a meeting that I attended along with John Mitchell, the Lord Advocate, Les Brown and Lindsey Miller in relation to the status of the officers (PIRC-02465(a)). That meeting was arranged shortly after my return from leave, in recognition of the fact that it was the Lord Advocate that was directing the investigation. We met to discuss the investigation and, in particular, the difficulties that the investigators were encountering in securing the statements from the officers involved. We also discussed the limitations around Regulation 5 of the 2013 Regulations. The Lord Advocate confirmed that he considered that the police officers were witnesses and that in the event that they said anything that would point to them incriminating themselves that they should be cautioned and treated as suspects.

326. The limitation of Regulation 5 was known to the Lord Advocate and to Crown Office from the establishment of the PIRC and was not a new matter to them. At the meeting, we discussed what other options may be available to secure the officers' statements, and there was a general agreement that no options were available to PIRC staff. There was discussion around whether COPFS staff could precognosce the officers on oath, and whether the Lord Advocate could issue an instruction to the Chief Constable requiring the provision of operational statements. Ultimately, the Lord Advocate indicated that he would write to the Chief Constable in an effort to advance the provision of the

Signature of Witness

DocuSigned by:
[Redacted Signature]

officers' statements to PIRC investigators. I don't know whether or not the Lord Advocate wrote in those terms or not.

327. My recollection is that, with a view to advancing the provision of the officers' statements, the Lord Advocate's letter would recognise that Section 21 of the Police and Fire Reform (Scotland) Act 2012, provided that constables are subject to the Chief Constable's direction and control and that they would be required to carry out lawful orders, but that if that order was given it would have to recognise the right of the officers not to incriminate themselves.

328. I have been referred to a letter dated 22 May 2015 from the Lord Advocate, Frank Mulholland QC, to the Chief Constable, [REDACTED] (COPFS-02855). I have been asked if this letter meets my expectations following the discussions at my meeting with the Lord Advocate. Yes, more or less. I note that the Lord Advocate appears to encourage the Chief Constable to encourage the officers to provide the statements and raises concerns about their failure to do so.

329. I have been asked why precognosing the officers on oath was not considered to be a viable option in this instance. I don't recall any rationale being provided for that. If an order is granted to precognosce someone on oath, they would appear before a Sheriff and be precognosced under oath.

330. I have been asked if an officer could be compelled to provide a precognition under oath. Again, they would be protected by the right not to incriminate themselves.

331. I have been asked if Crown Office expressed any unease with PIRC's approach to obtaining statements from the officers. I don't think so.

332. I have been asked what prompted me to write this letter to Lindsey Miller in March 2018 (PIRC-02465(a)). I can't remember what prompted that.

Signature of Witness

DocuSigned by:
[REDACTED]

333. I have been asked if I considered that police officers have a duty or responsibility to provide such statements. Yes. I think they've got a higher duty because in their role as police officers they have a public duty to do so.

334. I have been asked how a duty of candour might have helped to encourage the officers' provision of operational statements. If sanctions were applied in the event of a failure to meet a duty of candour that could encourage them, but I would expect that they would still have a right not to incriminate themselves.

Determining officer's status as witness or suspect

335. If someone is considered to be a suspect, there would have to be reasonable grounds to suspect that they had been involved in criminality. They could then be detained, afforded their legal rights and cautioned, but they still cannot be compelled to speak or incriminate themselves.

336. I have been asked who is responsible for deciding whether an officer is a witness or a suspect. Usually, in a PIRC investigation a senior member of PIRC's Investigation Team would make that decision.

337. There have been investigations where the Crown Office have explicitly instructed whether the person should be treated as a suspect or witness and, on other occasions, they have given no indication.

338. I have been asked why explicit instruction was given in some cases, but not others. I don't know why. I do know that there have been instances where there's been specifically defined instruction given and, in others, that there hasn't.

Signature of Witness

DocuSigned by:
[Redacted Signature]

339. I have been asked whether there is a reluctance to consider a police officer a “suspect” rather than a “witness”. If you mean by PIRC investigators, no, I’ve never encountered that. They would be treated in the same way as any other member of the public.

Notebooks, use of force forms and CS/PAVA forms

340. I have been asked if I recall what steps PIRC took to obtain paperwork from the officers involved in the arrest of Mr Bayoh, such as notebooks, use of force forms or CS/PAVA spray forms. My recollection is that the investigators established that the officers did not complete paperwork in relation to this matter. As they hadn’t completed it, there was effectively no documentation for the officers to provide.

341. I have been asked if, in a Crown-directed investigation, PIRC could compel the provision or completion of paperwork by officers. No. Regulation 5 does not provide that power in Crown-directed investigations.

342. I have been asked how this differs from investigations requested by Police Scotland or the SPA. In terms of Regulation 5 of the 2013 Regulations, the PIRC would have had power to require the police officers to cooperate in providing information in SPA and Police Scotland referred investigations.

343. I have been asked if PIRC could compel the completion of paperwork in investigations requested by Police Scotland or the SPA. Yes, in those investigations, PIRC could require those bodies to produce it in an acceptable form.

344. I have been asked if there was a legal obligation on officers to submit incapacitant spray forms to PIRC. I can’t remember if there was a legal obligation or not.

Signature of Witness

DocuSigned by:
[Redacted Signature]

345. I have been asked if I can recall any cases where Police Scotland initiated misconduct proceedings against one of its officers whilst a PIRC investigation was ongoing. No, I can't recall any instances where that was done. My recollection is that they waited until the conclusion of the investigation. I don't remember having any discussion in relation to possible misconduct proceedings during the Bayoh investigation.

346. I have been asked how Police Scotland's ability to initiate misconduct proceedings is impacted by the fact that they do not receive the evidence that PIRC collects during a Crown-directed investigation. As the legislation does not permit PIRC to share evidence of misconduct by police officers with Police Scotland, it will be unable to initiate proceedings until it conducts its own investigation.

347. I have been referred to the minutes for a morning briefing on 3 July 2015 (PIRC-04156, page 77), which, within an update provided by John Mitchell, note: *"Crown have advised that the investigation may extend into criminal neglect of duty or attempt to pervert."*

348. I have been asked if I recall any discussions about the possibility that PIRC's investigation be extended to cover these matters. No, I don't.

Officer interviews

349. I have been referred to the witness interview strategy used in obtaining statements from the officers involved in the arrest of Mr Bayoh (PIRC-04182). I knew that there would be a witness interview strategy, but wasn't aware that it was captured in a written format. I don't know if it was common practice to produce it in that format.

Signature of Witness

DocuSigned by:
[Redacted Signature]

350. I have been asked if I played any role in deciding which questions would be put to the officers involved in Mr Bayoh's arrest, or the process of obtaining statements from the officers more generally. No.
351. An operational statement is a statement from the officers containing evidence relating to their duties and their response to the matters that they were involved in. From those statements, the investigators then can identify what part different people played, for example in relation to the use of force, and to understand why it may have been used. That could then provide an understanding of whether the force used was appropriate or justified in the circumstances.
352. I have been asked if, in Crown-directed investigations, it will ultimately be Crown Office who will determine if the actions taken by a particular officer were reasonable, justified and proportionate. Yes.
353. I have been referred to the fact that the questions contained within the witness interview strategy (PIRC-04182) largely focus on the "what", "when", "who" and "where" of the circumstances of the incident. Only two questions ask the officers "why" certain actions were taken – why use of force and CS/PAVA forms were not completed and why there are no entries in the officers' notebooks in relation to the incident. I expect that individual interviews will be led by the responses provided and whilst an interview strategy was developed, there should remain flexibility for investigators to use discretion in asking additional follow up questions depending on the answers that they got and that there would have been scope to ask the 'why' questions in light of the responses received.
354. I have been asked if PIRC's investigators should have been asking the officers involved in Mr Bayoh's arrest why they took the actions and decisions they did on 3 May 2015. Yes, that would have been entirely appropriate.

Signature of Witness

DocuSigned by:
[Redacted Signature]

355. I have been asked if it would be possible to determine if an officer's actions were reasonable, justified and proportionate without clarifying why an officer took those actions. That would depend on what information was available in the wider context from other witnesses and any information received in response to the questions from officers involved.
356. I have been asked if I read the statements obtained from the officers involved in the arrest of Mr Bayoh. I think I read parts of them to identify their individual roles in Hayfield Road. I wasn't undertaking a formal analysis but trying to identify what physical interaction they each had with Mr Bayoh.
357. I have been asked if I was aware of PIRC comparing and contrasting the statements obtained from the officers that attended Hayfield Road to identify areas of consistency and inconsistency. Yes, I think that was undertaken in relation to this case. I know that that type of exercise has been undertaken in other cases to assess consistency.
358. I had reviewed sections of the officers' statements which addressed their actions when interacting with Mr Bayoh, to personally compare and contrast their individual accounts. After I had done that, I spoke to Mr Mitchell, who recognised that whilst the exercise was not normally undertaken, he agreed that it may be helpful to do so in this case and would instruct the Investigations Team accordingly.
359. Mr Brown formally requested that the exercise be undertaken, not only in respect of the police officers but also the civilian witnesses within a letter dated 2 September 2015 (COPFS-02557). I believe that I had agreed with Mr Mitchell that the Investigations Team would undertake that exercise in respect of the police officers' accounts before the letter from Mr Brown was received and indeed, the fact that the Investigations Team were already undertaking that exercise may well have formed part of a discussion between

Signature of Witness

DocuSigned by:
[Redacted Signature]

members of the team and Mr Brown, which in turn prompted Mr Brown to extend the exercise to include civilian eyewitnesses.

360. I have been asked how PIRC would deal with inconsistencies identified within witnesses' statements. Depending on the significance of the inconsistency, I would expect a senior member of the Investigations Team to consider instructing a further interview of the witness to identify what may have caused that discrepancy.

361. I have been asked which senior member of the investigations team this would be in the Bayoh investigation. Mr McSporran, as the Senior Investigator would have been ideally placed to identify any inconsistencies as he would have had the full information in front of him.

362. I have been asked if I can recall any discussions about further statements being obtained from the officers involved in Mr Bayoh's arrest. I don't recall any discussion on that. I wouldn't normally expect to be involved in the discussions of which witnesses were or weren't being interviewed or re-interviewed.

363. I have been referred to a letter dated 9 October 2015 from me to Aamer Anwar (PIRC-01849, page 3, paragraph 8), in which I state, in response to a question as to how many occasions the officers have been interviewed: "*I can confirm that PIRC investigators carried out lengthy witness interviews with each of the officers involved, comprehensively covering all relevant matters.*" I was content from the information which had been shared with me and in discussion with Mr Mitchell that the relevant witness interviews had been undertaken and assured that they were comprehensive.

364. I have been asked if I had concerns at any stage that certain areas had not been covered within the officers' statements. I don't recall any concerns.

Signature of Witness

DocuSigned by:
[Redacted Signature]

SPF media engagement

365. I have been referred to a statement released to the media by SPF on 14 May 2015 (SPF-00010 (a)). This statement contained details about the incident involving Mr Bayoh, including: *"A petit [sic] female police officer responding to a call of a man brandishing a knife was subject to a violent and unprovoked attack by a large male. The officer believed she was going to die as a result of this assault."* I recall the news coverage around it. The comments were unhelpful both in relation to our investigation and in relation to the family too. They provided a very one-sided account and appeared to represent the SPF's perspective on events and promoted their view without any balance to that. I'm not able to speak for the family, but my own perspective is that Mr Bayoh and the female police officer were being described in a particular fashion by the SPF.
366. The investigation was proceeding in any event. However, it would have been preferable if that could have happened without surrounding commentary, which was a constant feature of this investigation.
367. I have been asked if I had returned to the office by the point this media release was issued to the media. I'm not sure if I was back in the office by that point or not.
368. I didn't speak to the SPF at any point throughout the investigation. SPF representatives met with PIRC staff on occasions to discuss any matters of concern. During my tenure I extended offers to meet with the SPF staff to explore various comments made by SPF but those offers were not taken up.
369. I have been referred to the minutes for a morning briefing on 26 May 2015 (PIRC-04156, page 27), which note that *"Commissioner Kate Frame provided an update on the press surrounding Peter Watson"*. I don't recall the specific

Signature of Witness

DocuSigned by:
[Redacted Signature]

detail of that but think that it was in in connection with his representation of the officers involved.

370. I have been referred to a press release issued on behalf of SPF on 2 June 2015 (SPF-00019), in which Professor Peter Watson is quoted as saying:

The officers involved have never refused to provide statements. It was agreed at the outset with PIRC that they would revert to us when they wanted statements and when they were clear on the basis that statements were to be given. PIRC emailed me this morning at 10:46am asking for our assistance to organise interviews and we answered at 11:29am confirming we would be pleased to assist. Those are the facts."

371. I do remember the media coverage of this. The content of the release appeared to be inaccurate regarding the attempts to secure the statements from the officers involved. The press release suggested that PIRC investigators had not sought the officers' statements until 2nd June. It painted an inaccurate and negative picture which undermined public confidence in the investigation and the PIRC.

372. I have been referred to a statement released by PIRC on 4 June 2015 (PIRC-03925, pages 31 – 32:

The PIRC has been leading on the investigation into the death in custody of Sheku Bayoh and since the hours following his death on Sunday 3 May 2015 has made several attempts to secure statements from the arresting officers. Those officers have now agreed to provide statements to the PIRC and now that PIRC is in the process of gathering the material, it will be considered along with the information already gathered throughout the course of the investigation to date.

Signature of Witness

DocuSigned by:
[Redacted Signature]

373. I do recall discussing that statement with Mr Mitchell and possibly Mr Tait.

The release was issued to redress the position which had been promoted by the SPF and to clarify that several attempts had been made by PIRC investigators to secure the officers' statements.

374. I have been asked if it would be common for PIRC to comment publicly on its investigations in this way. No. This investigation was unique in that regard. There was a particularly high level of media interest and public commentary around it, which I felt was impacting on public confidence in the investigation and the PIRC. With a view to providing some reassurance around that, the release was issued.

375. I have been referred to a letter dated 5 June 2015 from Calum Steele, SPF's general secretary, addressed to me (SPF-00025), which states: *"I refer to the above [Death of Sheku Bayoh] and to the press comment issued at 16:09 yesterday. In particular I refer to the comment that the PIRC "has made several attempts to secure statements from the arresting officers"*.

376. I have been referred to a letter dated 25 June 2015 from me to Calum Steele (PIRC-02151(a)). I have been asked why I sent this letter to Mr Steele. I sent the letter to clarify the several attempts that had been made to secure the operational statements as he had sought that level of detail in his letter.

377. I have been referred to the letter dated 25 June 2015 (PIRC-02151(a), page 1), in which I state that neither I nor John Mitchell *"is answerable to the Scottish Police Federation"*. The relationship with the SPF was poor, principally as a result of unwarranted commentary provided by the SPF and its apparent hostility to the introduction of the PIRC.

378. Media commentary from various parties continued throughout the investigation in a fairly negative vein about Mr Bayoh, the police officers

Signature of Witness

DocuSigned by:
[Redacted Signature]

involved and the PIRC. I considered it continued to impact on public confidence both in the investigation and the PIRC.

SPF investigation

379. I have been referred to a letter dated 3 September 2015 from Professor Peter Watson addressed to me, enclosing a report [REDACTED]

[REDACTED]). [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

380. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

381. [REDACTED]
[REDACTED]

382. As the PIRC was the organisation that had been tasked with investigating the matter, independently of the police, it seemed to me to be inappropriate that the solicitor representing the officers was trying to influence the investigation. We also learned that some of the civilian eyewitnesses had been approached as part of that separate investigation and that they had expressed their unhappiness at that. My recollection is that there may have been some reluctance on the part of at least one female witness, who expressed some fear, to engage further in the PIRC investigation.

DocuSigned by: [REDACTED]
Signature of Witness [REDACTED]

383. I have been asked if the separate investigation impeded PIRC's investigation in any way. I can't remember if it had any additional impact other than what I've just described. I think Mr McSporran would be better placed to comment on that.

384. I have been referred to a letter dated 7 September 2015 from me addressed to Professor Watson (PIRC-02430(a)), which states:

Having considered the content of the summary report, [REDACTED], I request that you supply me with the details of the witness(es) who have provided this information in order that I may assess their evidence and consider appropriate action.

385. In that letter I was seeking to clarify if the PIRC investigators had already taken statements from those witnesses, or if they were witnesses unknown to PIRC. I can't remember if there was a response to that letter but I don't think any written evidence or details of the witnesses were ever provided by Professor Watson.

386. I have been referred to a letter dated 18 September 2015 from me addressed to Professor Watson (PIRC-02373(a)), which states: *"In the absence of your clarification, I consider the matter closed"*. Yes, my recollection is that no written evidence was provided to support the contents of his original letter.

387. I have been asked if the content of Professor Watson's correspondence was discussed with COPFS or factored into PIRC's investigation in any way. I don't remember whether it was or not.

388. I have been referred to Collette Bell's Inquiry statement (SBPI-00247, paragraph 64), regarding a story in the press that Zahid Saeed and Collette

DocuSigned by: [REDACTED]
Signature of Witness [REDACTED]

Bell were having an affair: *"I think the story was in the press because we had had this meeting with Kate Frame. It was to try to take the limelight away from that meeting with Kate Frame."* Mis Bell's perception is inaccurate [REDACTED]

[REDACTED] and in fact every effort was made to protect Miss Bell and alert her to the fact that the narrative had reached the media.

389. I recall a conversation with Mr Mitchell when he informed me that the press had contacted the PIRC Comms Team looking for comments on the story. He advised me that the Comms Team had declined to provide any comment whatsoever and, following that call, as he considered that it would be in Miss Bell's interests that she was forewarned, either he or a member of the investigations team made contact with Mr Anwar to advise him that the media appeared to be pursuing an interest in a story about Miss Bell.

390. I have been referred to an email dated 16 October 2015 from Aamer Anwar & Co addressed to me (PIRC-02503), in which the family's solicitor expressed concerns about an investigation being carried out on the instruction of Peter Watson and the actions of his investigator, John Sallens. I discussed its contents with Mr Mitchell and wrote to Professor Watson conveying Mr Anwar's concerns.

391. I have been referred to a letter dated 20 October 2015 from me to Professor Watson (PIRC-02379(a)), which states:

I refer to the above and write to advise you that Aamer Anwar has contacted me expressing concerns that Mr Saeed 'feels harassed and deeply unhappy' about approaches made by your investigator John Sallens, to contact him.

Signature of Witness

DocuSigned by:
[REDACTED]

He has also expressed concern that Mr Sallens left a card with the words 'Fatal Accident Enq' written thereon which he considers pre-judges the investigation.

392. I don't recall any further discussion or correspondence on this matter after that. I know that Mr Mitchell had telephone contact with Professor Watson, but I don't know whether it related to this matter or not or indeed whether it was before or after receipt of this correspondence.

393. I know that Professor Watson had been instructed by some of the officers involved, and appeared to be making his own investigations into the matter. The PIRC had no power to prevent his investigators speaking to witnesses and if those witnesses wanted to provide him with their accounts then that was a matter for them. I don't think there was anything more that we could have done to prevent a parallel investigation.

Investigation of issues of race

394. I have been asked if in any of the previous death in custody cases in which I worked at PIRC or COPFS the deceased was from an ethnic minority. No, none. I had involvement in death in custody investigations and separately in relation to matters in race, but not a combination of the two.

395. I recall a particular investigation around twenty years ago when I was at Crown Office involving a member of the Chinese community in which I met members of the family and representatives of the local Chinese community to gain a better appreciation and understanding of their concerns and cultural sensitivities around the matter. It related to the attempted murder of a member of the Chinese community. My recollection is that it was a targeted attack as a result of the person's race. It was quite clear from the evidence that comments about his race had been made at the time of the assault.

Signature of Witness

DocuSigned by:
[Redacted Signature]

396. I have been asked if there were any particular cultural sensitivities that I drew out of the meetings with the family and the community. I can't remember those now.
397. I have been asked if, prior to 3 May 2015, PIRC had ever considered the issue of race within an investigation. I don't remember it featuring in an investigation in the preceding months.
398. I have been asked if the issue of race was a consideration within a PIRC investigation subsequent to the Bayoh investigation. Yes, I recall an investigation into an alleged assault of two people, who I think were Vietnamese. From memory, consideration was given to comments made about the victim's ethnicity at the time of the alleged assault. It was reported to Crown Office and no proceedings were taken.
399. I have been asked if the race or ethnicity of a deceased person is automatically considered by PIRC as part of an investigation following a death in custody or a death following police contact. I don't recall any other death investigations by the PIRC which involved someone from an ethnic community.
400. I have been referred to a letter dated 2 September 2015 from Les Brown addressed to me, in which PIRC's terms of reference were expanded (COPFS-02557). Mr Brown states (at page 4): *"I require confirmation from the Commissioner that issues of race and whether there is any evidence of racial motivation is a primary focus in the PIRC investigation."* I don't specifically recall receiving that letter. By that time, some of the correspondence in relation to the investigation was being forwarded directly to the Investigation Team. I don't know if this letter was directed there or not but in any event, usually if the Investigation Team felt that the correspondence contained matters that I should be sighted on, they would bring it to my attention, particularly if I was being asked to reply personally.

Signature of Witness

DocuSigned by:
[Redacted Signature]

401. I have been asked if I would always sign off on correspondence issued in my name. Yes, normally that's what would happen.

402. I have been asked if I know why PIRC's terms of reference were expanded to include issues of race. No, I don't know what prompted that.

403. I have been asked if PIRC had given consideration to whether Mr Bayoh's race was a factor in the incident prior to the terms of reference being expanded by COPFS. Yes, it had been considered in the context of whether the officers' actions demonstrated any difference in how they would have engaged with someone of a different ethnicity. The investigators had traced civilian witnesses, ingathered their statements along with those of the officers involved and assessed whether there was any outward indication of racially motivated conduct in the manner in which they dealt with the situation. I was conscious that Mr Bayoh's race was a sensitive matter because of its potential impact on race relations between the police and the community.

404. I have been asked if I gave any direction to the Investigation Team to be conscious of Mr Bayoh's race and consider if it had an impact on the actions of the officers. I did discuss with the Director of Investigations the need for the Investigations Team to assess whether there was any evidence that the officers had interacted with him differently, on account of his race and whether there was any evidence from witnesses that indicated discriminatory behaviour.

405. I have been referred to a letter dated 31 July 2015 from Aamer Anwar & Co marked for the attention of John McSporran and Kate Frame, containing fifty-three points in relation to the investigation, including points relating to issues of race contained within points 23 – 26 of the letter **COPFS-04726(a)** This includes, within the final paragraph of point 26:

DocuSigned by:
[Redacted]
Signature of Witness [Redacted]

In the context of black deaths in custody the issue of race/racism has not been referred to by the PIRC or included in the terms of reference. Why not?

...

The Bayoh family is concerned that racial stereotyping may have been a contributing factor in the death of Sheku Bayoh resulting from restraint/use of force. The question of racism has from the very beginning been the elephant in the room. Can you advise how this forms part of the investigation process?

406. I can remember seeing that letter and discussing these issues with Mr Mitchell and Mr McSporran.

407. I have been asked if I can recall what was discussed within the team and when those discussions took place. The fact that the issue of race was not included in the Terms of Reference was discussed and it was recognised that the Lord Advocate set the Terms of Reference. The question of racism was also discussed and whether there was any evidence available in the material which had been ingathered which pointed towards racial bias in the officers' actions. That aspect of the discussion had also taken place before the letter was received.

408. I have been referred to a letter dated 7 August 2015 from me addressed to Aamer Anwar (PIRC-02420(a)), which includes, on page 3: *"I can assure you that if racial motivation is identified in the course of the investigation this will immediately be referred to the Lord Advocate."* That letter was prepared by Mr Mitchell following my discussions with him and his discussions with the Investigation Team.

Signature of Witness

DocuSigned by:
[Redacted Signature]

409. I have been asked what steps were being taken at this point, on 7 August 2015, to identify if racial motivation had been identified in relation to the incident involving Mr Bayoh. By that time, the investigators had traced civilian witnesses to the events, ingathered their statements along with those of the police officers involved, examined them to assess whether there had been any outward indication of racism in the manner in which they interacted with Mr Bayoh and submitted the Interim Report to Crown Office. Some of the statements from the police officers contained reference to their concerns as they attended the incident. Those concerns related to fear of interacting with someone who had knife and the terrorist threat level at the time. I don't recall what steps were taken to look at those concerns after their statements were obtained.

410. I have been asked if I drew a link between the references to the terrorist threat level within the officers' statements and Mr Bayoh's race. No, I didn't. The terrorist threat level is set by reference to several factors existing across the UK involving many different ethnicities. There was discussion within the Investigation Team in relation to what the threat level was at the time, which from recollection was 'severe'.

411. I have been asked when these discussions would have taken place. I can't recall.

412. I have been asked what steps PIRC took to progress the investigation of issues of race following receipt of COPFS's expanded terms of reference on 2 September 2015 (COPFS-02557). The Investigation Team examined data relating to complaints of discrimination within Police Scotland and Fife in particular. I think they also reviewed the officers' disciplinary records to consider whether they had any history of discriminatory behaviour and examined specific allegations relating to one of the officers. I also recall having general discussions within the Investigations Team in relation to

Signature of Witness

DocuSigned by:
[Redacted Signature]

whether there was any evidence to suggest that there had been any different approach or engagement with Mr Bayoh on account of his race.

413. I have been asked how PIRC looked to confirm if there was any link between the actions of the officers on 3 May 2015 and Mr Bayoh's race. Apart from the steps I have described I don't recall any further steps.

414. I have been asked who was in charge of directing this aspect of PIRC's investigation. Mr McSporran led the investigative response, under the direction of Mr Mitchell.

415. I have been referred to a file note by Les Brown dated 1 October 2015 (COPFS-03585 (a)), which states:

At the meeting with PIRC attending [sic] by John Mitchell and Kate Frame together with Les Brown and Stephen McGowan on 11 September 2015 at PIRC Offices, COPFS officials stressed the importance of ensuring that issues of race were fully addressed as part of the PIRC investigation. The importance of considering whether race had any influence in the way that the incident was dealt with as part of a wider consideration as well as whether there was any evidence of overt racism, was explained.

416. I have been asked if I recall this meeting. Yes, I do.

417. I recall that there was discussion about assessing whether race had any influence on the officers' actions and measuring whether institutional racism was more prevalent in Fife Division than elsewhere in Police Scotland.

418. We expressed concerns at that meeting about the feasibility of assessing whether race had any influence on the officers' actions in the absence of any evidence of overt actions and also on measuring institutional racism within

Signature of Witness

DocuSigned by:
[Redacted Signature]

Fife Division of Police Scotland and sought guidance on those matters. No guidance was provided on the assessment of influence. It was suggested that a comparison of data for each Division of Police Scotland may provide a measurement of racism within Fife Division as contrasted against Police Scotland.

419. I have been asked if I can recall attending a subsequent meeting with Crown Office staff, including the Lord Advocate, on 13 October 2015. I recall that Mr Mitchell and I met with Crown Office staff then and that we raised concerns again about the feasibility of assessing whether race had any influence on the officers' actions in the absence of any evidence of overt actions. I think at that meeting there was a recognition that without that evidence it would be difficult to demonstrate whether race had influenced the officers' actions and that PIRC should progress its data analysis, the examination of the allegations made about one of the officers and an investigation of messages between Fife Division officers. At that meeting, we learned that Crown Office staff had previously met with a representative of Inquest and Mr Anwar and it appeared that various racial aspects had been discussed at that meeting. We expressed the view that it would have been helpful if we had been invited to that meeting to gain a shared understanding of the issues raised. That meeting had been arranged without PIRC's knowledge and as PIRC wasn't represented at that meeting, I don't know what the discussions would have revealed. The Lord Advocate recognised that it would have been beneficial for PIRC to have been present and suggested that PIRC should be invited to attend any further meetings with Inquest. No invitations to any subsequent meetings with Inquest were received and I don't know if any other meetings took place.

420. I'm not aware of what other steps COPFS took that they didn't share with us. I was disappointed that a meeting which may have been relevant to the investigation had been held without us being afforded an opportunity to

Signature of Witness

DocuSigned by:
[Redacted Signature]

attend. I don't know if there were any other examples of Crown Office staff meeting with others, which may have been relevant to the investigation.

421. I have been asked if I recall who the representative of Inquest was. No, I don't.

422. I have been asked if I can recall when this meeting took place. No. I wasn't advised of when the meeting took place.

423. I have been asked if I considered approaching Inquest to obtain guidance in relation to the investigation of issues of race. I did consider that however as COPFS was directing the investigation and had already met with Inquest, I expected that any issues identified in the meeting which they considered pertinent, would be shared with PIRC. By the time that PIRC was made aware of the meeting, the representative had returned to England but as we'd been advised that PIRC would be invited to any future meetings with Inquest, I expected to have that opportunity then.

424. I have been asked if I considered approaching other organisations or individuals to obtain guidance in relation to the investigation of issues of race at any point during the investigation. No, I didn't as it appeared that Crown Office staff were exploring that with external organisations and directing PIRC in light of their discussions.

Analysis of statistics

425. I have been referred to an email dated 24 December 2015, in which John Mitchell provided an update on the progress of the investigation to Les Brown (COPFS-02782), including PIRC's investigation of issues of race:

An examination of all complaints of racism made against Fife Police / Fife Division of Police Scotland provides that, in comparison to other

Signature of Witness

DocuSigned by:
[Redacted Signature]

divisions or police forces over a 7 year period, Fife Police / Fife Division show an smaller than average norm, i.e. average number of racist complaints made against Fife Police/Fife Division is 0.3% of all complaints, Scottish police force / divisional norm is 1.9%. This is indicative that institutional racism played no part in the approach of the officers to Sheku Bayoh.

426. I have been referred to a letter dated 13 January 2015 [sic – 13 January 2016] from Les Brown to John Mitchell (COPFS-02562), in which Mr Brown responded to the email dated 24 December 2015 and stated:

I have read the comments made in respect of the allegation of racism in Fife division and note that some statistical analysis has been carried out but would question whether the figure "is indicative that institution [sic] racism played no part in the approach of the officers to Sheku Bayoh" as stated by John Mcsporrان.

...

I would be grateful if you would confirm that your final report will address whether there is any indication that race influenced the approach taken by officers either individually or collectively in the response to the incident. This should include consideration of whether the incident was perceived as a terrorist threat.

427. I have been referred to an email dated 18 January 2016 from John McSporran to Les Brown (PIRC-02091), in which Mr McSporran stated: "For the avoidance of doubt, my report will, where possible, address the issue of whether there is an indication that race influenced the approach taken by officers either individually or collectively in the response to the incident."

Signature of Witness

DocuSigned by:
[Redacted Signature]

428. I was aware of ongoing discussion between Mr McSporran and Mr Brown, in which I think Mr McSporran was trying to clarify with Mr Brown what precisely he was looking for and how best to fulfil his instruction. I understand that the information that was contained within the report was the product of agreement between Mr McSporran and Mr Brown.
429. My recollection is that further work was agreed to analyse complaints of racism received by Fife Division over a number of years to identify whether any of the police officers involved in the incident or members of the Bayoh family featured in those matters.
430. I have been asked what awareness I had of PIRC's analysis of statistics in relation to issues of race during the investigation. I was aware that Mr McSporran had undertaken the broader analysis of discrimination data and following further discussion, was carrying out an analysis of racism complaints within Fife Division to identify whether the officers or family featured in those. I was aware that the anticipated submission date for the report would be delayed until that further work was completed.
431. I have been asked if I recall any consideration being given to PIRC contracting an expert in statistical analysis to carry out this work. No, I don't.
432. I have been asked if it would have assisted PIRC to have obtained input from an expert in statistical analysis. It may have, dependent on the complexity of analysis required. I don't recall any conversation around that.
433. I have been asked if I was confident that PIRC's investigators had the necessary skills and experience to carry out the statistical analysis. I was satisfied from the information that I had that they were capable of undertaking the exercise. I wasn't aware of any concerns that there was any difficulty or issue around their ability or their expertise. If there had been, I would have

Signature of Witness

DocuSigned by:
[Redacted Signature]

expected that to be brought to my attention by either the Director of Investigations or Mr McSporran himself.

434. I have been referred to a letter dated 30 October 2015 from William Little and John McSporran to Les Brown, containing an update on the progress of various aspects of PIRC's investigation (PIRC-02088(a)). Whilst I don't recall having seen that letter before, I recognise details of the various strands of work being undertaken by PIRC in this investigation. Whilst the detail of individual conversations such as those between Mr Brown and Mr McSporran were not always shared with me, through briefings and discussion with Mr Mitchell I was usually sighted on various aspects of the ongoing investigation.

435. I have been asked if normal practice would have been for me to be sighted on those conversations. No, I would not expect to be sighted on every aspect of each conversation that was taking place in each investigation.

436. I have been asked if, in the Bayoh investigation, I had an expectation that I would be sighted on this sort of correspondence. Whilst the letter is a useful summary, I was updated verbally on significant features throughout the investigation.

437. I have been referred to the letter (PIRC-02088(a), page 12, section 13, paragraphs 2 and 4), where it outlines the steps taken by PIRC to carry out the statistical analysis of complaints of racism:

As an initial step the PIRC has examined national police complaints statistics in order to identify whether these indicated a pattern of racist behaviour by officers in Fife Division.

...

Signature of Witness

DocuSigned by:
[Redacted Signature]

Investigators focused on allegations recorded under the category 'Discriminatory behaviour' (one of the complaint categories adopted nationally by Scottish police forces). Such behaviour is defined as, 'an allegation that a member of a police force engaged in a course of action interpreted as discriminatory towards an individual or group on the basis of race, sexual orientation, faith, age, gender or disability'. More recently this definition has been amended to include discrimination on the basis of gender reassignment, marriage, pregnancy or maternity.

438. I was aware that the Investigation Team were undertaking an analysis of the national statistics for the broader category of discriminatory behaviour as that appeared to be the main source of collated data which captured racist behaviour within Fife Division.

439. The letter makes it clear that the analysis was being undertaken on a broader basis than just race. Other forms of discrimination are included within the statistics that were being analysed. The figures that were produced do not solely reflect race, but the broader category of discrimination, as is detailed in the letter.

440. I have been asked if this area was covered within PIRC's report. Yes. I think it was.

441. I have been referred to volume 3 of the PIRC report (PIRC-00004, page 54, paragraph 2), which states, within a section titled "PIRC Findings":

From analysis of available data, there is no evidence to indicate that racism or discriminatory behaviour was present in Fife Constabulary or Fife Division of Police Scotland to a greater or less extent than in other police areas of Scotland. The average number of complaints of discriminatory behaviour, which includes allegations of racism, made

Signature of Witness

DocuSigned by:
[Redacted Signature]

per year in Scotland is 1.4% of all complaints against the police. The average number of such complaints made in Fife from 2007 to 2014 was 1.37%.

442. I recall that Mr McSporran discussed with me and Mr Mitchell, the information which was available on which to base the analysis and how racism could not be separated from the overall discrimination statistics. He considered that this was the best available collated information at that time on which to base the analysis.

443. The analysis obviously didn't solely provide an indication of the level of racist behaviour within Fife but incorporated broader discriminatory behaviour, which included a number of characteristics. I think the paragraph within the PIRC report does make it clear that the analysis is not just solely in relation to racist behaviour but incorporates a wider range of discriminatory behaviour.

444. My recollection of the discussion of this at the meeting on 11th September 2015 is that it led Mr Mitchell in particular to question how the PIRC investigators should best measure the extent of racism within Fife Division. The general response from Crown Office staff was that that was a matter for PIRC to explore but suggested that a comparator exercise between Fife Division and the rest of Police Scotland may assist.

445. I have been asked if I would have expected a greater degree of direction and guidance from COPFS in this regard. That would have been helpful.

Guidance in relation to issues of race

446. I have been asked what guidance or reference materials in relation to race, or the investigation of issues of race, was available to PIRC staff during the investigation. There was some material contained in the On-Call kit which

Signature of Witness

DocuSigned by:
[Redacted Signature]

provided a cultural awareness of various faiths and their related beliefs and practices. I do not recall now whether other materials were available.

447. I have been asked if consideration was given to the creation of any guidance materials in this regard, either before or after the incident involving Mr Bayoh. I don't recall whether any additional material was considered.

448. I have been asked if, during my tenure, there were discussions with the IPCC, PONI or other organisations in relation to PIRC's approach to the investigation of issues of race. I don't recall any discussions that.

449. I have been asked if I consider that it would have been helpful for PIRC to have received input or guidance from external organisations in relation to PIRC's investigation of issues of race. As the IPCC would have been likely to be the organisation which held more experience than the other police oversight bodies, then it probably would have been helpful to have sought their input. Whilst IPCC had not visited the PIRC, following his appointment in 2019, the Chair of the IOPC did visit the PIRC offices as part of a drive to exchange best practice. That however was approximately 3 years after the investigation report in this matter had been submitted to Crown Office.

450. I have been asked if there was any discussion of the investigation of issues of race during this meeting. I didn't discuss that with him during my meeting with him, as racism was not the focus of the meeting. He also spent some time with the Investigations Team, but I don't know if race issues were discussed.

451. I have been asked if PIRC examined previous investigations of relevance to issues of race to obtain guidance from those investigations. I don't know if that was specifically considered within the Investigation Team. Following the discussions with Crown Office on institutional racism I looked at information on the Stephen Lawrence case and had previously had discussions with the

Signature of Witness

DocuSigned by:
[Redacted Signature]

IPCC on the Mark Duggan case, but that discussion focused on the difficulties which they had experienced in securing officer statements. I also had more general discussions about that case with Mr Mitchell.

452. I think around that time there were changes around the double jeopardy principle that arose from the Stephen Lawrence investigation.

453. I have been asked if there were any issues of race that I considered, or discussed with the IPCC, in relation to the Mark Duggan investigation. No. The discussion centred on the attendance of officers for interview.

454. I have been asked what consideration I gave to the issues of race arising within the Lawrence Inquiry during PIRC's investigation following the incident involving Mr Bayoh. The Lawrence case identified institutional racism within the Metropolitan Police and PIRC was taking steps to ascertain from the data available whether there was any evidence of that within Fife Division of Police Scotland.

455. I have been asked if I provided any guidance to PIRC's Investigations Team based on my knowledge of the Lawrence Inquiry. No. That issue had already been identified and I was aware from discussion that a number of them had knowledge and an understanding of that case and were sighted on various aspects of the investigation. I also knew that the investigators had gathered several civilian witness statements so the evidence in this investigation did not solely rely on police accounts.

456. I have been asked if there were any discussions with PIRC staff about the Lawrence Inquiry in relation to PIRC's investigation of issues of race. I don't know if there were any broader discussions on that.

457. I have been referred to the *IPCC guidelines for handling allegations of discrimination* (SBPI-00386) which appear, from the final page, to be dated

Signature of Witness

DocuSigned by:
[Redacted Signature]

September 2015. I have been asked if I have had sight of this document before, or any prior or subsequent version. No.

458. I have been referred to the guidance around "*lines of enquiry*" and "*conducting the investigation*" set out on pages VIII and 38 – 54 (SBPI-00386). I have been asked if guidance of this nature may have been helpful for PIRC's investigators during the Bayoh investigation. Yes, it would have been. It would appear that a number of similar matters have been raised and addressed by the IPCC. Had I been aware of the guidance, I could have shared it with the investigators. I recall that I met with the IPCC in 2014 but do not think that any meetings were arranged with them in 2015/16 as the pressure of business within PIRC at that time was such that the opportunity for external engagement was limited.

459. I have been asked what would have prompted me to make an approach to the IPCC or another external organisation to request guidance or support. If I had identified a need or the Director of Investigations had expressed a need for additional support, I would have taken steps to address that.

460. I have been referred to the IPCC guidelines for handling allegations of discrimination in relation to the use of comparator evidence when investigating such allegations (SBPI-00386, pages 42 – 46). I have been asked if I recall consideration being given to comparator evidence being used as part of the investigation of issues of race. Yes, I had several discussions with members of the Investigations Team on whether there was any evidence to suggest that there had been any different approach or engagement by the police officers with Mr Bayoh on account of his race.

Signature of Witness

DocuSigned by:
[Redacted Signature]

Language

461. I have been referred to PC Alan Paton's PIRC statement (PIRC-00262), in which, on page 4, he states: *"It also ran through my mind that this male could be part of a terrorist plot."*
462. I have been referred to PC Alan Paton's PIRC statement (PIRC-00262), in which, on page 5, he states: *"I kept thinking about the Lee Rigby boy, the soldier who was killed."*
463. I have been referred to PC Kayleigh Good's PIRC statement (PIRC-00274), in which, on page 7, she states: *"I was also thinking at that point of the Lee Rigby incident in London, mainly due to the fact of the coloured male and the potential terrorist connotations."*
464. I have been asked if PIRC gave any consideration to PC Paton's and PC Good's references to Lee Rigby and terrorism being influenced by Mr Bayoh's race. PIRC considered whether there was any outward indication provided in the officers' statements to indicate that his race had influenced their actions.
465. I have been referred to a letter dated 1 October 2015 from Les Brown addressed to me (COPFS-02555), which contains instructions from COPFS:
- I would be grateful for confirmation that intelligence logs and other relevant information sources will be examined to ascertain the level of terrorist threat that was in force at the time of the incident and whether this had any influence or daring [sic] on the way that the incident involving Mr Bayoh was dealt with.*
466. I have been asked if I recall receiving this letter. I don't.

Signature of Witness

DocuSigned by:
[Redacted Signature]

467. The terrorist threat level that was in force at the time was ascertained but I do not know what influence it had on the officers.

468. I have been referred to a letter dated 13 January 2015 [*sic* – 13 January 2016] from Les Brown to John Mitchell (COPFS-02562), which states:

I would be grateful if you would confirm that your final report will address whether there is any indication that race influenced the approach taken by officers either individually or collectively in the response to the incident. This should include consideration of whether the incident was perceived as a terrorist threat.

469. I don't remember what steps were taken to assess whether the perception of the incident as a terrorist threat was influenced by race other than considering whether there was any outward indication provided in the officers' statements to indicate that his race had influenced their actions.

470. I have been asked if, in my view, the references to the Lee Rigby incident and terrorism within PC Paton and PC Good's statements may have been influenced by Mr Bayoh's race. They may have been as they appear to have been of concern to the officers as they attended. However, I'm unable to assess what was in their minds.

471. I have been asked if I consider that PIRC's investigation should have explored whether officers' references to terrorism in connection with the incident could have been influenced by the fact that Mr Bayoh was black. Yes, that may have provided an insight into their concerns.

472. I have been asked if PIRC gave any consideration to PC Good's use of the word "coloured" to describe Mr Bayoh within its investigation of issues of race (PIRC-00274, page 7). I can't recall what consideration was given to that comment or the content of these statements now, almost 9 years on.

Signature of Witness

DocuSigned by:
[Redacted Signature]

473. I have been asked if I would consider that there are potential racist connotations to using the word "coloured" to describe Mr Bayoh. Yes.

474. I have been asked, if there are potentially racist connotations from language used within PC Good's statement, whether PIRC should have looked at that language as part of its investigation of issues of race. Yes.

475. I have been referred to PC Good's PIRC statement (PIRC-00274), at pages 9 and 10, in which she states, with reference to Mr Bayoh, that: *"I could see that the t-shirt was a tight fit as I could see the definition of his muscle through it, particularly at the back, and in particular his shoulder muscles, he was massive and is the biggest male that I have seen."*

476. I have been asked if I recall PIRC giving consideration to PC Good's reference to Mr Bayoh being the "biggest male" that she had seen being influenced by Mr Bayoh's race. No, I don't.

477. I have been asked if I consider that PIRC should have looked at the use of this type of language to describe Mr Bayoh within its investigation of issues of race. It's potentially something that should have been explored to ascertain whether there were any racial connotations.

478. I have been asked what sort of racial connotation there might have been in PC Good's description of Mr Bayoh as the "biggest male" she had seen. I'm don't know whether or not there were racial connotations in her description. That's why I'm saying it would have been worth exploring that.

479. I have been referred to the statement provided by PC Nicole Short to John Sallens (PIRC-00253), in which, on page 5, she states: *"The man was deranged with super human strength and in my mind intent on killing someone."*

Signature of Witness

DocuSigned by:
[Redacted Signature]

480. I have been asked if I am aware of PIRC giving any consideration to PC Short's attribution of superhuman strength to Mr Bayoh being influenced by his race. No, I'm not.

481. I have been asked if I think that consideration should have been given to whether there was potentially a link between attributions of superhuman strength and Mr Bayoh's race. Yes. It would have been worth exploring that to ascertain whether there was any racial connotation.

482. I have been asked if I am familiar with attributions of strength, or superhuman strength, to black men being potentially influenced by their race. No, I was not familiar with those attributions prior to this investigation.

483. I have been referred to the statement provided by PC Nicole Short to John Sallens (PIRC-00253), in which, on page 5, PC Short states: *"I was eventually admitted to Kirkcaldy hospital and kept in overnight and given a CT scan. I asked the wee Pakistani doctor whose surname began with an S that if the scan came back normal what had caused my face to droop?"*

484. I have been asked if I am aware of the use of the phrase "wee Pakistani" to describe PC Short's doctor forming part of PIRC's consideration of issues of race during the investigation. No, I'm not aware of that and consider it should have been explored to assess whether there were any discriminatory connotations.

485. I have been asked if I would consider that PIRC were sufficiently equipped to investigate issues of race relating to deaths in police custody or deaths following police contact in 2015 and 2016. Possibly not. In a perfect world, if it had been adequately resourced, with capacity to release the existing investigators for additional specialist training in racial matters and the funding

Signature of Witness

DocuSigned by:
[Redacted Signature]

for recruiting specialist staff, it would have benefitted from greater expertise in investigating issues of race in deaths in custody.

486. I have been asked how PIRC would have obtained a greater understanding of racial matters. That could have been improved through greater diversity within the team itself and the recruitment of specialist staff, as well as having capacity to release existing staff for additional specialist training on racial matters. However, funding for that was not there.

487. I have been asked whose responsibility it was to ensure that PIRC's Investigations Team had sufficient expertise to carry out investigations as instructed by COPFS. The Head and Director of Investigations had responsibility to identify any shortcomings in expertise within the Investigations Team and draw those to my attention so that I could have sought additional funding. However, given my experience of making other funding requests to the Scottish Government, I would not have been particularly optimistic that it would have been provided, if at all, or in the time frame required.

488. I have been asked how I might have progressed matters if I had been made aware that there was not sufficient expertise within the investigations team. I could have sought additional funding to provide capacity to release the existing investigators for additional specialist training in racial matters and to recruit specialist staff or external experts.

489. I may have considered contacting organisations such as the Equality and Human Rights Commission or the Coalition for Racial and Equality Rights.

490. I have been asked, knowing what I know now, whether there is anything that PIRC should have done differently in its investigation of issues of race. Yes, it should have explored some of the comments made by the officers and asked them whether the matters which they referred to had influenced their actions.

Signature of Witness

DocuSigned by:
[Redacted Signature]

It might also have been helpful to have sought external expertise from organisations which had experience of investigating issues of race and sought the required funding from the Scottish Government.

Investigation of racist text messages

491. I have been asked what involvement I had in investigating the potential connection between the case of racist text messages sent between officers in the Fife area and the officers involved in the incident involving Mr Bayoh. They were discussed at a meeting that I and Mr Mitchell attended with COPFS staff in connection with the investigation of racial matters. Mr Mitchell progressed the investigation in relation to those matters. From recollection, I don't think there was any evidence that the officers involved in the incident with Mr Bayoh were connected to the texts.

492. I have been referred to a document titled "*Positional Update briefing for Ms Frame COPFS- 160218*" (PIRC-03696), which includes updates in relation to various strands of PIRC's investigation, including this aspect of the investigation. I have been asked if I recall having sight of this briefing paper previously. No.

493. I have been asked if I recall PIRC encountering any issues when seeking to progress this aspect of the investigation, or in obtaining data from Police Scotland. I don't recall any issues in this regard being drawn to my attention.

494. I have been referred to a note of a meeting between DSI Billy Little and Les Brown on 5 February 2016 (PIRC-02771), which states:

Verbal update provided in particular the importance of obtaining the telecoms data and the unattributed numbers identified by the police relating to the racial texts identified as being sent by [redacted].

Signature of Witness

DocuSigned by:
[Redacted Signature]

Mr Brown asked to know when the Commissioner was back from her holidays and when she is it is for her to decide what powers she should use, I asked Mr Brown to explain what powers he meant and he alluded that the Commissioner has significant powers and it is for her to decide when to use them. I then asked him if the circumstances actually merited the Crown giving consideration to providing the Telecom material directly to the PIRC given it is a Crown Production in a Criminal Case. Or the Crown provide the PIRC with a warrant to seize the data from Police Scotland in both instances he said that could be a consideration but he believed that this was a Commissioner issue that she needed to resolve.

495. I have been asked if I recall having any discussions with DSI Little or other members of the investigations team in relation to the use of the Commissioner's powers to obtain data from Police Scotland. I don't.

496. I have been asked if I recall the Interception of Communications Commissioner (IOCCO) having an involvement in any aspect of PIRC's investigation. No, I don't.

Family liaison

497. In all death investigations, there would be dedicated FLOs appointed by PIRC to engage with the family throughout the investigation, to gather information that was relevant to the investigation and provide support and information throughout any process that followed. That could include signposting them to organisations and assisting them through any legal process for example by attending court along with the family.

498. I have been asked if PIRC was able to provide its normal level of family liaison support to the Bayoh family during this investigation. No. It wasn't

Signature of Witness

DocuSigned by:
[Redacted Signature]

able to do it as fully as I would have liked. From an early stage, the family directed that contact be through their legal representative. Whilst dedicated PIRC FLOs had been appointed to meet the family on 4th May, when the family were contacted, they indicated that any contact should be directed through their solicitor.

499. I am aware that the FLOs did meet with the family and their legal representative, but that the relationship that would normally be established through direct contact with the family was not there in this case. There seemed to be a lack of understanding by the family of either the role of the PIRC or the PIRC FLOs. I understand that the PIRC's role had been explained to the family on 3rd May and both roles were also subsequently explained.

500. I have been asked whose responsibility it was to provide an explanation of the role of the PIRC and its family liaison service to the family. I would expect that the initial explanation may be provided by the member of PIRC staff who was first in touch with the family and that the FLOs themselves would provide a fuller explanation.

501. I do think that Police Scotland's handling of their communication of the death had a bearing on the family's reticence to engage with the PIRC FLOs. There may have been a concern by the family that they felt the FLO's were closely associated with Police Scotland.

502. I don't know what the family's reasons were for their reticence to engage directly with the FLOs. However, I learned from discussion with Mr Mitchell, a few weeks into the investigation, that the normal family liaison relationship had not been established but that some contact was taking place through an agreed process between the FLO's and the family's legal representative whereby the FLOs would provide weekly updates to the family via their

Signature of Witness

DocuSigned by:
[Redacted Signature]

solicitor either by telephone or by face-to-face meetings in the presence of their solicitor.

503. It was a difficult and challenging relationship as the family appeared to have more or less disengaged from the normal direct FLO process almost immediately.

504. I have been asked if there were any other occasions where PIRC experienced similar challenges in establishing a relationship with a deceased's family during an investigation following a death in custody. No, I'm not aware of similar challenges either before or after in any other investigation. Normally, the relationships between the FLOs and the families of the deceased have been very positive and welcomed by the families.

Meeting with family on 3 September 2015

505. I was made aware that the family's solicitor had requested a meeting with me and, to allow him and the various members of family to co-ordinate and select suitable dates, I asked the FLOs to invite the solicitor to provide dates when they all would be available for a meeting.

506. I have been asked when a meeting was first requested with me by the family. I don't recall when that was.

507. I have been asked if I had given any consideration to meeting Mr Bayoh's family prior to that request being made. No, I hadn't as the family's expressed preference was for indirect contact with PIRC via their solicitor. I was also aware that the family had met with the Lord Advocate, who was directing the PIRC investigation, and was in communication with Crown Office staff.

508. I have been referred to the letter dated 31 July 2015 from Aamer Anwar & Co marked for the attention of John McSporran and Kate Frame, containing fifty-

Signature of Witness

DocuSigned by:
[Redacted Signature]

three points in relation to the investigation (COPFS-04726(a) page 10, point 53), where in states: *"We are growing increasingly concerned at the breakdown of trust, poor communication which does not allow the family to raise important concerns and grievances with you"*.

509. I have been asked what, if anything, PIRC did to address the "breakdown of trust" identified by Mr Anwar, beyond responding to Mr Anwar in the letter dated 7 August 2015 (PIRC-02420(a)). I established from the FLOs that Mr Anwar had not provided any dates for a meeting and asked them to supply dates to him to assist in narrowing the dates down. I had hoped that the meeting would have provided an opportunity to communicate to the family, the extent of the work that was being undertaken and address their concerns.
510. I have been asked if, beyond the meeting on 3 September 2015, whether I had any direct contact with Mr Bayoh's family during the investigation. No.
511. I have been asked if I had ever met the family of a deceased during a death investigation prior to the Bayoh investigation, or whether I met the family of a deceased in any subsequent investigation. Not in a PIRC investigation but regularly as a Fiscal.
512. I, the Director of investigations and other senior members of the Investigation Team met with the family. I had hoped that the meeting would be an opportunity to communicate PIRC's role in the process, the work that was being undertaken and the further work that was to be carried out. I also saw it as an opportunity for them to express their concerns, provide any information which was relevant to the investigation and to engage directly with the FLOs. Before the meeting started, I personally welcomed the family members to the meeting, expressed my condolences to them and acknowledged their loss. At the start of the meeting, being conscious that the family were concerned about PIRC's independence, I addressed that first, explaining the PIRC's independence from the police. Thereafter when we moved on to discuss the

Signature of Witness

DocuSigned by:
[Redacted Signature]

investigation and concerns held by the family, it was evident that they were particularly aggrieved that none of the police officers had been detained or arrested. We explained to them that despite the fact that the post-mortem had been inconclusive, the investigation was continuing with a number of expert medical witnesses, to ascertain both the cause of death and whether the actions of the police officers had contributed to it. Notwithstanding that, the family continued to express dissatisfaction that none of the police officers had been detained or arrested and shared their views that they should have been detained immediately and suggested that the number of injuries in themselves should have justified the arrest and/or the number of officers involved in the restraint should have justified their detention and arrest. Miss Bell in particular was very angry and became highly confrontational. She started to wave a newspaper article and demand that the police be held accountable. Some investigators who were doing their best to address points raised, were being prevented from doing so as she was shouting over them. The meeting ended with the family being again invited to engage directly with our FLOs and to contribute to the process through six weekly meetings, which we offered, to update them.

513. When I saw how highly emotional Miss Bell was becoming, I actually sought to find a suitable juncture to suggest pausing the meeting, but equally, I was trying to balance the fact that I didn't want to interrupt her opportunity to express her views and frustrations and, in the event, it proved impossible to either find a suitable point at which to intervene or indeed be heard, so I let the meeting continue.

Family members' recollection of meeting with PIRC

514. I have been referred to Kadi Johnson's Inquiry statement (SBPI-00236, paragraph 18), in which she states, with reference to the meeting with PIRC on 3 September 2015:

Signature of Witness

DocuSigned by:
[Redacted Signature]

We had a meeting with PIRC and Kate Frame was the senior there at the time. The meeting was not fruitful for me. When we went to the meeting it was all superiority, that's what we got from her. We didn't get any clear information. We didn't get any clear support from her, yet she just explained how things go, what their role was, and things like that. For me it was all about her and her organisation rather than any remorse. Where is the sympathy? What are you going to do to support this family? There was nothing there. They lacked compassion towards the family.

515. Before the meeting started, I personally welcomed all the family members to the meeting. I expressed my condolences to them and acknowledged their loss. I was conscious that the family wanted information both in relation to the role of the PIRC and the investigation, and as is recorded in the family liaison log, I shared that with them. I spent some time discussing the role, to provide them with an understanding of our independence from Police Scotland. Clearly, Mrs Johnson feels that there was too much information or time spent on that instead of support for the family. As regards support, we repeatedly invited the family to engage directly with the FLOs who as part of their role may have been able to signpost relevant support.

516. I have been asked what my opinion would be in relation to Mrs Johnson's characterisation of the meeting. It is disappointing, because as well as spending time at the beginning of the meeting personally speaking to family members, I recall speaking to Mrs Johnson at the end of that meeting too and expressing my sympathy for her loss. She didn't express any lack of support at that time or seek support from the FLO who was present at the meeting. She clearly was very upset at her loss.

517. I have been referred to Collette Bell's Inquiry statement (SBPI-00247, paragraph 48):

Signature of Witness

DocuSigned by:
[Redacted Signature]

I remember going to a meeting with Kate Frame, the head of PIRC. I feel those meetings went really badly. I remember being very, very angry. I remember them almost being blasé about what had happened and me being really angry and defensive because they didn't seem to show any emotion or care. I just remember being very angry because I remember we had been told all about his injuries when we were at the meeting with Kate Frame. I remember them saying that there was no evidence to suggest that they would have to look at the measures that were used, the way that he was restrained. I remember shouting at her, "If this was a member of the public who had all these injuries, somebody would be held accountable for it," and then I remember her saying that the injuries that Shek had received were kind of normal. I remember thinking, "What?" and I remember saying, "If Shek hadn't got in contact with the police that day, he'd still be here." I remember Kate Frame almost laughing at my anger, which made me more angry. She just seemed very ignorant and arrogant to it all. I felt a lot of the time with PIRC that they were insinuating that everything had all been Shek's fault and that the restraint and things that were used were his fault.

518. In relation to her comment that she was told that there was no evidence to suggest that we would be looking at the way he was restrained, that actually formed part of the inquiries that were being pursued with medical experts, so it's difficult to reconcile that view with the work that was actually being progressed. Until there was a clarity from the medical experts, it was impossible to know whether the way that Mr Bayoh was restrained played a part in his death or not.

519. In relation to Miss Bell's comments about the injuries being normal, Ms Bell seemed to consider that the number of injuries in themselves should have justified the detention and arrest of the police officers involved and, in that context, I tried to explain that a number of the external injuries that had been

Signature of Witness

DocuSigned by
[Redacted Signature]

described in the post-mortem report as minor blunt-force injuries, such as bruising and grazing injuries, could often be found on someone who had been taken to the ground and who'd engaged in a struggle and despite the fact that the cause of death had been inconclusive, a number of expert medical witnesses had or were about to be instructed to see whether they could clarify what had been the cause of death. I think I got some way through that explanation when she started to interrupt and shout over me.

520. In relation to her comment about laughing, I didn't find any part of that meeting entertaining. I had expressed my sympathy to the family individually at the commencement of the meeting and I was specifically keen to update them on the progress of the investigation and address their concerns and, in the face of considerable hostility both towards the PIRC investigation and to individual members of staff who were present, I allowed Ms Bell in particular the opportunity to express her views and frustrations without interruption.

521. In relation to her comment about insinuating that everything had been Mr Bayoh's fault, that was not the case. It was repeatedly made clear throughout the meeting that the investigators were continuing to follow every line of inquiry, in particular through the expert medical evidence, to get to the truth of what had happened.

522. I fully appreciate that she was very upset with regard to the circumstances and her loss. I was surprised at the level of hostility and was disappointed because I had hoped that the meeting would have allowed us to explain what had taken place already in the investigation and what steps we were taking to progress other aspects.

523. I have been referred to Collette Bell's Inquiry statement (SBPI-00247, paragraph 51), in which she states:

Signature of Witness

DocuSigned by:
[Redacted Signature]

I also remember when I was at that meeting with Kate Frame that they had said that when Police Scotland amalgamated that they had "inherited bad apples," but because they'd all come together there was nothing that could be done.

524. I recall there was a conversation around that. Ms Bell was further down the conference table and that discussion largely took place at that end of the table. I do recall that the family did focus their concerns about one officer and a comment was made to the effect that there could be bad apples within any organisation. My recollection is that it was about any large organisation.

525. I have been asked who made the comment about "bad apples". I don't recall who made that comment. I don't know if Police Scotland did or didn't inherit "bad apples".

526. I have been asked if the comment was made by a member of PIRC's team. I don't remember who made the comment.

527. I have been referred to Collette Bell's evidence to the Inquiry (day 40, page 86, line 14):

I remember going to this meeting and Kate Frame kind of just telling us about Police Scotland and how they worked and I remember being really quite angry at this meeting because she had said that they didn't think that there was any reason to think that any criminality had been – had taken place.

528. I don't understand why she thinks that I told her 'about how Police Scotland worked'. What I did do was explain the role of PIRC. That perhaps just underlines the lack of understanding of the distinction between the two organisations. My recollection is that my comment around criminality was linked to the family's expressed desire for the officers to be detained, and

DocuSigned by:
[Redacted Signature]
Signature of Witness

related to the fact that as the findings of the post-mortem had been inconclusive and as it had not been possible at that time to establish a precise cause of death there were no reasonable grounds to suspect that a crime, which had resulted in the death of Mr Bayoh, had been committed and that in the absence of that, the officers were not suspects. We also advised her that notwithstanding that, the investigation was continuing.

529. I have been asked if, based on the evidence provided by Kadi Johnson and Collette Bell, I feel that members of the family may have misinterpreted comments that I made during the meeting. It would appear so and I think, particularly in relation to the injuries, it was unhelpful. Miss Bell's interruption probably prevented her either hearing or understanding what I was trying to communicate to her.

530. I have been referred to Collette Bell's evidence to the Inquiry (day 40, page 88, line 13):

Q. Could Kate Frame have done anything or said anything that may have made things –

A. Probably be a little bit more understanding. I just feel like she had a very bad attitude towards us, very much she's right, we're wrong.

531. I have been referred to Kadi Johnson's evidence to the Inquiry (day 40, page 88, line 13):

Q. Looking back now, how could that meeting have been bettered, how could it have been improved? What would you have found helpful?

A. I think if she had shown some empathy, if she had shown some compassion. If she had -- if she had, you know, guided us in the right way, then that would have made a difference to us.

Signature of Witness

DocuSigned by:
[Redacted Signature]

532. I and a number of the PIRC staff did make considerable efforts to explain as clearly as we could what steps we were taking in the investigation and, as I've said, I particularly spoke to Mrs Johnson and showed empathy towards her, so it's disappointing that she feels that way.

533. It seemed as though there was a level of hostility by some members of the family on arrival and it was always going to be hard to explain in a way which they understood or accepted why the officers had not been detained. Perhaps it might have assisted to hear the family's concerns at the beginning rather than explaining the role of PIRC and the investigation at the outset.

534. I did that to provide clarity of the distinction between PIRC and Police Scotland and to reassure them that we were independent of the police. It appeared that they were distrustful of the police and that their distrust carried over to other organisations such as the PIRC perhaps due to their understanding of the composition of PIRC, which included former police officers.

Media engagement following meeting with family

535. The family left and offered their comments on their view of the meeting outside. I think their legal representative read out his statement to the media. It was disappointing, given the level of effort that was being put into the investigation.

536. I have been asked if I consider Mr Anwar's comments were representative of the meeting that had taken place. I can't remember them now.

537. I have been informed that PIRC's Head of Communications, Michael Tait, in his evidence to the Inquiry has described Mr Anwar's comments as being "pre-prepared". I don't know whether not it was 'pre-prepared' as I was not

Signature of Witness

DocuSigned by:
[Redacted Signature]

there. However, Crown Office staff had advised us that following his meeting with them, Mr Anwar delivered a pre-prepared script to the media and suggested that this was his normal practice. My recollection is that he had also delivered a media release in advance of the meeting and had said in that, that he would issue a further statement at the conclusion of the meeting.

538. I have been asked why Michael Tait was present at the meeting with the family on 3 September 2015. He was there as Mr Anwar had advised media outlets in advance of the meeting that he would issue a further statement at the conclusion of the meeting. That is what he had done following meetings with other organisations and we wanted to be in a position to provide an immediate response.

Family liaison following meeting with family

539. Following the meeting I wrote to the family because I recognised that several unfamiliar areas for them had been discussed in the meeting and to allow them to consider those areas further in their own time, I set them out in a letter which I forwarded to their legal representative and asked that it be shared with them. In that letter I again recognised the family's loss, extended a further offer to them to engage directly through the PIRC FLO process and additionally offered a date for the next meeting with them. Neither of those offers were not taken up.

540. At the end of the meeting I suggested that we meet regularly and proposed that we meet either every month or six-weekly. They selected six-weekly. In my letter, I offered a date for that and in the absence of any indication to the contrary I had understood that that date would be the date of the next meeting. Unfortunately, I received no response to that offer from Mr Anwar or the family and a day or so before the meeting, we learned, by chance, from Crown Office staff that the family had arranged a meeting with the Lord Advocate on that date. Therefore, it appeared unlikely that they would attend

Signature of Witness

DocuSigned by:
[Redacted Signature]

a meeting with PIRC. It appeared that the family's preference was to engage directly with the Lord Advocate, as he was directing the PIRC investigation.

541. I have been referred to a letter dated 10 September 2015 from me to Aamer Anwar (PIRC-01835(a), page 5), where it states:

I am keen that the family are able to openly and honestly communicate and engage with us so that they may achieve a better understanding of the process and progress of the investigation. To this end, I suggested that it would be beneficial for us all to meet again and I am able to offer a further meeting on Thursday 15 October at 10am.

542. I have been asked if this is the offer of a further meeting to which I am referring. Yes, it is.

543. I have been asked if, around this time, members of PIRC's team had any discussions with COPFS about how liaison with Mr Bayoh's family should be progressed. I don't recall whether or not there were discussions on that.

544. I think there was discussion with COPFS about how our meeting with the family had gone and at that time we were informed that they had had a similar experience at their meeting with the family, with Miss Bell shouting at that meeting too. I had hoped that the meeting would have been an opportunity to communicate our role in the process to them, discuss the work that had been undertaken and the further work that was to be carried out. It was also an opportunity for them to express concerns which they had and to provide any information which was relevant to the investigation, and again we extended the invitation to engage directly with the FLOs.

545. It was helpful to have met the family and to have explored some aspects of the investigation. I also thought that by following up the meeting with the letter, setting out information which they could consider away from the

Signature of Witness

DocuSigned by:
[Redacted Signature]

meeting, that they may be able to appreciate some of what had been said and be in a better position to take part in the following meeting. I thought it was beneficial to meet the family, establishing that face-to-face contact, and was disappointed when they didn't take the opportunity to attend the following proposed meeting.

546. I have been asked if it would have been helpful to have met with the family earlier in the investigation. It may have been, but as they had advised us from the outset, that they wanted indirect contact through their solicitor and as he had been requested to supply dates which were suitable to him and the various family members, we awaited those for a long time, without any response. Notwithstanding that, I was aware that the FLOs had agreed a process with the solicitor to indirectly liaise with the family on a weekly basis and that the family had met with the Lord Advocate, who was directing the PIRC investigation, and that their solicitor was in communication with Crown Office staff. Had meeting dates been provided and a meeting arranged sooner, the family may have had an earlier understanding of the role of the PIRC and an opportunity to contribute at an earlier stage.

547. I have been asked if further attempts were made to meet with Mr Bayoh's family after the family did not attend the meeting arranged with PIRC. On the basis that the family had not taken up the offer, arranged an alternative meeting with the Lord Advocate for the same day and had not provided the courtesy of a response, it appeared that they preferred to meet with the Lord Advocate, who was directing the PIRC investigation. The FLOs made it clear to the family that they remained available to them and ensured that they had their contact details, should the family wish to communicate with them.

548. I have been asked if, as far as I was aware, the FLOs continued to liaise with Mr Anwar following the meeting on 3 September 2015. I recall that contact tailed off but do not remember when that happened.

Signature of Witness

DocuSigned by:
[Redacted Signature]

549. I have been referred to PIRC's family liaison log (PIRC-04152, pages 40 - 43), where there appears to have been no contact documented between PIRC's FLOs and Mr Bayoh's family and legal representative between 14 September 2015 and the submission of PIRC's report on 10 August 2016. I have been asked if I was aware of there not being any contact between PIRC's FLOs and Mr Bayoh's family and legal representative during this period. My recollection is that there was some contact with the FLOs after the meeting. I'd been aware before the meeting that the FLOs had encountered difficulties in receiving responses from the family's solicitor in connection with various family liaison matters, and despite their efforts it was proving difficult to maintain the agreed arrangement. After the meeting, I think that the FLOs contacted the family's solicitor and sought a meeting with the family. That too was declined and then was followed by no communication from them in response to the invitation to meet in October. My understanding is that the FLOs continued to advise the family that they were available to them and ensured that they had their contact details, should the family wish to communicate with them. I do not know whether or not the family did so.

550. My recollection is that following the meeting the FLOs may have facilitated or attended a meeting with COPFS staff to allow the family or their representative to either view CCTV footage or listen to audio tapes. That was referred to at the meeting. I don't recall precisely when the FLOs' efforts to maintain regular indirect contact with the family diminished but was aware that they had continued to ensure that the family knew that they were available if they wished to communicate. I do remember that sometime after the meeting, the office received a media enquiry about Miss Bell and when PIRC staff contacted Mr Anwar to alert Miss Bell to the media interest, he appeared to imply that PIRC had either initiated the story or were trying to benefit from it. That was entirely inaccurate and the sole motivation in letting Mr Anwar know, was to ensure Miss Bell's safety and protect her from press intrusion. When the FLOs tried to meet with the family following that enquiry,

Signature of Witness

DocuSigned by:
[Redacted Signature]

they refused to meet with them. I think that coincided with the reduction in contact with the FLOs and the family.

551. As the FLOs continued to make themselves available to the family and as the family had chosen not to meet with PIRC representatives, on more than one occasion, it appeared that they had disengaged from that process. That was their choice and it was for the family to decide whether to engage or not. Clearly, I would have preferred had they engaged in the normal family liaison process and been able to be updated and informed as matters had gone along.

552. I was aware that the family had a number of meetings with the Lord Advocate and that their solicitor was engaging directly with COPFS staff. As the PIRC was operating under the direction of the Lord Advocate, it appeared that the family's preference was to engage directly with the Lord Advocate. They didn't explicitly say that, but their actions suggested that. There were occasions when in response to questions raised by the family, PIRC provided information only to be advised that the family had been given that information by the Crown. Similarly, when requests for disclosure of material were made to PIRC, as it was a Crown directed investigation, PIRC required to seek the Crown's approval and by the time that was received from COPFS, the family's solicitor had separately approached COPFS and obtained their approval directly.

553. Whilst I didn't know the exact number of times that there was contact between the Lord Advocate and COPFS staff and the family and their representative, there were several. More often than not, PIRC learned of these meetings through the media first and then matters arising in those meetings was communicated to the PIRC by COPFS, either verbally between staff or referred to in correspondence from COPFS.

Signature of Witness

DocuSigned by:
[Redacted Signature]

554. I have been asked if, in my view, PIRC should have continued to at least make efforts to maintain contact with Mr Bayoh's family and their legal representative between 14 September 2015 and 10 August 2016. Yes, efforts were made to maintain that contact by the FLOs providing their contact details to the family and letting them know that they remained available to them. Additionally, their legal representative raised queries on behalf of the family through correspondence with PIRC.

555. I have been asked, if there was no contact between PIRC's FLOs and Mr Bayoh's family or their legal representative during this period, whether that would give rise to any concerns around the investigation's compliance with the principles of Article 2. Several efforts were made by PIRC to engage with the family throughout the process but the choice to engage or not lay with the family. The family had made it clear from the outset in May that they did not want direct contact. Despite agreeing a process for weekly communication via their solicitor, he frequently did not adhere to those arrangements or timeously respond to requests for communication. The FLOs repeatedly sought the provision of suitable dates that were convenient to him and all the family members to enable a formal meeting to be fixed. The family agreed to formal six-weekly meetings and then ignored an invitation to attend that meeting preferring to meet with the Lord Advocate on the identified date. They declined to meet with FLOs when requested to do so. They were involved in the process through engagement directly with the Lord Advocate and COPFS, as was evident in the selection process for the expert witnesses and continued to correspond directly with PIRC. They also had been provided with contact details for PIRC FLOS, with whom they had been repeatedly encouraged to engage with but chose not to do so.

Correspondence with Aamer Anwar

556. I have been asked how I would describe the relationship between PIRC and Mr Anwar, the Bayoh family's legal representative and whether it was positive

Signature of Witness

DocuSigned by:
[Redacted Signature]

or negative. I have no view on that. I would say it was a neutral relationship being neither positive nor negative. It was recognised that his communication with PIRC was to represent the family's interests.

557. I have been asked if the relationship with Mr Anwar remained "neutral" when he was critical of PIRC during the investigation. There was disappointment within PIRC of the commentary that was promoted by Mr Anwar. From the outset he appeared to be critical that PIRC had not used the powers which he considered the PIRC held to obtain statements in early course from the police officers involved, without any recognition of the fact that the PIRC investigators had acted within the powers that had been provided to them by Scottish Ministers. He was particularly active in providing a considerable amount of commentary throughout the investigation, which appeared to be directed at undermining the investigation and PIRC. The investigation continued regardless.

558. I have been referred to a letter dated 10 September 2015 from me to Aamer Anwar, in which I refer to the meeting on 3 September 2015 as having been "constructive" (PIRC-01835(a), page 1, paragraph 1). Yes, I had hoped that the meeting was the first step towards it being a more constructive relationship with the family through meeting with them and securing their agreement for further regular meetings.

559. The purpose of that letter was to assist the family's understanding of a number of unfamiliar areas for the family, that were covered in the meeting, and to provide them with an opportunity to consider those matters in their own time. So, I set them out in that letter and asked that it be shared with them. It also provided another opportunity to extend an offer to the family to engage directly through the PIRC FLO process.

560. I have been referred to the letter dated 10 September 2015 (PIRC-01835(a), page 2):

Signature of Witness

DocuSigned by:
[Redacted Signature]

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

In this particular case, as you know, as it has not been possible (to date) to establish a precise cause of death, it has not so far been possible, in legal context, to establish that a crime has been committed. Accordingly, the police officers could not be detained as suspects in terms of the Criminal Procedure (Scotland) Act.

561. I have been asked if this is what I was referring to when discussing Collette Bell's reference to criminality within her Inquiry statement. Yes.

562. I have been asked why establishing a precise cause of death is necessary for officers to be detained as suspects. For someone to be considered a suspect there requires to be reasonable cause to suspect that they committed a crime. A precise cause of death would show how the person died. Without a precise cause of death, death may have been due to any number of reasons and not related to the incident. If a precise cause of death was established which could be linked to a criminal act then grounds may have been established to provide reasonable cause to suspect that the officers had committed a crime.

563. I have been asked if, without establishing a precise cause of death, it would have been possible for the officers to have been detained as suspects for crimes not directly linked to Mr Bayoh's death, such as assault. If there had been evidence of other crimes committed by the officers then if there was a reasonable cause to suspect that they had committed those crimes, then that may have been possible. However, there was no such evidence available. Despite the fact that there was evidence that Mr Bayoh was found to have

Signature of Witness

DocuSigned by:
[Redacted Signature]

minor blunt force injuries, it was not possible to establish either when or how they had occurred but even if it was accepted that they had been caused in the course of the incident with the police officers, it would have been necessary to establish that the officers' actions were not reasonable, necessary or proportionate before the crime of assault could be established. There was no evidence available to show that. I think I perhaps could have made that clearer in the letter.

564. I have been referred to a letter dated 16 September 2015 from Aamer Anwar addressed to me (PIRC-01839, page 1, paragraph 2), in which Mr Anwar states: *"We refer to your letter dated 10th September and the family are grateful for your meeting with them on the 3rd September. However as the family stated their confidence in the PIRC has been shattered."* It was very disappointing given the level of work that was being undertaken to investigate the circumstances.

565. I have been asked if I recall PIRC doing anything directly in response to the indication that the family's confidence in PIRC had been "shattered". I don't remember what was done at that time as I anticipated that we would be meeting with the family a few weeks later, as I had proposed, and expected to address that view then.

566. I have been provided with a summary of the points raised by Mr Anwar within the letter dated 16 September 2015 (PIRC-01839). We did consider the matters which he raised and they were incorporated as part of the investigation.

567. I have been referred to the letter dated 9 October 2015 from me to Aamer Anwar (PIRC-01849, pages 3 – 4), in which I state:

I can confirm that Senior Officers of Police Scotland provided PIRC Investigators with initial verbal briefings on the day of the incident, prior

Signature of Witness

DocuSigned by:
[Redacted Signature]

to the arrival of PIRC investigators at Kirkcaldy. PIRC was informed that: a number of members of the public had reported a man with a knife chasing cars; that police officers had subsequently intercepted him during which PAVA and CS spray was discharged at him; that the male was struck with police batons; was handcuffed to the rear and had leg restraints fitted; that the male subsequently became unconscious, stopped breathing and was placed in the recovery position, where he was subsequently given CPR.

568. I have been asked if, at the time of providing this summary, I was aware that within initial accounts of the incident Keith Harrower was informed that Mr Bayoh had approached the officers at the scene whilst he was in possession of a knife. I don't recall being aware of that at the time.

Engagement with Mr Anwar

569. The number of queries contained in the correspondence from Mr Anwar was considerable. One 11-page letter contained 53 various points. The extent of those queries, whilst the investigation was ongoing, detracted from some investigators' ability to deal with their day-to-day duties. It did divert some investigative staff from their ongoing duties as a number of these points required to be teased out individually with different members of the investigation team.

570. It was recognised that these queries required to be dealt with, so irrespective of the impact, it was accepted as just another facet to a high-profile investigation. The points raised by Mr Anwar were fully shared with the Investigation Team to allow them to explore and address the issues which had been raised and I expect that Mr McSporran, would have been aware of them when compiling the report.

Signature of Witness

DocuSigned by:
[Redacted Signature]

571. One of the points that I was particularly concerned about and I wanted fully explored was the issue around conferral. I discussed the circumstances with Mr Mitchell and he confirmed that that matter was already being investigated and apprised me of some of the evidence that had already been ingathered.
572. I have been referred to a document titled "Audit of questions raised by Mr Anwar" (PIRC-04134). My recollection is that this document was compiled to ensure each point raised by Mr Anwar was addressed, to identify those queries which had previously been addressed and to identify fresh issues so that they could be addressed or explored through any further investigation that may be required.
573. I have been asked if, as far as I was aware, I was content that the points raised by Mr Anwar were answered or considered. Yes, I think so.
574. I have been referred to a document titled "Summary of FLO contact during June 2015 re Ammer [sic] Anwar" (PIRC-02492(a)). That document was created because the FLOs were having difficulties in securing information from the family via Mr Anwar and repeated difficulties with Mr Anwar's adherence to the agreed FLO arrangements. The intention was to capture what efforts the FLOs had made to have family liaison contact via the agreed process and the difficulties they had encountered.
575. I have been asked what was done with the information contained within this document, once it was compiled. I don't recall that now, some 9 years later.
576. I have been referred to the summary of FLO contact (PIRC-02492(a), page 2), where it states, under the heading "Impact on Investigation":

At an early stage the family intimated several other family members and friends may be potential witnesses. Despite several requests by email, phone calls and meetings, including the offer of PIRC FLO

Signature of Witness

DocuSigned by:
[Redacted Signature]

assistance to progress this line of enquiry, there has been no response from Mr Anwar. This line of enquiry is therefore not complete.

577. I was aware that the FLOs were having difficulties in obtaining some family background in the early stages of the investigation, which impacted on their ability to progress their enquiries and later were having difficulties in securing witness statements as contact details were not being provided.

578. I have been referred to PIRC's Family Liaison Policy (PIRC-04460, page 17), which states:

The FLO should actively discourage the family from issuing statements to the media that are independent of the investigation and could impact on the investigative process. To achieve this it is important for the family to be involved in a partnership approach with the SI together with the PIRC Media Officer and FLO to develop and agree the PIRC/family media strategy.

579. I have been asked if any attempts were made by PIRC to discourage Mr Anwar from liaising directly with the media. I'm not aware of that and I don't know whether that was raised by the FLOs.

Media liaison

580. I had conversations and discussions with our communications team, principally Mr Tait, and Mr Mitchell and Mr McSporran in relation to media releases. In the Bayoh investigation I would expect to be sighted on most media releases.

581. I have been asked if PIRC's approach to media liaison was different in any way to the approach taken in other investigations. Yes, there was a

Signature of Witness

DocuSigned by:
[Redacted Signature]

significantly greater volume of media enquiries and a greater need to anticipate the media commentary by others and its potential impact.

582. I have been asked if I took a more active role in media liaison during the Bayoh investigation in comparison with other investigations. Yes. I did that because from an early stage in the investigation, it appeared that both the investigation and the organisation was being undermined by negative, ill-informed or inaccurate commentary from various parties.

583. I have been asked if I had any involvement in creating or discussing a media strategy for the Bayoh investigation. I don't recall that there was any formal media strategy, but I think that I agreed some general lines with Mr Tait and Mr Mitchell which would be available to the Comms Team in the event that they received further queries.

Media releases

584. I have been asked what prompts PIRC to issue lines to the media. Generally, lines were issued in response to media queries prompted by external commentary.

585. I have been referred to PIRC's "*previous lines up until 11.05.17*" (PIRC-03925). I have been asked if there was any significance to certain lines being issued in my name and other lines being issued in name of a "spokesman" or "spokeswoman". No, there wasn't. Some lines were a personal perspective but other than that, if it was generally about the work of the organisation, it could have been either and there was no real distinction.

586. I have been asked if, during the investigation, I approved all media lines before they were issued. Yes, mostly I did. There would be times if I wasn't present, that Mr Mitchell, or other senior members of the investigation team, would approve them.

Signature of Witness

DocuSigned by:
[Redacted Signature]

587. I have been asked if, in investigations directed by COPFS, it was standard practice for PIRC's media releases to be approved by COPFS before they were issued. I'm not sure if it was standard practice, some were and some weren't. They would usually be shared with Crown Office, but I don't remember whether there was any requirement for approval. In the early days of PIRC it probably was more common for any releases to be approved by the Crown Office.

588. I have been asked if, in 2015, it was PIRC's standard practice to notify families in advance before media releases were published. That would usually happen if there was considered to be a direct impact for them.

589. I have been asked if Mr Bayoh's family were informed before lines were issued to the media in this investigation. I don't know whether or not they were as that is something that would normally be undertaken by the Comms Team in conjunction with the Investigation Team.

590. I have been referred to a letter dated 28 October 2015 from Aamer Anwar & Co marked for my attention (PIRC-01852(a), page 2, point vi): *"In the past, if you were issuing a press release, you would contact us or provide us a copy of your release in advance of doing so. Can you advise why this practice has ceased?"*

591. I have been referred to a letter dated 6 November 2015 from me addressed to Mr Anwar in response to his letter on 28 October 2015 (PIRC-01856(a), page 2): *"It is not common practice for me to share all media releases during investigations, in advance, with the families."* I don't know which media releases are being discussed here, what their content is or whether there was potentially a direct impact for the family.

Signature of Witness

DocuSigned by:
[Redacted Signature]

Media liaison around 3 September 2015

592. I have been referred to a statement released by PIRC on 30 August 2015 (PIRC-03925, pages 23 – 24) responding to an article in the Sunday Mail on that day (AAC-00380, pages 50 – 51). The statement includes the following quotation, attributed to me:

It is unfortunate that the family lawyer, Aamer Anwar, appears to have interpreted the fact that forensic pathology experts from outwith Scotland have been instructed, as a sign that the PIRC has focused its investigation on a particular cause of death for Sheku Bayoh.

The Commissioner can reassure the family that in fact the opposite is true.

As they and Aamer Anwar know, the post mortem conducted in Scotland did not reveal a conclusive cause of death.

593. My recollection is this followed on from an article in relation to one of the expert witnesses, Dr Karch. Mr Anwar had provided commentary in the media that day saying: "It would appear that for PIRC, the central question became one of whether Sheku died from some mysterious syndrome as opposed to excessive use of force by the police". Additionally, a 'source close to the family' said that the family were "concerned that PIRC believe they can sort this whole thing out by going down the road of excited delirium but if they believe the family will fall for this, they are very much mistaken". A separate article in The National dated 31 August 2015 states: "The family say they fear the inquiry by the PIRC will whitewash the circumstances of his death, by signalling an attempt to blame the condition" on excited delirium (AAC-00380, pages 54 – 55). Those articles suggested that the PIRC investigation was focusing on excited delirium as the cause of death because PIRC had instructed Dr Karch and that the family was expressing concerns about that.

Signature of Witness

DocuSigned by:
[Redacted Signature]

594. To address that inaccurate information, the PIRC statement was issued, to clarify that the investigation was not focusing on excited delirium as the cause of death, that a number of expert witnesses had been identified by PIRC to the Lord Advocate, who then chose and instructed PIRC to approach his selected witnesses. As Crown Office had previously failed to correct inaccuracies and appeared content for matters lying within their responsibility to be erroneously attributed to PIRC, it appeared appropriate that PIRC should do so to allay the expressed concerns.

595. I don't recall if I asked Mr Tait to establish whether Crown Office intended to correct it. Previously there had been issues around press coverage of the post-mortem, where the article attributed responsibility to PIRC as being the organisation which instructed the post-mortem against the wishes of the family, when in fact it was Crown Office that instructed it. It was disappointing that the Crown Office did not correct that inaccurate story and I was not confident that they would correct this one.

596. I have been asked if COPFS clarified why it declined to correct the record. No. I can't remember any reason being provided.

597. I have been asked why in this instance PIRC's press release responds to Mr Anwar quite directly. The original article included a direct quote from Mr Anwar in which he inaccurately described the PIRC investigation and the response addresses that.

598. I have been referred to an email chain involving staff at COPFS, containing discussions on 28 August 2015 around amendments to be made to a PIRC press release (COPFS-02682). I have been informed that the discussions pertain to a media release issued by PIRC on 29 August 2015 (PIRC-03925, page 24). I have been asked if this would be the normal process for agreeing a press release with COPFS. I am aware that sometimes there was

Signature of Witness

DocuSigned by:
[Redacted Signature]

discussion back and forth between the Comms Teams about specific wording, but I wouldn't normally see, nor always be aware of, the content of those communications, as was the case here.

599. I have been referred to an email later in the chain, dated 30 August 2015 (COPFS-02682), which states: *"For the information of the Lord Advocate. I have just been informed by PIRC Comms that they had been instructed to issue the following by Kate Frame. It issued this afternoon just before they informed us about it."* I have been informed that this relates to the media release issued by PIRC on 30 August 2015 (PIRC-03925, pages 23 – 24).

600. I have been asked if I recall why, in this instance, PIRC chose to issue the press release without the prior approval of COPFS. I was aware that the information contained in the release – both in relation to the areas which were to be explored by the expert witnesses and that the experts were to be selected by the Lord Advocate – had previously been discussed with Mr Anwar by the Lord Advocate and/or COPFS staff, so there did not appear to be any conflict with the COPFS position and I did not want further inaccuracies to remain uncorrected.

601. The response was to correct the position and address the inaccuracies, which appeared to be directed at undermining the investigation and PIRC, as we had previously done when we corrected the press release by the SPF.

602. I have been referred to a press release dated 18 September 2015 (PIRC-03925, pages 19 – 20), which states, as part of the release: *"The Commissioner is keen that the family are able to openly and honestly communicate with her so that they may achieve a better understanding of the process and progress of the investigation."* I think that was around the time that I had written to the family proposing a date for the next meeting. I think the terms of that release would have been run past me.

Signature of Witness

DocuSigned by:
[Redacted Signature]

603. I have been referred to the letter dated 10 September 2015 from me to Mr Anwar (PIRC-01835(a), page 5), which includes very similar wording to this section of the press release. The press release simply restates the message. My recollection is that that section was lifted from my letter by the Comms Team and included in the release.
604. I have been referred to PIRC's press release dated 18 September 2015 (PIRC-03925, pages 19 – 20), which is titled "*Response to latest Aamer Anwar letter and possible Sunday Mail story*", as well as further press releases that appear to respond to comments or queries made by Mr Anwar (PIRC-03925, pages 12 – 13 and 17 – 19). Throughout the investigation, there was a lot of the commentary offered which appeared designed to undermine confidence in the organisation and the investigation. In an effort to prepare for providing a balance to that negativity the Comms Team prepared a number of lines. They did that so that they could respond quickly to meet the short deadlines applied by media agencies. The experience of the Comms Team had been that they had found themselves inundated with requests for comments when Mr Anwar provided advance copy scripts to media outlets and also after he held press briefings, having provided details of the time and location of those briefings to the media in advance.
605. I have been referred to a statement issued by COPFS on 22 October 2015 (COPFS-00975) which stated: "*The Lord Advocate has today called for restraint from all parties in the provision and publication of information in respect of the death of Sheku Bayoh*". My recollection is that PIRC had discussion with Crown Office regarding the level of ongoing media commentary that was circulating about the investigation, some of which was inaccurate, distracting and also distressing to both the family and the police officers.
606. My recollection is that the Lord Advocate's statement was issued following the release of information about the police officers involved. The information

Signature of Witness

DocuSigned by:
[Redacted Signature]

disclosed had formed part of the information contained in the expert witness pack. That pack was provided to the expert witnesses by PIRC and to Mr Anwar by COPFS. I think the information that featured in the press related to personal information about the officers such as their heights, weights and physical descriptions.

607. I have been asked if I had any conversations with COPFS staff in relation to this matter. I don't recall any conversations about that, but I may have done.

608. Unfortunately, the Lord Advocate's request didn't stop the ongoing commentary. There continued to be significant media interest around the investigation with extensive commentary which continued both in standard media and social media, which didn't stop just six months down the track.

609. It seemed as though there was a persistent negative flow of commentary from both sides that undermined confidence in the investigation and also in the PIRC. It was a distraction for staff who were otherwise trying to progress a complex investigation.

Expert witnesses

610. I remember a meeting with Crown Office staff following receipt of the final post-mortem report, which had been inconclusive. At the meeting it was agreed that expert evidence would be required to further explore the cause of death. It was left to PIRC to identify expert witnesses who might be able to assist in providing that expert evidence and then present those options to the Lord Advocate to allow him to select which witnesses he required to be instructed. There were obvious areas that required to be covered. The areas agreed on were the significance and contribution of drugs, the restraint, the CS and PAVA spray, and then the combination of all of those in the death.

Signature of Witness

DocuSigned by:
[Redacted Signature]

611. The investigation team considered potential experts and presented documentation about them to me. On the basis of that information, I sought the Lord Advocate's instructions.
612. Once a number of the proposed experts had been identified, I considered their CVs, which contained details of their qualifications and their experience. The material which I reviewed also contained details of previous cases in which the witnesses had provided expert opinion and publications which they had written. I forwarded that material to the Lord Advocate for his consideration and asked for his advice in relation to the scope of the evidence sought, the materials it was suggested be provided to the expert witnesses and which witnesses he wanted to instruct. He instructed that some of the witnesses that had been identified by PIRC be asked to provide expert opinions and then he instructed that others nominated by the family were approached.
613. I have been asked if, from the experts identified by PIRC's investigators, I chose which experts would thereafter be suggested to the Lord Advocate. I'd been involved in discussions both about which organisations the investigators would approach for recommendations and thereafter which witnesses may potentially be suitable so the material that I received reflected those earlier discussions.
614. I have been asked if I rejected any expert witnesses identified by the investigators. Not after I received the material. Prior to that I had discussed other potential experts with members of the Investigations Team.
615. I have been asked on how many other occasions during my tenure as Commissioner PIRC required to instruct expert witnesses. Other than in the standard areas of matters such as firearms or road traffic issues I don't recall any others.

Signature of Witness

DocuSigned by:
[Redacted Signature]

616. I have been asked if, in my previous role at COPFS, I had been involved in some way in the identification and instruction of expert witnesses. Yes. I required to identify and instruct expert witnesses in cases involving areas such as severe injuries, road traffic matters, child abuse, drugs and deaths.

617. I have been asked, as I had previous experience in the identification and instruction of expert witnesses, whether I provided my investigator colleagues with guidance in this regard. Yes. I discussed with them which organisations may be able to identify suitable witnesses and thereafter, I think Mr Little established contact with a number of those organisations. Following receipt of some of their suggestions, I discussed with him what experience and expertise those witnesses were known to hold, and whether their skills could potentially assist the investigation.

Liaison with external organisations regarding experts

618. I have been referred to the letter dated 9 October 2015 from me addressed to Mr Anwar (PIRC-01849, page 6), which states:

As part of the identification process, PIRC investigators consulted the IPCC, the College of Policing and the National Crime Agency (NCA) and thereafter examined published papers by the identified experts having regard to key attributions and references. A number of the published papers included attributions and references to Dr Steven Karch, (MD, FFF, LM, FFSSOC) who is a consultant in Cardiac Pathology and Toxicology.

619. Those are the organisations that I recall being discussed and considered because of their previous experience in the relevant areas. I remember discussing with Mr Mitchell and Mr Little which organisations might be able to assist.

Signature of Witness

DocuSigned by:
[Redacted Signature]

620. I have been asked if, when I was at COPFS, I liaised with these organisations when identifying potential expert witnesses. I had liaised with them on other matters but not specifically in identifying potential expert witnesses.
621. I have been asked what reliance was placed on the expertise of the IPCC, College of Policing and NCA when identifying expert witnesses. Reliance on their expertise depended on their level of experience in similar matters.
622. I have been referred to a document produced by the NCA titled "*Advice on the Management of Expert Advisers*" (PIRC-04447), which states, on page 5: "*In addition the NCA does not accredit Expert Advisers on its database.*"
623. I have been asked if I have had sight of this document before. I don't think I have.
624. I have been asked if this matches my understanding of the databases of expert witnesses maintained by organisations such as the NCA. Yes. However, I don't think that the investigators placed reliance solely on databases rather than personal contact and discussion with the organisations.
625. I have been asked whether individuals at the IPCC, College of Policing and NCA provided guidance in relation to expert witnesses, beyond what was contained within their databases. Yes. I understand so. The investigators undertook the scoping exercise, discussed the results of that with me and Mr Mitchell and then produced the material on the identified witnesses. From the information, obtained and provided to me, that exercise seemed to be fairly extensive. Some referees were provided as part of the material. I personally didn't approach the referees.

Signature of Witness

DocuSigned by:
[Redacted Signature]

626. In considering the witnesses, I reviewed the recommendations from the external organisations and who had made the recommendation, and their experience of the expert witnesses. Those experiences were communicated to me verbally by the investigators. From the information provided, it appeared that the identified witnesses had previously been tried and tested in the relevant matters. I am not an expert in the areas of restraint, misuse of drugs, or the use of CS or PAVA spray, so relied on the information and material provided to assess their ability.

Selecting and instructing experts

627. I have been asked upon which criteria PIRC's investigators were assessing potential expert witnesses to be proposed to COPFS. They and I assessed that by reference to the witnesses' professional qualifications, previous experience and specialist knowledge of the subject matter.

628. My recollection is that all the witnesses provided were from outwith Scotland and had no links to Scottish policing. That was a conscious decision and may also have been discussed with Crown Office. The benefit in that was that they were independent from Scottish policing.

629. I have been asked what process PIRC followed in considering previous articles published by potential expert witnesses. All of the medical expert witnesses had published tens or hundreds of papers and I don't know what steps were taken within PIRC to consider that material, as it was appropriate for it all to be provided to the Lord Advocate to enable him to consider who he wanted to select.

630. I have been asked what role I played in drafting experts' Terms of Reference. I drafted the Minute to the Lord Advocate including the Terms of Reference.

Signature of Witness

DocuSigned by:
[Redacted Signature]

631. I have been asked if I had received training in relation to the identification and instruction of expert witnesses during my time at COPFS. Yes.

632. I have been asked what, if any, training was provided to PIRC's staff in relation to the identification or instruction of expert witnesses. I'm not aware of what training they received on that.

633. I have been asked what rules, guidance, SOPs and case law, if any, PIRC considered when identifying, selecting and instructing expert witnesses. I don't recall any reference to SOPs or other documentation. However, PIRC applied the standard considerations of the extent of their specialist knowledge, experience and expertise on the subject matters, their independence, their ability to provide objective evidence based on the facts presented and impartiality.

634. At the meeting with COPFS staff there was a general agreement of the areas in which expert evidence should be sought, but as I recall that was the extent of the guidance provided by COPFS. As part of the Minute to the Lord Advocate, I invited him to consider whether the proposed Terms of Reference, the extent of the material it was suggested be provided to the expert witnesses and identified witnesses were suitable.

635. It is usually helpful to have additional assistance if there is any additional expertise to be gained on the matter under consideration. Generally, in most cases, after COPFS provided the Terms of Reference they very rarely provided any guidance or advice. In this investigation, there was some supplementary communication, but limited guidance. It may have been helpful to have had more.

636. I have been asked how the costs of instructing the expert witnesses were covered. I think they were met by COPFS.

Signature of Witness

DocuSigned by:
[Redacted Signature]

637. I have been asked if I recall there ever being an issue in covering the costs of an expert witness. Not that I can recall.

Dr Lipsedge

638. I have been referred to a letter dated 19 November 2015 from me to Dr Maurice Lipsedge (COPFS-06007), containing the Terms of Reference upon which his expert opinion was sought:

(a) Potential impact of the drugs identified in the attached package, on the behaviour of the deceased as described by the police and civilian witnesses.

(b) Any behavioural science aspects of the case including in particular reference to whether the actions of the officers are indicative to particular mind set indicating that the officers were behaving as a group rather than as individuals

642. Yes, I received a draft of that letter which I signed off after discussion with Mr Little. Those Terms of Reference and Dr Lipsedge's response to them were included in the report to Crown Office.

643. I have been referred to the report prepared by Dr Lipsedge (COPFS-00130) and the accompanying covering letter, in which Dr Lipsedge states: "*I have not attempted to address question (b) because the subject of group behaviour as opposed to individual behaviour lies outside by expertise as a psychiatrist. Group behaviour is the province of social psychologists.*" I don't recall seeing his letter before.

644. I have been asked if, in circumstances where an expert witness has identified that they do not have the necessary expertise to fulfil part of their terms of

Signature of Witness

DocuSigned by:


reference, if I would have expected to have been informed. Yes, I would and I may have been but I don't remember that now.

645. I have been asked why this area was included within Dr Lipsedge's terms of reference. I think I discussed that with Mr Little but don't remember the terms of that discussion now.

646. I have been asked if, after Dr Lipsedge identified that this area was beyond his area of expertise, I am aware of PIRC and COPFS discussing the instruction of an alternative expert in this area. I don't recall discussion on that, no.

Alpha-PVP

647. I have been referred to the minutes for a morning briefing on 24 June 2015 (PIRC-04156, page 65), which, within an update that John Mitchell provided, note: "*The Commissioner wrote to the American FBI for details of an expert on Alpha-PVP.*" The Investigation Team had discussed with me the lack of expert knowledge of Alpha-PVP in Scotland and more broadly in the UK and had identified that it was prevalent in America. Alpha-PVP appeared to be a relatively new drug within the UK at that time and Mr Bayoh's death appeared to be one of the first in Scotland where Alpha-PVP had been identified. Mr Mitchell's reference to the American FBI is incorrect as it was the legal attaché at the American Embassy that I contacted.

648. The Investigation Team asked whether I had any professional American contacts who could identify someone who had knowledge and experience of the effects of Alpha-PVP. I had those contacts through previous work in the International Cooperation Unit at COPFS. That Unit deals with extraditions to and from Scotland and the exchange of mutual legal assistance to and from foreign countries. In progressing that work there was liaison and contact with

Signature of Witness

DocuSigned by:
[Redacted Signature]

various embassies, including the American Embassy. Expert witnesses had been identified through those routes previously.

649. My recollection is that the legal attaché to the American Embassy provided contact details of someone in the Department of Justice in America and I contacted him. I don't recall the details of that communication but in the first instance, it was to ascertain what level of knowledge or expertise they held in relation to Alpha-PVP.

650. I requested that the Department of Justice consider whether they could assist in identifying expert medical witnesses who might be able to provide evidence of the physiological effects of Alpha-PVP and also expert witnesses who might be able to provide operational experience of Alpha-PVP. In response, the Department of Justice supplied the details of the two law enforcement agents but after enquiry, were not able to secure any expert witnesses to speak to the physiological effects.

651. I have been referred to an email dated 30 June 2015 that I sent to John Mitchell and Irene Scullion, with the subject "Drug Expert" (PIRC-03464):

Please see the above biographies for DEA Special Agent Eric Fess and Boca Raton Police Department Officer Robert Volgaardson which have been supplied by the DEA Attaché.

I am advised that DEA SA Fess has more 'case experience' whilst BRPD Volgaardson has more 'street experience'. Additionally, I understand that they have identified a research pharmacist who may be able to provide evidence of the physiological effects.

652. The information provided to me distinguished between the two as one who had case experience and the other as having street experience. My interpretation is that the officer holding the case experience may have been

Signature of Witness

DocuSigned by:
[Redacted Signature]

involved in a number of court cases whilst the other officer may have had greater experience of interacting with individuals on the street whilst they were under the effect of Alpha-PVP.

653. I have been referred to a Minute sent to the Lord Advocate, along with the expert witness package, proposing four potential expert witnesses for the investigation, including Police Officer Robert Volgaurdson (COPFS-06005). I have been asked what made Officer Volgaurdson stand out as a potential expert witness. The information provided indicated that the officer had considerable experience of investigating individuals who used and supplied synthetic drugs such as Alpha-PVP. As such he had knowledge of the behavioural effects of Alpha-PVP on those individuals, which may have been relevant in this investigation.

654. I have been asked if I considered Officer Volgaurdson was able to provide expert opinion in relation to the effect that Alpha-PVP might have on an individual. Yes, I thought so.

655. As regards to the officer's street experience, it appeared that he had operational experience of interacting with individuals who had used Alpha-PVP and its behavioural impact on them.

656. I have been asked if an expert was ultimately identified by PIRC to speak to the physiological effects of Alpha-PVP, as referred to within my email dated 30 June 2015 (PIRC-03464). No. Their enquiries with that witness were unproductive and they were unable to secure any other witnesses to speak to that. Following the Lord Advocate's selection of the expert witnesses, I advised the Department of Justice that the Lord Advocate had not selected the officer. At that time, which was some months after the original contact, they advised that they had not been able to secure a medical witness who was able to assist. The Lord Advocate had by that time instructed several

DocuSigned by:
[Redacted Signature]
Signature of Witness

other expert medical witnesses and it appeared that there was little appetite to pursue further witnesses in America.

657. I have been asked if COPFS provided an explanation as to why they did not wish to pursue further witnesses in America. I'm not aware of any explanation being offered.

658. I have been asked if I recall if PIRC's investigation looked at from whom Mr Bayoh sourced his drugs. I don't recall whether or not Mr Bayoh's source of drugs was investigated. The main focus of the investigation was the circumstances of his death and whether interaction with the police officers contributed to it rather than the source of Mr Bayoh's drugs.

Dr Karch

659. My recollection is that Dr Karch was identified as a potential witness by the Investigation Team and his details and background were provided to me to review before I drafted the Minute to the Lord Advocate. I recall speaking to Mr Little and Mr Mitchell in relation to the proposed expert witnesses.

660. I have been asked if Dr Karch was identified via one of the organisations with whom PIRC consulted. I think that he was identified following research of medical publications on cardiac pathology. I don't remember whether or not that followed discussion with one of those organisations.

661. I reviewed Dr Karch's CV, which contained details of his qualifications, his career experience, details of other cases that he'd previously been involved in and details of papers that he had written.

662. I have been referred to Dr Karch's CV (PIRC-03462(a)). I recall reading it.

Signature of Witness

DocuSigned by:
[Redacted Signature]

663. I have been asked what made Dr Karch stand out as a potential expert witness for the investigation. He held several years' experience as a Consultant in Cardiac Pathology and Toxicology and was a Fellow and Examiner at the UK Faculty of Forensic and Legal Medicine. Dr Karch's specialism in cardiac pathology and toxicology appeared to be of particular relevance in light of the information contained in the pathology, neuropathology and toxicology reports. Dr Karch had a number of published papers relating to drugs in cardiac deaths, as well as publications on anabolic steroids in cardiac deaths and positional asphyxia.

664. I have been referred to a letter of instruction from me to Dr Karch dated 13 August 2015 (PIRC-03435(a)) and an updated letter of instruction 8 September 2015 (PIRC-03435(b)). I drafted the first letter of instruction dated 13 August 2015 (PIRC-03435(a)) and recognise the four points of the Terms of Reference contained in it as having been drafted by me. I don't remember whether the second was initially drafted within the Investigation Team and then revised by me, before it was sent.

665. I have been asked how two additional terms of reference came to be included within the updated letter of instruction (PIRC-03435(b)), relating to whether handcuffs and leg restraints could have contributed to any positional asphyxiation and how the fracture to Mr Bayoh's rib was most likely to have been sustained. I think that the family raised those matters with PIRC and Crown Office.

Dr Karch's expertise

666. I have been referred to the letter dated 9 October 2015 from me addressed to Aamer Anwar (PIRC-01849, page 6), in which I state:

Dr Cary asked who the experts chosen by Crown were and was informed that they were Dr Karch and Dr Payne-James. Dr Cary

Signature of Witness

DocuSigned by:
[Redacted Signature]

expressed his professional regard for the significant expertise of both persons, considering Dr Karch to be one of the most eminent and expert practitioners in the world in the field of cardio pathology.

667. I have been referred to a letter dated 12 October 2015 from me addressed to the Lord Advocate concerning expert witnesses, including summaries of the reports received from Drs Payne-James and Karch (PIRC-04246). The letter states, at page 3: "*Dr Karch is considered to be one of the world's foremost experts in this field.*" That information was provided to me by the Investigation Team and formed part of a draft letter given to me.

668. I have been asked if I recall who drafted the letter dated 12 October 2015 (PIRC-04246). I think it may have been Mr Mitchell.

669. I have been asked if I would read letters that were drafted by colleagues in my name before they were issued. Yes, I did.

670. I have been asked how I came to the understanding that Dr Cary had expressed his professional regard for Dr Karch's expertise. I was advised of that by a member of the Investigation Team and the information was contained in the draft letter which I think was provided by Mr Mitchell.

671. I discussed the issue which had been raised in relation to events at Dr Cary's house with Mr Mitchell. My recollection is that he had explored that with Mr Harrower and then provided me with the information.

672. I have been referred to a letter dated 6 November from me to Mr Anwar (PIRC-01856(a)), in response to a letter from Mr Anwar dated 28 October 2015 (PIRC-01852(a)), in which I state, on page 1:

DSI Harrower's conversations with Dr Carey in relation to Dr Karch has been explored. He has advised that Dr Carey enquired as to who had

Signature of Witness

DocuSigned by:
[Redacted Signature]

been instructed as expert witnesses and when DSI Harrower advised him of their identity, DSI Harrower's recollection is that Dr Carey stated "I know Dr Karch. He is very well regarded in his own area of expertise".

DSI Harrower is clear that Dr Carey did not provide any personal view on Dr Karch's eminence or expertise and it appears that there has been a misinterpretation of DSI Harrower's rehearsal of his conversation, which in turn has led to the phrase "eminent and expert practitioner" being erroneously referred to in my letter of 9 October 2015.

673. I do recall this as I queried the discrepancy with Mr Mitchell. My recollection is that Mr Mitchell had discussed the circumstances with DSI Harrower and that the original information provided to me had been misinterpreted. I cannot recall what the further explanation for that misinterpretation was.

674. I discussed that with Mr Mitchell as I was surprised that there had been any misunderstanding in relation to the information that DSI Harrower provided. I didn't speak to DSI Harrower about it as Mr Mitchell had already addressed the matter with him.

675. I have been asked what impact the misinterpretation of Dr Cary's comments had on the decision to select or instruct Dr Karch as an expert witness. I don't think it had any bearing on the inclusion of Dr Karch on the list of experts suggested to the Lord Advocate. Dr Karch had already been identified as a potential expert witness, in advance of Mr Harrower's conversation with Dr Cary.

676. I have been referred to a letter dated 6 November 2015 from Aamer Anwar & Co marked for my attention (PIRC-01858, page 8), which states: *"The fact that Dr Cary refutes the claims by a senior PIRC investigator as to the*

Signature of Witness

DocuSigned by:
[Redacted Signature]

recommendation of Dr Karch, means that the claims by the investigator are either a complete distortion of the facts and/or a deliberate attempt to steer the investigation in a specific direction." Neither description fitted my experience of Mr Harrower at all. I was surprised and disappointed that there had been any conflict in relation to the versions, and I shared that with Mr Mitchell. I don't recall the specifics of that discussion now.

677. I do not know how there was any misinterpretation of the original information, particularly if it was supplied by Mr Harrower as his communication style was clear and not usually susceptible to misinterpretation. I don't know if the misinterpretation was in communication between Mr Harrower and Dr Cary or Mr Harrower and Mr Mitchell.

Excited delirium

678. I have been asked, at the point that Dr Karch was instructed by PIRC, what awareness I had of excited delirium. My knowledge was largely confined to what had been identified in the post-mortem report and discussions following that post-mortem report. It seemed as though there was a lack of consensus amongst medical experts on whether or not it was a recognised condition.

679. I have been asked if the reference to excited delirium within the final post-mortem report (PIRC-01445, page 17) led to PIRC taking steps to explore this within the investigation. The only steps which PIRC took in relation to excited delirium, was to engage in discussion with Crown Office staff on what was understood by the term excited delirium and a recognition that there was a lack of medical consensus on whether it was a recognised condition but no steps were taken within the investigation to advance it as a factor in the death.

680. I have been referred to a letter dated 11 May 2015 from Les Brown addressed to me (COPFS-02833(a), page 1), which states: "*Any history of*

Signature of Witness

DocuSigned by:
[Redacted Signature]

mental health problems should be looked into to exclude such conditions as excited delirium causing his demise.” Yes, I’ve seen that letter which instructs investigation of Mr Bayoh’s medical history to exclude the condition of excited delirium. Following discussion of the term with COPFS staff, steps were taken to investigate Mr Bayoh’s medical history but not to advance excited delirium as factor in his death.

681. I have been asked if I was aware of Dr Karch’s views in relation to excited delirium at the point he was instructed by PIRC. I wasn’t aware of his views at the point that the Lord Advocate instructed PIRC to approach him. I subsequently identified that he had published a few papers on the subject amongst many others he had written on cardiac pathology, drugs deaths and positional asphyxia. I don’t recall concerns being expressed about his views until around the time that it was raised in a media article.

682. I have been asked if Dr Karch’s previous work in relation to excited delirium was a factor that led to him being instructed as an expert witness. No, he was proposed to the Lord Advocate on the basis that he had expertise in cardiac pathology and toxicology.

683. I have been referred to a letter dated 10 November 2015 from me addressed to Aamer Anwar (PIRC-01859, page 1), which states:

As you are aware, all the experts whom PIRC have approached have been approached and instructed on the explicit instructions of the Lord Advocate. I would also remind you of the contents of my letter of 10 September 2015 in which I detailed the terms in which the Lord Advocate instructed that the experts be commissioned.

For the sake of clarity, I can again confirm that “excited delirium” did not form part of those explicit terms.

Signature of Witness

DocuSigned by:
[Redacted Signature]

684. I have been asked if PIRC had any informal discussions with its experts in relation to excited delirium, beyond the explicit terms of reference contained within the experts' letters of instruction. I'm not aware of any such conversations. There was no implied meaning behind what's stated in the letter. My understanding of, "Did not form part of those explicit terms" is that the terms of instruction as agreed by the Lord Advocate specifically related to the drugs, the restraint, the CS spray, and the combination, and that there was no direction in relation to excited delirium.

Dr Karch's comments in the media

685. My recollection is that Dr Karch was approached by the media following the family's press release and at that stage, he contacted the office when he was told, clearly, not to provide any commentary to the media. My recollection is he did however provide some comments to the media.

686. I have been referred to an article within the Scottish Sun on Sunday on 1 November 2015 (AAC-00381, page 38) in which Dr Karch is quoted as stating, with reference to Mr Bayoh: *"I can tell you that I saw evidence of heart disease"*. Yes. I remember that.

687. I have been referred to the letter dated 6 November 2015 from Aamer Anwar & Co marked for my attention (PIRC-01858, page 2, point 5), which states: *"At this stage the family are calling for the dismissal of Dr Steven Karch and any reliance on his findings, the Lord Advocate was also advised of this"*. The witness was instructed by the Lord Advocate and it was for the Lord Advocate to consider whether he wished to place any reliance on his findings or not. I think that was discussed at a meeting with COPFS staff, along with the advice that Dr Karch had been given by PIRC.

688. I have been referred to the letter dated 6 November 2015 from Aamer Anwar & Co (PIRC-01858, page 2, point 2), which states: *"We are seriously*

Signature of Witness

DocuSigned by:
[Redacted Signature]

concerned once again at the failure of PIRC failing [sic] to contact us with regards to this matter whether by telephone or in writing." I have been asked if consideration was given to contacting Mr Anwar following the publication of the article on 1 November 2015. No, I don't know if consideration was given to that as I was out of the country at that time and not aware of the article. On my return, Mr Mitchell and I met with the Lord Advocate and learned that Mr Anwar either had met or was to meet the Lord Advocate that day too.

689. I have been asked if it would have been best practice for PIRC to have contacted Mr Anwar following reporting of this nature appearing in the media. It may have been best practice, but I don't know what would have been achieved by contacting him after the article had appeared. It is evident from his letter that he had a well-informed knowledge of what had appeared in the media and had discussed the matter the day before writing his letter, with the Lord Advocate, who had instructed that Dr Karch be approached as an expert witness.

690. I have been asked if PIRC considered apologising to Mr Bayoh's family for one of its expert witnesses becoming involved in this sort of media reporting. No. Dr Karch was an expert witness instructed by the Lord Advocate. PIRC had specifically advised Dr Karch not to communicate with the press and, in the face of that, he had provided commentary. We were also aware that Mr Anwar had met the Lord Advocate on 5th November to directly express his concerns about Dr Karch's comments.

Delivery of samples to expert witnesses

691. The investigators would normally personally take samples to the relevant experts to allow them to examine them.

Signature of Witness

DocuSigned by:
[Redacted Signature]

692. I have been asked if the investigator would usually remain with the expert whilst the examination took place. Yes. That would be my expectation. It would be good practice to remain with samples to ensure their continuity.

693. I have been asked if this practice was set out within a SOP. I can't remember whether or not it was.

694. I have been asked if PIRC's investigators would have been aware that this was considered best practice. Yes.

695. I have been referred to DSI Harrower's second PIRC statement (PIRC-00008, page 3), in which he refers to meeting with Dr Cary on 20 August 2015:

The samples were left with Professor Carey for him to complete his work.

About 1503 hours that day I re-attended at Professor Carey's home address and collected the box containing the histology slides. I checked the contents and all was in order. I thereafter left this location to travel back to Scotland.

696. I have been referred to the letter dated 9 October 2015 from me to Mr Anwar (PIRC-01849, page 6), in which I state: "As you may be aware, in order to facilitate the examination by your expert, Dr Nat Cary, of histology and other samples, a PIRC investigator travelled to Dr Cary's home with the samples and remained while he examined them." Yes, Mr Mitchell provided me with that information. I don't know where he got that information from.

697. I have been referred to the letter dated 6 November 2015 from Aamer Anwar & Co marked for my attention (PIRC-01858, page 7, point ii), which states:

Signature of Witness

DocuSigned by:
[Redacted Signature]

Can you explain why you stated that your investigator remained with Dr Cary with the samples when he examined them, according to Dr Cary, the investigator actually leaves as the examination would take some time, and went to Norwich for it is believed sightseeing until the examination was carried out.

698. I recall subsequently discussing with Mr Mitchell how the discrepancy had arisen and whether Mr Harrower had left the sample with Dr Cary. He advised me at that time that Mr Harrower had left the sample. I didn't regard it as best practice and I don't think Mr Mitchell did either.

699. I have been asked if this led to a change in practice within PIRC in relation to the delivery of samples to expert witnesses. No. Investigators were reminded of the existing practice to stay with samples.

Expert witness package

700. I have been referred to the Minute submitted to the Lord Advocate in relation to four potential expert witnesses and the attached expert witness package (COPFS-06005). I compiled the Minute. In relation to the expert witness pack, draft material was compiled within the Investigation Team, which I then reviewed and redrafted

701. I have been asked if COPFS provided any explanation for their decision to select two of the four expert witnesses proposed. I don't recall any explanation being provided and considered that it was the Lord Advocate's prerogative to choose which witnesses he wanted to instruct.

Ashley Wyse's statement

702. I have been referred to a letter dated 15 March 2017 from Stephen McGowan addressed to me (COPFS-02575), relating to an issue identified within

Signature of Witness

DocuSigned by:
[Redacted Signature]

Ashley Wyse's witness statement. The historical background to this was that there had been difficulties with the COPFS external agency reporting system for a number of years, which I had raised with Crown Office on a number of occasions, with a view to trying to resolve those difficulties. The issue related to the fact that the COPFS system did not receive CLUE statements in a form that was acceptable to Crown Office staff. In this instance when the PIRC team had sent the statements via the COPFS system, Crown Office staff, to alleviate their burden in converting them to an acceptable format, requested the statements first of all in PDF format. The Investigation Team converted the statements into that format, and the entire content of the statements was sent again. On receipt of the PDF versions. COPFS requested the documents as MS Word versions which required PIRC staff to cut and paste the CLUE statements into Word documents. In the course of that exercise, one paragraph at the bottom of Ashley Wyse's statement was not transferred.

703. My recollection is that all relevant sections of the witness statements had been included in the briefing material along with their statements and been sent to the expert witnesses, but to ensure that there was no discrepancy, the full statements were sent again.

704. I have been referred to the letter dated 15 March 2017 (COPFS-02575, page 1), which states:

It has been discovered that the redacted statement disclosed to Mr Anwar and expert witnesses including Dr Nat Cary has also omitted this information. Although it is the case that the summary of evidence disclosed to witnesses does include this information there is a risk that experts will have placed reliance upon the contents of statements and in view of the importance of the information omitted, Crown Counsel have instructed that the Crown should advise the expert witnesses and the solicitor representing the family that the statement was incomplete

Signature of Witness

DocuSigned by:
[Redacted Signature]

and disclose an amended redacted statement that includes the passage omitted.

705. Yes, that's what happened.

706. I have been referred to a letter dated 26 October 2016 from John McSporran addressed to Les Brown (COPFS-02566), which states: *"I have carried out a check of all the statements sent to you on this disc and I can confirm that with the exception of statement No 020- Ashley Wyse, all the remaining statements, apart from one mentioned below, are in order."*

707. I have been referred to the letter dated 15 March 2017 (COPFS-02575, pages 1 – 2), which states, with reference to the point at which the issue with Ashley Wyse's statement was originally identified:

Following discovery of the omission, John McSporran wrote to the Head of CAAPD advising that a disc containing 463 statements prepared by PIRC and submitted to CAAPD had been checked and that issues had been identified only in relation to the statement of Ashley Wyse and one other statement. However, a copy of the original handwritten statement of Ashley Wyse has been compared with the typed version by the Crown and a number of anomalies have been highlighted. In the light of this I require to have assurance from you that all typed statements have been proof read and have been compared with the original handwritten versions for accuracy.

708. I raised my concerns with Mr Mitchell about these anomalies. My recollection is that every statement was then checked for anomalies or discrepancies and certified as having been checked. I can't remember any other issues being identified.

Signature of Witness

DocuSigned by:
[Redacted Signature]

709. I have been referred to an email dated 24 March 2015 sent on my behalf to John McSporran and John Mitchell (PIRC-02457), which states, with reference to the issue identified with Ashley Wyse's statement:

Can you please explain to me in detail how this occurred and describe what steps you have now taken to prevent any reoccurrence of such omissions from statements in the future.

Additionally, the further anomalies between hand written and typed statements, identified by the Crown give me further concern and I would be obliged if you would confirm that with immediate effect, investigators personally proof read and check that the typed statements produced contain the entire content of the statement, that it is endorsed to this effect and confirms that it has been proof read for accuracy.

The matters identified by Mr McGowan tend to indicate a lack of attention to detail and thorough quality assurance process.

Can you please advise me of the steps you have taken to address both matters and confirm that the revised procedures have been implemented with immediate effect.

710. Following this, the investigators were required to certify on each typed statement that they had checked the typed version against their handwritten versions to ensure that they were accurate.

711. I was aware of the general standards of thoroughness within the Investigation Team and level of work and was disappointed that this issue had arisen as I had expected that a comparison of versions would have been undertaken to check accuracy.

Signature of Witness

DocuSigned by:
[Redacted Signature]

712. I have been asked if the identification of this issue led to me having any concerns about the thoroughness of PIRC's investigation more generally. No.

713. I have been referred to a letter dated 28 April 2017 from me to Stephen McGowan (PIRC-02070(a)), in which I apologise for the error and outline how the issue arose. I have been asked if this reflects my earlier recollection of how the issue arose. Yes, and I found the matter to be particularly disappointing as we had previously raised the issue with Crown Office and asked that it be resolved. It was recognised that the issue lay at the Crown Office end and, despite meetings with their IT team, no solution was actioned. The impact of the Crown Office system's inability to receive statements in the CLUE format created a considerable additional burden for the investigators as in compliance with Crown Office requests, they had to provide statements to Crown Office in alternative formats. That was a significant matter in this case, as it entailed reformatting about 463 statements.

714. We had met with COPFS staff on a number of occasions in an effort to progress this issue, but no solution was installed. COPFS IT staff indicated that they were extremely busy with other IT projects and it appeared that resolving the issue with the external agency reporting system was not a priority for them.

Health and Safety Executive (HSE)

715. I can remember Crown Office were taking forward a query in relation to whether the HSE could explore aspects of the Bayoh investigation.

716. I have been referred to a letter dated 20 August 2015 from Les Brown addressed to me (COPFS-02528), in which Mr Brown states that he is of the view that HSE require to consider whether the findings of PIRC's interim report require HSE's involvement. I don't recall receiving that letter, but I do

Signature of Witness

DocuSigned by:
[Redacted Signature]

recall that HSE was given access to the material and subsequently advised Crown Office that they did not intend to investigate the matter.

717. I have been referred to a letter dated 31 March 2016 from Alistair McNab, HSE, to Stephen McGowan (COPFS-01954), in which Mr McNab identified that HSE did not propose to investigate the incident involving Mr Bayoh at that stage as HSE did not consider that the incident met its criteria for investigating public safety incidents of this type.

718. I have been referred to a subsequent letter dated 5 April 2016 from Stephen McGowan addressed to me (PIRC-02047(c), page 2), which states:

In relation to the death of Sheku Bayoh Mr McNab uses the same criteria. Again we are of the view that HSE have not properly categorised this incident. There are matters in relation to the training concerning CS/PAVA sprays and use of force which we consider systemic issues. In particular there are systemic issues in our view around how police officers collectively approach an incident such as this. Whilst they are trained individually in the use of force a situation like this where multiple police officers were involved in the restraint appears to us to be systemic issues in the training. Again we are working on a response in relation to this.

719. Yes, I recall that the Crown Office view was that HSE should be undertaking an investigation and that Mr McGowan intended to explore that further with HSE. I thought that there potentially was a role for HSE and was aware that Crown Office were pursuing that with HSE.

720. I have been asked if I had any direct contact with HSE during the investigation. I don't think I did.

Signature of Witness

DocuSigned by:
[Redacted Signature]

721. I can't recall HSE being involved in any other PIRC investigations. I know that Crown Office staff were in discussion with HSE about the M9 investigation at around the same time as the Bayoh investigation but, apart from those two investigations, I don't recall there being HSE engagement in other PIRC investigations.
722. I have been asked if HSE became involved in the M9 investigation. I don't think they did. My recollection is that on the basis of the evidence available, I thought that they may be more likely to investigate that matter but was content that Crown Office were pursuing both. My recollection is that HSE did not become involved in either.
723. I have been asked if in 2015 PIRC was equipped, in terms of resources and expertise, to investigate matters arising under the Health and Safety at Work etc. Act 1974 where HSE chose not to investigate. Possibly not but as I have not worked closely with HSE, I do not know what resources and expertise they had.
724. I have been asked if HSE became involved in the investigation after PIRC had obtained evidence from its expert witnesses and submitted the final report to COPFS. I can't remember them being involved.

Compliance with SOPs

725. I have been referred to a letter dated 1 June 2015 from Les Brown addressed to me (COPFS-02532), which states: *"John Mitchell is aware of the situation, but I would be grateful if you would confirm that the PIRC investigation will examine compliance with standard operating procedures in relation to the death of Mr Bayoh and specifically address this in the report to the Crown."* I do remember that request was received. Examination of compliance with SOPs would form part of most investigations. The terms of the SOP would be examined against the evidence obtained of the actions taken and may be

Signature of Witness

DocuSigned by:
[Redacted Signature]

commented on in reports. In this investigation, SOPs on the Use of Force and the Use of CS and Pava Sprays were examined and some commentary provided in the report.

726. The SOPs detailed the various escalating circumstances which officers could face and considerations of how they should approach those.

727. I have been asked if PIRC investigations following deaths in custody would always involve an analysis of officers' actions against the terms of SOPs. Usually there was a comparison between what the SOP detailed and the actions taken. I can't remember whether or not there was always a written analysis of that, particularly in relation to the Use of Force SOP, as determination of whether the actions were legal, proportionate or necessary was a matter which COPFS required to determine.

728. I have been asked if PIRC gave any consideration to the training that the officers had received. Yes, that was considered and the training records of the officers and the currency of that training was examined. My recollection is that all of the officers' training was up to date.

729. I have been asked if PIRC looked at what the officers' training comprised and the techniques in which the officers had been trained. I can't remember whether or not, it was.

Repatriation of Mr Bayoh's body

730. There was media coverage that efforts had been made to repatriate Mr Bayoh's body to Sierra Leone which was linked to coverage of the family's dissatisfaction that the post-mortem had gone ahead before other family members were available. It suggested that Police Scotland were responsible for efforts to repatriate the body to Sierra Leone. This suggestion was inaccurate.

Signature of Witness

DocuSigned by:


731. I think I, Mr Mitchell, Mr Little or the Comms Team raised concerns with Crown Office around the inaccuracy of that reporting and in particular their responsibility for instructing that the post-mortem should go ahead. That discussion may have been with Mr McGowan or the COPFS Comms Team.

732. I have been asked what the COPFS response was in relation to these concerns. They took no action to correct it. I thought it should have been addressed because from a PIRC perspective it was inaccurate information which gave the impression that PIRC had instructed the post-mortem to go ahead, despite the family's request, when in fact that action had been taken by Crown Office.

733. I have been referred to a report dated 25 October 2015 in the Scottish Mail on Sunday with the headline "*Revealed: Police bid to send Sheku's body to Africa...without telling his relatives*" (PS10004). I have been asked if I had any discussions with Police Scotland in relation to this reporting. I don't think so.

734. I have been referred to the report dated 25 October 2015 (PS10004, page 2), which states: "*The Police Investigation [sic] and Review Commissioner watchdog, which is investigating Mr Bayoh's death, said it could not comment.*" As I indicated earlier, I was out of the country at that time and the line was not run past or approved by me.

735. I have been asked if I recall any discussion within PIRC about how to respond to that reporting. No, I don't recall any discussion.

736. I have been asked if I had any contact with the Foreign and Commonwealth Office or the Sierra Leone Embassy during the investigation. No.

Signature of Witness

DocuSigned by:
[Redacted Signature]

Data protection

737. Mr Brown requested that the PIRC investigate a number of concerns which Mr Anwar had raised with him, including Mr Anwar's concerns relating to data protection issues about friends and family of Mr Bayoh and also himself. Following receipt of Mr Brown's letter we met with Crown Office staff and discussed what steps would be taken to advance investigation of the matters identified in Mr Brown's letter.

738. I have been referred to the letter dated 2 September 2015 from Les Brown addressed to me (COPFS-02557, page 3), which states:

Previous correspondence instructed PIRC to examine whether there is any evidence of an unauthorised access to an interrogation of the information systems of the Police Service of Scotland, and if so, whether this could constitute a breach of data protection legislation. This investigation should be carried out as expeditiously as possible.

739. I can remember that the Investigation Team had difficulty in obtaining information from Police Scotland in connection with their investigation of this. I don't remember the reasons provided by Police Scotland now for that.

740. I recall that Mr McSporran had been having difficulties trying to contact Carole Auld, the Head of PSD, to secure a statement and as I was meeting with her as part of a regular programme of meetings, I suggested at the end of our meeting, that she speak to Mr McSporran to discuss the provision of a statement. I understand that she did that.

741. I have been asked if I had any other conversations or meetings with Police Scotland in relation to this aspect of the investigation, beyond the meeting with Carole Auld. No.

Signature of Witness

DocuSigned by:
[Redacted Signature]

742. I have been asked if the discussion with Carole Auld led to matters being resolved in this regard. I think that she did undertake to assist but that there was considerable delay in receiving the material requested.

743. I have been asked what my colleagues' views were in relation to Police Scotland's position regarding the provision of information for this strand of the investigation. I think that they thought that they were being reluctant and unhelpful.

744. I was concerned that, having requested Police Scotland to provide information in connection with a Crown directed investigation, Police Scotland weren't providing it. I don't think I would describe it as a frequent problem but there were some sticking points in other investigations too.

745. I recall that in another Crown directed investigation, there was resistance by Police Scotland to allow PIRC investigators to access material which it held. That matter was resolved through discussion.

Intelligence held in relation to Aamer Anwar

746. I have been asked if I recall any aspects of PIRC's investigation regarding the intelligence held by Police Scotland in relation to Aamer Anwar prior to the submission of PIRC's report to COPFS on 10 August 2016. No.

747. I have been referred to a draft application to the Procurator Fiscal for a search warrant for all premises occupied or used by Police Scotland and those occupied by Scottish Police Authority seeking all personal data held concerning Aamer Anwar (PIRC-04535). I can remember that there was some discussion, possibly with Mr Mitchell or Mr McSporran, about a search warrant as Police Scotland seemed to be reluctant to provide information sought. I don't think any steps were taken to action an application.

Signature of Witness

DocuSigned by:
[Redacted Signature]

748. I have been asked if I can recall any details about why Police Scotland were resisting providing the information. No, I don't.

749. I have been asked if the meeting I had with Carole Auld was in relation to this aspect of the investigation, or the checks of police systems carried out by staff and officers at Police Scotland. No. The meeting I had with Carole Auld had nothing to do with the investigation. It was one of a series of regular meetings about other work. At the end of our meeting, Mrs Auld went on to meet Mr McSporran to discuss the provision of a statement. I don't know whether that was in connection with the general checks or in relation to this aspect of the investigation.

750. I have been asked if I recall any discussion about interviewing officers under caution in relation to this aspect of PIRC's investigation. No.

751. I have been asked if the investigation of the intelligence held by Police Scotland in relation to Aamer Anwar was part of PIRC's investigation in relation to the incident involving Mr Bayoh. Whilst it did not form part of the circumstances of the original incident under investigation, I think it related to concerns which Mr Anwar had raised in correspondence with Mr Brown and which Mr Brown had forwarded to PIRC for investigation.

752. I have been referred to a letter dated 27 October 2016 from Stephen McGowan addressed to me (COPFS-02567), which instructed PIRC to investigate intelligence held by Police Scotland in relation to Aamer Anwar which, *"whilst badged 'refract', appear to be linked to be linked to his professional activities as a lawyer and human rights campaigner."* My understanding is that "refract" refers to counter terrorism intelligence. Following the instruction, I and other members of the Investigation Team met with staff from the Information Commissioner's office as directed by COPFS. We advised them of the circumstances, the evidence that was available, and invited them to consider the material.

Signature of Witness

DocuSigned by:
[Redacted Signature]

753. My recollection is they spent some time examining the material and that Mr McSporran had a further discussion with them. I do not recall what the ultimate outcome was.

Final Report

754. Mr McSporran, as the Head of Investigations, compiled the draft report with input from members of the Investigation Team and then passed it to Mr Mitchell for assessment. He in turn, then provided a draft report to me. I reviewed it and sought clarity on any areas which I thought were either unclear or required further clarification and suggested any amendments following that.

755. I have been asked if I recall any specific areas that required clarification or amendment, or any major issues that required to be addressed. I don't, no.

756. I have been asked what Mr Mitchell's role was in this process. The report was passed to him for review, assessment and revisal as part of a quality assurance process before he passed a draft to me.

757. The death took place on 3 May, and a critical element of this investigation was the post-mortem report and medical evidence. The post-mortem report was supplied around six weeks after 3 May, in around the middle of June. From recollection, most of the evidence contained in the original Terms of Reference was reported to Crown Office at the beginning of August 2015, which was approximately six or seven weeks after the final post-mortem report was provided. In June 2015, just at around the time the final post-mortem report was being made available, Crown Office were seeking the proposed timescale for submission of the final report. I think that request was contained in a letter from Mr McGowan.

Signature of Witness

DocuSigned by:
[Redacted Signature]

758. So, the initial report which responded to the original Terms of Reference and which contained statements from members of the public, who witnessed events that morning, the statements of the police officers who engaged with Mr Bayoh and the statements of the pathologists who conducted the post-mortem was with Crown Office, within about 3 months, in August 2015. Just before that, the Terms of Reference began to be significantly expanded by Crown Office and over the ensuing months, more were added providing more and more grounds for investigation. Dealing with those additional matters obviously extended the length of the investigation. I think it was undertaken as expeditiously as possible having regard to the scale and complexity of the investigation in the circumstances, and against the backdrop of the other levels of business that were ongoing.

759. I was conscious of what the normal reporting timescales would have been within Crown Office for serious matters such as this and was endeavouring to meet those timescales before the Terms of Reference were expanded. I was encouraged that the original report was with Crown Office by that stage. The fact that the post-mortem report was inconclusive obviously required further significant and complex investigation and the need for expert evidence on a range of matters. That took a while to ingather from witnesses that were scattered throughout the UK and elsewhere. The addition of several further Terms of Reference, whilst related but disparate, further contributed to the time required to investigate those matters before submitting the report.

760. There was no delay in progressing the investigation. It was actioned as quickly as possible, and was prioritised. The work that required to be undertaken took time. There's always to be a balance struck between the thoroughness and the speed at which the investigation could be undertaken. This was a serious and complex investigation.

761. I have been asked if drafts of the report would usually be retained by PIRC. They would not normally be retained after the final report was produced.

Signature of Witness

DocuSigned by:
[Redacted Signature]

762. I have been asked how I could be confident in the completeness and thoroughness of the investigation, and the associated report, if I had not been involved in all aspects of the investigation. From my discussions and briefings on various aspects of the investigation and from my experience of the consistency of the quality of other investigative work undertaken by experienced and skilled staff I considered that the investigation and report to be accurate and complete. The reports were submitted to the Lord Advocate for his consideration and any further direction.

763. I have been asked how much reliance I placed on my colleagues in ensuring the report was accurate and complete. I placed significant reliance on them. The Director of Investigations, Mr Mitchell, Mr McSporran, the Senior and Deputy Senior investigators and several other members of that team were highly experienced and skilled in investigating serious matters and were well aware of the need for accuracy and completeness.

Publication of reports and recommendations

764. In matters directed by the Lord Advocate, the legislation does not authorise the PIRC to publish the report. However, once the Lord Advocate determined whether further action was appropriate, and any proceedings were concluded he or she often recognised the value in PIRC sharing information about matters contained in the report with Police Scotland, which took place with the approval of Crown Office.

765. In matters referred by Police Scotland, some details of the reports were normally published at the conclusion of any proceedings. Reports in matters referred by the SPA were not published.

766. The legislation does not include powers to enforce the implementation of PIRC recommendations.

Signature of Witness

DocuSigned by:
[Redacted Signature]

Decision not to prosecute

767. I have been asked when I became aware that COPFS had taken the decision not to prosecute the officers involved in the arrest of Mr Bayoh. When the matter was reported in the media. I don't think I knew of the final decision before then. I would have expected to have learned before it appeared in the press.

768. I have been referred to a report dated 23 September 2018 in the Scottish Mail on Sunday with the headline "*Sheku Death: Police Cleared*" (PS18106). I saw it either that day or the following day in the press cuttings. I think that Mr Mitchell discussed the coverage of that with COPFS but I don't know when those discussions took place.

769. I have been asked if any member of PIRC's team spoke to Mr Bayoh's family or Mr Anwar following publication of this report. I don't think so as it had been well publicised and the Lord Advocate had made it well known that when he had determined whether or not there would be any criminal proceedings, he would meet the family to share his decision with them directly. Apart from that, the Lord Advocate had not communicated any reason for his decision to PIRC. Therefore, the PIRC would not have been able to assist the family by providing any additional information.

770. In other investigations, normally the Crown Office would have informed PIRC of their decision and PIRC in turn would confirm to Crown Office, once the decision had been communicated to the family, before there was any external commentary. The Lord Advocate however had made it clear that in this case, he would share that information with the family and Crown Office confirmed, following the article that that remained their intention.

Signature of Witness

DocuSigned by:
[Redacted Signature]

771. I have been asked if PIRC had any involvement in investigating how this story came to be leaked to the press. I think PIRC may have been involved in investigating it and there was a separate investigation undertaken at Crown Office.

Witness interviews

772. I have been informed that, on 26 May 2015, PIRC investigators took a statement from Alan Finlayson, a paramedic involved in the response to the incident on 3 May 2015. I have been referred to Mr Finlayson's statement to the Inquiry (SBPI-00007, paragraph 110), in which he states, with reference to PIRC's investigators:

They were really quite snippy and quite arrogant about the whole thing. It really didn't start off well that meeting. There was a lot of bad feeling. I was under duress to provide evidence from a statement that technically I shouldn't even have had in my hand at that time.

773. I have been informed that, on 27 May 2015, PIRC investigators took a statement from James Hume, a friend of Mr Bayoh. I have been referred to Mr Hume's Inquiry's statement (SBPI-00021, paragraphs 54 – 57), in which he states, with reference to PIRC's investigators:

They were trying to lead the conversation and lead me on the type of person Shek was.

They also wanted to know if he was aggressive and if he got involved in fights. I just felt really uncomfortable. It was definitely leading questions and it felt like accusatory rather than fact-finding. It was like they had a picture built up and they were just confirming what they already thought with me.

Signature of Witness

DocuSigned by:
[Redacted Signature]

...

After they left I was quite upset. It was like they were trying to smear his name. I answered their questions but I felt like I'd let him down, betrayed him a bit, because it was like I never got a chance to say what type of person Shek was. It built up a wee bit mistrust towards PIRC and the police just because of the way that went.

774. I wasn't aware of either of those comments.

775. I have been asked how senior members of the investigation team would become aware if PIRC's investigators were taking an inappropriate approach with witnesses. They would become aware if someone complained about it.

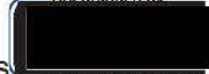
776. I have been asked if I recall any complaints being made in relation to PIRC's investigators during the investigation. No.

Examination of mobile phones

777. I have been referred to an email chain between PIRC and COPFS starting on 21 February 2018, in which there were discussions in relation to the examination of data from Ashley Wyse's mobile phone (PIRC-02587). I have been asked if I was aware of these discussions at this time. Not that I can recall.

778. I have been referred to an email within the chain, on 21 February 2018, in which Stuart Taylor seeks guidance from COPFS in relation to PIRC's examination of the download of Ashley Wyse's phone and whether COPFS was content for PIRC to only examine the files from the download that related to the incident on 3 May 2015, based on Ashley Wyse's consent within one of her statements.

Signature of Witness

DocuSigned by:


779. I have been referred to a subsequent email in the chain, on 27 February, in which Les Brown replied, stating: *"PIRC should pursue all legitimate investigative avenues in order to legally obtain and evaluate evidential material that assists in the inquiry instructed by the Crown."*

780. I have been asked if I would have expected COPFS to have provided more definitive guidance than this to PIRC. Yes. I would have expected guidance on whether they wished the data on her phone relating to her personal messages and emails to be examined and if so under what authority.

781. I have been referred to subsequent emails within the chain sent by Billy Little and John McSporran on 27 February 2018 and 12 March 2018 respectively. I have been referred to John McSporran's email, in which he states:

Ashley Wise does not give authority for anything. The phone is a Crown production and is seized as a production. At the point of seizure, ownership transfers to Crown, i.e. PIRC, who can examine anything on the phone to determine whether it has a bearing on the investigation. I think our investigators and the police need to understand these matters better.

Examine all the material to determine whether it has a bearing, if it has, produce it as evidence.

782. The witness handed the phone over to only facilitate recovery of the video footage and whilst the phone may have been a production, because it held the original footage, it is difficult to understand how that provided authority to view the other data held on the phone.

Investigation overall

Signature of Witness

DocuSigned by:
[Redacted Signature]

783. I have been asked if, knowing what I know now, there is anything I would have done differently within this investigation. I think where a family in a serious matter like this has chosen not to directly engage with the standard family liaison process that I would be inclined to try and understand better why that was the case, to see if it could be addressed. However, in this case I respected the fact that the family's request was made through their legal representative and that they requested that the family liaison be channelled through him.

784. I have been asked if there is anything else that PIRC could have done differently within the investigation. It could have agreed with COPFS and the family, one point of communication for the family, either within COPFS or PIRC, who could have established a defined channel for the provision and sharing of information to all parties.

785. I have been asked if there was any process within PIRC to assess lessons learned from its investigations. Generally, any lessons learned would be raised at the team briefings and shared at that stage. For example, the issue around the comparison between the handwritten and typed statements was raised at a team briefing. Generally, in some of the serious investigations there were individual meetings convened with senior investigative staff and those who had been most heavily involved in the investigation.

786. I have been asked if a such a meeting was convened for the Bayoh investigation. Yes, a debrief session was held. A number of the investigators who took a lead part in the investigation were present, and we reviewed some of the aspects of the case, such as the proposal to strengthen Regulation 5 and whether statements required to be requested via the SPOC. There was also general discussion around the wider use of the PIM process.

Signature of Witness

DocuSigned by:
[Redacted Signature]

787. In relation to Regulation 5, whilst the Scottish Government were aware of it, we drew it to the attention of the Justice Committee and the Angiolini Review. I am aware that Dame Elish Angiolini made a recommendation in that connection for a duty of candour. As regards the PIM process, there was a recognition of its value, if closely managed, in a broader range of critical incidents, than solely just in firearms incidents. Police Scotland accepted that it would be appropriate to use the process more broadly in critical incidents.

Race

788. I have been asked if Mr Bayoh's race was a factor in any of my decisions and actions in the investigation. Not apart from the fact that it was considered as part of the investigation.


789. I have been asked if not giving consideration to Mr Bayoh's race could in any way have been an explanation for why a relationship could not be established with Mr Bayoh's family, due to the fact that black people may have experienced differential treatment in the past on account of their race and that might, therefore, have merited an alternative approach to family liaison in this case. It may have been.

790. I have been asked if, as at 3 May 2015, PIRC recorded the race or ethnicity of the deceased person who was the subject of an investigation following a death in police custody or death following police contact. I don't think that information was recorded.

Record keeping

791. I have been asked if I took any notes during the course of the investigation. I did not take any formal notes as in formal meetings there was a minute taker. Nor did I take any informal notes during the course of the investigation.

Signature of Witness

DocuSigned by:


The Inquiry

792. I've seen some clips of the Inquiry on the News, and, having been referred to Mr McEwan's evidence in this process, I've had a look at some of that.

793. I have been asked if what I have seen in the media or through the Inquiry website has had an impact on my evidence within this statement. No.

794. I have been asked if I have been in contact with any individuals who have been, or might become, witnesses in the Inquiry. No.

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

Signature of Witness  DocuSigned by:  January 22, 2024 | 9:56 PM GMT
90A69618B36643C.....Date.....