

Sheku Bayoh Inquiry
Inventory of evidence about race
Inquiry hearing 1, PS PIM, Cause of Death and written evidence

This Inventory should be read in conjunction with SBPI-00582 – Introduction to the
Inventory of evidence about race

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1. Introduction

1.1 General comments

This document collects and summarises relevant evidence relating to race, taken from Inquiry hearing evidence, statements and other evidence provided to the Inquiry.

When referred to “the attending officers” are the [nine](#) officers who attended Hayfield Road while Mr Bayoh was also there. They are PCs Alan Paton¹, Craig Walker, Nicole Short², Ashley Tomlinson, Alan Smith, Kayleigh Good, Daniel Gibson, James McDonough, and Sergeant Scott Maxwell.

A table setting out the witnesses referred to and a brief summary of their role in events referred to in this Inventory has been added in Annex 1.

1.2 Commonly used terms or acronyms

ACR means Area Control Room.

Airwaves means the secure private mobile radio communications network used by Police Scotland to communicate securely with each other whilst on duty.

ARV means Armed Response Vehicle.

Critical Incident means any incident where the effectiveness of the police response is likely to have a significant impact on the confidence of the victim, their family and/or the community. Such resources required to deal with the incident will be re-deployed by the police as necessary. The most senior officer within Police Scotland is also made aware of the incident.

FLO means Family Liaison Officer. They are specially trained officers who can provide a two-way flow of information between bereaved families and investigation teams. The primary role of a Family Liaison Officer is that of an investigator who will gather evidence and information from the family to contribute to the investigation.

Gold Group means the group of police officers responsible for delivering the strategic, tactical and operational response to an incident.

Gold Group Meeting means a meeting of the Gold Group convened by the police officer who has overall strategic command of the investigation to initially set the overarching strategy that all other plans should take account of. Roles are allocated to officers within the Gold Group in order to contribute towards the overarching strategy. Officers within the Gold Group may have to develop individual strategies for their particular area of responsibility to implement and support the overarching Gold Group strategy. Subsequent Gold Group Meetings can be arranged to monitor progress in relation to the overall strategy.

¹ Alan Paton has now retired from Police Scotland

² Nicole Short has now retired from Police Scotland

KPO means Kirkcaldy Police Office

MIT means the Major Incident Team

Moodle is the platform used by Police Scotland to deliver training to officers and staff.

OST means Officer Safety Training

PIM means Post Incident Manager

PIP means Post Incident Procedure

SIO means Senior Investigating Officer

SPF means Scottish Police Federation

SOP means Standard Operating Procedure

1.3 Chronology of events at Hayfield Road on 3 May 2015

Contact with Police at Hayfield Road

- Mr Bayoh was first sighted making his way to Hayfield Road by Mr Harry Kolberg, Mr Simon Rowe, and Ms Linda Limbert between 07:09 and 07:10.
- In response to the calls received by Police Scotland, PC Paton and PC Walker were the first to arrive at 07:20 at Hayfield Road. PC Paton were the first to engage with the man later identified as Mr Sheku Bayoh³. In their evidence, described in more detail below, PC Paton and PC Walker engaged with Mr Bayoh by issuing verbal commands with PC Paton discharging his CS spray⁴ first and PC Walker discharging his PAVA spray⁵ thereafter as it appeared that PC Paton's spray had been ineffective.
- PC Tomlinson and PC Short arrived next, also at 07:20. PC Tomlinson says that PC Walker was still engaging with Mr Bayoh but that he could not see PC Paton⁶. PC Short says that when they arrived she could see both PC Paton and PC Walker verbally engaging with Mr Bayoh⁷. PC Tomlinson says that after PC Walker had engaged with Mr Bayoh, Mr Bayoh then turned and walked in the opposite direction heading towards the roundabout with Hendry Road. PC Tomlinson says that he attempted to verbally engage with Mr Bayoh but he did not respond⁸. PC Short says that she also attempted to verbally engage but Mr Bayoh continued walking passed her. PC Tomlinson says that he also

³ Mr Sheku Bayoh will be referred to as Mr Bayoh

⁴ SBPI-00081 para 24

⁵ SBPI-00039 para 26

⁶ SBPI-00043 para 11

⁷ SBPI-00041 para 10

⁸ SBPI-00043 para 12

discharged his CS spray, firstly with a short burst and thereafter with a more prolonged burst⁹. He says that this struck Mr Bayoh at the top of Mr Bayoh's left neck or shoulder area and "that would have been the closest point to me"¹⁰

- PC Short says that she attracted Mr Bayoh's attention when she drew her baton and extended it. PC Tomlinson says that he is not sure what caught Mr Bayoh's attention and caused him to turn – whether it was the verbal commands or the feeling of the spray¹¹. PC Short says that Mr Bayoh turned round to face PC Tomlinson who was closest to Mr Bayoh, then PC Walker and then herself who was furthest away. PC Tomlinson said that he returned his PAVA Spray to the holder on his utility belt and drew his baton¹². PC Short says that Mr Bayoh responded saying "What?" and then said "Fucking come on then" in an aggressive tone¹³. PC Short says that Mr Bayoh then began to walk towards her and she began to retreat in order to maintain distance between them¹⁴. PC Short says that Mr Bayoh continued to walk towards her despite her commands to "stay back, stay back, get back"¹⁵. PC Tomlinson says that Mr Bayoh "was running around me and was chasing PC Short" and that led him to believe that Mr Bayoh was deliberately targeting PC Short¹⁶. PC Short says that "instinct kicked in and I was running away from him before I knew it"¹⁷ and she was running towards the houses on Hayfield Road¹⁸.
- PC Walker says that he first noticed PC Short when she was running away from Mr Bayoh¹⁹. PC Short says that whilst running towards the houses, she felt a single blow to the back of her head and she was unable to stay on her feet²⁰. PC Short says that she fell face forwards²¹ then "curling up into a ball and grabbing, like, the bun at the back of my head and trying to protect my head, and I was on my right hand side on the ground"²². PC Tomlinson says that whilst he cannot recall PC Short's body position, Mr Bayoh stamped on PC Short more than once²³.
- PC Tomlinson says that PC Short tried to push herself up from the ground but that Mr Bayoh stamped on the centre of her back²⁴.
- PC Tomlinson says that he also struck Mr Bayoh once in the "head area" which he said he did after he observed Mr Bayoh "making an attempt to kill/murder PC Short by stamping on her back whilst she was motionless on the ground"²⁵.
- PC Tomlinson says that following the initial baton strike Mr Bayoh turned his attention away from PC Short, He struck Mr Bayoh two or three more times but

⁹ SBPI-00043 para 22

¹⁰ 9/71/21

¹¹ 9/73/9

¹² 9/75/21

¹³ 8/63/19

¹⁴ 8/64/17

¹⁵ 8/66/15

¹⁶ SBPI-00043 para 24

¹⁷ 8/66/22

¹⁸ 8/69/16

¹⁹ SBPI-00039 para 46

²⁰ 8/71/7

²¹ 8/73/11

²² 8/74/3

²³ SBPI-00041 para 26

²⁴ 9/80/3

²⁵ SBPI-00043 para 22

striking him on his arms²⁶. PC Tomlinson says that at the point that he struck Mr Bayoh with his baton he was not aware of any other officers around him and he believed that he was the only officer left²⁷.

- PC Tomlinson says that he then saw PC Walker coming into his view and knock Mr Bayoh to the ground in “some sort of, like, bear hug, like wrestle thing”²⁸.
- PC Tomlinson says that whilst PC Walker and Mr Bayoh were on the ground, PC Tomlinson could see Mr Bayoh’s leg. He says that he struck Mr Bayoh two or three times with his baton to his Achilles area to limit Mr Bayoh’s ability to use his legs as leverage to get off the ground again²⁹. These baton strikes did not have the desired response and PC Tomlinson says that he then straddled Mr Bayoh’s legs using his own knees to balance on the road³⁰.
- PC Tomlinson says that Mr Bayoh was initially lying face down whilst he was on the ground³¹.
- PC Walker says that after tackling Mr Bayoh to the ground he was on his knees³² and took hold of his right wrist and forced his arm across his body. He says that he also applied pressure using his chest on Mr Bayoh’s right shoulder pushing Mr Bayoh onto his left side. PC Walker says that throughout this manoeuvre he was on his knees crouched over Mr Bayoh³³. PC Walker says that after PC Tomlinson joined him in trying to restrain Mr Bayoh, PC Paton arrived shortly thereafter and he also joined PC Walker in trying to restrain Mr Bayoh³⁴.
- PC Smith, and PC Good arrived at Hayfield Road at 07:21. PC Smith says that on his arrival he could only see PC Short initially but then saw the “other officers who were in the process of trying to restrain Mr Bayoh on the ground”³⁵. PC Smith says that he conducted a very quick check of PC Short and noted that she was not bleeding and there was nothing else which needed immediate first aid. PC Smith says that he left PC Short with PC Good. PC Smith says that PC Short pointed him towards PC Walker, PC Paton, and PC Tomlinson who were in the process of restraining Mr Bayoh³⁶. PC Smith says that he joined the other officers in trying to restrain Mr Bayoh and positioned himself in front of Mr Bayoh at the upper half of Mr Bayoh’s body³⁷ and assisted in applying handcuffs to Mr Bayoh³⁸.
- PC Gibson and PC McDonough also arrived shortly after PC Smith and PC Good but also at 07:21. PC McDonough says that when he arrived the restraint of Mr Bayoh was already in progress and he assisted in applying the fastrops,

²⁶ 9/92/10

²⁷ 9/101/9

²⁸ 9/101/24

²⁹ 9/116/20

³⁰ 9/119/10

³¹ 10/23/7

³² SBPI-00039 para 53

³³ SBPI-00039 para 54

³⁴ SBPI-00039 para 55

³⁵ SBPI-00042 para 5

³⁶ SBPI-00042 para 25

³⁷ SBPI-00042 para 29

³⁸ SBPI-00042 para 30

i.e. the leg restraints on Mr Bayoh³⁹. PC McDonagh says that PC Gibson also assisted and using his upper body lay on top of Mr Bayoh's lower legs⁴⁰.

- Sergeant Maxwell then arrived at Hayfield Road at 07:22. Sergeant Maxwell calls for an ambulance for PC Short via his police radio at 07:23. He also calls via his police radio at 07:26 to check if an ambulance has been dispatched to attend to Mr Bayoh.
- PC Smith says that a few minutes after Mr Bayoh had been restrained, it appeared to him that Mr Bayoh had stopped breathing⁴¹. He says that as soon as it was clear that Mr Bayoh was not breathing, he initiated normal CPR procedures and instructed PC Walker to commence chest compressions⁴². PC Smith says that there were difficulties in administering rescue breaths and PC Smith says that he made the decision for chest compressions only to be carried out⁴³.
- Sergeant Maxwell calls again via his Police radio at 07:29 advising that Mr Bayoh was not breathing and that CPR had been commenced⁴⁴.
- The ambulance attended for Mr Bayoh at 07:34⁴⁵.
- Around 07:40 to 07:45 the attending officers returned to Kirkcaldy Police Office after the ambulance arrived with the exception of PC Short who was taken to Victoria Hospital, Kirkcaldy for assessment/treatment.
- The ambulance arrives at Victoria Hospital at 07:45
- At 09:04 on 3 May 2015, Mr Bayoh is declared to have died within the Accident and Emergency Department at Victoria Hospital, Kirkcaldy. The terminology used is that "Life pronounced extinct" at 09:04.

2. **Race generally**

2.1 **Mr Bayoh, his family and friends**

During her evidence to the Inquiry hearing, Mr Bayoh's partner Ms Collette Bell speaks about Mr Bayoh's views and experiences of the police.

"Shek used to always say to me that – about racism and the police... "Do you know, as a Black man when you are up against the police, it doesn't matter if you have done right or if you have done wrong, the only way you're getting out from a confrontation with the police is if you run. There is no way out, as a Black man, when you are coming up against the police"⁴⁶. Ms Bell says "we've heard how they do come across people who are on drugs, they do come across people who have knives, they manage to arrest them all right, you know, they managed to get the restraints on him"⁴⁷."

³⁹ SBPI-00063 para 14

⁴⁰ SBPI-00063 para 20

⁴¹ SBPI-00042 para 44

⁴² SBPI-00042 para 46

⁴³ SBPI-00042 para 48

⁴⁴ SBPI-00044 para 52

⁴⁵ 15/39/22

⁴⁶ 40/95/21

⁴⁷ 40/96/12

Ms Bell speaks about the depiction of Mr Bayoh in the media, as particularly large, and a 'zombie', and says to her this seems like racism. She says that the press were "briefed that Shek was part of genocide in Sierra Leone. I think Shek was about 8 when that happened"⁴⁸. She also speaks of a story in the media about her and Mr Zahid Saeed, which was "completely made up and totally false and defamation of me and Zahid's character". She says she believes this was in the media to deflect from a meeting between the family and Commissioner Kate Frame⁴⁹. Ms Bell is asked during the Inquiry hearing when she first became aware that race might be an issue. She says "I really didn't think about it straightaway. I think that's maybe naïve on my behalf again... I didn't want to think of the idea that racism was maybe involved in this. But I think more the way they were describing him and, you know, like, saying how big he was, what a build he had, to me it just portrayed him in a really bad way and not true"⁵⁰.

Mrs Kadijartu Johnson spoke about her experiences of living in Scotland as a black woman. She says she is just "living day to day" as she doesn't know how she will be treated⁵¹. When asked about her concerns about involvement with Police Scotland she says she receives hate mail and threats and is concerned for her own and her family's safety⁵². She says "I feel if Sheku was White, he would have been treated in a different way. And I'm saying this now with a lot of fear, because I know I will get people coming for me for saying this... if Sheku was White, the police had met him, they would have approached him in a different way. I feel they would have approached us as a family as well in a different way. So, for me, because he was Black, that's why he was treated the way he was treated from the very first instant the police met him"⁵³.

The family of Mr Bayoh and members of their legal team have been subject to racist abuse during the course of this Inquiry⁵⁴.

2.2 Attending officers

In the Inquiry hearing, PC Paton is asked about a complaint made against him in 2010⁵⁵. The complaint relates to PC Paton's interaction with an Asian woman who did not have fluent English, at her home while on duty. PC Paton refused to speak to the woman's husband on the phone at the time. The report says of PC Paton "your clear lack of understanding of cultural issues in dealing with Muslim women and a basic respect for diversity related matters". PC Paton states during the Inquiry hearing that he had not been warned that an interpreter would be required, that he had a warrant, and that he had no legal obligation to speak to the person on the phone⁵⁶. He says he took corrective advice on board and highlights that he had arranged interpreters on several other occasions and would have done so on this occasion if he believed it was required. He says that he was arranging interpreters about three times a week at the time, mostly of Polish and Eastern European people. He is not able to recall the

⁴⁸ SBPI-00247 para 60, 61, 62

⁴⁹ SBPI-00247, 63, 64

⁵⁰ 40/97/19

⁵¹ 34/90/5

⁵² 34/91/1

⁵³ 34/92/5

⁵⁴ 23/5/9

⁵⁵ PS13586A

⁵⁶ SBPI-00148

corrective advice given⁵⁷. PC Paton is also asked about a statement by his grandfather⁵⁸ in which PC Paton's grandfather says that he met PC Paton in a supermarket and "I remember Alan saying to me that he 'was a total racist and hated all blacks'". PC Paton denies the conversation happened and denies that he would ever state hatred against anybody. He suggests that because Mr Aamer Anwar was present for the statement, there was an 'ulterior motive' in making the statement. When asked what this was he says "it's to do with other members of my family and I just want to leave it at that"⁵⁹ and when asked why he has concerns about Mr Anwar's presence he says "I don't think it needs explaining"⁶⁰. PC Paton is also asked about a statement from his sister that he was in the BNP as a teenager. PC Paton denies this⁶¹.

In her statement, PC Short, when speaking about attending hospital, refers to a doctor as "the wee Pakistani Doctor whose surname began with S..."⁶². When asked about this in the Inquiry hearing PC Short says "I must have been asked for a description...I was badly concussed, I was struggling with words, and I'm afraid that has been my best way of describing that gentleman. Would I describe him as that now? No, seven years on in my recovery and I would choose different – a different way to describe him... It wasn't meant to cause any form of offence, I was just trying my best at that time"⁶³. Asked again why she assumed the doctor was of Pakistani heritage she says "...at the time I was struggling to find my words because of concussion", and continues that she cannot confirm that she used those words⁶⁴.

The attending officers are asked a question similar to "Do you ever take someone's physical characteristics or skin colour or religion and make any assumptions about them, such as a Black person is a terrorist?"

PCs Paton⁶⁵, Walker⁶⁶, Tomlinson⁶⁷, Short⁶⁸, Good⁶⁹, McDonough⁷⁰, and Gibson⁷¹ and Sergeant Maxwell⁷², deny ever making an assumption about anyone based on the colour of their skin. This question was not asked to PC Smith.

2.3 Others

Detective Chief Inspector Keith Hardie⁷³, who was in the major investigations team, is asked about training received specifically about race. He says he received it and

⁵⁷ 20/150/13

⁵⁸ PIRC-00473

⁵⁹ 20/157/9

⁶⁰ 20/158/12

⁶¹ 60/3/20

⁶² PIRC-00253

⁶³ 8/155/15

⁶⁴ 8/178/8

⁶⁵ 20/173/16

⁶⁶ 7/125/9

⁶⁷ 10/169/6

⁶⁸ 8/167/6

⁶⁹ 12/175/22

⁷⁰ 14/106/15

⁷¹ 13/193/14

⁷² 15/84/19

⁷³ Keith Hardie has now retired from Police Scotland. When he retired his rank had not changed.

remembers the impact it had on him well, because it “involves racial speech”⁷⁴. He goes on to explain that he used to use an offensive term to refer to Chinese meals with his daughters, but following the training he stopped using that term and told his daughters not to use it anymore “although it was never meant towards a Chinese person”. He uses the term twice during the Inquiry hearing in order to provide an example when asked about racially stereotypical language⁷⁵.

Detective Inspector Colin Robson⁷⁶ was part of the pro-active investigations unit covering the whole of Fife, and was based at Kirkcaldy during the week of the 3 May 2015. In his Inquiry statement, Detective Inspector Robson says his knowledge of racial diversity in Fife is mainly through crimes he dealt with. He talks about mainly “Eastern Europeans, predominantly Polish” people, saying “the reason we knew [about them] is the fact that they actually liked to drink and fight with each other”⁷⁷. Asked about this in the Inquiry hearing he volunteers that this is a stereotype and he does not like how he put it. When asked if it appears to be derogatory he apologises for any harm it has caused⁷⁸.

Detective Constable David Bellingham⁷⁹ says in his evidence that he would agree with the statement that if someone dies after contact with the police, then it would obviously follow that there would be a lot of press interest in that matter, particularly where the person who died was black⁸⁰.

Detective Chief Superintendent Lesley Boal⁸¹, speaking about the approach to race and diversity, says “I would say that the death of Stephen Lawrence along with other reviews, public inquiries and community feedback has had a significant impact in terms of policing in Scotland”. She says that the police have become more acutely aware of the needs of different communities⁸².

Detective Superintendent Patrick Campbell⁸³ says “I have never made any decisions throughout my service, and also in my personal life, based on someone’s race or ethnicity – or religion... I had, and have, no negative preconceptions regarding race. I would say that I’m anti-racist”⁸⁴. He is asked about the term “anti-racist” and says “it’s something I’m fully behind”. He comments on the use of the term by the Chief Constable in his opening statement, in relation to Police Scotland, and says “I thought it was really accurate...it’s a total zero tolerance approach to it as such”. He identifies being “anti-racist” as being proactive in addressing discrimination⁸⁵.

⁷⁴ 50/137/25

⁷⁵ 50/138/12

⁷⁶ Colin Robson had been promoted to Detective Chief Inspector prior to giving his evidence to the Inquiry.

⁷⁷ SBPI-00133

⁷⁸ 44/61/12

⁷⁹ David Bellingham was promoted to Inspector prior to giving his evidence to the Inquiry.

⁸⁰ 37/71/24

⁸¹ Lesley Boal has now retired from Police Scotland. When she retired her rank had not changed.

⁸² SBPI-00223 para 343

⁸³ Patrick Campbell was promoted to Detective Chief Superintendent prior to giving his evidence to the Inquiry.

⁸⁴ SBPI-00256

⁸⁵ 49/150/18

Assistant Chief Constable Ruairaidh Nicolson⁸⁶ says that in the initial stages “there was no suggestion that race played a part in what happened”. He says that although he could not point to anything which made clear that race was not a factor, he says that the Mr Bayoh “running about between cars with a knife” was the cause of the incident. The subsequent investigation would reveal the issues and the understanding of what happened including the motivations of Mr Bayoh⁸⁷.

Chief Superintendent Garry McEwan⁸⁸ says that Mr Bayoh’s race played no part and if anything, due to potential community tensions that could arise, Police Scotland probably did more than they normally would⁸⁹. Chief Superintendent McEwan says in his Inquiry statement that the police had been criticised in previous events across the country for their response. He refers to the “tragic death” of Simon San “a Vietnamese delivery driver” in 2009 which had not been declared as a “critical incident” meaning that the police were unable to “step up their response and to give it the priority it perhaps deserved. I didn’t want to make that mistake”⁹⁰. Whilst giving his evidence at the Inquiry hearing, Chief Inspector McEwan accepted that although Simon San had been wrongly described as Vietnamese at the time⁹¹, he was in fact Chinese, and this was an example of how misinformation shared at an early stage can linger in the mind and be remembered⁹².

Chief Inspector Conrad Trickett⁹³ says that he was aware of the background to policing and race and race relations. This was probably an important factor in the incident being declared a critical incident⁹⁴. However, the issue of race made “absolutely no difference” to how he conducted the post incident procedures.

He also says that the MacPherson Report following the Stephen Lawrence Inquiry had two major impacts on policing in Scotland. Firstly, the critical incident management SOP and secondly the Scottish equivalent of the Black Police Officers Association, SEMPER Scotland⁹⁵. He says that the MacPherson report spoke of how policies and procedures can discriminate not through a direct act of racism but by a discriminatory aspect that has not been considered. The tool to try and overcome that, or mitigate that risk is an equality impact assessment⁹⁶.

⁸⁶ Ruairaidh Nicolson has now retired from Police Scotland. Prior to his retirement he had been promoted to Deputy Chief Constable.

⁸⁷ SBPI-00217 para 121

⁸⁸ Garry McEwan has now retired from Police Scotland. When he retired he had been promoted to National Policing Commander.

⁸⁹ SBPI-00258 para 198

⁹⁰ SBPI-00258 para 37

⁹¹ 64/131/5

⁹² 64/131/9

⁹³ Conrad Trickett was promoted to Chief Superintendent prior to giving his evidence to the Inquiry.

⁹⁴ SBPI-00257 at para 277

⁹⁵ 46/86/15

⁹⁶ 46/92/8

3. Police Officers' previous experiences of racial diversity in Kirkcaldy

3.1 Attending officers – general

The attending officers are asked the following about their prior experience with the black community in Kirkcaldy:

Question: in May 2015 what was your awareness of the black community in Kirkcaldy? PCs Paton⁹⁷, Walker⁹⁸, Tomlinson⁹⁹, Short¹⁰⁰ and Good¹⁰¹ say that they did not have any awareness of the black community in Kirkcaldy in May 2015. PC Paton says Kirkcaldy “is a diverse town but Black people don’t really form that a big part of it”¹⁰². PC Smith states that he had very little contact with the community.¹⁰³ PC McDonough states that he had some awareness just from carrying out his daily duties¹⁰⁴. The question was not asked of PC Gibson or Sergeant Maxwell.

Question: Had you been involved in any community relations work with the black community in and around Kirkcaldy?

PCs Walker¹⁰⁵, Tomlinson¹⁰⁶, Smith¹⁰⁷, Short¹⁰⁸, Good¹⁰⁹, McDonough¹¹⁰ and Gibson¹¹¹ all state that they had not been involved in any community relations work with the black community in and around Kirkcaldy. Sergeant Maxwell says that he worked as a community officer for two years and had interactions with the black community¹¹². The question was not asked of PC Paton but he explains that he was a community officer on two occasions in the Templehall area of Kirkcaldy¹¹³. He also describes an incident involving the Traveller community for which he was a temporary Family Liaison Officer and was praised for his communication with the people involved¹¹⁴.

Question: What experience did you have of the black community, either as witnesses, as suspects, or as victims of crime?

PC Paton says he “dinnae like the specific questions regarding Black people” and requests for the question to be changed to be about Black and minority ethnic communities¹¹⁵. PC Paton states that he was a community officer for two years and

⁹⁷ 20/170/10

⁹⁸ 7/131/12

⁹⁹ 10/172/25

¹⁰⁰ 8/164/20

¹⁰¹ 12/178/22

¹⁰² 20/170/10

¹⁰³ 11/187/12

¹⁰⁴ 14/107/23

¹⁰⁵ 7/131/20

¹⁰⁶ 10/173/8

¹⁰⁷ 11/187/16

¹⁰⁸ 8/164/23

¹⁰⁹ 12/178/25

¹¹⁰ 14/108/19

¹¹¹ 13/198/14

¹¹² 15/80/1

¹¹³ 20/171/1

¹¹⁴ 20/185/4

¹¹⁵ 20/170/18

dealt with a call out to deal with issues that the local mosque was having¹¹⁶. PC Walker states he has dealt with the black community just as a response officer out noting statements and that from them and just normal day-to-day interactions¹¹⁷. PC Tomlinson states that he does not know if he has had experience of dealing with the black community either as witnesses, suspects or as victims of crime¹¹⁸. PC Smith states he had very little experience of the black community, either as witnesses, suspects or as victims of crime¹¹⁹. PC Short states that she does not have experience dealing with the black community either as witnesses, suspects or as victims of crime¹²⁰. PC Good states that she did not have very much experience other than maybe taking a witness statement¹²¹. PC McDonough states that there is a chance that he has dealt with the black community either as witnesses, suspects or as victims of crime. However, there is nothing that he can think of¹²². PC Gibson states that he probably would have dealt with witnesses and victims, but does not think he had dealt with black suspects¹²³. Sergeant Maxwell has had involvement with black people as suspects of crimes, witness to crimes and as victims of crime.¹²⁴

Question: Did you have much experience prior to May 2015 of interacting with any members of the black community in Kirkcaldy?

PC Paton states that he had hosted monthly community meetings as a community officer¹²⁵. Both PC Walker¹²⁶ and PC Tomlinson¹²⁷ state that they could not put a number on the members of the black community in Kirkcaldy that they had interacted with. Both PC Short¹²⁸ and PC Good¹²⁹ say that they had no experience in interacting with any members of the black community in Kirkcaldy. Sergeant Maxwell says he did not very regularly interact with members of the black community¹³⁰. The question was not asked of PCs Smith, Gibson or McDonough.

Question: Were you aware at that time of any tensions between the black community and the police force?

PCs Walker¹³¹, Tomlinson¹³², Short¹³³ and Good¹³⁴ say that they were not aware of any tensions. The question was not asked of PCs Paton, Smith, McDonough, or Gibson or Sergeant Maxwell.

3.2 As community officers

¹¹⁶ 20/171/1

¹¹⁷ 7/132/13

¹¹⁸ 10/173/14

¹¹⁹ 11/187/22

¹²⁰ 8/165/13

¹²¹ 12/179/5

¹²² 14/108/12

¹²³ 13/198/19

¹²⁴ 15/80/15

¹²⁵ 20/172/14

¹²⁶ 7/132/21

¹²⁷ 10/173/23

¹²⁸ 8/165/5

¹²⁹ 12/178/25

¹³⁰ 15/80/21

¹³¹ 7/133/1

¹³² 10/174/6

¹³³ 8/165/18

¹³⁴ 12/179/13

3.2.1 Attending officers

PCs Walker¹³⁵, Short¹³⁶, Tomlinson¹³⁷, Smith¹³⁸, Gibson¹³⁹, Good¹⁴⁰ and McDonough¹⁴¹ all say they had not been involved in community work with the black community prior to May 2015. PC Walker says in 2015 he “didn’t really have” an awareness of the black community in Kirkcaldy¹⁴². PC Good says she had no awareness of the black community in Kirkcaldy in 2015¹⁴³.

PC Paton and Sergeant Maxwell say they had been involved in community work before May 2015. PC Paton mentions attendance at monthly meetings and specific events¹⁴⁴.

PC Paton says that in his work as a community officer “part of the duties on the van was going around the areas of concern, like mosques, like warehouses full of whisky, so to do with terror stuff and things like that. The concern for obviously the checks on the mosques was that they were getting vandalised and graffitied etc, on the back of things like the Lee Rigby incident”. He goes on to say that he worked “in cash and carries which was predominantly people from the Asian minority. I have worked with Chinese people. I have worked with all sorts, aye, so I have had a lot of contact with non-white people. I have not had a great deal, apart from one officer I worked with that was Black”¹⁴⁵. He also describes visits to schools “where there’s Black children and things like that” and monthly community engagement meetings that he held¹⁴⁶.

Sergeant Maxwell says he was “a community officer for two years in the Templehall area of Kirkcaldy where I was mosque liaison officer and held community groups, community meetings, so I would like to think I had contact with the majority of people in Kirkcaldy in the Templehall area... also dealing with reports of racist behaviour, investigating crime”¹⁴⁷. This role included interacting with the black community, interactions with the mosque or people there, and dealing with reports of racist behaviour¹⁴⁸.

¹³⁵ 7/131/12

¹³⁶ 8/165/1

¹³⁷ 10/172/25

¹³⁸ 11/187/12

¹³⁹ 13/198/14

¹⁴⁰ 12/178/25

¹⁴¹ 14/108/19

¹⁴² 7/131/12

¹⁴³ 12/177/19

¹⁴⁴ 20/172/13

¹⁴⁵ 20/171/1

¹⁴⁶ 20/172/5

¹⁴⁷ 15/79/16

¹⁴⁸ 15/80/4

3.2.2 Other officers

PC Brian Geddes says he had not been involved in any community work with the black community prior to May 2015¹⁴⁹. He says he did not deal with a lot of black or minority ethnic people as custodies, though there were a few¹⁵⁰.

Inspector Jane Combe¹⁵¹ says she had been involved in community work before May 2015. She says “there wasn’t a large Black community in Kirkcaldy or even in Fife, but they were part of the largest ethnic minority, so we went to open days, seminars, mosque visits, engagement with youth...we actually worked quite closely with them”¹⁵². She says this work was done around 2014-2018, and the community engagement was quite a big part of her role¹⁵³. She speaks of listening to the community and adapting the approach to community engagement based on feedback¹⁵⁴. She mentions Frae Fife as a group that had members who would occasionally assist with police inputs. She describes the group as “sort of an interface...with the ethnic community”¹⁵⁵. She says other officers in Kirkcaldy would not have contact with the black community unless it was their specialism, though a lot of community officers would attend events while on duty and a lot would also go when off duty¹⁵⁶. She explains that community officers have time to build up a rapport in a specific area or community while response officers have to respond to calls as they come in¹⁵⁷.

Chief Inspector Nicola Shepherd¹⁵⁸ says that the independent advisory group which she was to liaise with comprised individual members from diverse communities, and they were known as lay advisers¹⁵⁹. When she was tasked to make contact with them on 3 May, she did not know if there were any lay advisers who were black¹⁶⁰, or Muslim¹⁶¹, or African¹⁶².

Detective Chief Superintendent Boal says in her evidence that the Vulnerable Persons Database is used to record hate crimes including those which involve an allegation of racism and complaints of racist behaviour by police officers¹⁶³. She also says that the Police and Fire Reform Act has changed policing in relation to equality and diversity as, in her view, there is arguably a statutory obligation on Police Scotland to improve the wellbeing of communities¹⁶⁴.

¹⁴⁹ 22/76/9

¹⁵⁰ 22/7/4

¹⁵¹ Jane Combe has now retired from Police Scotland. Her rank had not changed when she retired.

¹⁵² 17/44/24

¹⁵³ 17/45/10

¹⁵⁴ 17/46/11

¹⁵⁵ 17/47/5

¹⁵⁶ 17/48/22

¹⁵⁷ 17/49/4

¹⁵⁸ Nicola Shepherd was promoted to Superintendent prior to giving her evidence to the Inquiry.

¹⁵⁹ 51/7/4

¹⁶⁰ 51/8/14

¹⁶¹ 51/8/16

¹⁶² 51/8/18

¹⁶³ 66/107/21 to 66/108/22

¹⁶⁴ 66/106/18

Detective Sergeant Graeme Dursley¹⁶⁵ says that the way in which hate crimes are dealt with now is significantly different as they simply were not recorded when he joined the police in the 1990s¹⁶⁶. Additional investigative steps are now taken in relation to any reported hate crime and the police service now give “special attention” to make sure that minority groups are supported and so that the person making the report feels that they are believed. He could not say when this change in focus occurred or why, but says that “it’s been a long time since we started doing that”¹⁶⁷.

3.3 As response officers

3.3.1 Attending officers

Asked what his experience was of interacting with black people in Kirkcaldy in the discharge of his police duties, in 2015, PC Walker says “just as a response officer out noting statements and that from them. Just normal day-to-day interactions”¹⁶⁸. He says he was not aware of any tensions between the black community and the police, and not aware of any negative views held by colleagues in Kirkcaldy in relation to black people generally¹⁶⁹.

PC Short says at the time of the incident she had only been at KPO for two months and did not attend a call involving a black person until 3 May 2015. She also had not come across a black person as a witness or victim¹⁷⁰. She says she had dealt with two knife incidents prior to 3 May 2015, but neither involved black men¹⁷¹.

PC Tomlinson says any experience with the black community would have been “through my normal sort of daily engagements with members of the community” but he is not able to say how often he would have come into contact with them¹⁷².

PC Smith says he had “very little” experience of the black community as witnesses, suspects or victims of crime¹⁷³. He says that none of the knife incidents he can recall attending prior to May 2015 involved a black man¹⁷⁴.

PC Good is asked if she had experience of dealing with members of the black community as witnesses, suspects or victims of crime and she says she may have taken witness statements but cannot remember specifically¹⁷⁵.

PC Gibson says “I have never dealt with a Black suspect, female or male”¹⁷⁶. He says he has probably dealt with black people as witnesses or victims as part of his work but

¹⁶⁵ Graeme Dursley was promoted to Detective Inspector prior to giving his evidence to the Inquiry.

¹⁶⁶ SBPI-00228 para 196

¹⁶⁷ SBPI-00228 para 197

¹⁶⁸ 7/132/13

¹⁶⁹ 7/133/1

¹⁷⁰ 8/165/5

¹⁷¹ 8/49/3

¹⁷² 1/173/14

¹⁷³ 11/188/22

¹⁷⁴ 11/43/12

¹⁷⁵ 12/179/5

¹⁷⁶ 13/202/13

says “I don’t think I’ve ever dealt with a Black suspect before”¹⁷⁷. He says he did not have much contact with members of the black community other than his work, except one man with whom he played rugby¹⁷⁸.

Sergeant Maxwell says he had involvement with black people as suspects, witnesses and victims of crimes, but came into contact with members of the black community “not very regularly”¹⁷⁹.

When asked if he had experience of black people in Kirkcaldy PC McDonough says “Yes, certainly you’re aware from just doing your duties...walking down the high street...you do see Black people in Kirkcaldy”¹⁸⁰. He says he doesn’t recall arresting or dealing with anyone who was a black suspect, victim or witness¹⁸¹.

3.3.2 Other officers

PC Geddes was on secondment to the Custody Division on 3 May 2015 and was working in the Kirkcaldy Custody Suite. When asked if he had an understanding of the black community in Kirkcaldy in his role as custody officer or as a member of the response team, he says “Kirkcaldy to my knowledge doesn’t have a large Black community anyway, so I’ve had next – very little involvement with the Black community”¹⁸². He adds “there’s some contact. There is – there has been a few black people in custody, but they’re very little – we’ve had hardly any involvement with Black people because they don’t have a big community in certainly Kirkcaldy”¹⁸³. He says that he might see black people about at sports days or out and about, but not on a day to day basis – “very rarely, next to nothing”¹⁸⁴.

PC Rhuaridh Fraser usually worked in Levenmouth. When asked if he had experience dealing with people from different cultures he says “Yes, the area Levenmouth has many different cultures”¹⁸⁵. He says he would expect a person to volunteer information to an officer if something was not acceptable to them¹⁸⁶.

Inspector Combe says that she had a lot of contact with the black community in Kirkcaldy but that other officers wouldn’t “unless it was their specialism”. She says community officers would have contact and some went to meetings in their own time¹⁸⁷.

When asked if he had dealt with people of different ethnicities or nationalities, Inspector Stephen Kay¹⁸⁸ says that when he was custody sergeant he would have been “booking in all nationalities and dealing with a whole host of people”.

¹⁷⁷ 13/198/19

¹⁷⁸ 13/199/4

¹⁷⁹ 15/80/23

¹⁸⁰ 14/106/23

¹⁸¹ 14/108/12

¹⁸² 22/75/17

¹⁸³ 22/76/1

¹⁸⁴ 22/76/9

¹⁸⁵ 62/81/11

¹⁸⁶ 62/81/19

¹⁸⁷ 17/48/19

¹⁸⁸ Stephen Kay has now retired from Police Scotland. When he retired his rank had not changed.

Detective Superintendent Campbell says “I would like to elaborate on the experience I have had in dealing with culturally diverse communities within this country...I have had a lot of experience in North Glasgow, dealing with the impact of asylum seekers being housed within the Barnlanark and Balornock areas. Thereafter I worked in South Glasgow and Govanhill: one of the most culturally diverse communities in Scotland... I did become more aware of cultural issues from my own experience”¹⁸⁹.

Detective Chief Superintendent Boal was Detective Chief Superintendent in public protection across Scotland in May 2015. She says she had not been involved in a death in police custody prior to May 2015 and the cases she knew of mainly occurred in police stations and on the way to the station¹⁹⁰. She says she investigated one case where race was a factor, circa 2006¹⁹¹. She describes a complaint against two South Asian officers by a male of the same ethnicity, which involved an “allegation related to cultural practices”. She describes the assistance of “an advisor, and expert” who would “consider whether any of our proposed actions would inflame a situation, or cause distress or alarm”¹⁹². She says she dealt with cases with a racial element relating to members of the public “infrequently”, and these were usually criminal offences “where race was an aggravating factor”. She says she does not remember how many related to black males¹⁹³. She describes her role on the Equality and Diversity steering group and she says that the group that she led gave updates to an equality and diversity advisory group (which independent advisers sat on)¹⁹⁴ and it may be that the advisory group had considered the significance of black males out with her area of responsibility¹⁹⁵. Detective Chief Superintendent Boal mentions that she is aware that there is less trust and confidence in the police from black and other minority ethnic groups¹⁹⁶.

Chief Superintendent McEwan was Chief Superintendent and local policing commander for Fife in 2015. He established in 2008¹⁹⁷ an independent advisory group with key people and partner agencies from minority groups across Fife. He says that engagement with and sensitivity to the interests and needs of minority groups was important to his role¹⁹⁸. He says that the Advisory Group had evolved over time from initially a networking opportunity to workshops where the police would explain how they would approach a hypothetical incident and how they would investigate it. They said that they would invite input from representatives at the Advisory Group on how, for example they would approach witnesses taking account of their particular needs. From that exercise they would adjust their equality and diversity policies¹⁹⁹.

¹⁸⁹ SBPI-00256 para 59

¹⁹⁰ SBPI-00223 paras 7, 8

¹⁹¹ 65/60/7

¹⁹² SBPI-00223 para 14

¹⁹³ SBPI-00223 para 17

¹⁹⁴ SBPI-00223 para 32

¹⁹⁵ SBPI-00223 para 35

¹⁹⁶ SBPI-00223 para 346

¹⁹⁷ 64/16/21

¹⁹⁸ SBPI-00258 para 190

¹⁹⁹ 64/17/18

4. Racial diversity within the police force in Kirkcaldy

PCs Good²⁰⁰, Gibson²⁰¹, and McDonough²⁰², and Inspector Combe²⁰³ are asked if any officers at KPO in 2015 were black or from ‘another ethnic minority group’. They all say they do not think so. PC Good says that some of the other recruits at Tulliallan with her were black but could not remember how many²⁰⁴. Inspector Combe says she thinks there was one person in the West of Fife and a senior ranking officer who started her service in Fife²⁰⁵.

PC Paton speaks about two individuals he worked with while he was with the police. He socialised with Paul Castledine who was chair of SEMPER Scotland at one point. He also describes another colleague with a Scottish father and a Sri Lankan mother who he worked with at Kirkcaldy for four years²⁰⁶.

PC Amanda Givan²⁰⁷ is asked when giving her evidence whether any “office bearers” of the SPF are black or from an ethnic minority. She answers that none are currently [in June 2022] and none were in 2015. She says she does not know how many local representatives or members were black or from an ethnic minority²⁰⁸. She says during her 20 years of holding roles in the SPF she has been contacted by about half a dozen officers who were black, mainly in situations where the person has been subject to conduct allegations or disciplinary procedures and have had concerns that the disciplinary proceedings were racially motivated²⁰⁹.

5. Race issues within policing

5.1 Officers’ awareness of racism, racial harassment and discrimination within the police

5.1.1 Attending officers

The attending officers were asked questions along the lines of the following:

Question: Had you before May 2015 had you ever come across any situations or examples of racial discrimination in Kirkcaldy Police Office? Any racist jokes or comments?

²⁰⁰ 12/176/13

²⁰¹ 13/194/1

²⁰² 14/106/19

²⁰³ 17/58/1

²⁰⁴ 12/123/15

²⁰⁵ 17/58/1

²⁰⁶ 20/183/9

²⁰⁷ Amanda Givan retired from Police Scotland a few days after giving her evidence to the Inquiry.

²⁰⁸ 18/128/2

²⁰⁹ 18/129/3

PCs Paton²¹⁰, Walker²¹¹, Tomlinson²¹², Smith²¹³, Short²¹⁴, Good²¹⁵ and Gibson²¹⁶ say that they had never come across any situations or examples of racial discrimination in Kirkcaldy Police Office. This question was not asked of PC McDonough, or Sergeant Maxwell.

Question: If you had come across situations like that in Kirkcaldy, how would you have responded to them?

PC Paton states that he would say to them that their comments were not appropriate²¹⁷. PCs Walker²¹⁸, Tomlinson²¹⁹, Short²²⁰, Good²²¹ and McDonough²²² all state that they would challenge the behaviour. PC Good²²³ and PC McDonough²²⁴ elaborate that they would if necessary raise it to management. PC Smith states that depending on the behaviour exhibited there was a range of ways that he would respond from giving someone advice or reporting it up the line²²⁵. PC Gibson states that he would address the comment and then educate the person on why what they said was racist²²⁶. The question was not asked of Sergeant Maxwell.

Question: What was your impression of senior officers at the time? How would they respond to racist or discriminatory behaviour?

PC Tomlinson²²⁷ and PC Short²²⁸ reply that yes senior officers would respond to hearing racist comments by challenging the person at the time. PC Walker²²⁹ states that he did not know and that senior officers should be asked the question. PC Smith²³⁰ states that he believes that senior officers would respond similarly to him and, depending on the circumstances, he feels they would take disciplinary action if required. PC Good²³¹ states that senior officers would take it seriously. This question was not asked of PCs Paton, McDonough, or Gibson or Sergeant Maxwell.

Question: Had any of your colleagues exhibited any behaviour of that sort, racist discrimination [or similar]?

²¹⁰ 20/166/16

²¹¹ 7/127/22

²¹² 10/170/10

²¹³ 11/185/7

²¹⁴ 8/162/14

²¹⁵ 12/176/18

²¹⁶ 13/194/4

²¹⁷ 20/167/14

²¹⁸ 7/128/2

²¹⁹ 10/170/16

²²⁰ 8/162/21

²²¹ 12/177/5

²²² 14/105/6

²²³ 12/177/6

²²⁴ 14/105/7

²²⁵ 11/185/16

²²⁶ 13/195/4

²²⁷ 10/170/24

²²⁸ 8/163/4

²²⁹ 7/128/5

²³⁰ 11/186/1

²³¹ 12/177/8

PCs Paton²³², Walker²³³, Smith²³⁴, Short²³⁵, Good²³⁶, and Gibson²³⁷ say they have never seen any colleagues exhibit any racist or discriminatory behaviour. The question was not asked of PC Tomlinson, PC McDonough or Sergeant Maxwell.

5.1.2 Other officers

PC Geddes, who was working in the custody suite in Kirkcaldy on 3 May 2015, is asked if he had ever encountered jokes or comments about Islam, about terrorists, or whether he was aware of officers making assumptions about terrorists being black or Middle Eastern. He replies “no” to all three²³⁸. He says if he heard someone making what was or what could potentially be considered a racist comment he would pull them up on it. He says he has done it to people in the past, though he clarifies that this was not at work but at a rugby match²³⁹. He says if it happened at work he would first challenge it and then if he was not listened to, report it to his supervisor or someone of relevant rank²⁴⁰. PC Geddes is asked about the comment by PC Christopher Harris which is recorded in the transcript as “ISIS staying in the station”²⁴¹. He says he does not know why he did not challenge it but he should have²⁴². This is set out in more detail under heading 6.3: The phrase “ISIS staying in the station”.

Detective Constable Robert Finch says that he was not aware of any examples of racial discrimination by police in Kirkcaldy or of any racist views held by officers. He says that he has not heard racist jokes by police officers and further says that he would actively challenge anyone who made a racist comment or told a racist joke²⁴³.

In PC Fraser’s statement he says “I haven’t heard or told any racist jokes among police officers. I am not aware of any racist views held by police officers. I’m not aware of any racial discrimination by police officers”²⁴⁴. He says during the Inquiry hearing that this is his current position as well as his position in 2015²⁴⁵. He says he is “very confident” that he would recognise a joke that was racist or had an underlying tone of racism, and if he heard them he would “challenge it and then escalate it” but he has never come across such a situation. He says “If I got the impression anyone held any sort of racist belief or view, then I would recognise it”²⁴⁶.

Detective Sergeant Dursley who was based at Levenmouth but assisting with oversight at Kirkcaldy on 3 May 2015, says “I’ve never seen discriminatory behaviour by police officers. I’m not aware of any racist views of police officers. I’ve never heard

²³² 20/167/14

²³³ 7/128/12

²³⁴ 11/185/13

²³⁵ 8/163/10

²³⁶ 12/177/2

²³⁷ 13/194/13

²³⁸ 22/57/24

²³⁹ 22/59/5

²⁴⁰ 22/60/9

²⁴¹ PIRC-01463

²⁴² 22/72/2

²⁴³ SBPI-00189 Para 144

²⁴⁴ SBPI-00136, para91

²⁴⁵ 62/102/20

²⁴⁶ 62/103/7

any racist jokes or racist comments by police at any time”²⁴⁷. Detective Sergeant Dursley says in his evidence that younger officers are more aware of discriminatory issues and whilst he did not directly answer the question, the inference was that younger officers are perhaps less likely to engage in discriminatory jokes²⁴⁸. When this is put to Detective Inspector Robson, he says that he would agree that younger police officers would be much more aware of the type of language and behaviour that was inappropriate²⁴⁹. He adds that he joined the police at a similar time to Detective Sergeant Dursley in the late 1990s and there would have been inappropriate jokes. However these jokes did not originate within the police but were prevalent within society²⁵⁰.

Detective Constable Gordon Miller²⁵¹ says that he is not aware of racist jokes within the police. He says that there may have been some inappropriate remarks made by colleagues but never anything said that was connected to race²⁵². He says that if he did observe something in the workplace which discriminated on the basis of race then he would always refer the matter to the Professional Standards Department (PSD) to investigate. He adds that it is everybody’s duty in the police to ensure that the police are impartial, fair, and transparent. Therefore, he would not think twice about referring someone to PSD if it was necessary²⁵³.

Chief Inspector Trickett says “I’ve experienced no examples of discrimination by police officers. Even in PSD I don’t think I dealt with anything racial [sic] discriminatory. Police officers in my experience are normally the subject of racial abuse rather than being participants. I know of black colleagues being racially abused because of their accents. It’s normally members of the public towards police not the other way around in my experience. I’m not aware of any racist views, racist jokes or racist comments of police officers.”²⁵⁴

In Inspector Combe’s Inquiry statement she says “I have been asked what “police culture” means to me. To me it is acceptable parameters in which we were working within. When I first joined back in 1991 the police culture was 100% different than it is now. I’m not making excuses for what officers said, it was often just a release²⁵⁵”. She says “I have never heard any of the officers subject to this Inquiry say anything with a racial overtone...I would challenge them if I did hear anything of this nature”²⁵⁶. She adds in her Inquiry hearing evidence that she has never heard anything from the officers with a racial undertone²⁵⁷. She says “There was sexism and things like that but, as I say, as far as officers under my command being really racist, no, never saw that. Sexism, homophobia? Yeah, definitely there was that, there were issues”²⁵⁸. Asked if she would expect there to be racism if there was sexism and homophobia,

²⁴⁷ SBPI-00228, para 201

²⁴⁸ 42/42/10

²⁴⁹ 44/6/25

²⁵⁰ 44/7/10

²⁵¹ Gordon Miller was promoted to Sergeant prior to giving his evidence to the Inquiry.

²⁵² SBPI-00315 para 123

²⁵³ SBPI-00315 para 124

²⁵⁴ SBPI-00257, paras 281, 282

²⁵⁵ SBPI-00124, 37-38

²⁵⁶ SBPI-00124, 48

²⁵⁷ 17/43/20

²⁵⁸ SBPI-00124, 52

she replies that she is not saying it did not exist in Fife Constabulary or Police Scotland officers. She did not witness anyone being treated differently because of race, but she did witness somebody being treated differently because they were gay, lesbian or female²⁵⁹. Asked during the Inquiry hearing, Inspector Combe says she does not know what she means by “really racist” and just means “racist full stop”²⁶⁰.

PC Givan is asked whether she has encountered racist comments or jokes by police officers. She says she has not. She is asked what she would do if she did, and she explains that Police Scotland’s advice is that “you challenge that behaviour and you report it”²⁶¹.

Detective Inspector Robson was asked about his comment in his first Inquiry Statement²⁶² in relation to PC Paton and how “negativity sometimes does creep in”. Detective Inspector Robson says that the negativity he was referring to was in relation to general feelings towards how the job had changed and was not directed towards any particular members of the community²⁶³. He confirmed that he was not aware of any negativity regarding discriminatory views to any particular individuals or members of the community held by PC Walker²⁶⁴.

Chief Inspector Trickett says that he has experienced no examples of discrimination by police officers and believes that it is in fact police officers themselves who are more likely to be the subject of racial discrimination from the public²⁶⁵. He is not aware of any racist views held, or racial comments or jokes, by police officers²⁶⁶.

Detective Chief Inspector Stuart Houston²⁶⁷ says in his Inquiry statement that he is not aware of any racist views held by any police officer and has not heard any racist jokes or comments from police officers. He says that if he became aware of anyone holding racist views he would do something about it²⁶⁸. He adds that given the position that he has been in for some time it would be foolish for an officer to make a racial joke or comment in his presence. He also says that his generation, when he joined the police (1996) “were a bit more aware of language, how to conduct yourself. If there was something I would’ve dealt with it”²⁶⁹.

Detective Superintendent Campbell says he cannot recall any examples of discrimination, racist jokes or comments during his service “which is not to say that it does not happen, just that I have not personally witnessed it”²⁷⁰. Detective Superintendent Campbell is also asked if there is a culture of encouraging officers to

²⁵⁹ SBPI-00124, 53

²⁶⁰ 17/59/22

²⁶¹ 18/133/20

²⁶² SBPI-00133, 27

²⁶³ 44/3/9

²⁶⁴ 44/4/12

²⁶⁵ SBPI-00257 para 281

²⁶⁶ SBPI-00257 para 282

²⁶⁷ Stuart Houston was promoted to Chief Superintendent prior to giving his Inquiry Statement.

²⁶⁸ SBPI-00214 para 327

²⁶⁹ SBPI-00214 para 328

²⁷⁰ SBPI-00256 para 498

“let things go” if they encounter racism. Detective Superintendent Campbell says that there certainly is not now²⁷¹.

Chief Superintendent McEwan says that he does not necessarily think that reporting mechanisms within Police Scotland had hampered the reporting of racially discriminatory behaviour and suggests that it might be better to ask those from underrepresented groups whether they felt if there were any barriers or inhibitors towards them reporting such behaviour²⁷². Chief Superintendent McEwan also says that he had chaired police misconduct hearings for approximately ten to fifteen years²⁷³. Throughout that period he estimated that he personally dealt with matters relating to racially discriminatory behaviour on three or four occasions²⁷⁴.

Detective Chief Superintendent Boal says that “there must have been examples” of discriminatory behaviour in policing but she cannot think of any. She describes a disciplinary hearing she sat on against an officer for “racial communications” and says the officer was dismissed. She says she cannot remember any racist jokes or comments and would have been surprised if someone had made one in front of her²⁷⁵.

When asked about discriminatory behaviour in Kirkcaldy, Assistant Chief Constable Nicolson says in his Inquiry statement that whilst he was the Deputy at Strathclyde many incidents would have passed over his desk although he could not provide specific examples. He says however that he is not aware of any racist views held by police officers and had not heard any racist views or comments by police officers²⁷⁶. He clarified in his evidence that the “many incidents” that he referred to as passing his desk were in relation to discipline generally but could not be specific about which incidents were in relation to discrimination²⁷⁷.

He does however say that an officer under his command whilst at Strathclyde Police, sometime prior to 2013, was racially discriminated against²⁷⁸. He says that he did not have to deal with incidents such as this very often but that they may have been recorded centrally²⁷⁹. Incidents such as these may have been underreported as officers will not want to report on their colleagues²⁸⁰.

Chief Superintendent McEwan says that he was aware of racially discriminatory behaviour within the police. He gives an example of an officer who, in or around 2017, made a racial comment on Facebook. Following a misconduct hearing the officer was dismissed. Chief Superintendent McEwan says that he has not personally witnessed racially discriminatory behaviour²⁸¹ or racist views held, or racist jokes or comments by officers²⁸².

²⁷¹ 49/152/24

²⁷² 64/129/2

²⁷³ 64/121/7

²⁷⁴ 64/121/23

²⁷⁵ SBPI-00223 para 350, 351, 352

²⁷⁶ SBPI-00217 para 345

²⁷⁷ 68/170/21

²⁷⁸ 68/164/21

²⁷⁹ 68/166/9

²⁸⁰ 68/165/1

²⁸¹ SBPI-00258 para 199

²⁸² SBPI-00258 para 200

Chief Inspector Trickett says that training on equality and diversity is currently provided to senior officers, called ‘truth to power’ sessions, where junior officers speak about their experiences in relation to discrimination²⁸³. He says that the junior officers who come to speak at these sessions are supported by SEMPER Scotland as “it’s a difficult thing for them to do to speak to senior officers about these experiences”²⁸⁴. Chief Inspector Trickett says that the higher rank that you are the less likely you are to hear or experience discriminatory behaviour since other officers know that the senior officer is within earshot²⁸⁵.

Detective Chief Inspector Hardie also refers in his evidence to a “canteen culture” and describes it as interactions between officers without supervisors being present. He says that the incidents which he became aware of related to sexist behaviour towards female officers. Although he had not witnessed racism or sexism or other forms of discrimination he thought that it was entirely possible that it does occur²⁸⁶.

Detective Chief Inspector Hardie also says in his evidence that he recognises that it might require courage for an officer to come forward and report racism. He says that the officer making the report would be “fighting against the norm”²⁸⁷. However he adds that a system of anonymous reporting was in place prior to May 2015²⁸⁸ and officers had been briefed that they would be fully supported if they were to come forward²⁸⁹.

5.2 Officers’ awareness of public concerns about police use of force against black men

5.2.1 Attending officers

The attending officers are all asked questions similar to the below:

Question: At the time in May 2015 what awareness, if any, did you have about public concern about the use of force by police officers, particularly against black men?

PCs Paton²⁹⁰, Smith²⁹¹, Short²⁹² and Gibson²⁹³ say that they had no awareness at the time around public concern about the use of force by police officers, particularly against black men. PCs Walker²⁹⁴, Tomlinson²⁹⁵ and McDonough²⁹⁶ say they were aware of the concern in America around use of force by police officers, particularly against black men. PC Good stated that she did not think it was a concern²⁹⁷. The question was not asked of Sergeant Maxwell.

²⁸³ 46/110/11

²⁸⁴ 46/112/10

²⁸⁵ 46/108/15

²⁸⁶ 50/127/8

²⁸⁷ 50/141/14

²⁸⁸ 50/141/1

²⁸⁹ 50/141/25

²⁹⁰ 20/168/7

²⁹¹ 11/186/10

²⁹² 8/163/13

²⁹³ 13/196/25

²⁹⁴ 7/128/15

²⁹⁵ 10/171/6

²⁹⁶ 14/106/23

²⁹⁷ 12/177/23

Question: general question about the use of force by police in Kirkcaldy

PCs Walker²⁹⁸, Tomlinson²⁹⁹, Smith³⁰⁰ and Short³⁰¹ say that they were not aware of any concerns around use of force in Kirkcaldy. The question was not asked of PCs Paton, Good, McDonough, or Gibson or Sergeant Maxwell.

Question: And at that time were you aware of high profile cases in other parts of the UK, such as down south, where a person has died in police custody having been restrained, or being restrained face down, and of public concern and debate about that?

PCs Paton³⁰², Walker³⁰³, Good³⁰⁴, McDonough³⁰⁵ and Gibson³⁰⁶ say that they were not aware of any high profile cases in other parts of the UK, where a person has died in police custody having been restrained. PC Tomlinson³⁰⁷ and PC Smith³⁰⁸ both state that if any of these events had happened in England and had been featured in the news they would have been aware of it. PC Short stated that she cannot remember anything on the topic³⁰⁹. The question was not asked of Sergeant Maxwell.

Question: Thinking back to 2015 and the training you had had up until that point, was there much information sharing about, for example, learning points from down south and other cases with officers in Police Scotland?

PC Walker states that he cannot speak to intelligence sharing³¹⁰. PCs Tomlinson³¹¹, Smith³¹², Short³¹³, Good³¹⁴, McDonough³¹⁵ and Gibson³¹⁶ say that they were not aware of any information sharing. The question was not asked of PC Paton or Sergeant Maxwell.

²⁹⁸ 7/128/25

²⁹⁹ 10/171/16

³⁰⁰ 11/186/19

³⁰¹ 8/164/5

³⁰² 20/168/14

³⁰³ 7/129/8

³⁰⁴ 12/178/2

³⁰⁵ 14/107/6

³⁰⁶ 13/197/24

³⁰⁷ 10/171/22

³⁰⁸ 11/186/14

³⁰⁹ 8/164/11

³¹⁰ 7/129/19

³¹¹ 10/172/6

³¹² 11/187/2

³¹³ 8/164/11

³¹⁴ 12/178/10

³¹⁵ 14/107/9

³¹⁶ 13/197/24

5.2.2 Other officers

Detective Sergeant Samantha Davidson³¹⁷ is asked when she was at Hayfield Road in May 2015, whether she was aware of high profile deaths in the UK and abroad of people, particularly black men, dying after police restraint. She says she has no recollection. She says it may have been included in training but she does not remember. She was however aware of risks of the prone position and positional asphyxia³¹⁸.

Inspector Combe is asked whether she was aware at the time of any concerns that the black community had, or Frae Fife had about policing of black people in Kirkcaldy. She says “the concerns they had were the same as any of the communities in Fife...the time police took to respond, the lack of the communication that we gave them”³¹⁹. When asked specifically about high profile deaths in the UK and abroad of people, particularly black men, dying after police restraint, she says she “has no recollection”³²⁰.

Inspector Combe is asked in her Inquiry statement why there was not any kind of reaction from the community to the incident. She says “my own perception is because the local community trusted the police. There was no perception of “a big cover up” by the police in Kirkcaldy or Scotland”³²¹. When asked about this in the Inquiry hearing she says that they organised a meeting after the incident, to which community leaders were invited to see if they had any concerns. She does not remember who was invited or if any concerns were raised³²². She says she was not aware of any demonstrations or protests bar one, following Mr Bayoh’s death “more like a vigil as opposed to a demonstration...there was no hostility, it wouldn’t be...what I would class as a demonstration”³²³. She says that the local community trusted the police – when asked if she means the local black community she says “All community”³²⁴. Inspector Combe also says “In general if you look at the media reporting there's plenty media reporting throughout the years about Black people being taken into custody, your stop and search down in England”³²⁵.

Detective Superintendent Campbell mentions Stephen Lawrence, Habib Ullah, Sean Rigg and Christopher Alder in his Inquiry statement³²⁶. He is asked to expand on his understanding of those cases in the Inquiry hearing. He says “I think there was one whereby there was apparent mental health issues with one of the individuals concerned...and again it’s clear that there wasn’t an appreciation of the background to some of the individuals involved in these sort of critical incidents”³²⁷. He also says that he understood that there were “significant shortcomings on behalf of the police in

³¹⁷ Samantha Davidson was promoted to Detective Inspector prior to giving her evidence to the Inquiry.

³¹⁸ 17/178/22

³¹⁹ 17/48/5

³²⁰ 17/178/22

³²¹ SBPI-00124, 51

³²² 17/50/16 to 17/53/24

³²³ 17/54/14

³²⁴ 17/55/7

³²⁵ 17/105/2

³²⁶ SBPI-00256 para 47

³²⁷ 49/127/9

respect of the management of each of these incidents involving black males”³²⁸. Detective Superintendent Campbell says that there were issues relating to the level of restraint, the lack of appreciation of underlying mental health issues, and the way in which the police responded although he could not recall all of the specific details of previous cases³²⁹.

6. Training

6.1 E&D

The attending officers are all asked:

Question: Had you had training, equality and diversity training, training on race prior to May 2015

PCs Paton³³⁰, Walker³³¹, Tomlinson³³², Smith³³³, Short³³⁴, Good³³⁵, McDonough³³⁶ and Gibson³³⁷ all recall receiving either 1 week or 2 weeks’ training as probationers at Tulliallan. PC Paton recalls also attending a diversity training day back in 2014³³⁸. Though stated on his SCOPE Record PC Walker cannot recall attending this training day³³⁹. Sergeant Maxwell received no extra training in relation to equality and diversity when moving to the role of acting police sergeant³⁴⁰.

PC Paton says of the training “I think it could probably be improved if I’m being honest, ey. Maybe every two years or something like that would be handy... done for the right purposes and for the right reasons...but not rammed down your throat. Not every year”³⁴¹.

PC Geddes says that he received training at Tulliallan that covered “everything relating to any – people of different race, different genders, different backgrounds...that gave you a wee bit of insight into other people and their cultures, how they have different ways of life, how they live”. He says he thinks he received similar training as part of his training as a custody officer but is not able to remember specifics³⁴². He says that there was refresher training but it was infrequent. Some was available on Moodle³⁴³.

Detective Constable Finch says that he does not recall receiving any equality and diversity training following his probation³⁴⁴. Detective Constable Miller says that when he joined the police in 1999 there was not the same level of understanding of religions, and he probably has a far better understanding of the Islamic faith through his own

³²⁸ 49/128/5

³²⁹ 49/128/11

³³⁰ 20/164/9

³³¹ 7/123/18

³³² 10/168/14

³³³ 11/183/22

³³⁴ 8/159/15

³³⁵ 12/175/5

³³⁶ 14/103/22

³³⁷ 13/191/20

³³⁸ 20/164/10

³³⁹ 7/124/7

³⁴⁰ 15/77/13

³⁴¹ 20/169/7

³⁴² 22/46/23

³⁴³ 22/53/19

³⁴⁴ SBPI-00189 para 140

interactions. He did not think that there was any specific training on interacting with a female Muslim witness³⁴⁵. He says that the diversity training which he had was in 2001 and it was a two- or three-day course. The training included input on the Islamic faith and input from LGBTI and other groups. He presumes that there will have been refresher training but does not know for certain if there's been a refresher on diversity or not³⁴⁶. Detective Sergeant Dursley says that he recalls a two-day diversity course in 2003 when he was part of Fife Constabulary. The training involved sessions from various groups including the black community, LGBT, and the travelling community. There may have been other groups represented but he could not recall. People from these groups were asked to describe their experiences of interactions with the police and Detective Sergeant Dursley says that he found their descriptions of how they were made to feel was very impactful³⁴⁷.

He also says that he did not recall any regular training in relation to diversity issues³⁴⁸. Further he had not read anything proactively in relation to equality and diversity throughout his service³⁴⁹ until recent mandatory training on Moodle³⁵⁰.

Inspector Kay says he attended a two-day diversity awareness training in 2001 but is not able to recall that training specifically or any other training on equality and diversity since. He says he has touched on it in situations external to the police but is not able to identify training completed as a police officer on the subject³⁵¹. He says he probably got training relating to being "culturally aware" for his work as a custody officer though he is not able to provide detail.

Chief Inspector Shepherd says in her Inquiry statement that the amount of training that a police officer will have in relation to equality and diversity will depend on their length of service and the roles that they have performed. Chief Inspector Shepherd says that she has performed roles in relation to equality impact assessment and therefore has had a lot of experience in this area. Equality and diversity is included in a number of training courses that she has attended such as detective training. New recruits will now receive training on racial awareness and equality and diversity issues at the very start of their police careers³⁵².

Detective Inspector Robson says that he received training on equality and diversity in 2007 whilst part of Fife Constabulary. He recalls that it was a "two or three day course" which raised awareness and provided attendees with the "tools to deal with [equality and diversity] internally or with the public". He cannot remember the structure of the training or what he learned from it³⁵³. He continues that he has had no other bespoke training on equality and diversity, except for an equality, diversity, and ethics briefing in 2014³⁵⁴, until the last few years prior to giving his Inquiry statement when it has become a priority for Scotland. He says that this recent training has included various

³⁴⁵ SBPI-00315 para 117

³⁴⁶ 74/119/18

³⁴⁷ SBPI-00228 para 192

³⁴⁸ 42/31/9

³⁴⁹ 42/31/11

³⁵⁰ 42/30/21

³⁵¹ 24/95/19

³⁵² SBPI-00261 para 55

³⁵³ SBPI-00251 para 13

³⁵⁴ SBPI-00251 para 19

courses and inputs to shape how policing in Scotland reflects, represents, and serves our local communities. The title for this programme of training courses is “Policing Together”³⁵⁵.

Chief Inspector Trickett says when asked to summarise the training that he had received on equality and diversity, that it requires individual leadership from all ranks to encourage inclusion and diversity³⁵⁶. A more inclusive and diverse police service will have better engagement with, and be more trusted by, the communities that they serve³⁵⁷. They will also increase the opportunity to recruit police officers from all groups in society³⁵⁸. He questions whether classroom style training was the best way to learn and suggests that lived experience is a better way. There has to be a willingness on the part of individual officers and on the part of Police Scotland to learn from mistakes and improve the way that they operate³⁵⁹. He also says that the terms of the Equality Act 2010, and the fact that race was a protected characteristic, would have been widely understood within policing in 2015³⁶⁰.

Chief Inspector Trickett adds that he was on an accelerated leadership programme and he had access to resources on equality and diversity. He says that he had a three-and-a-half-day course on diversity from an external provider as part of his development as a senior leader³⁶¹.

Detective Superintendent Campbell says that “experiences arising from significant incidents” including Stephen Lawrence, Habib Ullah, Sean Rigg and Christopher Alder, as well as other incidents, were relevant to equality, diversity and race, and that there were significant inputs into the equality and diversity OST courses over the years³⁶². He mentions that he completed an “ethnic awareness” course in 1998 and although he could not remember the content of the course it was based upon Strathclyde Police’s guiding principles and promoting an organisational structure of treating everyone with dignity and respect³⁶³. He also completed a race relations course in 1998, and courses entitled “Equality and Diversity – Non supervisory personnel” and “Equal Opportunities Awareness Stage 2” in 2002³⁶⁴. He also attended in 2014 a one-day course which he recalls was mandatory for all officers in Police Scotland. The course was “Values and Ethics Briefing” and it focussed on fairness, integrity, respect and human rights. He adds that Police Scotland were the first force in the UK to introduce a code of ethics in 2013³⁶⁵. Detective Superintendent Campbell also says that he would enrol on training courses which he considered appropriate or following a suggestion from his line manager. He says that a large proportion of these training courses were external courses³⁶⁶.

³⁵⁵ SBPI-00251 para 18

³⁵⁶ 46/100/22

³⁵⁷ 46/100/17

³⁵⁸ 46/100/13

³⁵⁹ 46/101/2

³⁶⁰ 46/104/4

³⁶¹ SBPI-00257 para 48

³⁶² SBPI-00256 para 47

³⁶³ SBPI-00256 para 34

³⁶⁴ SBPI-00256 para 35

³⁶⁵ SBPI-00256 para 36

³⁶⁶ SBPI-00256 para 49

Chief Superintendent McEwan says learning opportunities that could come from police misconduct hearings relating to racially discriminatory behaviour were not something that was shared across the police service and he feels that this could be improved upon³⁶⁷.

Detective Chief Superintendent Boal says that she had had training in equality and diversity whilst part of Lothian and Borders Police but that it was some time ago³⁶⁸. She also was part of an Equality and Diversity Steering Group chaired by a member of the Executive of Police Scotland. Detective Chief Superintendent Boal says that her area of responsibility included domestic abuse, forced marriage, human trafficking and other abusive and exploitative behaviour. She says that she would, “for example.... draft of policy on honour-based abuse” and the draft would be shared with external support and advocacy services that she “worked in partnership with”. The final draft would be shared with the Steering Group who would draft policies which would be shared with an Equality and Diversity Advisory Group who would provide any final advice. She says that she had significant input in terms of equality and diversity given the nature of the types of work that she had responsibility for³⁶⁹. She also says in her evidence that she had attended a three-day course on equality and diversity in 2003³⁷⁰. The course featured speakers sharing their lived experiences of discriminatory treatment and she felt that training such as this, i.e. hearing first-hand accounts, was much more impactful than training led by police officers or advocacy groups³⁷¹.

Detective Chief Inspector Houston says that he had equal opportunities training when he joined the police in 1996³⁷². He says that whilst part of Lothian and Borders Police, he as well as all staff and officers undertook a three-day equality and diversity course in 2001³⁷³. Detective Chief Inspector Houston says that he completed his Family Liaison Officer (FLO) course in 2004 and that included inputs on equality and diversity³⁷⁴. He adds that as a FLO he attended seminars “virtually every year” at the FLO Conference until 2012 and these seminars often covered equality and diversity³⁷⁵. He felt that the most effective training was learning from other cases from across the UK³⁷⁶. He also attended a critical incident management awareness session which covered equality and diversity in 2012 whilst still part of Lothian and Borders Police and an equality and diversity values and ethics briefing as part of Police Scotland in 2014³⁷⁷.

Detective Chief Inspector Houston says that as part of his line management role he would ensure that if there was mandatory training set by the organisation covering equality and diversity that he would ensure that his officers would complete that training. He recalls that the equality and diversity training was mandatory for all Police

³⁶⁷ 64/122/3

³⁶⁸ SBPI-00223 para 31

³⁶⁹ SBPI-00223 para 32-33

³⁷⁰ 66/97/12

³⁷¹ 66/99/11

³⁷² SBPI-00214 para 24

³⁷³ SBPI-00214 para 26

³⁷⁴ SBPI-00214 para 25

³⁷⁵ SBPI-00214 para 27

³⁷⁶ SBPI-00214 para 31

³⁷⁷ SBPI-00214 para 28

Scotland. He adds that he highlighted the FLO since “significant training was done because of diversity from cases across the UK”³⁷⁸. He also says that he would make sure that his officers were undertaking mandatory equality and diversity training as part of their training requirements as part of appraisals³⁷⁹.

Detective Chief Inspector Hardie says in his statement that he will have had equality and diversity training around 2011/2012. He says that in his role as Chief Inspector for the custody division he did a lot of work on diversity around the treatment of people from ethnic minority groups when they were brought into police custody³⁸⁰. The work that was undertaken in this respect was not formal training but rather the establishment of a protocol in how people should be treated when brought into police custody³⁸¹.

Assistant Chief Constable Nicolson says that whilst he could not remember the dates of any training courses, he had had training in equality and diversity covering everything from race, LGBT issues, equality, and diversity. He says that the training was classroom based³⁸² and the training was part lecture, part interactive, and part discussion³⁸³. He goes on to say that whilst training is important, how the learning was applied and how the police delivered their service was more important. He adds that a mistake could be made between race and religion leading to categorising an incident on a crime report incorrectly³⁸⁴. He says that it is important to continually work on the relationship between the police and the communities that they serve to preserve the trust of the community³⁸⁵.

PC Gibson refers as an example of putting his training into practice, an occasion when he used an interpreter to communicate with a Pakistani female witness³⁸⁶. He says “So the interpreter spoke the language of – of the female, so in this case she spoke Pakistani. She might understand things a little bit better. I'm aware through training, not necessarily Pakistani people, but I remember it was some kind of religions that some females might not want to speak to a male police officer, they might want to speak to a female, these kind of things. So I think she would maybe have a -- a kind of better understanding, so I used that to my advantage and asked her if she could assist, and, yeah, basically so I could make the female be at ease and just have a bit of respect for her, I guess”³⁸⁷. He is not asked about his understanding of the languages spoken in Pakistan.

6.2 Unconscious bias

6.2.1 Attending officers

All the attending officers are asked the following:

Question: What, if anything, did you learn during your training about unconscious bias?

³⁷⁸ SBPI-00214 para 30

³⁷⁹ SBPI-00214 para 35

³⁸⁰ SBPI-00230 para 10

³⁸¹ SBPI-00230 para 11

³⁸² SBPI-00217 para 18

³⁸³ SBPI-00217 para 19

³⁸⁴ SBPI-00217 para 21

³⁸⁵ SBPI-00217 para 20

³⁸⁶ 13/215/19; 13/219/1 to 13/219/3

³⁸⁷ 13/218/8 to 13/218/25

PCs Paton³⁸⁸, Tomlinson³⁸⁹, Smith³⁹⁰, Short³⁹¹, Good³⁹², McDonough³⁹³ and Gibson³⁹⁴ say that they cannot recall if they ever learned about unconscious bias during their training. PC Walker says he remembers receiving training on unconscious bias and was able to give an example: “immediately becoming fearful of a group of Black teenagers standing as a group and then walking away on the other side of the road without actually making that conscious decision”³⁹⁵. PC Short speaks about computer-based training as part of the recruitment process “designed to root out and identify anything such as unconscious bias”³⁹⁶. PC McDonough says “I don’t know if at another point if unconscious bias has had another meaning or another term to describe it, but I don’t remember the words “unconscious bias” being within the learning outcomes of modules that were taught”³⁹⁷. The question was not asked of Sergeant Maxwell.

Question: Were you personally able to identify any areas of unconscious bias in your own mind during that training?

PCs Paton³⁹⁸, Walker³⁹⁹, Tomlinson⁴⁰⁰, Smith⁴⁰¹, Short⁴⁰² and Gibson⁴⁰³ say that they were not able to identify any areas of unconscious bias in their own mind during the training. PC Walker says that “as part of the training it is to make you look at your own actions and evaluate your own actions” but he is not able to recall thinking about his own unconscious biases⁴⁰⁴. When asked how he would guard against unconscious bias, PC McDonough says “Constantly asking yourself questions, put yourself in that person’s shoes...how would they feel if they knew I was thinking that. Educating yourself essentially...I would like to think that I have implemented that way of thinking anyway. At the end of the day you want to treat everyone the same way and with respect...”⁴⁰⁵. The question was not asked of PC Good or Sergeant Maxwell.

6.2.2 Other officers

Detective Sergeant Davidson says that most of her detective training packages involved self-reflection, including detective packages, senior investigating officer’s training and CVF⁴⁰⁶. When asked if she had been taught tools or skills to allow her to guard against bias or prejudice or discrimination, Detective Sergeant Davidson says “no tools, there’s no specific tools to go by. It’s inevitably to be open minded,

³⁸⁸ 20/164/15

³⁸⁹ 10/169/10

³⁹⁰ 11/184/10

³⁹¹ 8/160/13

³⁹² 12/175/20

³⁹³ 14/106/5

³⁹⁴ 13/192/25

³⁹⁵ 7/125/15

³⁹⁶ 8/160/13

³⁹⁷ 14/1060/5

³⁹⁸ 20/165/2

³⁹⁹ 7/126/3

⁴⁰⁰ 10/169/16

⁴⁰¹ 11/184/19

⁴⁰² 8/161/4

⁴⁰³ 13/193/5

⁴⁰⁴ 7/125/15

⁴⁰⁵ 14/110/15

⁴⁰⁶ 17/177/23

considerate, and if you're open minded, you will make accurate and informed decisions"⁴⁰⁷.

Detective Constable Finch says that he does not recall receiving any training about unconscious bias but does understand what it means⁴⁰⁸. He also says that he does not believe that he holds any biased thoughts and tries to treat every person he encounters with professionalism and impartiality⁴⁰⁹.

Detective Sergeant Dursley does not recall having received any specific training in relation to unconscious bias⁴¹⁰. Detective Constable Miller also says that he does not recall having training on unconscious bias prior to 2015⁴¹¹ but that there has been training via the Moodle platform within the last two or three years prior to him giving his evidence to the Inquiry⁴¹². However, he says that he does not believe that the training has helped him to identify any biases that he has individually held⁴¹³.

Chief Inspector Trickett is asked about training on unconscious bias, when it was applied and what it meant. He speaks at length about it but acknowledges that he is not a training expert. He acknowledges that "everyone has unconscious bias. And the importance is people recognise that...and recognise how it might be affecting your thought process, your decision making process, your engagement processes"⁴¹⁴. When asked if he has undertaken training on unconscious bias he says "yes, you can probably tell that, couldn't you?"⁴¹⁵. He says he doesn't know if unconscious bias was being taught in 2015 but gives some examples of current training ("inclusion moments" – short video clips used to generate discussion in a group setting)⁴¹⁶. When asked what the training does to identify and guard against unconscious biases in day-to-day work, Chief Inspector Trickett says "I'm not the training expert in unconscious bias ...it's not a case of trying to remove unconscious bias from every person in society and so on. It's actually the recognition that they exist. So if you recognise that unconscious bias exists and you may have them... there isn't some sort of test that you do and therefore you identify all your unconscious bias, because then they are all conscious bias, et cetera. So you just need to recognise that this is a thing that can happen and then how it impacts"⁴¹⁷. He goes on to say that addressing unconscious bias is "actually all about listening. So the way to overcome unconscious bias is to listen to other opinions."⁴¹⁸. He goes on to add that combatting unconscious bias might be assisted by listening to lived experiences⁴¹⁹. When later asked whether unconscious bias training he had been involved in specifically addressed race, he says as far as he recalls it did not⁴²⁰.

⁴⁰⁷ 17/178/12

⁴⁰⁸ SBPI-00189 para 140

⁴⁰⁹ SBPI-00189 para 141

⁴¹⁰ SBPI-00228 para 194

⁴¹¹ 74/120/4

⁴¹² 74/120/23

⁴¹³ 74/121/8

⁴¹⁴ 46/101/6

⁴¹⁵ 46/101/23

⁴¹⁶ 46/101/23

⁴¹⁷ 46/105/20

⁴¹⁸ 46/106/17

⁴¹⁹ 46/107/23

⁴²⁰ 46/139/19

Detective Inspector Robson is asked about the concept of unconscious bias. He talks about treating people who look similar to himself more favourably and accepts that might mean that he could treat people who look different to him less favourably⁴²¹. He is asked whether the counter-terrorism landscape led to an unconscious bias in his mind. He says he is not sure⁴²².

PC Fraser is asked about unconscious bias during the Inquiry hearing. He says “I generally reflect after I have spoken – after each person I have spoken to as to how I have presented and carried myself, and if I’ve done – given the person justice” but he says he has not ever reflected on whether he has any biases in relation to race⁴²³.

PC Givan says that she remembers an hour’s training on unconscious bias by an external trainer, at some point in the years after Mr Bayoh’s death which was “specifically in respect of chairing a misconduct hearing”. She says it covered “more than just the race aspect of it”. She says she is unaware whether there was any other form of unconscious bias training for other staff⁴²⁴.

PC Gary Wood speaks about a diversity training module on Moodle that covered “stuff like unconscious bias and other items like that” which he had to complete in 2008 when he first started⁴²⁵. He says he does not remember the training but explains he did research in his own time. Asked if he is aware he has unconscious biases, he says “I think everyone does, in a sense, so to guard against it you have to understand it and...to deny that fact is, I think folly. You’re not going to understand people if you don’t understand it”. When asked, bearing in mind that his police dog is a “tool” which he can use whilst carrying out his duties as a police officer, if there is any “recognition about an unconscious bias that you may have which is somehow translated into how you use your dog”, he says “no”⁴²⁶. He adds that “you’ve got to guard against that all the time by keeping learning and keeping understanding things and the more experience you have, the more knowledge you acquire, the more that you can guard against that”⁴²⁷.

Detective Constable Finch says he does not recall that his 2007 training covered unconscious bias. When asked how he guards against unconscious bias, he says “the very nature of unconscious bias, you’re not necessarily conscious of it, but as I’ve said... I try every day to treat people with compassion and impartiality and be professional, treat people the way I would expect myself or my friends or my family to be treated”⁴²⁸.

Inspector Combe speaks about diversity and equality training in Fife in 2014, which she says was an online package and testing which included “human rights et cetera”⁴²⁹. She says all officers should complete competency and value framework

⁴²¹ 44/74/17

⁴²² 44/95/13

⁴²³ 62/112/2

⁴²⁴ 18/131/6

⁴²⁵ 26/76/24

⁴²⁶ 26/79/5

⁴²⁷ 26/79/9

⁴²⁸ 38/104/11

⁴²⁹ 17/176/15

training which includes equality and diversity training, but she says she does not recall it expressly including unconscious bias training⁴³⁰.

PC Geddes says that he has ‘probably’ been taught about unconscious bias but could not say how long ago the course was or what would have been mentioned⁴³¹.

Detective Superintendent Campbell says that unconscious bias is “the thread going through all our training that we’re involved in just now across Police Scotland”⁴³². Detective Superintendent Campbell is asked whether officers searching the Saeed house would have been trained in equality and diversity. He says “there’s...a significant number of courses, as you will see in my training record, you go through over a period of time round about diversity and considerations and inclusion...from probationer training all the way through to...detective training, it will have encompassed some aspect of that”⁴³³. When asked how comfortable or confident he is in identifying his own unconscious bias, Detective Superintendent Campbell says “I don’t think you’re comfortable with it, I think it’s something you have to do as a leader in the organisation”⁴³⁴. When asked whether training received from Police Scotland has provided him with strategies to allow him to identify unconscious bias in himself and other officers, he says it has. “It’s nothing that you try to hide or basically do not take into account”. He says it is about identifying stereotypes and ensuring that “it doesn’t impact negatively on your decision-making”⁴³⁵.

Assistant Chief Constable Nicolson says that he does not recollect having any specific training on unconscious bias but acknowledges that he will have a bias based upon the environment he has been exposed to⁴³⁶. In his evidence he says that he does not recall any bespoke training on unconscious bias⁴³⁷, racial discrimination⁴³⁸, or institutional discrimination⁴³⁹ but that these topics would have been discussed on various training courses. He also says that inadequacies in officer training on officer safety, first aid, or equality and diversity had not been brought to his attention in his role as Gold Commander⁴⁴⁰.

Chief Inspector Trickett speaks of training that he has received throughout his career on equality and diversity, with the Chief Inspector programme including specific training on the subject. Part of a previous role as an Inspector in Tayside Police included engagement with ethnic minority groups in Dundee and meant developing an appreciation of cultural sensitivities⁴⁴¹.

Chief Inspector Trickett says in his evidence that he has had training on unconscious bias but he could not recall if he received any prior to 2015. The training that is now

⁴³⁰ 17/177/2

⁴³¹ 22/56/17

⁴³² 49/155/19

⁴³³ 48/91/1

⁴³⁴ 49/157/1

⁴³⁵ 49/158/20

⁴³⁶ SBPI-00217 para 341

⁴³⁷ 68/168/19

⁴³⁸ 68/174/2

⁴³⁹ 68/174/20

⁴⁴⁰ 68/173/7

⁴⁴¹ SBPI-00257 para 48-51

available involves video clips called “inclusion moments” which generate group discussion on unconscious bias⁴⁴². He adds that unconscious bias must be acknowledged and that it might affect decision-making and thought processes. He feels that this is an issue of communication on a one-to-one level as well as communication from Police Scotland to society at large⁴⁴³.

6.3 The phrase “ISIS staying in the station”

In the transcript for CCTV Camera 12 in Kirkcaldy Police Station⁴⁴⁴ the phrase “ISIS staying in the station” is recorded as said by PC Harris, who was an Edinburgh based officer assisting in KPO on 3 May 2015 as an observation officer, to PC Geddes at around 08:27:17. PC Geddes, who was on duty in the custody suite on 3 May 2015, is asked about this in his first Inquiry statement⁴⁴⁵ and the Inquiry hearing. He originally says that he doesn’t think it related to anyone in the cells in KPO, as the anti-terrorism unit is in Glasgow⁴⁴⁶. He is later asked whether it may have been a derogatory comment about someone in the cells. He says it may have been but he was not aware of it at the time⁴⁴⁷. He is then asked why he didn’t challenge the statement and he says he does not remember the conversation so cannot give a reason⁴⁴⁸, but he accepts he should have challenged it⁴⁴⁹. After his appearance at the Inquiry hearing, PC Geddes emailed the Inquiry stating that he did raise the issue with his line manager, Sergeant Eric Anderson⁴⁵⁰. In his supplementary statement to the Inquiry, PC Geddes says he spoke to the sergeant in the office and pointed out the officer who had made the remark. He says the sergeant wasn’t very impressed and said he would contact the Inspector, but PC Geddes says he doesn’t know what happened after that. He says “at that point we’re dealing with Mr Bayoh’s death and we didn’t know at that time if there was any terrorism elements...we weren’t fully aware of the circumstances that went on out on the street, so whether it had been a terrorist incident or not”⁴⁵¹. In his Inquiry statement, Sergeant Anderson says he was the sergeant on the day but he has no record of speaking to PC Geddes about the incident. He says “the inference from what [PC Geddes is] saying is that he sounds like he’s quite appalled...I think if that were the case, I would remember that, and the fact that I don’t remember, I can only suggest that that conversation didn’t take place or didn’t take place in the terms that [PC Geddes is] making out”⁴⁵². When asked about it, PC Harris, who was usually based in Edinburgh but was on duty in Kirkcaldy that day, says he has no memory of using the term and it does not mean anything to him. He thinks it might have been “is he staying in the station”⁴⁵³.

⁴⁴² 46/101/23

⁴⁴³ 46/101/17

⁴⁴⁴ PIRC-01463

⁴⁴⁵ SBPI-00128

⁴⁴⁶ 21/175/5

⁴⁴⁷ 22/71/18

⁴⁴⁸ 22/72/2

⁴⁴⁹ 22/72/22

⁴⁵⁰ SBPI-00154

⁴⁵¹ SBPI-00154

⁴⁵² SBPI-00174

⁴⁵³ SBPI-00224, para 28

In his Inquiry statement, PC Geddes speaks about the transcript from camera 12 which includes him speaking about an “ISIS attack and that on a female...”⁴⁵⁴. He says in his statement “I don’t know what the ISIS attack is. That’s certainly not a way I would talk...the only thing I can think of, at the time there’s been terrorist attacks on the go and it’s whether there’s some kind of connection between a Black male being involved in an incident, and is there anybody going to link it to some sort of terrorist thing”⁴⁵⁵. Asked about this in the Inquiry hearing PC Geddes accepts that he has made a connection between a terrorist attack and a black male being involved⁴⁵⁶.

7. Terrorism and threat levels

7.1 Documents and notes

A number of documents were issued by Police Scotland to staff in the months before Mr Bayoh’s death.

Notices were issued on 16 January⁴⁵⁷ and 19 February⁴⁵⁸ 2015 stating that the threat level to the police service sector and police personnel working in the UK had been heightened to severe. Assistant Chief Constable Nicolson says that he could understand how the memo of 19 February might be relevant on the basis that Mr Bayoh was reported as “running seemingly without purpose with knives”, but that the terror threat in Scotland was related to Irish terrorism. The fact that Mr Bayoh was black could not be a factor in understanding this to be terrorism⁴⁵⁹. The January notice encourages officers and staff to “take sensible proportionate steps in relation to their own personal safety and maintain a heightened awareness of the safety of colleagues”, and the February notice refers to “recent attacks in Copenhagen, Paris, Australia and Canada and... the murder of Fusilier Lee Rigby on the streets of Woolwich”. It says, “Intelligence suggests that the current threat comes from an opportunistic attack by self-organised Islamist extremist groups or individuals”.

FAQs were issued about the “Threat and Response Levels” on 13 February⁴⁶⁰, and 14 April 2015⁴⁶¹. The February FAQ says “Terrorists will utilise any method which they think is effective. That can range from flying planes into buildings to the type of attack on an individual like Lee Rigby”. It also says it is “very important” to cover up police uniform when travelling to and from work. The April FAQs show that a “severe” threat level means “an attack is highly likely”. All note that the threat is the same in rural areas as in big cities and refer to a requirement to “double crew”.

A video from 2015 with Assistant Chief Constable Bernard Higgins says that the type of incident identified as most likely to occur is “a lone individual carrying out a low-sophisticated type of attack”, but says that this type of incident has not occurred. This

⁴⁵⁴ SBPI-00128 and PIRC-01463

⁴⁵⁵ SBPI-00128 paras 71, 72.

⁴⁵⁶ 21/174/5

⁴⁵⁷ PS01314

⁴⁵⁸ PS09749

⁴⁵⁹ SBPI-00217 – para 39

⁴⁶⁰ PS01315

⁴⁶¹ PS01317

also mentions the “default position for double crewing”⁴⁶². It is unclear when or how this video was issued.

During the call between Inspector Steven Stewart⁴⁶³ and Inspector Kay at 9.12 on 3 May 2015, Inspector Kay says “it came over and I just brought up the stay safe thing we’ve got on... they were on route and they got told “be safe” and we heard an ARV and the dog and that..”⁴⁶⁴

7.2 Terrorism and threat level – when mentioned

PCs Paton, Walker, and Good and Sergeant Maxwell mention the threat level or terrorism in their PIRC statements. PCs Short, Smith, Gibson, Tomlinson and McDonough do not refer directly to terrorism or the threat level in their PIRC statements.

PCs Paton, Walker, Short, Tomlinson, Smith and McDonough were not asked about terrorism or the threat level in their Inquiry statements and do not mention it voluntarily. PC Good is specifically asked in her Inquiry statement what it was about Mr Bayoh’s skin colour that made her think about “terrorist implications” and she refers to the UK threat level at the time and various briefings⁴⁶⁵. PC Gibson is asked what account he took of the threat level in his Inquiry statement, and he says he took no account of the threat level “this was just a knife call”⁴⁶⁶. Sergeant Maxwell voluntarily mentions the threat level in his Inquiry statement saying he is bringing it up because he knows “the Inquiry will examine it”⁴⁶⁷.

All attending officers are asked something about terrorism or the threat level in the Inquiry hearing. Their responses are included under relevant headings below.

7.3 Terrorism and threat level – specific comments

In their Inquiry hearing evidence, PCs Paton, Good, Walker, and Gibson and Sergeant Maxwell all mention the heightened or severe terrorist threat level at the time⁴⁶⁸, with PC Good in her PIRC statement and PC Paton mentioning that officers were not allowed to travel to work in uniform at the time due to the threat level⁴⁶⁹.

In relation to the information available and context at the time, PC Paton says “throughout the station at every turn there’s terror – posters highlighting the terrorist threat level and we had also.... a memo came out by [Assistant Chief Constable] Ruairaidh Nicolson that was highlighting the terrorist level...and making reference to Lee Rigby”⁴⁷⁰. He says in his PIRC statement that “due to the increased terrorist risk”, checks had been carried out by officers at “identified locations in Kirkcaldy” for “a

⁴⁶² PS01319

⁴⁶³ Steven Stewart retired from Police Scotland prior to giving his statement to the Inquiry. When he retired his rank had not changed.

⁴⁶⁴ PS02107

⁴⁶⁵ SBPI-00040

⁴⁶⁶ SBPI-00045

⁴⁶⁷ SBPI-00044

⁴⁶⁸ 20/19/25, 12/139/18, 6/68/19, 13/130/12, 14/157/24,

⁴⁶⁹ PC Good: PIRC-00274, PC Paton: 20/29/13

⁴⁷⁰ 20/19/14

number of months”⁴⁷¹. PC Good recalls receiving “a number of briefings on safety and threat levels” but cannot recall the content or who gave them⁴⁷². Sergeant Maxwell mentions “recent intelligence and the threat level to serving Police Officers in the United Kingdom”⁴⁷³. PC Walker in his Inquiry hearing evidence says “there was intelligence that there was...potentially someone looking to cause harm to the police and that was highly likely”⁴⁷⁴.

PC Paton⁴⁷⁵, PC Walker⁴⁷⁶ and Sergeant Maxwell⁴⁷⁷ in their Inquiry hearing evidence talk about having considered terrorism as a possibility among others other possibilities mentioned, including suicide, ‘death by cop’, and a mental health problem, when approaching the scene. PC Paton says “as with every knife call I consider terrorism until I get further information to rule it in or out”⁴⁷⁸.

PC Walker says in his PIRC statement that Mr Bayoh might have been trying to “get the police there” for an attack on the police⁴⁷⁹. Asked about this in the Inquiry hearing PC Walker says it was the “overt nature” of what Mr Bayoh was doing that concerned him, alongside intelligence about someone wanting to cause harm to the police⁴⁸⁰.

PC Good says she considered the possibility of terrorism because she genuinely believed PC Short had been stabbed, and 7:00 on a Sunday was a strange time for such a call⁴⁸¹.

PC Good is asked if there was an association in her mind between the colour of Mr Bayoh’s skin and potential terror connotations and she says “no”⁴⁸². When asked in her Inquiry statement “what it was about Mr Bayoh’s skin colour that made her think about terrorist implications”, she says “I assumed this thought entered my head momentarily due to the UK Terror Level at the time suggesting that an attack was likely and a briefing from the beginning of the year regarding intelligence regarding a female being attacked and watching events in the news”⁴⁸³. PC Paton is asked if he would have the same concerns about terrorism if Mr Bayoh was white and he says “of course I would. Terrorists are not just White – are not just Black, should I say”⁴⁸⁴. PC Walker is also asked if he would have the same concern about the threat level if the man had been white, and answers “yes”⁴⁸⁵.

PC Gibson is asked “what account, if any, did you have to the threat level” in his Inquiry statement. He responds “I took no account of the threat level. This was just a knife

⁴⁷¹ PIRC-00262

⁴⁷² PIRC-00275

⁴⁷³ PIRC-00267

⁴⁷⁴ 6/68/4

⁴⁷⁵ 20/88/7

⁴⁷⁶ 6/68/22

⁴⁷⁷ 14/07/158

⁴⁷⁸ 20/19/10

⁴⁷⁹ PIRC-00264

⁴⁸⁰ 6/67/10

⁴⁸¹ 12/142/2

⁴⁸² 12/141/24

⁴⁸³ SBPI-00040 para 10

⁴⁸⁴ 20/20/1

⁴⁸⁵ 6/68/14

call”⁴⁸⁶. He is asked further about this in the Inquiry hearing and he says “I was aware of the threat level... however the threat level made no difference to this call for me... I just thought it was a knife call... I didn’t at any point think it was terror-related”. He says he remembers that the threat level was “severe” but he “definitely” did not make a connection between that and the call⁴⁸⁷. He says he does not think he was aware of Mr Bayoh’s race before he got there⁴⁸⁸.

Sergeant Maxwell says in his [self-penned](#) statement “A part of me considered this to be a terrorism related incident based on recent intelligence and the threat level to serving Police Officers in the United Kingdom”⁴⁸⁹. His subsequent statement to PIRC does not mention terrorism or specifically cover risk assessment⁴⁹⁰. In his Inquiry statement he says “for the avoidance of doubt and because I know the Inquiry is going to examine the issue, I was aware of the threat level to national security and police officers as being severe, and that there had been high profile incidents in relation to terrorism in the United Kingdom. However, my risk assessment at the time did not take terrorism into account and only would have if credible evidence was available”⁴⁹¹. When asked further in the Inquiry hearing he says [“when the initial call came in, it’s my job to think of every sort of avenue, contingency, what’s going on, and obviously the nature of it with all the heightened security and terrorism, that did go into my mind, but, however, at that time there was no credible evidence to suggest that was the case until I actually arrived at scene and see what actually happens, mental health, death by suicide, different -- lots of different contingencies. If I wasn’t doing that, I wouldn’t have been doing my job right”](#)⁴⁹². He goes on to say that credible evidence that would have led him to take terrorism into account in his risk assessment would have been “if the information received had been terrorism related. I mean there have been religious...remarks or if the witnesses had been phoning in – something that would indicate a terrorism threat”⁴⁹³. When asked what his risk assessment did take into account, he says that it was a male armed with a knife running through the streets and chasing people, which was a “very rare occurrence”. When asked about his [self-penned](#) statement he says [the notes were made very early on in the morning after the incident and that he considers his PIRC statement to be more accurate](#)⁴⁹⁴. He goes on to say that “I did consider terrorism” and “the threat level being severe...” and he replies “yes” when asked if terrorism came into his mind and his risk assessment⁴⁹⁵. Maxwell is asked whether he came to the view that the incident was connected with terrorism or not and he answered “I came to the view that it was not linked with terrorism... I discounted it through the decision making process I made in my head”⁴⁹⁶. He is asked if a terrorist incident might justify police officers using more force. He replies “I wouldn’t say justified in using more force, just based on it’s terrorism. You

⁴⁸⁶ SBPI-00045

⁴⁸⁷ 13/130/14

⁴⁸⁸ 13/130/25

⁴⁸⁹ PIRC-00267. Sergeant Maxwell says he wrote this statement as notes to himself at home early on 4 May 2015 and a copy of it was later provided to PIRC: 14/123/6 to 14/124/8

⁴⁹⁰ PIRC-00266

⁴⁹¹ SBPI-00044

⁴⁹² 14/157/23 – 14/158/7

⁴⁹³ 14/158/8

⁴⁹⁴ 14/161/10

⁴⁹⁵ 14/161/13

⁴⁹⁶ 15/115/18

still need to go and assess the situation”⁴⁹⁷. When asked whether he connected the incident to terrorism because of his senior role as an acting sergeant he says “yes...if it is in front of you more you will consider it”⁴⁹⁸.

Detective Superintendent Campbell says that “it is important to highlight that the national threat level to the Police within the UK was “Severe” and that an attack on Police was “highly likely”. There had been significant terrorism related incidents earlier that year in Europe”. He goes on to say that “I had a wider appreciation and open-mindedness about what I was going to face at Kirkcaldy police office before I became actively involved there. Was this an incident triggered by ideology, or was this an incident simply involving the arrest of an individual and that this individual was black”⁴⁹⁹.

Area Control Room Controller PC Scott Masterton⁵⁰⁰ is asked if it crossed his mind that the incident could have the hallmarks of a terrorist incident. He says “no”⁵⁰¹.

Detective Chief Superintendent Boal says in her statement that “there was a mention of terrorism in this incident” saying that Assistant Chief Constable Nicolson mentioned the heightened threat level and “there was a mention to speak with counterterrorism to check whether Mr Bayoh was known on any of the systems”. She says this did happen and she thinks it was negative⁵⁰².

Assistant Chief Constable Nicolson refers to the minutes of the Gold Group meeting on 6 May in which it was said that “it was identified via the [Scottish Police] Federation that there may have been concerns being raised by Divisional Officers not attached to the incident that the incident may have connections to [counter terrorism]”. It was confirmed that a national electronic circular would be sent to officers to alleviate those concerns⁵⁰³. Assistant Chief Constable Nicolson also says that the incident which occurred at Hayfield Road involved a lone individual with a knife and ties into the briefing he previously circulated regarding a lone individual attacking the public or police⁵⁰⁴.

7.4 Potential attack on a female police officer

Some witnesses describe a shared belief that some intelligence had indicated a risk that a female officer was going to be attacked by an Islamist terrorist. PC Paton and PC Good refer to an awareness in Kirkcaldy Police Office of a potential attack on a female police officer. PC Paton says that this rumour was believed the rumour and that it had contributed to all officers in Kirkcaldy being told to be double crew (go out in pairs) whilst on patrol. PC Paton refers to this in his PIRC statement as a rumour, saying he thought about it “straight away”⁵⁰⁵ while PC Good says she received a

⁴⁹⁷ 14/162/7

⁴⁹⁸ 14/162/20

⁴⁹⁹ SBPI-00256 para 59

⁵⁰⁰ Scott Masterton retired from Police Scotland prior to giving his statement to the Inquiry. His rank had not changed when he retired.

⁵⁰¹ 25/62/7

⁵⁰² SBPI-00223 para 96, 97

⁵⁰³ SBPI-00217 para 330

⁵⁰⁴ SBPI-00217 para 331

⁵⁰⁵ PIRC-00262 page 4

briefing at “the turn of the year, where intelligence had been received by the police that there would be a potential attack on a female police officer⁵⁰⁶ but is not able to provide further details except that the briefing was probably at Tulliallan⁵⁰⁷. PC Paton says in his Inquiry hearing evidence the rumour of a potential attack by a “lone wolf” was “common knowledge”⁵⁰⁸. He says in his PIRC statement that officers had asked for confirmation of the rumour by managers but it had not been confirmed. However, it was “believed by officers that this had contributed to all officers in Kirkcaldy being double crewed while on patrol⁵⁰⁹. When told in the Inquiry hearing that the Inquiry may have heard evidence that an officer checked later and could not find anything to do with a threat against a female he responded “that’s convenient eh”, but he says “I don’t know” when asked what he meant by that⁵¹⁰.

PCs Walker, Short, Tomlinson, Gibson and McDonough do not mention this rumour or briefing in any of their evidence.

In the transcript for CCTV Camera 12 at KPO⁵¹¹, at 08:27 on 3 May 2015 PC Geddes is recorded as saying “...we’re wondering noo because the ISIS attack and that on a female on Friday big boy...”. When asked about this for his Inquiry statement⁵¹² he says he does not remember making the comment. He says, “The only thing I can think of, at the time there’s been terrorist attacks on the go and it’s whether there’s some kind of connection between a Black male being involved in an incident, and is there anybody going to link it to some sort of terrorist thing”. He is asked about this comment further in the Inquiry hearing⁵¹³, and refers to an intelligence briefing that came out saying that there was intelligence that a female police officer was going to be attacked. He says he does not know where the intelligence came from and that it was part of a briefing that they got at the start of every shift. When asked if it was a rumour or intelligence, PC Geddes says “It was intelligence, I’m positive it was an intelligence briefing that the information came from”⁵¹⁴. When asked why he connected the incident that day with an ISIS attack he says “I just mentioned it may have been an ISIS attack because of the suggestion a female officer has been targeted for it, and it may well have been ISIS”⁵¹⁵. He denies it was because Mr Bayoh was black⁵¹⁶ but later says “potentially that’s me making that connection because of the intelligence that there’s going to be a terrorist attack and connect that – a Black male attacking someone”⁵¹⁷.

7.5 Lee Rigby

⁵⁰⁶ PIRC-00274, page 7 PIRC-00275

⁵⁰⁷ 12/142/24

⁵⁰⁸ 20/27/10

⁵⁰⁹ PIRC-00262

⁵¹⁰ 20/29/22

⁵¹¹ PIRC-01463

⁵¹² SBPI-00128

⁵¹³ 21/168/3

⁵¹⁴ 21/169/24

⁵¹⁵ 21/171/3

⁵¹⁶ 21/171/14

⁵¹⁷ 21/174/19

PC Paton refers to the Lee Rigby case as being part of a memo on the threat level issued by Assistant Chief Constable Nicolson⁵¹⁸.

PC Paton says “I felt that I would get plunged stabbed or struck to the head... I kept thinking about the Lee Rigby boy”⁵¹⁹. In the Inquiry hearing he says that during the incident he “had visions of the Lee Rigby Incident, just blood everywhere”⁵²⁰.

PC Good in her first PIRC statement says she thought PC Short had been stabbed. “I was 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”⁵²¹. In the Inquiry hearing she is asked how the murder of Lee Rigby influenced her thinking on the morning of 3 May. She says, “it’s part of the memos that was mentioned”. Asked if she means “the Terrorist memos” she says “yeah... I think that’s the only reason I’ve mentioned that in my statement”⁵²².

PCs Walker, Short, Tomlinson, and McDonough do not refer to Lee Rigby. PC Walker is asked by Ms Mitchell KC during the Inquiry hearing whether PC Paton’s reference to Lee Rigby was the sign of a stereotype, and he answers that it would depend on the situation and the person’s perception of it⁵²³.

7.6 Senior officers

The Gold Group minutes for 11:30 on 3 May 2015 refer to “CT [counter-terrorism] Considerations”⁵²⁴.

Detective Inspector Robson was part of the pro-active investigations unit covering the whole of Fife, and was based at Kirkcaldy during the week of the 3 May 2015. Detective Inspector Robson’s daybook refers to “CT Consideration / Motivation Threat Level / Severe”⁵²⁵. In his second Inquiry statement, Detective Inspector Robson says “at that time a number of reported incidents classed as counterterrorism had occurred in the UK...We didn’t know what we had here. It would be wrong to dismiss terrorism”. He says, “By no means did I immediately think this was a terror incident. Nor did I think there was any racial element to it or have any information to support this”⁵²⁶.

Detective Inspector Robson is asked whether he considered terrorism in reference to the incident. He says “probably not until it was mentioned as a consideration. But again...we don’t discount anything, especially in the early stages, until we get information to make that assessment of the principles of any crime and incident”⁵²⁷. He says terrorism was “never at the forefront of my mind in terms of that early actions”⁵²⁸. He is asked if anything about the circumstances gave rise in his mind to

⁵¹⁸ 20/19/14

⁵¹⁹ PIRC-00262

⁵²⁰ 12/140/24

⁵²¹ PIRC-00274

⁵²² 12/140/24

⁵²³ 7/170/1

⁵²⁴ PS06491

⁵²⁵ PS18495

⁵²⁶ SBPI-00251

⁵²⁷ 43/159/25

⁵²⁸ 43/159/25

terrorism as being one of the eventualities. He says “no but the primary focus was establishing a motive”⁵²⁹.

Chief Inspector Shepherd is asked about the inclusion of CT/Counter Terrorism in the Gold Group minutes. She says the issue was passed on to Corporate Communications⁵³⁰.

Inspector Stewart in his first Inquiry statement⁵³¹ says he cannot recall what the terror threat was at the time, “but in the control room I would have been aware of the terror threat and the briefings that were going out...”. He says, “I did not view this as a terrorist incident based on the limited information I had at the time and I thought the incident was more likely related to the locality...”. He is asked in the Inquiry hearing whether the fact that the man involved was black altered his view of whether this was a terrorist incident and says “there was nothing to suggest during the incident that it was a terrorist-related incident at all”⁵³². He says if the officers attending were concerned they were attending a terrorist incident “their concerns should have been voiced” to the control room.

Detective Superintendent Campbell says in his second Inquiry statement, “It was the perception that could possibly be taken from the incident in Kirkcaldy that it could be seen as some perhaps related to a terrorist activity or incident – but we knew it was not. We were conscious of that because of the precursor incidents, and we had a significant threat to law enforcement in Europe at the time. These were things that were of no relevance, but we wanted the public to be aware that it was not a terror related incident”⁵³³. In the Inquiry hearing he says that he did consider there could be “some aspect of counterterrorism, CT, ideology aspect to what we were looking at...although there was no intelligence indicating anything as such”⁵³⁴. He says once background checks were carried out on Mr Bayoh they eliminated this hypothesis⁵³⁵. He is asked what it was about the incident that made him consider terrorism. He says the number of calls and the unusual time of day for a knife incident, as well as the “broader climate within the UK at that time” and the number of memos about the threat level and ‘stay safe’ were his main considerations. He is asked whether the fact that Mr Bayoh was black was a factor and he replies “no, absolutely not. If it was a white male with a knife restrained by police officers I would still have says the same”⁵³⁶.

Chief Superintendent McEwan says in his evidence that since Assistant Chief Constable Nicolson raised the issue of counter-terrorism in the first Gold Group meeting, this would have been investigated even if it had not initially been in the mind of the investigating officers to do so⁵³⁷. He says that the circumstances of the incident as described to him did not lead him to consider that this was terror-related⁵³⁸.

⁵²⁹ 43/160/12

⁵³⁰ 52/14/10

⁵³¹ SBPI-00084

⁵³² 5/202/10

⁵³³ SBPI-00256

⁵³⁴ 47/75/21

⁵³⁵ 47/79/20

⁵³⁶ 47/83/7 and 47/84/13

⁵³⁷ 63/92/16

⁵³⁸ 63/91/10

Detective Chief Superintendent Boal is asked if whether during the discussion about counter-terrorism in the 11:30 Gold Group meeting on 3 May 2015, there had been any connection made between Mr Bayoh being black and terrorism. She says that there was not⁵³⁹.

8. **Officers' previous experiences with knives or knife calls**

All attending officers say they have attended knife incidents in their career.

PC Paton is asked if he has been involved in previous incidents which have gone wrong and officers have been injured or threatened. He says he has but they were not knife incidents. He is asked specifically about knife incidents where something has gone wrong and officers have been injured, and he says "more than likely I have. I worked in the two busiest towns in Fife, so more than likely I have but I can't recall any"⁵⁴⁰. He is asked if he has ever used his spray at a knife incident and he says "probably" but he cannot be specific. He says he has used his baton once "and it was ineffective"⁵⁴¹. PC Paton says "as with every knife call I consider terrorism until I get further information to rule it in or rule it out"⁵⁴². He is asked whether this runs through his mind for all knife incidents whether the person is black or white and he says "it made no difference whatsoever"⁵⁴³.

PC Walker says he has never used his baton at a knife incident or otherwise⁵⁴⁴. He has only used his spray two or three times and cannot be sure if that was at a knife incident or otherwise⁵⁴⁵.

PC Short is asked about the difference between this incident and previous knife incidents she had attended that did not involve a black person. She says that the difference was with Mr Bayoh "there was absolutely no verbal communication in response to the commands...It's like nothing was kind of going in"⁵⁴⁶. She is asked whether, if she was first on the scene for a knife call, she would attempt communication first. She says she would⁵⁴⁷.

PC Tomlinson says he has attended knife incidents previously and they are a "regular occurrence"⁵⁴⁸ but he is not able to say whether any of them involved black men⁵⁴⁹.

PC Smith says he has attended knife incidents previously, and the police deal with "an awful lot of knife incidents", but he does not recall any involving a black man. He says the "majority...just over half" involve someone suffering from a mental health crisis⁵⁵⁰.

⁵³⁹ 66/82/18

⁵⁴⁰ 20/160/6

⁵⁴¹ 20/160/19

⁵⁴² 20/19/7

⁵⁴³ 20/81/15

⁵⁴⁴ 6/55/17

⁵⁴⁵ 6/61/12

⁵⁴⁶ 8/157/17

⁵⁴⁷ 8/161/19

⁵⁴⁸ SBPI-00043

⁵⁴⁹ 10/168/6

⁵⁵⁰ 11/43/12

He says “a few” involve someone under the influence of drink or drugs⁵⁵¹. Prior to May 2015 he recalls using CS spray once at a knife incident later clarified as a piece of glass rather than a knife, and once at an incident involving a blunt implement. Both involved self-harm⁵⁵². He says in the case involving glass, he used the spray when the glass object became a threat to himself⁵⁵³. In the case involving a blunt instrument he used the spray when “all other tactical options had failed”⁵⁵⁴.

PC Good says she had only attended one knife call prior to the incident, the day before. She had attended a mental health facility with PC Smith and restrained a woman to remove the knife from her hand⁵⁵⁵. She says after the incident, when working in a response unit for three years she attended knife calls roughly once a week⁵⁵⁶. During those calls she never used her baton or spray, but did have to resort to restraint⁵⁵⁷. None of the knife calls involved a black person⁵⁵⁸.

PC Gibson says he was in the response team for about a year before May 2015. He says he cannot put a number on how many knife calls he had attended but that most knife calls involve “self-harm, stuff like that”. He says he had limited experience of knife calls “like this”⁵⁵⁹. He says that knife calls “can be quite regular” in Kirkcaldy but that no knife calls he attended involved any black men⁵⁶⁰.

PC McDonough says he had attended knife incidents prior to May 2015, saying they are “relatively common”⁵⁶¹, but none involved a black man with a knife⁵⁶². He says a “fair amount”, being 3-4 times in a set of 6 shifts, would have involved a person under the influence of drink or drugs⁵⁶³. He says he has never used his CS spray or baton in a knife or any other call⁵⁶⁴.

Sergeant Maxwell says he has attended previous knife incidents, stating that this was “quite out of the ordinary” on a Sunday morning⁵⁶⁵. He says he had attended numerous calls where a knife was involved from the start, or became involved during the response, before 3 May 2015⁵⁶⁶.

Detective Sergeant Davidson says she “very likely” attended a knife call from Kirkcaldy Police Office before, though she remembers attending “immediate” calls rather than specifically knife calls⁵⁶⁷.

⁵⁵¹ 11/44/16

⁵⁵² 11/44/25

⁵⁵³ 11/45/16

⁵⁵⁴ 11/46/24

⁵⁵⁵ 12/125/20

⁵⁵⁶ 12/127/6

⁵⁵⁷ 12/128/1

⁵⁵⁸ 12/129/1

⁵⁵⁹ 13/112/24

⁵⁶⁰ 13/113/13

⁵⁶¹ 14/9/2

⁵⁶² 14/11/3

⁵⁶³ 14/11/7

⁵⁶⁴ 14/12/3

⁵⁶⁵ 14/132/6

⁵⁶⁶ SBPI-00044

⁵⁶⁷ 17/119/25

PC Fraser says that it “wasn’t uncommon” to attend an incident where someone was alleged to be holding a knife⁵⁶⁸. He says he never used his baton or his PAVA or CS spray⁵⁶⁹.

Inspector Stewart, who was based in the Area Control Room on 3 May 2015, says that knife calls are common to deal with in Scotland⁵⁷⁰ and Masterson says that knife calls are common to deal with in his area of Leith in Edinburgh⁵⁷¹.

9. Use of language to describe Mr Bayoh

9.1 999/101 calls

Within a period of around 8 minutes, between 07:09:43 and 07:16:33, six emergency calls were received in the Police Scotland Area Control Room ACR at Bilston Glen. One caller, Mr Kolberg, called twice.

Mr Bayoh is described in the calls⁵⁷² as a man of “African origin” with “quite big build”/ “quite muscly built”⁵⁷³, “a Black man”⁵⁷⁴ and “a big coloured guy... quite well built” with a “big build”⁵⁷⁵. His height is described as “about 6 foot” by both Mr Kolberg and Mr Alan Pearson in the calls. His height is not mentioned by any of the other callers.

The knife is described as “a huge blade” by Mr Rowe. When asked if he means a sword he clarifies “a big kitchen knife”. Both Mrs Joyce Joyce and Mr Pearson say it is a “9 inch knife” and it is further described as a “large knife”⁵⁷⁶, and “a huge big big knife”⁵⁷⁷.

In their statements and oral evidence, these witnesses use the following terms to describe Mr Bayoh: “athletic, certainly muscly”⁵⁷⁸, “muscular physique or well-built: you could tell he looked after himself”⁵⁷⁹, “he looked as though he’d done some weights. He was quite broad in the shoulders but I wouldn’t say he was fat. He was very muscly”⁵⁸⁰, “big muscly guy, really really muscly especially in the shoulders and arms”⁵⁸¹, “he was well built, he was big”⁵⁸²; “large man”, “bigger than average”, “quite a big guy”⁵⁸³, “big built like he had been working out”⁵⁸⁴, “well-built, muscly”⁵⁸⁵, “Big

⁵⁶⁸ 62/8/3

⁵⁶⁹ 62/8/23

⁵⁷⁰ 5/158/18

⁵⁷¹ 24/118/7

⁵⁷² SBPI-00082

⁵⁷³ Mr Kolberg

⁵⁷⁴ Mr Rowe, Mrs Joyce, Linda Limbert

⁵⁷⁵ Mr Pearson

⁵⁷⁶ Mr Pearson

⁵⁷⁷ Linda Limbert

⁵⁷⁸ Mr Kolberg, 4/74/19-4/75/8

⁵⁷⁹ Mr Rowe SBPI-00018, PIRC-00010 and 5/35/12

⁵⁸⁰ Mrs Joyce SBPI-00069

⁵⁸¹ Mrs Joyce PIRC-00065

⁵⁸² Linda Limbert, 4/56/21

⁵⁸³ Mr Pearson SBPI-00085

⁵⁸⁴ Mr Pearson PIRC-00066

⁵⁸⁵ Mr Pearson PIRC-00067

build. Not fat, but well muscled”⁵⁸⁶. Mrs Joyce at one point refers to Mr Bayoh as “the boy”⁵⁸⁷.

The witnesses, including other witnesses who did not call 999 but saw Mr Bayoh that morning, consistently describe Mr Bayoh’s height as between 5’8” to around 6 foot. Mr David Grey does describe him as “tall” and “in excess of 6 foot”⁵⁸⁸.

9.2 Descriptions of Mr Bayoh by people that knew him and saw him shortly before the incident

Ms Bell, Mr Bayoh’s partner, describes him on her 999 call as “Black”, “quite muscly” and “just under six foot”⁵⁸⁹. In the Inquiry hearing she says “he had a muscular build but he wasn’t massive... he was only a little bit taller than me”⁵⁹⁰. In her Inquiry statement and Inquiry hearing evidence she speaks about stereotypical descriptions the police gave of Mr Bayoh, “having...excited delirium, being like a zombie, being really, really big” “superhuman strength... being the size of a house”⁵⁹¹, stating that they seemed to be “dehumanising” him⁵⁹². She says “they [Peter Watson] were trying to make [Mr Bayoh] out as something that he wasn’t...to portray Sheku as a really big, dangerous man... I can’t understand why they think he’s so large... in my opinion, that image was portrayed to the public to excuse what the police had done”⁵⁹³. She is asked whether she thought there “was racism in the portrayal of Sheku” and says “I think so. They did describe him as Black, and he is Black, but it’s almost the stereotypes they were using, that he was incredibly large when he wasn’t incredibly large”⁵⁹⁴.

Mr Bayoh’s neighbours, described him as “a fit guy who takes care of himself”, “a really dark Black guy”⁵⁹⁵, “quite a fit guy”, “he was Black”, “not a very tall guy but quite broad. You can tell he looks after himself a bit. Not a massive body but he had muscle on him. A bit of weight behind him. He’s short, not very tall”⁵⁹⁶, “He wasn’t a giant... nice and trim he kept – he looked after himself”⁵⁹⁷.

Other friends of Mr Bayoh describe him as “Black, about 5 foot 10... muscular build”⁵⁹⁸, “of West African descent”, “Black African, 5’10 – 5’11, large build, muscular”⁵⁹⁹ “Black African from Sierra Leone”, “kept himself fit... well built with a strong muscly physique”⁶⁰⁰. Mr Bayoh’s brother-in-law, Mr Adeyemi Johnson, says “Sheku keeps himself fit and attends the gym on a regular basis”⁶⁰¹. He expresses disbelief that the

⁵⁸⁶ Mr Pearson, 5/12/24

⁵⁸⁷ PIRC-00065

⁵⁸⁸ SBPI-00013, 4/102/3

⁵⁸⁹ PIRC-01384

⁵⁹⁰ 40/95/8

⁵⁹¹ 40/91/21

⁵⁹² 40/109/4

⁵⁹³ SBPI-00247, para 60, 61

⁵⁹⁴ SBPI-00247, para 61

⁵⁹⁵ Eleanor Galloway PIRC-00039

⁵⁹⁶ Neil Morgan SBPI-00024

⁵⁹⁷ Neil Morgan Day 4/35/22

⁵⁹⁸ Martin Dick PIRC-00030

⁵⁹⁹ Kirsty MacLeod PIRC-00053

⁶⁰⁰ Zahid Saeed PIRC-00033

⁶⁰¹ Adeyemi Johnson PIRC-00106

officers described Mr Bayoh as “the biggest Black male they had ever seen”⁶⁰². No other family members of Mr Bayoh included physical descriptions of him in their evidence.

9.3 Medical witnesses

Dr Gillian Pickering describes Mr Bayoh as “tall, Black”⁶⁰³, “large chest”⁶⁰⁴, “big build guy and he was tall”⁶⁰⁵. Other medical witnesses give similar descriptions. Dr Sophie Rawlings at Victoria Hospital says in her PIRC statement “I would describe the situation as follows – the gentlemen, who was black, well built, muscular...”⁶⁰⁶ and Nurse Kendall Ovens says “Sheku Bayoh was a tall, well-built black man”⁶⁰⁷. The initial post mortem report provides the following description: “The body was that of a dark brown skinned adult male, of heavy build, measuring approximately 178cm (5ft 10) in height and weighing 81kg (12st 10lb) – BMI of 25.6”⁶⁰⁸.

9.4 Airwaves

In airwaves calls between 06:16 and 08:00 that day, an unknown male voice reports “male armed with a knife...African looking male chasing... someone ... may be carrying a knife ... described as big with muscles about six foot tall”, “male Black well-built six foot tall... carrying a very large knife”, then “he’s described as male Black well built six foot tall”⁶⁰⁹. He is otherwise described as “the male” or “the accused” in the transcript.

In a transcript of a call between Inspector Kay and Inspector Stewart at 09:12:35, Inspector Kay says, “he’s basically... he’s the size of a house” and says “I have’nae seen him but he’s a decent size”. He further says that Mr Bayoh “ran at them with a knife” and “basically just went for them”⁶¹⁰.

9.5 Attending Officers – statements and Inquiry hearing

The attending officers describe Mr Bayoh in their PIRC and Inquiry statements and Inquiry hearing evidence. He is described as a “Black man/Black male”⁶¹¹, “large Black male”⁶¹², “a Black African Caribbean male chasing people with a knife”⁶¹³, “the coloured male”⁶¹⁴, “a huge, very muscular Black guy, a “Black male brandishing a knife”⁶¹⁵, a “large male brandishing a knife”⁶¹⁶, “a strong dude”⁶¹⁷, “well built, muscular,

⁶⁰² SBPI-00248

⁶⁰³ PIRC_00118

⁶⁰⁴ PIRC-00119

⁶⁰⁵ SBPI-00028

⁶⁰⁶ PIRC-00206

⁶⁰⁷ SBPI-00031

⁶⁰⁸ PIRC-01444 page 4 “External Findings”

⁶⁰⁹ PIRC-01399

⁶¹⁰ PS02107

⁶¹¹ 15/92/5

⁶¹² PC Paton, PIRC-00262,

⁶¹³ PC Short PIRC-00253

⁶¹⁴ PC Good PIRC-00274

⁶¹⁵ PC Tomlinson PIRC-00263

⁶¹⁶ PC Tomlinson SBPI-00043

⁶¹⁷ PC Gibson PIRC-00258

looked like somebody who enjoyed going to the gym”⁶¹⁸, “big, muscular”, “muscular male”, “broad about the chest and had a strong build”⁶¹⁹, “physically quite broad”, “he looked quite a strong individual”, “broad build, broad around the shoulders”⁶²⁰.

PC Good says, “I could see the definition of his muscle through [his t-shirt], particularly at the back, and in particular his shoulder muscles, he was massive and is the biggest male I have seen”⁶²¹. When asked about this comment in the Inquiry hearing she volunteers that she meant “at... a police incident”⁶²² and “when I’ve said he’s massive, I’ve been talking about his muscles”⁶²³. In her PIRC statement, PC Good refers to Mr Bayoh as “the coloured male”.

PC Good says in her PIRC statement that during the restraint “I saw Alan Paton pat him on the cheek with his hand. I thought that Shek was faking it, as in he was faking that he was unconscious, as it is not unusual for people to do that when they are being arrested”⁶²⁴. Asked about this in the Inquiry hearing, she denies that she made any assumptions about Mr Bayoh “faking it” based on the fact he was black⁶²⁵. Asked about the same topic, PC Paton says the touch to Mr Bayoh’s face was “two pats” not a “slap” and that “it was done with the best intention to get a reaction from him”⁶²⁶. Separately, when asked about use of handcuffs during CPR, PC Paton says “it is good practice to have handcuffs on obviously for whether they’re feigning it or come back round or whatever”⁶²⁷. He was not asked whether a concern regarding feigning unconsciousness was linked to Mr Bayoh’s race.

PC Paton says “I remember the t-shirt being tight-fitting around his shoulders and biceps”⁶²⁸. When asked about his description of Mr Bayoh as a “large, Black male” despite Mr Bayoh being lighter than him and PC Walker, PC Paton says he meant “his physique, his muscles, his neck muscles, his biceps, his chest” and “he was a steroid user, ey, so he was pumped up”⁶²⁹.

PC Short says ⁶³⁰, “his arms were very muscular as were his shoulders. He was wearing a white t-shirt exposing his muscular arms”⁶³¹ “Mr Bayoh’s muscles were bulging”⁶³², “his muscles were massive”⁶³³. She describes Mr Bayoh as “pumped up”, “deranged with superhuman strength”⁶³⁴, “the most muscular man I’ve ever seen”⁶³⁵

⁶¹⁸ 9/56/12

⁶¹⁹ PC Walker SBPI-00039

⁶²⁰ 7/134/19

⁶²¹ PIRC-00274

⁶²² 12/180/18

⁶²³ 12/181/5

⁶²⁴ PC Good, PIRC-00274

⁶²⁵ 12/190/23 to 12/191/9

⁶²⁶ 20/76/7 to 20/76/10

⁶²⁷ 20/63/23

⁶²⁸ 20/78/23

⁶²⁹ 20/174/6

⁶³⁰ PC Short PIRC-00253

⁶³¹ PC Short PIRC-00254

⁶³² PC Short SBPI-00061

⁶³³ 8/55/15

⁶³⁴ PIRC-00253

⁶³⁵ 8/166/21

and says she has “never ever seen a more frightening crazy man” in her life⁶³⁶. When asked about the use of “superhuman” she says it is not based on stereotype but is “accurate”⁶³⁷.

PC McDonough says Mr Bayoh had a “muscular and aggressive manner”⁶³⁸.

PC Tomlinson uses the word “swagger” in relation to Mr Bayoh’s walk. He is asked about this and denies it exhibits any “underlying bias”, saying he would also use the word in relation to a white man⁶³⁹.

10. **Other use of language**

10.1 ‘Coloured’

PC Good describes Mr Bayoh as “coloured” in her PIRC statement⁶⁴⁰. When this statement was read to her in the Inquiry hearing, she says, “I’ve said that in error” and explains that she knows it is not an acceptable word to use⁶⁴¹. When asked she says she knows it is considered offensive, and she used the term in 2015 because she was “trying to be polite” and “made a mistake and used the incorrect term”⁶⁴². She says she had never used the word around Kirkcaldy Police Office⁶⁴³. In Rule 9 questioning PC Good says no one from Police Scotland challenged her about the use of the word “coloured” in a police statement although it is questioned whether Police Scotland would have had access to her statement at the time. She does not remember anyone from PIRC bringing it up, and she does not remember any police training covering offensive terms⁶⁴⁴.

In his [self-penned](#) statement, Sergeant Maxwell says “on arrival at locus I witnessed a Black coloured male...”⁶⁴⁵. He is not asked further about this.

PC Tomlinson⁶⁴⁶ and PC Gibson⁶⁴⁷ are asked in the Inquiry hearing if they have ever heard any of his fellow officers or colleagues using the word “coloured” to describe a black person. They say they have not. PC Tomlinson says if he did he tell them it was “not the correct thing to be saying”.

PC Gibson is asked if he has heard his colleagues using words like “coloured” in referring to someone who was black and he replies “not my colleagues, no”⁶⁴⁸. PC Gibson says he has heard “members of the community” in Kirkcaldy use “coloured” to

⁶³⁶ 8/109/9

⁶³⁷ 8/166/14

⁶³⁸ 14/51/1

⁶³⁹ 10/175/4

⁶⁴⁰ PIRC-00275

⁶⁴¹ 12/141/7

⁶⁴² 12/142/9

⁶⁴³ 12/177/11

⁶⁴⁴ 12/187/4

⁶⁴⁵ PIRC-00267. Sergeant Maxwell says he wrote this statement as notes to himself at home early on 4 May 2015 and a copy of it was later provided to PIRC: 14/123/6 to 14/124/8

⁶⁴⁶ 10/185/7

⁶⁴⁷ 13/194/16

⁶⁴⁸ 13/194/16

describe “a Black man, or someone who is Muslim” and even before May 2015 he would educate them on the fact that “coloured” is not a correct term now. He says he thinks it is a generational thing, that he has heard younger people use the word but it is used more by older people⁶⁴⁹.

PC Walker is asked what he would have done if he had heard a colleague use the word “coloured” to describe Mr Bayoh. He says he would have “corrected them...that he was a Black man, and there were some sensitivities around the use of the word “coloured”⁶⁵⁰.

Mr Kolberg refers to Mr Bayoh as “a coloured guy” in his Inquiry hearing evidence⁶⁵¹. Mr Pearson describes Mr Bayoh as “a big coloured guy” in his PIRC statement⁶⁵². When asked about this in the Inquiry hearing he says “Looking back on it, yes, I shouldn’t have used that word, I should have just used the term “Black man” but at the time it just came out”⁶⁵³.

Mr Kevin Nelson describes Mr Bayoh as “a tall guy, coloured.”⁶⁵⁴.

Ambulance paramedic Mr Alan Finlayson (not an employee or officer of Police Scotland) in his Crown precognition statement, when describing the scene on his arrival at Hayfield Road, also refers to Mr Bayoh as “a coloured gentleman”⁶⁵⁵.

10.2 ‘Boy’

Both PC Paton and PC Geddes use the term “the boy” when referring to Mr Bayoh⁶⁵⁶. PC Geddes also refers to other officers, and a person in the cells on 3 May 2023 as “the boy”⁶⁵⁷. PC Geddes is asked in the Inquiry hearing if calling someone ‘boy’ is a phrase commonly heard in Fife and he says “yes”⁶⁵⁸. PC Paton is asked in the Inquiry hearing if he would call someone ‘boy’ if they were black or white, and he says it would not make a difference⁶⁵⁹. PC Paton says, “I kept thinking about the Lee Rigby boy⁶⁶⁰”, refers to Detective Chief Inspector Hardie as “the boy Hardie”⁶⁶¹, and refers to a previous incident he was involved in “a boy...had gone up to the roof”⁶⁶².

Mrs Joyce refers to Mr Bayoh as “the boy” once in her statement⁶⁶³. Mr David Taylor the paramedic says “I remember cutting the boy’s t-shirt right down the front”⁶⁶⁴.

⁶⁴⁹ 13/195/22

⁶⁵⁰ 7/168/19

⁶⁵¹ 4/74/20

⁶⁵² PIRC-00262

⁶⁵³ 5/20/9

⁶⁵⁴ COPFS-00055

⁶⁵⁵ COPFS-00044

⁶⁵⁶ PC Paton: PIRC-00363 , 20/109/13, Geddes: 22/18/10

⁶⁵⁷ SBPI-00154

⁶⁵⁸ 22/43/11

⁶⁵⁹ 20/99/15

⁶⁶⁰ PIRC-00262

⁶⁶¹ 20/137/18

⁶⁶² 20/182/21

⁶⁶³ PIRC-00065

⁶⁶⁴ PIRC-00179

Inspector Combe in her Inquiry statement says “An example of this is a boy like Alan Smith”⁶⁶⁵.

Mrs Johnson in her PIRC statement says of her brother, “I can remember being told “the police have been involved in a forceful arrest and during that time they realised Shek was unconscious and ambulance was called and died by the time he got to the hospital.” By that time we all got upset because by that reading we thought the police had killed him (Sheku). I thought this because I said to the police officer from a nursing background, you are from a nursing background, I am from a nursing background, I said this is a black boy you have killed...”⁶⁶⁶.

10.3 ‘Size of a house’

In an Airwaves call Inspector Kay is recorded as saying to Inspector Stewart “he’s the size of a house”⁶⁶⁷. Inspector Kay is asked about the use of this expression in the Inquiry hearing⁶⁶⁸. He says he would not use that terminology but he would have taken that from the briefing from Sergeant Maxwell. Inspector Kay says. “I know where it would stem from... I would describe him as being well built, he is a unit, in sports [terms], he is muscly, powerful, athletic. That’s what I would take from that”⁶⁶⁹. Inspector Kay is asked whether he has views about whether the expression was used because Mr Bayoh was black. He says he is not aware of the stereotype that black men are bigger, stronger or more aggressive⁶⁷⁰, and says that Mr Bayoh’s height being 5’10”-5’12” would not suggest to him the term “size of a house” but “I also wouldn’t disagree if I was getting told he was a unit or powerful”⁶⁷¹. Sergeant Maxwell [was not](#) asked about the phrase⁶⁷².

Inspector Stewart is asked what his impression is of someone who is the size of a house. He says “someone who is hugely built, massively built”, and “6 foot plus”⁶⁷³. Asked if it would describe someone who is 5’10” and 12 stone 10, he says “no”⁶⁷⁴.

PC Tomlinson and Detective Chief Inspector Hardie are asked about the description of Mr Bayoh as “the size of a house”. Both say they would not use the phrase themselves, and that they would interpret it as referring to someone who was fat or overweight⁶⁷⁵. Detective Chief Inspector Hardie says he would describe Mr Bayoh as “a very, very fit individual”⁶⁷⁶.

PCs Walker, Short and Smith are also asked about the use of the phrase. PC Walker says “that’s not how I would have described him but I would certainly say he – he was

⁶⁶⁵ SBPI-00124 para 46

⁶⁶⁶ PIRC-00252

⁶⁶⁷ PS02107

⁶⁶⁸ 24/93/24

⁶⁶⁹ 24/94/1

⁶⁷⁰ 24/94/25

⁶⁷¹ 24/95/13

⁶⁷² Hearing Days 14 and 15.

⁶⁷³ 5/193/7

⁶⁷⁴ 5/193/20

⁶⁷⁵ Tomlinson: 10/175/20, Hardie: 50/138/3

⁶⁷⁶ 50/138/12

broad build, broad around the shoulders”⁶⁷⁷. PC Short also says she did not use the phrase but says in response “he was the most muscular man I have ever seen, like face-to-face”⁶⁷⁸. PC Smith says it was not the kind of view he held in 2015⁶⁷⁹.

10.4 ‘Zombie’

In his Inquiry statement PC Walker describes Mr Bayoh as being in a “rage or zombie state”⁶⁸⁰. He explains this further in the Inquiry hearing as referring to Mr Bayoh having a “thousand yard stare” and not communicating⁶⁸¹. The word zombie is also used by PC Short⁶⁸² and PC Paton⁶⁸³. PC Short denies that she used the word zombie because Mr Bayoh was black and says “nothing was going in, nothing of what we were saying seemed to be getting any response whatsoever”⁶⁸⁴. PC Paton is asked what he meant by it and says, “Just on a one-track mind...oblivious to what is going on around him, consistent with being on Flakka”. Asked if it is a word he would use for white people as well as black, he says “why would I not?”⁶⁸⁵. Ms Bell in her Inquiry hearing evidence also mentions officers describing Mr Bayoh as “being like a zombie” and describes this as Mr Bayoh being “dehumanised”⁶⁸⁶.

10.5 Stereotypes

Various officers were asked during the Inquiry hearings about stereotypical language or stereotypes that they are aware of that are used to describe black people or black men. The question asked is usually about whether they are aware of stereotypes around black people or black men being perceived as more violent, more likely to resist, having superhuman strength or size, or being terrorists.

PCs Paton⁶⁸⁷, Short⁶⁸⁸, Good⁶⁸⁹, and Geddes⁶⁹⁰, Sergeant Maxwell⁶⁹¹ and Inspector Kay⁶⁹² say they are not aware of stereotypes of black men described above. PC Gibson says he is not aware of attitudes like this in Kirkcaldy⁶⁹³. PC Short adds that she did not make assumptions along those lines. Sergeant Maxwell is also asked if he is aware of stereotypes of black men being more likely to be feigning or faking, and he says ‘no’⁶⁹⁴.

⁶⁷⁷ 7/134/15

⁶⁷⁸ 8/166/17

⁶⁷⁹ 11/188/9

⁶⁸⁰ SBPI-00039

⁶⁸¹ 6/167/1

⁶⁸² SBPI-00061

⁶⁸³ 20/87/12

⁶⁸⁴ 8/119/1

⁶⁸⁵ 20/88/24

⁶⁸⁶ SBPI-00247, 40/92/11

⁶⁸⁷ 20/173/16

⁶⁸⁸ 8/165/22

⁶⁸⁹ 12/179/16

⁶⁹⁰ 22/77/6

⁶⁹¹ 15/84/19

⁶⁹² 24/95/5

⁶⁹³ 13/202/9

⁶⁹⁴ 15/84/24

PC Tomlinson⁶⁹⁵, Inspector Stewart, and Detective Superintendent Campbell⁶⁹⁶ say they are aware of these stereotypes but do not hold those views themselves. Inspector Stewart⁶⁹⁷ mentions a press article that day about black people being more likely to be tasered by police officers.

PC Gibson⁶⁹⁸, PC McDonough⁶⁹⁹ and Sergeant Maxwell⁷⁰⁰ all say that they are aware of a stereotype that black men are more likely to be part of a gang or involved in criminality when asked about stereotypes they are aware of. All mention media or social media as a source of this and say they do not hold the view themselves. PC McDonough says it is important to be aware of stereotypes to assist in educating people that they “aren’t facts” and are “offensive”⁷⁰¹. PC McDonough also says he is aware of a stereotype that “all Black males are superior athletes or good at running”⁷⁰².

PC Good, PC Gibson, Sergeant James Young⁷⁰³, and Inspector Stewart are asked about training relating to stereotypes. PC Good says she cannot remember whether training she received covered the use of racial stereotypes⁷⁰⁴. PC Gibson says that training he received ‘probably’ covered assumptions like that but he can’t recall⁷⁰⁵. Inspector Stewart is not able to identify specific training provided in relation to stereotyping of black suspects. He mentions the “Policing Together” programme⁷⁰⁶. Sergeant Young is asked whether training on racial stereotypes was included in diversity courses. He says stereotyping was mentioned though he is unsure if it was racial stereotyping⁷⁰⁷.

PC Walker is asked whether describing someone as a “large Black male” could be a racist stereotype, and replies “not if it’s an accurate description”⁷⁰⁸. He also says that more information is needed to decide whether an assumption that the incident was a terrorist incident was based on stereotype⁷⁰⁹. He is asked whether he assumed Mr Bayoh posed a greater risk because he was particularly strong or going to be more violent because he was black. PC Walker says “No, it was just he was physically quite broad...he looked like quite a strong individual and that’s... the only thing we took into consideration was his possible physical power”. He says he would not have considered Mr Bayoh was less of a threat if he had been white⁷¹⁰.

PC Paton, when asked about stereotypes he is aware of, says “there is not a big Black community in Kirkcaldy” but he is aware of stereotypes about “youths in general... youths in a gang, youths are causing trouble, youths are the ones that are

⁶⁹⁵ 10/174/11

⁶⁹⁶ 49/160/13

⁶⁹⁷ 5/204/12

⁶⁹⁸ 13/201/7

⁶⁹⁹ 14/109/18

⁷⁰⁰ 15/84/14

⁷⁰¹ 14/110/9

⁷⁰² 14/109/18

⁷⁰³ James Young was promoted to Inspector prior to giving his statement to the Inquiry.

⁷⁰⁴ 12/188/7

⁷⁰⁵ 13/201/25

⁷⁰⁶ 6/5/4

⁷⁰⁷ 23/125/23

⁷⁰⁸ 7/169/19

⁷⁰⁹ 7/169/20

⁷¹⁰ 7/134/1

causing damage...nine times out of ten it's not the youths"⁷¹¹. When asked if he was aware that black men may be perceived as more likely to resist, be more violent, have superhuman strength or size he says he was not and did not hold those views himself.

PC Short says Mr Bayoh was "deranged with superhuman strength" in her PIRC statement⁷¹². PC Short is asked if her description of Mr Bayoh as having "superhuman strength" was based on a stereotype and she responds that it was "an accurate account of what I came across"⁷¹³.

Detective Inspector Robson was part of the pro-active investigations unit covering the whole of Fife, and was based at Kirkcaldy during the week of the 3 May 2015. His Inquiry statement contains a comment about "Eastern Europeans"⁷¹⁴, which he recognises as a stereotype and apologises for in the Inquiry hearing⁷¹⁵.

Detective Superintendent Campbell is asked if he would consider whether racial stereotypes influenced the actions of the attending officers. He says it was something that was not easy to do immediately with the absence of personal accounts⁷¹⁶, but was something that "would have to be obviously taken into account"⁷¹⁷.

Detective Constable Miller is asked about police officers not wearing forensic suits whilst in Mr Saeed Ahmed's property, and says that he did not appreciate the relevance of the property to the investigation but assumed⁷¹⁸ that they would be searching the property for "either drugs or potentially a bladed article or something like that"⁷¹⁹.

Mr Martin Graves is asked whether the race of a subject would be a relevant consideration in the perception of a threat, and whether racial stereotypes might form part of the perception of a threat. He says "I can accept that they can in some instances affect an individual's perception, but again, as I said, it's not something within the training or within the police service that is a recognised risk factor"⁷²⁰.

In his evidence Chief Inspector Trickett refers to page 39 of PS-05536 as being notes that he took of the incident during the 09:30 initial briefing⁷²¹. He has written "7am; reports; African male; chasing cars; machete" in his note of the briefing. See section 9.1 above for language used in the 999/101 calls.

⁷¹¹ 20/173/6

⁷¹² PIRC-00253

⁷¹³ 8/166/12

⁷¹⁴ SBPI-00133

⁷¹⁵ 44/61/12

⁷¹⁶ PS-10934 para 9. As part of the Post Incident Procedures, officers involved in an incident will be required (subject to legal/medical advice) to provide their personal initial account. The purpose of a personal initial account is not a detailed statement but records the officer's "role" in the incident, "what they believed to be the essential facts" of the incident, and "their honestly held belief that resulted in their use of force".

⁷¹⁷ 49/160/13

⁷¹⁸ 74/74/5

⁷¹⁹ 74/73/15

⁷²⁰ 27/103/10

⁷²¹ 46/5/25

Dr Maurice Lipsedge speaks about the language used in relation to “diagnoses” of Excited Delirium and Acute Behavioural Disturbance, stating that the terms “superhuman strength” and “impervious to pain” were frequently used. He explains that these have links to historical and current stereotypes relating to slavery and black people and states that the Royal College of Emergency Physicians denounced these diagnostic criteria⁷²².

10.6 Machete

In the 999 calls the knife Mr Bayoh was seen holding is described as a “knife”⁷²³, “9 inch knife”⁷²⁴, “Knife... 9 inch blade”⁷²⁵. Mr Rowe calls it a “huge blade” and is asked by the call handler if he means a sword. He says “a big kitchen knife”⁷²⁶.

The PIM log completed by Chief Inspector Trickett at 09:55 on 3 May 2023 begins “reports male machete in street. Police attend, male strikes one with machete”⁷²⁷. In his Inquiry hearing evidence Chief Inspector Trickett says this may have come from the briefing that morning from Chief Superintendent McEwan⁷²⁸ and the “sit rep” on the morning of the 3 May⁷²⁹. Chief Inspector Trickett says that he was unsure where Chief Superintendent McEwan received the information from, i.e. that it was a machete⁷³⁰. Chief Inspector Trickett says this log was actually completed at 11:24. Chief Superintendent McEwan says he does not recall using the word but that “In policing terms, and in sort of media terms, it is a very commonly used word, machete...it is very common actually”⁷³¹. He says to him it means “a very large knife” and has no connotations relating to race⁷³². He adds that it would not have made any difference to the investigation if the bladed article which Mr Bayoh had been reported to have been in possession of had been referred to as either a “large knife” or a “machete”. Both are lethal weapons⁷³³.

The transcript for camera 12 at KPO⁷³⁴ has at 08:07:11: “PC Geddes, “Battened to the head by a cop. They’d reckoned he’d had a big machete type blade”. PC Harris “he’s got a machete, fuck him””. At 08:58: “PC Harris “...he has obviously come from somewhere to have got in that mood where he is carrying a machete””. When asked where he was getting information from on 3 May 2015, PC Geddes says “the only place I was getting it was from ...Lorraine Dewar... I don’t know if that would have been passed over the radio or not”⁷³⁵. [PS02539](#) which records Pod calls⁷³⁶ from 3 May

⁷²² 55/57/1

⁷²³ Mr Kolberg, Linda Limbert

⁷²⁴ Mrs Joyce

⁷²⁵ Mr Pearson

⁷²⁶ Mr Rowe

⁷²⁷ PS00387

⁷²⁸ 45/11/12

⁷²⁹ 46/83/4

⁷³⁰ SBPI-00076 – answer in relation to Question 2

⁷³¹ 63/149/14

⁷³² 64/150/8

⁷³³ 63/150/20

⁷³⁴ PIRC-01464

⁷³⁵ 21/161/2

⁷³⁶ In his evidence to the Inquiry PC Masterton explained that there are four “pods” within the Area Control Room covering East Division of Police Scotland, and fully staffed there would be six controllers within each pod. Each of the four pods dealt with calls which related to four distinct areas

2015 includes a discussion between officers discussing what happened that day. During a call at 15:22:03 a female on the call says, “apparently he attacked a female officer with a machete” and a later conversation at 15:27:30 also refers to a machete⁷³⁷.

Ms Bell, Mr and Mrs Johnson all say that when Chief Superintendent McEwan was at the Johnsons’ house on 3 May 2015, he told them that Mr Bayoh had been chasing people with a machete⁷³⁸. Chief Superintendent McEwan says in his statements⁷³⁹ and Inquiry hearing evidence that “machete” is not a term or language he would use and he does not remember using that word but in the Inquiry hearing he says “it is possible” that he did⁷⁴⁰. In her statement to PIRC, Chief Inspector Shepherd says “at no time during the meeting did Chief Superintendent or myself use the word wielding or machete. They were told that the male had been in possession of a knife not a machete”⁷⁴¹.

11. Previous experience with similar calls

11.1 Previous experience of mental health calls

PC Paton is asked if he had attended incidents prior to 3 May 2015 when someone was suffering from a mental health crisis, or under the influence of drink or drugs, and whether he used communication skills with that person. He says “every other day of my working life” but he says “it wasnae the time or the place” on this occasion because “it was corroborated that he was using the knife...he was potentially causing harm to members of the public and their cars, that from my first sighting of him I formed the opinion that he was on drugs, that he had the physical capability to continue causing damage”⁷⁴².

Inspector Stewart is asked to comment on a PowerPoint presentation which was used in 2015 as part of officer safety training⁷⁴³. With regard to the bullet point “abnormally strong and pain tolerance” he says that “a lot of the open hand controls that we do as well relies on what they call pain compliance, so pressure points in the body, bending joints in certain directions, and if they don’t work, then it could be as a result of – it could be a result of a lot of things, but they are normally related to drugs which obviously leads on to excited delirium⁷⁴⁴. When asked if the failure to respond to the pain inflicted using one of these techniques could be a sign of excited delirium,

within East Division. Within each pod, work would be assigned to a controller and they would have to deal with calls for a specific geographical area – (see 24/119/20 to 24/124/4).

⁷³⁷ PS02539

⁷³⁸ PIRC-04350,

⁷³⁹ PIRC-00182

⁷⁴⁰ 63/149/12

⁷⁴¹ PIRC-00209

⁷⁴² 20/162/8

⁷⁴³ PS-17208 – PowerPoint presentation – Slide 26 refers to Excited Delirium which describes “(i) a person exhibits violent behaviour in a bizarre and manic way; (ii) constant, purposeless, often violent activity; (iii) meaningless speech and hallucinations with paranoid delusions; (iv) abnormally strength and pain tolerance; and (v) CS may not work”.

⁷⁴⁴ 6/125/13

Inspector Stewart says that it “could be a sign of a lot of things but yes, one of them is excited delirium”⁷⁴⁵.

He adds when questioned about CS spray potentially being ineffective on someone suffering from excited delirium, that it is an indicator but not necessarily conclusive that someone is indeed suffering from excited delirium. He says that “CS Spray doesn’t work on a lot of people. Some people have a natural immunity to it. Some people are trained to be able to fight through it, namely, like, Armed Forces. Again, just drug intoxication and also into excited delirium, so it could be – it’s not exclusively to excited delirium”⁷⁴⁶

Inspector Stewart is also referred to a further slide within the PowerPoint presentation⁷⁴⁷ and asked about excited delirium being treated as a medical emergency, he says that “as soon as it’s being identified as being ABD or possible ABD or excited delirium as it was called at the time, that an ambulance should be contacted as soon as possible”⁷⁴⁸. He adds that as soon as you think that it could be ABD it would now need to be “Classed as a medical emergency and the ambulance need to be contacted as soon as you suspect it may be”⁷⁴⁹. In 2015 he says that it would be dealt with in a similar manner and “as soon as you think it might be [excited delirium / ABD] and as soon as you diagnose it to be it’s probably one and the same, but as soon as you think that’s the case then certainly you would be requesting an ambulance”⁷⁵⁰. Inspector Stewart is also referred to PS-17918 on “the care and welfare of persons in police custody” which says that “people who appear to have this condition [excited delirium] should only be restrained in an emergency. They should be taken by Ambulance to Hospital immediately the diagnosis is considered”⁷⁵¹ which he agrees is consistent with what he had already said during the Inquiry hearing on how to handle situations where excited delirium is a factor⁷⁵². Inspector Stewart continues that he did not consider seeking medical assistance for the man that he saw (now known to be Mr Bayoh) when he first arrived on the scene at Hayfield Road. He said that he did not consider the possibility of drugs or alcohol intoxication with excited delirium or psychiatric illness as “you need to contact him and speak to him and try – and that’s not something that you could diagnose from 100/200 metres away”⁷⁵³. He says that extremely erratic behaviour might be the only thing that you could identify from a distance⁷⁵⁴ but that was not evident during the events at Hayfield Road⁷⁵⁵. In order to assess whether excited delirium is a factor in the behaviours being exhibited by an individual “you would need to try and engage with the male first of all. There’s only so much you could do from within a van”⁷⁵⁶. He says

⁷⁴⁵ 6/125/25

⁷⁴⁶ 6/126/10

⁷⁴⁷ PS-17208 – PowerPoint presentation – Slide 27 refers to “Excited Delirium: Causes” and these are listed as “(i) drug and/or alcohol intoxication; (ii) Psychiatric illness; (iii) or a combination of the above”. The slide also contains a heading “Medical Emergency” and underneath that is listed “(i) expect a sudden collapse. (ii) acute exhaustive mania can be fatal”

⁷⁴⁸ 6/127/4

⁷⁴⁹ 6/127/11

⁷⁵⁰ 6/127/16

⁷⁵¹ PS-17918 page 7 under the heading “Excited delirium”

⁷⁵² 6/128/17

⁷⁵³ 6/129/2

⁷⁵⁴ 6/129/7

⁷⁵⁵ 6/129/10

⁷⁵⁶ 6/129/13

that you would have to communicate⁷⁵⁷ with the person and observe to see what sort of reaction to any communication⁷⁵⁸ you would get from them. He also says that this assessment is an ongoing thing. You get to them, you try and speak to them, do they speak back to you, do they make eye contact with you, do they acknowledge your existence. There's many factors that you do throughout, so it's not just a case of turning up, run through a tick box and then come to a decision. You've got to judge it as you go"⁷⁵⁹. He agrees when questioned that you would spend some time with them to make an assessment and to see what sort of reaction there is"⁷⁶⁰.

PC Smith was asked to comment further on comments made in his Inquiry statement⁷⁶¹. He said that "quite shortly"⁷⁶² after Mr Bayoh had been turned onto his left-hand side after handcuffs and leg restraints had been applied he checked Mr Bayoh's condition and Mr Bayoh was unconscious. PC Smith says that moments later he checked Mr Bayoh again and started to have "concern about the excited delirium thing and then started – had a close look at him"⁷⁶³.

When PC Smith was asked during the Inquiry hearing if any attempts were made to remove Mr Bayoh's handcuffs and leg restraints after Mr Bayoh was observed to be unconscious but still breathing, PC Smith says that this was not considered.

11.2 At the scene

In his evidence, Detective Inspector Robson says that although he was aware that Mr Bayoh was unconscious at the scene at Hayfield Road, he had assessed that whilst Mr Bayoh was still breathing, the ambulance had been called as a precautionary measure. He says that it was only when he left Victoria Hospital after PC Short had been admitted for treatment that he learned that Mr Bayoh was no longer breathing. At this stage Detective Inspector Robson assessed that Mr Bayoh required urgent medical attention⁷⁶⁴. He adds that had he known at an earlier stage that Mr Bayoh was in need of urgent medical attention, he would have put locus protection measures in place. These measures would have meant that the knife and the police batons would have remained in place⁷⁶⁵. He says that he was generally aware, prior to leaving the scene to take PC Short to hospital, of the Airwaves call made by PC Smith⁷⁶⁶ for an ambulance to attend the scene. This call reported that Mr Bayoh appeared to be

⁷⁵⁷ 6/129/18

⁷⁵⁸ 6/129//22

⁷⁵⁹ 6/130/1

⁷⁶⁰ 6/130/10

⁷⁶¹ SBPI-00042 at para 42 PC Smith says "I then began to consider the subject and was considering the issue of excited delirium, thus far he had shown considerable strength and that irritant spray was not effective although up to this point he has shown no signs of ill health. I was still unaware of any earlier behaviour. As stated above the training at this time was fairly limited and I had never been exposed to excited delirium operationally and as such I did not immediately come to any conclusion. This thought process still only lasted a few seconds and prompted me to have a closer examination of the subject. At this point he appeared to me to be unconscious. An ambulance was contacted immediately".

⁷⁶² 11/138/23 – PC Smith indicates that his attention was "slightly elsewhere, around about that – within a minute of me standing up, him being turned on his side, around about that time and me going back to look at him".

⁷⁶³ 11/139/4

⁷⁶⁴ 42/144/8

⁷⁶⁵ 42/142/23

⁷⁶⁶ 42/110/2

“unconscious, breathing, not responsive”, although Detective Inspector Robson says that he was not aware or conscious of the detail of the transmission⁷⁶⁷.

12. De-escalation

12.1 Previous experience

PC Walker says “it’s hard to de-escalate through communication when it’s one sided⁷⁶⁸. If the person is under the influence of drink or drugs or suffering from some sort of psychiatric episode, you would expect some sort of acknowledgement in fact that the police were there “or in my experience, if people want to speak to you, then they will start communicating back with you”⁷⁶⁹.

PC Short says that she had used her height⁷⁷⁰ to her advantage when approaching men to de-escalate a situation. She says that she had been in quite a few kind of situations where a tall male going to speak to another male who was upset or whatever would in some way, shape, or form, and for whatever reason, aggravate the situation, they just would sometimes seem to get more angry, but, you know, on a few occasions I would go in and it would be like for example “I will speak to you, hen, but I’m no..... speaking to him”, you know, and then it was like: right, that’s that line of communication open, right, let’s just take it from here a step at a time and find out what’s happened”⁷⁷¹.

PC Tomlinson was asked whilst giving his evidence during the Inquiry hearing if by using his voice and perhaps his handcuffs he had always successfully managed to calm a situation down without having to use spray or batons he says that “you can engage with somebody quite effectively and yes, you could de-escalate the situation quite effectively”⁷⁷².

12.2 At the scene

PC Paton is asked how much importance he places on communication as a skill, as a tactic to de-escalate a situation. He replies that he tried to communicate with Mr Bayoh but “if he’s not engaging back with you...there’s only so much you can do”⁷⁷³.

PC Walker says whilst he had not received any negotiator/de-escalation training, the use of minimum force is at the heart of Officer Safety Training (OST)⁷⁷⁴.

PC Walker says that during the journey to Hayfield Road he was aware of a number of calls from a variety of sources all saying that there was a male in possession of a knife striking out at anything that came near to him⁷⁷⁵. He was of the opinion that the male was posing a real risk to the public and he was also concerned for his own safety given the nature of erratic behaviour being described by the various witnesses⁷⁷⁶.

⁷⁶⁷ 42/112/4

⁷⁶⁸ 6/171/13

⁷⁶⁹ 6/171/20

⁷⁷⁰ 8/15/4 – when asked, PC Short confirmed that she is five foot one inch tall.

⁷⁷¹ 8/24/19

⁷⁷² 9/27/16

⁷⁷³ 20/86/10

⁷⁷⁴ SBPI-00039 para 17

⁷⁷⁵ SBPI-00039 para 24

⁷⁷⁶ SBPI-00039 para 25

Upon arrival at the incident, PC Walker says that Mr Bayoh matched the description of the male that had been reported by various witnesses and he observed that Mr Bayoh was “very broad about the chest and had a strong build”. He says that he based his assessment of the level of risk and the potential resistance he would face on these factors⁷⁷⁷. He also says that when he first observed Mr Bayoh he was walking in a straight line and was not staggering or swaying. There were no obvious signs of him being intoxicated with drink or drugs. He appeared to PC Walker to be walking with purpose⁷⁷⁸.

PC Tomlinson says that in order to assess whether someone was under the influence, he would need to see them walking about normally rather than aggressively and he would try to speak to them. In the incident at Hayfield Road PC Tomlinson was unable to form an opinion due to the speed with which the incident was unfolding and the fact that he was unable to verbally engage with Mr Bayoh⁷⁷⁹.

PC Walker says that based on the observations which he made, he decided to use his PAVA spray immediately in the expectation that this would incapacitate Mr Bayoh without having to come into contact with him. It would also mean that he could remain a safe distance from Mr Bayoh since he had been reported to have been in possession of a knife⁷⁸⁰.

PC Tomlinson says that the OST that he had received included the use of TAC Comms and verbal commands. He says that “the use of verbal commands requires the subject to respond in order to de-escalate situations”⁷⁸¹. He says that attempts to de-escalate the situation were ineffective as Mr Bayoh did not engage with him or follow any commands⁷⁸².

PC Short also says when asked during the Inquiry hearing if she would have attempted to communicate with Mr Bayoh when she arrived at Hayfield Road and de-escalate the situation had Mr Bayoh been white, that her approach would have been the same regardless of skin colour⁷⁸³.

PC Walker says that following the altercation between Mr Bayoh and PC Short, and then the “physical exchange”⁷⁸⁴ with PC Tomlinson, PC Walker ran towards Mr Bayoh and shouldered charged him to the ground⁷⁸⁵. Although he had been in possession of PC Paton’s baton, he discarded it and made the decision to “take Mr Bayoh to the ground by bodily force”⁷⁸⁶.

PC Walker says that once Mr Bayoh was on the ground, he used handcuffs to restrain Mr Bayoh from striking out at officers or reaching for a concealed weapon. He

⁷⁷⁷ SBPI-00039 para 26

⁷⁷⁸ SBPI-00039 para 29

⁷⁷⁹ 9/96/15

⁷⁸⁰ SBPI-00039 para 26

⁷⁸¹ SBPI-00043 para 18

⁷⁸² SBPI-00043 para 19

⁷⁸³ 8/168/20

⁷⁸⁴ SBPI-00039 para 49

⁷⁸⁵ SBPI-00039 para 50

⁷⁸⁶ SBPI-00039 para 51

considered the use of cuffs as proportionate and justifiable in terms of OST training⁷⁸⁷. Whilst Mr Bayoh was on his back on the ground PC Walker tried to get over the top of his shoulders and hands to get him under control. He says that Mr Bayoh continued to resist and attempted to punch PC Walker. PC Walker says that as he was leaning over he struck Mr Bayoh with a clenched fist “a couple of times” around his left cheekbone. He says that these were not full force punches but were intended to make Mr Bayoh bring his hands up towards his face so that PC Walker could apply handcuffs. He says that this was a technique which he had been taught in OST training. PC Walker also says that given that Mr Bayoh was “actively resisting with extreme force”, the punches he delivered were a reasonable use of force in the circumstances⁷⁸⁸.

PC Walker says that he managed to get hold of Mr Bayoh’s right wrist and put pressure from his chest area onto Mr Bayoh’s right shoulder, pushing him onto his left side⁷⁸⁹. Once he had applied a handcuff to Mr Bayoh’s right wrist he was able to pull Mr Bayoh’s right arm towards his left arm, which had been pinned on the ground, and he was able to apply the handcuff to Mr Bayoh’s left wrist meaning that Mr Bayoh was handcuffed to the front⁷⁹⁰.

PC Paton says in his evidence that after Mr Bayoh was on the ground he moved towards where Mr Bayoh was to assist his colleagues. He says that he picked up a baton that had been discarded on the road, extended it and used it to pin Mr Bayoh’s left arm to the ground by holding the baton across Mr Bayoh’s left bicep⁷⁹¹. PC Paton says that he was not sure if this was a recognised restraint technique to control someone’s upper arm⁷⁹². He says that his rationale was that by controlling the upper arm Mr Bayoh would not be able to move his lower arm. PC Walker says that in his view the manner of restraint and the techniques used by the officers was justifiable and proportionate in the circumstances⁷⁹³.

12.3 Other comments

Mr Christopher Fenton was a psychiatric nurse at Whiteman’s Brae Hospital at the time of the incident. He drove past Mr Bayoh as he was being restrained, on the morning of 3 May 2015⁷⁹⁴. He says that he had attended training on restraint as part of his job [although this was in the context of a hospital setting and not restraint carried out by police on the street](#). He says in his Inquiry hearing and statement evidence that he would in general try to use de-escalation techniques on a patient before restraining them. He says it would depend on his knowledge and rapport with the patient, but even if he did not know them well he would still try de-escalation first. He says verbal de-escalation can be less effective if the person has a drug-induced psychosis but he would still attempt it as the least restrictive option. This would involve talking calmly and giving them space. He says “It’s traumatising to be restrained and there are

⁷⁸⁷ SBPI-00039 para 44

⁷⁸⁸ SBPI-00039 para 53

⁷⁸⁹ SBPI-00039 para 54

⁷⁹⁰ SBPI-00039 para 59

⁷⁹¹ 20/52/23

⁷⁹² 20/50/9

⁷⁹³ SBPI-00039 para 66

⁷⁹⁴ PIRC-00251

physical risks involved...so we try and minimise that, especially with people who are already disturbed mentally”⁷⁹⁵. “We’ll always try and verbally de-escalate at the start: you would try and verbally de-escalate, regardless of the situation... By verbally de-escalate, I mean talk through the person’s behaviour and problem-solve, work out the reasons for the behaviour and see what resolutions you would come to”⁷⁹⁶. When asked what tone he would use to de-escalate he says, “I would try and be as friendly as possible”. When asked if he would shout commands at a person he says “It depends on the situation. If they’re walking out of the hospital potentially on a busy road in traffic, yeah I would shout”. He says he would use open body language and stay a couple of metres away from the person to give himself time to react if they decided to attack him.

13. Use of batons and sprays

13.1 At the scene

PC Walker says that as he was exiting the driver’s seat of the van he could hear PC Paton shouting a command at Mr Bayoh, “Stay where you are, don’t move” or words to that effect. PC Walker says that PC Paton had his spray drawn in his right hand and his left arm fully extended in a “fend-off” position⁷⁹⁷. When PC Paton was asked how he would have engaged in conversation with Mr Bayoh when he exited the van he says that “it was a situation for taking control and I gave him a firm command to stop, pointing at the ground and saying words to the effect of “Get down to the ground”⁷⁹⁸. He adds that there was no reaction from Mr Bayoh⁷⁹⁹.

PC Walker says that both he and PC Paton initially gave clear verbal instructions to Mr Bayoh but that these were ignored⁸⁰⁰. PC Walker says that he noted that PC Paton had deployed his CS spray but it may not have made contact with Mr Bayoh due to the wind direction. Mr Bayoh had not acknowledged or responded to the verbal command by PC Paton⁸⁰¹. PC Walker says that after PC Paton had deployed his spray, Mr Bayoh continued to walk towards him and this closed the reaction gap between them. Mr Bayoh had been deemed to be a high risk due to the allegation of being armed with a “bladed weapon” and therefore PC Walker determined that it was proportionate to use PAVA spray in line with OST⁸⁰². PC Walker says that he thought that the fact that he was not in possession of his police baton did not prevent him from carrying out his duties⁸⁰³. He says that he had not received any specific risk assessment training during his police career⁸⁰⁴. The absence of his baton did not affect his assessment of the risk of the incident. He says in his Inquiry statement that “for me, the use of a baton is absolutely the last option, probably as it has the potential to be the most dangerous item of officer’s safety equipment. I am satisfied that my first

⁷⁹⁵ SBPI-00011

⁷⁹⁶ 21/34/13

⁷⁹⁷ SBPI-00039 para 31

⁷⁹⁸ 20/32/7

⁷⁹⁹ 20/34/13

⁸⁰⁰ SBPI-00039 para 42

⁸⁰¹ SBPI-00039 para 35

⁸⁰² SBPI-00039 para 44

⁸⁰³ SBPI-00039 para 21

⁸⁰⁴ SBPI-00039 para 17

course of action in an incident such as this would be initially clear communication then my PAVA spray”⁸⁰⁵.

PC Tomlinson says that he considered that the actions he took to be in line with the training that he had received, namely to issue commands, thereafter to use his CS spray and finally to use his baton⁸⁰⁶. PC Tomlinson says that he initially used a short burst of CS spray but it had no effect. He then used his spray for a second time with a longer burst to take account of the wind conditions and also to adjust his aim towards Mr Bayoh’s face. The spray had no effect. PC Tomlinson says that he then used his baton and struck Mr Bayoh in the head area more than once. He says he did this after he had “observed Mr Bayoh to be making an attempt to kill/murder PC Short by stamping on her back whilst she was motionless on the ground. The objective was to stop Mr Bayoh’s killing PC Short. As soon as I achieved this objective and Mr Bayoh stopped his actions towards PC Short, I did not strike this body area again”⁸⁰⁷. He says when giving his evidence that using his baton was the only option available to him. He says that if he had come into physical contact with Mr Bayoh and he had also ended up on the ground then he would have been vulnerable⁸⁰⁸. The first blow to Mr Bayoh’s head was probably his strongest blow, but the second and third blows were less forceful⁸⁰⁹. PC Tomlinson adds that striking Mr Bayoh on either his arms or legs was not an option at this point as his legs and arms were constantly changing position whereas his head was in a more stable position and PC Tomlinson would be able to land a blow to make Mr Bayoh stop⁸¹⁰.

PC Tomlinson says that he used his baton for a second time on Mr Bayoh when he had turned his attention from PC Short towards PC Tomlinson with his fists raised. He says that he believed that Mr Bayoh was intending to cause him serious injury or kill him⁸¹¹. Although Mr Bayoh had not struck PC Tomlinson, he says in his evidence that he thought “...you know, “this is it, I’m not going home””⁸¹². PC Tomlinson says in his Inquiry statement that he issued more than one baton strike to Mr Bayoh’s arm in order to maintain distance between them⁸¹³. When giving his evidence PC Tomlinson says that he was anticipating that Mr Bayoh would attempt to punch him and therefore he directed his baton strikes towards Mr Bayoh’s arms in order to reduce the power with which Mr Bayoh would be able to punch him⁸¹⁴.

PC Tomlinson says the third and final time he used his baton was when Mr Bayoh was on the ground and he struck Mr Bayoh in the Achilles area to stop Mr Bayoh from using his legs to resist restraint. He says that he could not remember how many times he used his baton to strike Mr Bayoh whilst he was on the ground⁸¹⁵. In his evidence he says that he hoped that the pain that Mr Bayoh will have experienced from these baton

⁸⁰⁵ SBPI-00039 para 22

⁸⁰⁶ SBPI-00043 para 20

⁸⁰⁷ SBPI-00043 para 22

⁸⁰⁸ 9/87/2

⁸⁰⁹ 9/89/2

⁸¹⁰ 9/87/8

⁸¹¹ SBPI-00043 para 22

⁸¹² 9/93/25

⁸¹³ SBPI-00043 para 22

⁸¹⁴ 9/92/10

⁸¹⁵ SBPI-00043 para 22

strikes would have made him more compliant and that the use of pain compliance is a technique that is taught as part of OST⁸¹⁶.

14. **Paperwork**

14.1 **Use of force and use of spray forms**

PC Paton and PC Walker used their spray during the incident. PC Smith took out his spray and warned Mr Bayoh that he would use it, but was told not to use it by PC Walker. PC Tomlinson describes striking Mr Bayoh with his baton three times⁸¹⁷. PC Walker is described as taking Mr Bayoh to the ground using a “shoulder barge”, a “bear hug” or “grab”⁸¹⁸. PC Walker also describes punching Mr Bayoh to the face while he was on the ground⁸¹⁹.

In his statement, PC Walker says his understanding is “in relation to the use of force and use of spray forms, these are to be completed prior to terminating duty by officers, or if unable, by the supervising officers”. He says in this instance none of the officers were afforded access to a computer or any relevant paperwork to complete the spray forms, and he was then off sick for six months following the incident so was unable to complete them. He says he was unsure, and remains unsure of whether he was legally required to complete these in the case of a death in custody “particularly in light respect of receiving legal advice on whether to document any aspect of the events”⁸²⁰. In the Inquiry hearing PC Walker confirms that he would have had to go onto a computer to complete the forms and if he was unable to, it would be up to his supervising officer, being someone higher in the chain of command⁸²¹. He is asked who his supervising officer was but he is unable to confirm who that was on the day, as Sergeant Maxwell was in the canteen with them⁸²². He says if he had had access to computers, he would have waited on someone to take the lead and talk them through the process. He says, “we were in a state of shock...we had no idea what was going on, what was required, what we had to do”⁸²³.

PC Paton says in his Inquiry statement, “I was in shock when I was in the canteen and cannot recall if I was aware that I had not completed the paperwork”⁸²⁴. He adds that he was not given the opportunity to do so while in the canteen, and no computers were provided to complete paperwork⁸²⁵ and was eventually told to go home SBPI-00081. He says he does not recall any discussion about the completion of paperwork, he would not have given advice to any other officer and does not recall if he was given any advice by PC Givan⁸²⁶. He is asked whether he was aware that someone else could complete a form in relation to the entire incident. He says he was, and adds “I wouldn’t expect [Sergeant] Scott Maxwell to do it, but I would maybe expect either

⁸¹⁶ 9/116/23

⁸¹⁷ 9/87/2, 9/87/10, 9/88/2

⁸¹⁸ 7/79/20; 9/101/24;9/104/2; PIRC-00263, page 3, paragraph 4,

⁸¹⁹ SBPI-00039, paragraph 53

⁸²⁰ SBPI-00039

⁸²¹ 7/111/13

⁸²² 7/112/2

⁸²³ 7/118/23

⁸²⁴ SBPI-00081

⁸²⁵ 20/132/3

⁸²⁶ SBPI-00081

[Inspector] Stevie Kay or maybe even Alan Seath or somebody like that to complete it”⁸²⁷

PC Short says she did not consider the use of force form, the spray form and notebook at the time. She says “I couldn’t even speak properly never mind fill out a form”⁸²⁸. She says that she attempted to strike Mr Bayoh with her baton but it did not connect. She is asked whether she would usually have filled out a Use of Force form in that situation. She says she can’t remember but perhaps “to err on the side of caution”. She says that she didn’t go back to work after 3 May 2015 and no copies were provided for her to fill out⁸²⁹.

PC Tomlinson says that PC Givan told the officers “not to fill in a Use of Force or CS Spray form because that would have outlined our actions without speaking to a solicitor first”⁸³⁰.

PC Smith speaks about the legal requirement to complete use of force forms. He says that in 2015 the use of force and spray forms were only accessible on the computer and the officers had no access to a computer in the canteen⁸³¹.

PC Good says “I...had very limited knowledge about completing use of force forms or spray forms”. She says she does not recall specific training she received about this though it would have been covered somewhat as a probationer. She says she did not complete the paperwork as she was “overwhelmed and in shock”. She says she does not recall being present during any conversation about completing paperwork, and does not remember what advice PC Givan gave regarding the completion of paperwork⁸³².

PC Gibson says that he did not consider his involvement in the incident would have required him to submit a use of force form, and he did not use spray so he would not have to submit a spray form. He says he “is not clear” about what training he received at the Scottish Police College about completion of forms, but he is aware of OST and online packages about this.⁸³³

PC McDonough says he is aware that at the time, use of force forms were to be completed within 24 hours of an incident taking place. He says “I did not need to complete a use of force form at that time as I was only restraining Mr Bayoh, I had not used my baton or spray” so it was his understanding that he did not need to complete a spray form⁸³⁴.

Sergeant Maxwell says he did not need to complete a use of spray or use of force form as he did not use spray and did not use force⁸³⁵.

⁸²⁷ 20/132/20

⁸²⁸ SBPI-00041

⁸²⁹ 8/147/2

⁸³⁰ 10/166/1

⁸³¹ 11/179/12, 11/113/11

⁸³² SBPI-00040

⁸³³ SBPI-00045

⁸³⁴ SBPI-00063

⁸³⁵ SBPI-00044

PC Gibson, PC McDonough and Sergeant Maxwell all say that training on use of force and use of spray forms was given through OST⁸³⁶.

Detective Sergeant Davidson is not asked about completion of spray or use of force forms, and does not mention it voluntarily.

Inspector Kay says that he does not recall giving any instructions or commands in relation to the completion of use of spray forms, "but any sergeant of mine and [Sergeant] Scott Maxwell would know that I like them in for the end of that shift if possible, and if not, generally document a good reason why"⁸³⁷. He says he would be "astonished if I hadn't said to [Sergeant] Scott [Maxwell] to make sure that that was in as per normal"⁸³⁸. He is asked further about this as Sergeant Maxwell gave evidence saying that he had been relieved of supervisory duties by Inspector Kay on the day. Inspector Kay says that he does not dispute this⁸³⁹.

Detective Chief Inspector Hardie says that the completion of the forms relating to the use of CS/PAVA spray would not have been high on his list of priorities if he had been SIO. If statements had been provided by the officers then there would have been enough information in order to complete those forms⁸⁴⁰.

Chief Inspector Trickett says in his evidence that whilst the discharge of CS/PAVA spray would require a post-incident investigation. He says that if CS spray had been discharged the investigation might consist of the documentary paperwork to be completed and the welfare of the officer would be dealt with by their line manager. However, the full post incident procedure would not necessarily be activated in all instances⁸⁴¹.

14.2 Notebooks

In his statement, PC Walker says he understood that completion of notebooks was at the discretion of the officer. He says he remembers PC Tomlinson asking if he should complete his notebook and "I advised him that I would not be completing my notebook until advised that we should". He says he does not recall any specific advice given by PC Givan other than to wait and see what would happen⁸⁴². PC Walker is asked in the Inquiry hearing if he recorded his decision-making process at the scene or soon afterwards. He says he did not for that incident⁸⁴³. He says he believes it was at the discretion of the officer whether to complete the notebook, but it would be good practice⁸⁴⁴.

⁸³⁶ SBPI-00045, SBPI-00063 and SBPI-00044

⁸³⁷ 24/87/7

⁸³⁸ 24/88/8

⁸³⁹ 24/107/4

⁸⁴⁰ 50/65/9

⁸⁴¹ 45/94/16

⁸⁴² SBPI-00039

⁸⁴³ 6/103/4

⁸⁴⁴ 7/113/7

PC Paton says that he would have been given advice on how to make use of his police issue notebook when he was trained, but he cannot recall the exact guidance⁸⁴⁵.

PC Short is asked why she did not complete a notebook or any other forms following the incident. She replies that it was “the furthest thing from [her] mind” after being “knocked out and stamped on”. She adds “there’s no computers in the canteen and no hard copies were ever provided to me”⁸⁴⁶.

PC Tomlinson says that he asked PC Givan if he should fill in his notebook and “she said not to and I asked her if I needed a solicitor and she said yes because by that time the man had died and we would need legal advice”⁸⁴⁷.

PC Smith says in his statement that “in normal circumstances notebook entries would be made following any incident of note”, and that “I was not clear what my obligations were in this case in respect of notebooks or use of force forms”. He says he had learned about a firearms PIM process and expected a well-rehearsed approach to the PIM and handling of the attending officers but this was not his experience. There was no guidance about the preparation of officers’ notes and the gathering of evidence”. He says in a normal situation he would have been pro-active about completing notes and paperwork but the situation was not normal and he was “stunned and exhausted”. PC Smith says that a clear PIM process with instructions on what to do next in respect of completing paperwork would have assisted but no instructions were received. He adds that several factors led him to believe that the officers supervising the attending officers did not consider completion of notebooks or forms a priority, because they would have required access to a computer and no mention was made of providing them access. He adds that a use of force form is not the requirement of every individual officer but is one per incident, and would be a collaborative process. “Given the strict instructions not to discuss the matter I do not see how such a form could be completed”. He says he thinks this would have occurred to a senior officer on the day who had a serious interest in completion of the forms, but it was never mentioned⁸⁴⁸. When asked further about this in the Inquiry hearing, he says he may have been confused about the process for completing use of force forms as the procedure has changed in the interim⁸⁴⁹.

PC Good says that she was in the early stages of learning how and when to complete her notebook and would usually have discussed it with her tutor, PC Smith. In this case she did not think about completing it and did not have a conversation with PC Smith about it. PC Good says she was “exhausted” on the day and “completing my notebook had been the last thing on my mind that day”⁸⁵⁰.

PC Gibson says he was not aware of his obligations concerning the completion of his notebook in relation to events such as this at the time. He says he would generally have used his notebook to record statements or recording he had cautioned and charged someone. He says he was aware of a system by which senior officers

⁸⁴⁵ SBPI-00081

⁸⁴⁶ 8/146/2

⁸⁴⁷ 10/166/24

⁸⁴⁸ SBPI-00042

⁸⁴⁹ 11/178/4

⁸⁵⁰ SBPI-00040

checked officers' notebooks, and he had never been told he was using his notebook incorrectly. He says "I did not fill in my notebook or prepare an operational statement as Amanda Givan told us not to give a statement at that time as the incident had just happened. Thereafter, I received advice from my solicitor not to provide an account until my status was confirmed. Also, on 3 May 2015 I would not have been capable of making notes given the state I was in"⁸⁵¹. He says he does not remember discussing completion of paperwork or giving anyone else advice.

PC McDonough says that he used his notebook at the time to record statements, details of members of the public he interacted with, if he had cautioned or charged someone, or recording duties of a particular day. He says his shift sergeant would check his notebook to make sure it was being used correctly. He says he was not in a fit state to make an entry in his notebook about the incident, and his notebook was later seized. He says he does not remember discussing completion of paperwork or giving anyone else advice. He does not remember PC Givan saying anything about completion of paperwork or provision of operational statements⁸⁵².

Sergeant Maxwell says he was aware of general obligations in relation to completion of notebooks but they related to day-to-day activities, and he had not been involved in an incident of this nature before. He says he did not have time to complete his notebook that day as he was involved in caring for the welfare of his team. He says as emotions were running high, it would not have been appropriate to try to record an accurate notebook entry in that state⁸⁵³.

Detective Sergeant Davidson is asked whether she completed her notebook on return to the police office on 3 May. She says she did⁸⁵⁴.

When asked about completion of notebooks of officers who have used force during a shift, Inspector Kay says "that's a personal preference but I would expect the sergeants to be getting them to document it, if not at the time, as soon as reasonably possible"⁸⁵⁵.

Detective Superintendent Campbell says he did not hear any discussion among the officers about completion of their notebooks and that it was not the responsibility of the SIO to ensure that officers complete their notebooks or other paperwork⁸⁵⁶.

14.3 Operational statements

PC Good says she does not recall receiving training in relation to operational statements. She says she does not remember being asked or advised to provide an operational statement. She says she remembers being approached by "two officers around a week after the incident who asked me if I wanted to provide an operational

⁸⁵¹ SBPI-00045

⁸⁵² SBPI-00063

⁸⁵³ SBPI-00044

⁸⁵⁴ 17/175/24

⁸⁵⁵ 24/88/2

⁸⁵⁶ SBPI-00134 paras 21, 22

statement...however I stated I did not wish to provide one which was the advice of the Federation solicitor Professor Watson as my status had not been clarified”⁸⁵⁷

Sergeant Maxwell says he was not aware of his status as a witness or suspect on the day. He says he took advice from PC Givan not to provide an account of the incident at that time because the incident had not happened. He then received advice from Professor Watson not to provide a statement until his status was confirmed⁸⁵⁸.

Inspector Kay is asked for his view on completion of operational statements. He says “that depends. It’s a personal preference”. He says he would do his within a week of an incident but says that the younger officers may not have been aware of the need to do it, and that they don’t have to do it until requested⁸⁵⁹.

Detective Superintendent Campbell says in a PIRC statement that after entering the break area he “explained the status of the investigation” to the attending officers and “I explained in consultation with PIRC their status was that of witness. I told them that my intention was to obtain statements from them...”⁸⁶⁰. In his Inquiry statement Detective Superintendent Campbell says that he had been informed by PIRC Deputy Senior Investigator Keith Harrower⁸⁶¹ on the morning of the 3 May 2015 that the officers were to be treated as witnesses, and this status was confirmed in a Gold Group meeting on 3 May 2015 chaired by Assistant Chief Constable Nicolson. Detective Superintendent Campbell says that he “requested that officers were to provide operational statements during my initial address to them in the canteen/break area. This was a general request to all officers that this would be required as part of the investigation”. He says the officers did not ask any questions about what he told them, and he was told by PC Givan prior to addressing the officers that they would not provide any statements prior to obtaining legal advice. He says he informed PC Givan that he “would still be requesting operational statements from the officers as they were being treated as witnesses”. He says in his first statement to the Inquiry that he did not request the statements again as it was not the immediate priority and he had other pressing matters to deal with⁸⁶². In his second statement he says “In respect of learning from the incident, the significant gap for me, was the officers concerned not providing statements at the initial stages. There was a gap in respect of the use of force and who did what in the arrest of Mr Bayoh. I believe the requirement for this information at an early stage is operationally critical to any SIO”. He mentions the lack of operational statements impacting on the public’s perception of the incident⁸⁶³. He says the decisions made around operational statements were not influenced by Mr Bayoh’s race or perceived race⁸⁶⁴.

Chief Inspector Trickett says in his evidence that it was for the SIO, in this case Detective Superintendent Campbell, to consider the need for statements or accounts to be given⁸⁶⁵. He also says that Detective Superintendent Campbell had said in their

⁸⁵⁷ SBPI-00040

⁸⁵⁸ SBPI-00044

⁸⁵⁹ 24/88/16

⁸⁶⁰ PIRC-00213

⁸⁶¹ Keith Harrower was promoted to Senior Investigator prior to giving his statement to the Inquiry.

⁸⁶² SBPI-00134

⁸⁶³ SBPI-00256

⁸⁶⁴ SBPI-00134 para 15-20, 24, 25

⁸⁶⁵ 45/74/10

initial discussion (timed as taking place at 13:40 in the PIM Log) that “there is no need to take statements”⁸⁶⁶. He says that it was “clear to me that [Detective Superintendent Campbell] didn’t want any accounts to be provided to the officers at that time”⁸⁶⁷. He accepts when it is put to him that it was clear that he and Detective Superintendent Campbell were using different language when referring to statements and accounts but that this was probably reflective of the lack of understanding of the PIM process throughout the force in 2015⁸⁶⁸. He says that whilst it was incumbent on him to discuss the PIM process in relation to specific actions instructed by the SIO, such as the recovery of the officers clothing, it was not his responsibility to educate others generally on the post incident management process⁸⁶⁹. If Detective Superintendent Campbell had asked the officers to provide “operational statements” then Chief Inspector Trickett, in his evidence, says that he would have had to have a further discussion with Detective Superintendent Campbell pointing out that the PIM process states that the provision of accounts being provided by the officers is subject to both medical and legal advice⁸⁷⁰.

Chief Inspector Trickett adds in his evidence that the rationale for the delay in the officers providing an initial account of the incident is based on the advice of psychology and human behavioural experts who say that following a traumatic event, those involved will have a better ability to recall the event in greater detail after a period of rest⁸⁷¹. He also says he understood that when the public became aware that the officers involved had not provided statements in the immediate aftermath of the incident, that this will have dented public confidence. However, he felt that that had arisen due to the lack of awareness within Police Scotland at the time and that it could have been explained that the officers were not expected to provide statements at that time. They would provide statements, but not right now⁸⁷².

With regard to the cause of death being shared with the attending officers, Chief Inspector Trickett says in his evidence that the legal advice evolved following the initial results of the postmortem. The toxicology results would typically take ten days and the legal advice that the officers received appeared to be to delay providing statements until after the cause of death is known⁸⁷³. In terms of whether they could be compelled to provide statements Chief Inspector Trickett says he had a discussion where it was thought that Police Scotland could compel the attending officers to provide detailed statements⁸⁷⁴ but that they could not compel them to include the level of detail required to assist the investigation⁸⁷⁵.

Detective Chief Inspector Hardie says in his evidence that he would have concerns about the results of the postmortem being shared with the attending officers prior to

⁸⁶⁶ 45/84/2

⁸⁶⁷ 45/84/10

⁸⁶⁸ 45/84/14

⁸⁶⁹ 45/86/8

⁸⁷⁰ 45/87/14

⁸⁷¹ 45/118/10

⁸⁷² 45/190/7

⁸⁷³ 46/72/22

⁸⁷⁴ “Detailed statements” in the sense of the type of statements required at stage 4 of the Post Incident Procedure SOP – see 46/74/24.

⁸⁷⁵ 46/73/23

them having provided their statements⁸⁷⁶. He also says that he would have concerns about the perception that the officers “not providing their statements and other issues” might give rise to suspicion of a “cover up”⁸⁷⁷. He says that, at the request of PIRC he attempted to take statements from the attending officers⁸⁷⁸ notwithstanding the fact that he knew that the advice that the officers had received was not to provide statements.

14.4 Senior and other officers

PC Givan says, regarding use of force forms: “I advised them that there were other supervisors who were on duty who could fill out that information who already had that information, so until they were advised whether they were suspects or witnesses that they probably shouldn’t complete that form. I did do that.”⁸⁷⁹. She explains that there are frequent occasions where the officer involved is not able to complete a use of force form so their supervisor or a more senior officer does it instead⁸⁸⁰.

Chief Superintendent McEwan says in his Inquiry statement that it was not a legal requirement for police officers to complete use of spray forms. He regarded it as simply guidance and that it was best practice to complete the forms so that statisticians within Police Scotland could analyse the reasons for the use of spray⁸⁸¹. However when the terms of a Police Scotland memo dated 1 April 2013⁸⁸² are read out to Chief Superintendent McEwan during his evidence, he acknowledges that the completion of forms was in fact a legal requirement⁸⁸³.

For operational statements, he went on to say that it was not necessarily about receiving the fastest account, the important thing is to get the best account from the officer and if it would take a few days in order for that to happen, then Chief Superintendent McEwan says that he would be prepared to give the officers that time in order to complete statements⁸⁸⁴.

15. Conferral

When he is asked whether any of his colleagues who were with him on 3 May 2015 had exhibited any racist or discriminatory behaviour, PC Paton says “The incident on 3 May 2015 was not in the slightest bit racist. There was nothing done, nothing said, either at the locus, back at the canteen, in the days that followed, in the weeks that followed, in the months that followed, there was nothing at all racially motivated, or said with racial connotations”⁸⁸⁵.

PC Good is asked whether, when the officers were waiting in the canteen, there was any discussion about the fact that Mr Bayoh was black, or any concerns that there

⁸⁷⁶ 50/111/20

⁸⁷⁷ 50/112/17

⁸⁷⁸ 50/117/5

⁸⁷⁹ 18/91/25

⁸⁸⁰ 18/92/11

⁸⁸¹ SBP-00258 para 80

⁸⁸² 64/118/21

⁸⁸³ 64/119/14

⁸⁸⁴ SBPI-00258 Para 81

⁸⁸⁵ 20/167/20

might be allegations of racism against the officers. She says she does not remember any of that being discussed⁸⁸⁶.

Sergeant Maxwell is asked whether he had any concerns, when in the canteen on 3 May 2015, that there may be allegations that Mr Bayoh's race had played a part in his death. He says it certainly went through his mind but none of his other team members raised it as a concern and it was not discussed⁸⁸⁷.

PC Givan speaks in her Inquiry statement about "Black" being mentioned to her when she was updated by Sergeant Maxwell in the canteen on 3 May 2015. She says it was used to identify Mr Bayoh but "I don't recall there being any other discussion about it"⁸⁸⁸ and she says she discouraged any further discussion at that point. She is asked whether she remembers any discussion in the canteen between the officers about racism or allegations of racism and says she does not⁸⁸⁹. She says, "I think that...these worries came later in the days following when things didn't seem to progress...there had been no clarification on whether [the attending officers] were suspects or witnesses and the longer that came, people were assuming that they were going to be suspects and there was a worry about whether...that might be connected to the fact he was a minority". She explains that this was in the days following when the officers were asked to attend meetings as a group⁸⁹⁰.

Inspector Kay says in his Inquiry statement that he made the canteen "sterile" for the attending officers to use⁸⁹¹. When asked what he did to achieve this he says "nothing special...nobody in and nobody out, nothing to do with the Inquiry apart from elected members of staff from the MIT"⁸⁹².

Detective Superintendent Campbell says in his Inquiry statement "it is not the standard procedure to separate officers following an incident of this nature...all officers were reminded by me not to discuss the incident, which also would have been made clear by line management with the support of Chief Superintendent McEwan, his Senior Management Team, and the support offered by [PC Givan]". He says he was not aware of the officers discussing the incident at any time. He says the decision not to separate the officers was not based on or influenced in any way by Mr Bayoh's race or perceived race⁸⁹³.

When asked how he explained the requirement for officers not to confer whilst gathered in the canteen at Kirkcaldy police office, Chief Inspector Trickett says in his evidence that during his initial meet and greet introduction to the officers, there was no need to speak about the incident and he would also have said the officers should not speak about it⁸⁹⁴. He says that he did not stick rigidly to the wording of the advice on conferring referred to on page 3 of the PIM Log since the officers were not familiar with the PIM process and he wished to adapt the language designed for firearms

⁸⁸⁶ 12/191/15

⁸⁸⁷ 15/100/25

⁸⁸⁸ SBPI-00072

⁸⁸⁹ 18/123/14

⁸⁹⁰ 18/125/20

⁸⁹¹ SBPI-00036 para 93

⁸⁹² 24/80/24

⁸⁹³ SBPI-00134 para 4, 5, 8

⁸⁹⁴ 45/51/11

incidents so that it would be understood in the context of an incident such as this not involving firearms⁸⁹⁵. Chief Inspector Trickett also says in his evidence that his recollection was that “people didn’t talk about the incident when I was present in that room”⁸⁹⁶ from the time he arrived on 3 May 2015. He says that the justification for separating the police officers in the canteen would be to guard against “contamination of evidence”. That risk is managed in the PIM suite (i.e. the canteen) by reminding officers of the guidance on conferral and making sure that an independent officer is within the PIM suite. If there is any conferral the independent officer should intervene and record what was said⁸⁹⁷. He further says that if the officers were suspects then there would be good reason to separate them⁸⁹⁸ but otherwise he was not able to think of a good reason why separating the officers could have been justified⁸⁹⁹.

Detective Chief Superintendent Boal says that she would expect that the officers in the canteen would understand the need to avoid conferring⁹⁰⁰. From an investigative point of view, conferral gives rise to a concern about initial statements being tainted⁹⁰¹. A warning on conferral would definitely be required, but there would also need to be supervision to ensure that conferral did not take place⁹⁰². If Inspector Kay was not present within the canteen supervising, then someone else should have been⁹⁰³.

When questioned about the public perception of not separating the officers, Chief Superintendent McEwan says in his evidence that two officers would have had to be removed from other duties to transport each of the attending officers to different locations in Fife⁹⁰⁴. Chief Superintendent McEwan added that the legal and Scottish Police Federation advice which the officers had received was that they should not give statements. Asked whether the lack of statements or risk of conferral concerned him, he says it did not actually matter whether it concerned him or not – this was the position that the officers were taking⁹⁰⁵. He did not consider trying to exert any pressure on or apply any leverage against the attending officers to provide statements since it was appropriate to respect the advice that the officers had received and follow the due legal process⁹⁰⁶.

Assistant Chief Constable Nicolson says that he cannot recall precisely how Chief Inspector Trickett was appointed but that he had spoken to him before he was appointed as PIM. Assistant Chief Constable Nicolson says that there was a need to ensure that the officers in the canteen were not colluding⁹⁰⁷. He also says that this was the primary reason why Chief Inspector Trickett was appointed⁹⁰⁸.

⁸⁹⁵ 45/48/12

⁸⁹⁶ 45/58/17

⁸⁹⁷ 45/67/15

⁸⁹⁸ 45/71/7

⁸⁹⁹ 45/70/25

⁹⁰⁰ 66/70/12

⁹⁰¹ 66/64/24

⁹⁰² 66/70/15

⁹⁰³ 66/66/24

⁹⁰⁴ 63/65/20

⁹⁰⁵ 64/65/24

⁹⁰⁶ 65/66/6

⁹⁰⁷ 67/39/8

⁹⁰⁸ 67/41/12. Assistant Chief Constable Nicolson also says that Chief Inspector Conrad Trickett was appointed to support the officers’ welfare (67/41/25).

16. Treatment of family and friends

16.1 Contact with the Collette Bell on 3 May 2015

Detective Constable Andrew Mitchell⁹⁰⁹ and Detective Constable Wayne Parker⁹¹⁰ attended at Ms Bell's home initially to secure the property at approximately 09:20 on 3 May 2015⁹¹¹. They then brought Ms Bell to Kirkcaldy Police Office⁹¹² at 11:00 on 3 May 2015⁹¹³. Detective Constable Mitchell says that at "about 11:00" on 3 May 2015 he and Detective Constable Parker gave a death message to Ms Bell. Detective Constable Mitchell says that at "about 11:12" Detective Constable Parker noted a comprehensive statement from Ms Bell⁹¹⁴.

Ms Bell met officers after calling 999 to report Mr Bayoh missing. She says she was asking officers if they knew where Mr Bayoh was and what had happened to him, but was told that they did not know as they had just come on shift from Methil and would speak more if she came to the police station⁹¹⁵. They initially insisted that she attend the police station alone but after she and her mother refused, they allowed her to attend with her mother and son⁹¹⁶. Both Ms Bell and her mother, Lorraine Bell speak about attending the police station and commenting on a missing person poster, and the officer at the desk saying that the missing person's family "didn't do him any favours by going so public with it all"⁹¹⁷.

Detective Sergeant Dursley says that he had noted a conversation with Parker in his daybook where he has written "might have two phones"⁹¹⁸. Detective Constable Parker says he believed that Mr Bayoh had left his mobile phone and keys behind when he left his property on Arran Crescent⁹¹⁹. Detective Sergeant Dursley says when giving his evidence that "[Detective Constable] Wayne Parker had come up and I think the information may have come from Collette, so Wayne comes up giving me an update and during that time he has mentioned about the – a gold mobile phone. Now... I'm sure there was either a gold mobile phone found on Mr Bayoh or found at the scene⁹²⁰ and I remember at that time saying "it's got to be him", so – and it was at that point 10:45, myself and [Detective Inspector] Colin Robson spoke briefly and said "We've got to tell Collette"⁹²¹. Detective Sergeant Dursley adds that he did want to make it clear to the officers that the identification had not been confirmed, but in terms of timing⁹²², it was important to pass this information to the family quickly⁹²³.

⁹⁰⁹ Andrew Mitchell was promoted to Police Sergeant prior to giving his statement to the Inquiry.

⁹¹⁰ Wayne Parker was promoted to Police Sergeant prior to giving his statement to the Inquiry.

⁹¹¹ PIRC-00023

⁹¹² SBPI-00238 para 66

⁹¹³ PS-18502

⁹¹⁴ PIRC-00025

⁹¹⁵ SBPI-00247, para 12

⁹¹⁶ SBPI-00247, para 9

⁹¹⁷ SBPI-00247, para 14

⁹¹⁸ PS-01066

⁹¹⁹ 35/51/11

⁹²⁰ PIRC-00137 at page 2, Detective Sergeant Dursley is noted as saying "Collette Bell had previously that morning told DC Wayne Parker that Sheku had an unusual 20 gold coloured mobile phone".

⁹²¹ 41/102/8

⁹²² 41/115/22

⁹²³ 41/116/9

Ms Bell was told about Mr Bayoh's death at the police station when she attended on the morning of the 3 May 2015. She says she was told, "there's been a body found that matches your partner's description and we think it's Shek" and that "a passer-by had found him dead on the street"⁹²⁴.

Detective Sergeant Dursley's statement to PIRC of 4 May 2015 refers to Mr Bayoh being "found dead". The words used in his daybook are "tell Collette black male dead". He says that when speaking to Ms Bell he did not go into "the details of the circumstances in which he [Mr Bayoh] was found"⁹²⁵. Detective Sergeant Dursley says that there was nothing that he shared with Detective Constable Parker which would have given the impression that Mr Bayoh had been found dead or found by a passer-by⁹²⁶, murdered⁹²⁷, or that there was a warrant out for his arrest⁹²⁸.

When questioned again about this in the following day's evidence, he is played the audio file of his call to the Technical Support Unit in relation to the potential recovery of CCTV from one of the vans which attended Hayfield Road. In that recording Detective Sergeant Dursley refers to "male has been found dead after altercation with police officers". He conceded that it was possible that he may have used the words "found dead" when speaking with Detective Constable Parker prior to delivering the first death message⁹²⁹. He adds that "it's a term that I have used without understanding the importance of the word "found""⁹³⁰.

He also says that he, along with Detective Inspector Robson⁹³¹, agreed that they should not tell Ms Bell about the police contact when delivering the first message as they did not know for certain that it was Mr Bayoh who had passed away and the circumstances of the police contact⁹³². In hindsight he feels that Ms Bell should have been told in that first message that there had been a call to the police, some sort of contact, the male lost consciousness, was thereafter taken to hospital, and then passed away⁹³³.

After being told about Mr Bayoh's death, Ms Bell says the police asked if she would be able to contact Mr Bayoh's family and tell them about his death but she said she could not, especially as she did not know what had happened⁹³⁴.

When asked to describe her experience at Kirkcaldy Police Station on 3 May 2015 and what might have been better for her, Ms Bell says "I don't feel like they [the police officers interviewing her] were looking out for me. I feel like they were looking out for themselves. I think they knew that I was a vulnerable person...and I think they knew that any questions that they were going to ask I was going to answer them"⁹³⁵.

⁹²⁴ SBPI-00247, para 16, 40/31/18

⁹²⁵ 41/112/24

⁹²⁶ 41/114/17

⁹²⁷ 41/114/24

⁹²⁸ 41/115/3

⁹²⁹ 42/5/9

⁹³⁰ 42/5/7

⁹³¹ 41/121/3

⁹³² 41/120/17

⁹³³ 41/122/24

⁹³⁴ SBPI-00247, para 23

⁹³⁵ 40/54/18

Ms Bell says that police told her at the police station that they were “looking for somebody” in connection with Mr Bayoh’s death⁹³⁶. She says she had understood from their description that Mr Bayoh had been murdered, and they were looking for someone in connection with that⁹³⁷. When asked what difference it would have made to her if she had been told that Mr Bayoh had died after coming into contact with the police, Ms Bell says “I don’t think I would have sat in the police station for hours giving a statement on the back of Shek dying having come into contact with the police”⁹³⁸. She says she feels “disgusted” that the information was withheld from her, and that she sees it as a “straight up lie”⁹³⁹. When told that the evidence of Detective Constable Mitchell was that he had been instructed by Detective Sergeant Dursley that the fact that Mr Bayoh had died following contact with the police should not be disclosed, Chief Superintendent McEwan says that he would have questioned why that information should be withheld from Ms Bell⁹⁴⁰. He says however that if disclosing that information would have compromised the investigation it may have been appropriate to withhold the information⁹⁴¹.

Ms Bell highlights the different stories she was given compared with Mrs Johnson, as Ms Bell was first told that Mr Bayoh was found dead on the street while Mrs Johnson was first told that he died in an ambulance. She then says that when the police attended Mrs Johnson’s house they said they had a warrant out for Mr Bayoh’s arrest⁹⁴². She remembers Chief Superintendent McEwan visiting the house and providing more information about Mr Bayoh’s death but not being sure about it. She remembers being told that Mr Bayoh went towards the police with a knife, and that he hit a female officer⁹⁴³.

Ms Bell says she was reassured by police officers that a postmortem examination would not be carried out until she had seen Mr Bayoh, as they needed an identification. She waited to see him with the rest of his family but at the time believed that the postmortem would not commence until she had seen and identified him. She found out that the postmortem had happened without her having seen him and was “very upset, very, very angry and...really confused”⁹⁴⁴. She says they were not allowed to see Mr Bayoh until several weeks later, and she did not want to see him after the postmortem⁹⁴⁵. She speaks about the impact of believing she would see him, and then not being able to see him: “I didn’t have that closure and I didn’t have that time to say goodbye”⁹⁴⁶.

Detective Chief Superintendent Boal says that interviewing Ms Bell immediately after telling her the news of Mr Bayoh’s death was “insensitive”. About contact with the family she says “I think the family said we didn’t get it right, so that for me suggests

⁹³⁶ SBPI-00247, para 18

⁹³⁷ 40/38/12

⁹³⁸ 40/34/10

⁹³⁹ 40/35/2

⁹⁴⁰ 63/68/11

⁹⁴¹ 63/70/9

⁹⁴² SBPI-00247 paras 30, 31

⁹⁴³ SBPI-00247, paras 32-34

⁹⁴⁴ SBPI-00247, para 44

⁹⁴⁵ SBPI-00247, para 47

⁹⁴⁶ 40/82/4

we didn't get it right"⁹⁴⁷. Assistant Chief Constable Nicolson when asked if it was appropriate for Ms Bell to be asked to give a statement immediately after receiving the death message, says that if important information could be obtained to assist the investigation then that might be appropriate. However if it was possible to give her some time, then that would have been better⁹⁴⁸.

Detective Superintendent Campbell is also asked if Mr Bayoh being black had any implications on the standard priority actions that he would have to consider. He says that it had an impact on the FLO strategy, and how they would have to take account of ethnicity, nationality, religion and how the family could be supported⁹⁴⁹.

Detective Chief Inspector Hardie says in his evidence that, if he were SIO, he would have wished to reassure the family that potential racism or racial discrimination was not a factor. This would have been made more difficult by the absence of statements from the attending officers. However he says that the officers had been called to the location at Hayfield Road due to the behaviour of Mr Bayoh and that it was important not to lose sight of that as well⁹⁵⁰.

Assistant Chief Constable Nicolson says when questioned about the family's belief that information had been deliberately withheld from them, that it was incumbent on the police to give the family all of the information that they require, including that Mr Bayoh died following contact with the police.

16.2 Contact with the Mr Adeyemi Johnson and Mrs Kadijartu Johnson on 3 May 2015

Detective Constable Mitchell and Detective Constable Parker attended at Mr and Mrs Johnson's home at 15:10 on 3 May 2015 and delivered the first death message⁹⁵¹. Detective Constable Parker says that he and Detective Constable Mitchell visited the home of Mr and Mrs Johnson for a second time at 15:40 on 3 May 2015⁹⁵². Detective Constable Mitchell says that they were instructed to go there and wait with the family until a senior officer arrived⁹⁵³. During the second visit to their home Detective Constable Mitchell was instructed to inform Mr and Mrs Johnson that Chief Superintendent McEwan was not currently available to attend at their address at that time⁹⁵⁴ and he delivered a second death message⁹⁵⁵. Detective Constable Mitchell says that they also said that FLOs would be attending at Mr and Mrs Johnson's property and they would be able to provide further information. Chief Superintendent

⁹⁴⁷ SBPI-00233 para 321, 345

⁹⁴⁸ SBPI-00217 para 205

⁹⁴⁹ 49/133/2

⁹⁵⁰ 50/131/23

⁹⁵¹ SBPI-00238 para 153

⁹⁵² SBPI-00238 para 157

⁹⁵³ SBPI-00229 para 128

⁹⁵⁴ SBPI-00238 para 160

⁹⁵⁵ SBPI-00238 para 161. According to PIRC-00024 whilst not said to be a verbatim record of the second death message, the wording of the second death message is noted as: "following an incident on Hayfield Road, Kirkcaldy this morning, officers from Police Scotland attempted to arrest Sheku Bayoh. He became unconscious and was conveyed to hospital by Scottish Ambulance Service and despite efforts by hospital staff, died shortly after 9am this morning".

McEwan and Inspector Shepherd attended at Mr and Mrs Johnson's home at 18:10 on 3 May 2015.

Mr Johnson says in the first death message they were told that a member of the public called an ambulance, Mr Bayoh was lying on the side of the road and the ambulance picked him up. It was on the way to hospital that he passed away⁹⁵⁶ and "they were looking for two men who they believe were involved in his death"⁹⁵⁷. He says the officers gave him the impression that it had just happened and they were the first to be told⁹⁵⁸.

Mr Johnson says that police officers came to his house twice and told him and Mrs Johnson that "they were looking for two men"⁹⁵⁹. There was then discussion of Chief Superintendent McEwan attending the house, and at this point the officers who were there told them that the police were involved in Mr Bayoh's death⁹⁶⁰. He says the officers "came to the house knowing they were coming to lie... we knew at that point something was really, really wrong because they were trying to blame members of the public. I also felt this was a way of their gathering information on Sheku and on our family, to find dirt, all of which would be much easier if we didn't know that Sheku had died at their hands"⁹⁶¹.

Detective Constable Mitchell says that Mr Johnson responded to the second death message by saying that Mr Bayoh had been killed by the police because he was black⁹⁶². He says that he recalls that Mrs Johnson was crying but that he cannot remember what Ms Bell's reaction was⁹⁶³, but they were all really angry and upset⁹⁶⁴. Detective Constable Mitchell says that he "remembers apologising for what they'd been through". He also acknowledges that this was the first time that Ms Bell had heard the statement and that there was more information in the second death message delivered to Mr and Mrs Johnson than they had previously given to her. Detective Constable Mitchell says that they apologised and then they left⁹⁶⁵.

Mr Johnson says that Chief Superintendent McEwan told them that "when the officers turned up...they met Sheku with the machete in his hand and they tried to talk him down so that he drops the machete, but he refused... He said that Sheku punched a female officer...he stamped on her head...all the officers used their batons on him and it was when they stopped that they realised that Sheku was not breathing... he was pronounced dead on the way to the hospital"⁹⁶⁶. During the questions from the people

⁹⁵⁶ SBPI-00248 para 3

⁹⁵⁷ SBPI-00248, para 4

⁹⁵⁸ SBPI-00248, para 5, SBPI-00247, para 24

⁹⁵⁹ SBPI-00248, paras 7 and 8

⁹⁶⁰ SBPI-00248, para 10

⁹⁶¹ SBPI-00248, para 12

⁹⁶² SBPI-00229 para 133

⁹⁶³ SBPI-00248 paras 6 and 7. According to Mr Johnson, Ms Bell was not at Mr and Mrs Johnson's home when she received the first death message but came over to their home before the second death message was delivered.

⁹⁶⁴ SBPI-00229 para 136

⁹⁶⁵ SBPI-00229 para 137

⁹⁶⁶ SBPI-00248, para 17

at the house “he changed from a machete to a large knife, and then...he moved from a large knife to a kitchen knife, and then he moved from that to a blade”⁹⁶⁷.

Chief Superintendent McEwan is asked in his evidence about his conversation with Chief Inspector Gill Boulton in preparation for a visit to the home of Mr and Mrs Johnson on the evening of 3 May 2015. Assistant Chief Constable Nicolson had asked for Chief Superintendent McEwan and Chief Inspector Shepherd to be briefed by Chief Inspector Boulton who was part of the Safer Communities Division. Safer Communities worked with minority communities across Scotland and the purpose of the briefing was to ensure that they were aware of any sensitivities in terms of diversity issues. Boulton had prior to the briefing with Chief Superintendent McEwan and Chief Inspector Shepherd spoken to Mr Gary Wilson, a lay adviser, and he suggested that given the high profile and sensitive nature of this case it would be appropriate for a lay adviser to be appointed and that they should be “someone that is of that particular protected characteristic or understands that protected characteristic”⁹⁶⁸. Mr Wilson says that he did not think that he would be an ideal person to be appointed as the lay adviser in this case⁹⁶⁹. No other lay adviser had been identified. Chief Superintendent McEwan says that he contacted one of his main contacts from the Independent Advisory Group to assist in the role of lay adviser. However, the person he contacted, Adnan, who had worked with the Free Fife and the Fife Arabic Society, knew the family well and was not therefore comfortable to become involved⁹⁷⁰.

When asked to comment on the evidence of Mr Johnson relating to Chief Superintendent McEwan’s and Chief Inspector Shepherd’s first visit to the home of Mr and Mrs Johnson, Chief Superintendent McEwan says that he never used the words “I should not be telling you this” since, in his view, he was there with the intention of sharing information⁹⁷¹. When asked if he had used this phrase as a way of building a rapport, he does not remember using that phrase⁹⁷². He also says that he would not have used the term “pepper spray” as the terminology he would have used would be “CS Spray”⁹⁷³. He also added that he would not have says that after the police “officers had pepper sprayed him that Sheku then moved towards the officers and that the police officers used their batons”. He says that at the time that he was in the Johnson’s home, the only people who knew if batons had been used or not were the police officers who had attended at Hayfield Road. Although he knew batons had been drawn, he did not know that they had been used⁹⁷⁴.

Chief Superintendent McEwan also says that he was disappointed to hear that Mr Johnson felt that his offer to pay for hotel accommodation for members of Mr Bayoh’s extended family was a cynical exercise. He says that there was no ulterior motive. He says that he felt that the immediate family had “enough on their plate to be getting on with” and he was keen to do what they could do to help⁹⁷⁵.

⁹⁶⁷ SBPI-00248, para 18

⁹⁶⁸ SBPI-00263 para 16

⁹⁶⁹ SBPI-00263 para 16

⁹⁷⁰ 64/42/24

⁹⁷¹ 63/154/17

⁹⁷² 63/159/13

⁹⁷³ 63/156/25

⁹⁷⁴ 63/157/10

⁹⁷⁵ 64/89/20

16.3 Delivery of the death message

Detective Constable Andrew Mitchell⁹⁷⁶ says that he had had no training in liaising with the family of the deceased in investigations of deaths⁹⁷⁷ but as at 3 May 2015 he did describe himself as being relatively experienced in delivering death messages⁹⁷⁸.

Assistant Chief Constable Nicolson says in his evidence that when the death message was first delivered to the family the officers delivering that message should have treated the family with fairness and respect. The family ought to feel that the officers were compassionate. Treating the family otherwise should never happen⁹⁷⁹.

Ms Connie Barcik, who is the mother of Mr Bayoh's older child, found out about his death via a friend on Facebook at around 21:00 on 3 May 2015. Ms Bell had told police about her at the station and Mrs Johnson had told them about her and given them her number when they visited the house. Both were told that the police would contact her⁹⁸⁰.

Mr Saeed says that while he was in the police station at around 15:00, Mr Johnson called him, and was unaware of Mr Bayoh's death. Mr Saeed told him that Mr Bayoh was dead⁹⁸¹.

Mr Saeed says that he was with two police officers for some time that day as they took him to hospital from his family's home, before taking him to the police station. He says on arrival at the police station they told him Mr Bayoh had died. He says he thinks he was told that Mr Bayoh had had a heart attack though he was so upset he could not remember exactly. He says he was so upset the officers offered to take him home, and he went outside for a smoke, but then he was asked to give a statement. He says that while giving the statement he was asking questions, including about Mr Bayoh's heart attack, and was eventually told that Mr Bayoh had been approached by police officers during the incident⁹⁸².

Detective Chief Superintendent Boal says that she was not involved in the decision, and has no idea who gave the instruction⁹⁸³, to withhold from the first death message delivered to the family the fact that Mr Bayoh had died following police contact. She says that you would have to provide a certain amount of context around the news that a loved one has died⁹⁸⁴. Withholding the information around police contact was, in her view, damaging to the relationship with the family⁹⁸⁵. Detective Chief Superintendent Boal also says that FLOs ought to have been deployed more quickly. It is appropriate for Police Scotland to have the responsibility for delivering death messages but in

⁹⁷⁶ Andrew Mitchell was promoted to Police Sergeant prior to giving his statement to the Inquiry.

⁹⁷⁷ SBPI-00229 para 28

⁹⁷⁸ SBPI-00229 para 39

⁹⁷⁹ 68/116/25

⁹⁸⁰ PIRC-00072

⁹⁸¹ PIRC-00034

⁹⁸² PIRC-00034

⁹⁸³ 66/62/19

⁹⁸⁴ 62/61/19

⁹⁸⁵ 66/62/25

circumstances such as this, where there has been contact with the police means that the delivery of the death message by Police Scotland will be even more difficult⁹⁸⁶.

Assistant Chief Constable Nicolson says that the timescales in delivering the death message to the family were “very long and should have been much shorter than what’s happened”⁹⁸⁷. Assistant Chief Constable Nicolson also says that Ms Bell should have been told that Mr Bayoh died following contact with the police and there was no benefit whatsoever in withholding that information from her⁹⁸⁸. Not telling the truth would have implications and appears as if Police Scotland have something to hide⁹⁸⁹.

16.4 Interviews with the police

Ms Bell was asked to give a statement to Detective Constable Parker and Detective Constable Mitchell immediately after hearing Mr Bayoh was dead. Detective Sergeant Dursley says that taking a statement at that time helped to capture a lot of information to assist in the enquiry⁹⁹⁰. Ms Bell says she was not offered any support or a break and was told she had to give a statement. Detective Sergeant Dursley said that the officers would have had to judge whether she was capable of giving a statement⁹⁹¹. She says she ended up giving a statement because officers told her she would be able to see Mr Bayoh afterwards⁹⁹².

Ms Bell says she was not told that the statement was voluntary. She says she was left with the impression that she “had to do it”⁹⁹³.

During the statement taking, Ms Bell says that the officers kept asking her if she had had an argument with Mr Bayoh and if that was why she had stayed at her mum’s. Chief Superintendent McEwan is asked about item 2 on the minutes of the third Gold Group meeting, namely “Information to suggest that the deceased had an argument with his partner Ms Bell”; he says that did not recall that being of any particular significance⁹⁹⁴. When it is put to him that Ms Bell’s evidence suggested that she viewed this persistent line of questioning as an attempt to find a reason to blame Mr Bayoh in some way, Chief Superintendent McEwan says that he could not comment on that⁹⁹⁵. Ms Bell further says that the police officers pushed her on Mr Bayoh’s religion, asking “if he was a Muslim, how religious was he? Did he pray? How often did he pray? Did he drink? Did he eat bacon?... if I got on well with his family.... If his family had a problem with me being white. Did they have a problem with me not being a Muslim? Did Shek want me to be a Muslim?...was Shek ever violent to me...if Shek was a violent person, if he had any enemies”⁹⁹⁶. Ms Bell says that she thought the questions were routine but she did find the questions about his religion

⁹⁸⁶ 66/110/3

⁹⁸⁷ 67/104//7

⁹⁸⁸ 67/108/13

⁹⁸⁹ 67/109/16

⁹⁹⁰ 41/124/9

⁹⁹¹ 41/125/21

⁹⁹² SBPI-00247, para 19

⁹⁹³ 40/42/17

⁹⁹⁴ 64/26/11

⁹⁹⁵ 64/27/25

⁹⁹⁶ SBPI-00247 paras 21 and 22

“maybe...pushy” and “very strange”⁹⁹⁷. She says she did not read over her statement afterwards, and was not allowed to see Mr Bayoh as she had expected⁹⁹⁸.

Ms Bell’s statement to PIRC taken on 8 May 2015 also contains information about Mr Bayoh’s religion⁹⁹⁹.

Detective Sergeant Dursley says that he does not remember going into any detail with Detective Constable Parker and Detective Constable Mitchell of what ought to be covered when taking the statement from Ms Bell¹⁰⁰⁰.

Detective Sergeant Dursley says that it was necessary to bring Ms Bell back to the police station rather than interviewing her in her home since there were signs of disturbance in the property and it would be better to preserve the property as it was¹⁰⁰¹. He says that conducting the interview in a soft suite might have been a better setting, as it’s more comfortable, but looking back he would still have tried to take a statement from her at that time in order to capture the information which ultimately assisted the enquiry¹⁰⁰².

When asked about the approach to Ms Bell’s statement and how it was taken, Detective Superintendent Campbell says “a witness statement from her at the time when she is extremely distressed is something we wouldn’t do these days...it’s something that we would give her time to basically be consoled by her family and friends, and we would make arrangements over the coming days to go and get a more thorough statement from her”. He says they could have got the information they needed through a conversation with her initially rather than a statement¹⁰⁰³.

Mr Saeed in his third PIRC statement¹⁰⁰⁴ makes a complaint against police officers who dealt with him on 3 May 2015. He says his interactions with officers that day lasted about 10 hours. As noted above, Mr Saeed describes being taken to the hospital by Detective Constable Simon Telford¹⁰⁰⁵ and Detective Constable John McGregor¹⁰⁰⁶. He says they spoke to the receptionist and doctor he saw, and waited outside the bathroom for him when he went to the toilet. He says after the hospital he was taken to the police station. He says he was not happy about going but went willingly because he was worried about Mr Bayoh. He says that on the way he asked to stop and buy some painkillers and both police officers accompanied him into the shop.

Mr Saeed says he was only informed about Mr Bayoh’s death when they attended the Police Office, and that he was so upset by the news the officers initially offered to take him home before he had given a statement, but he was then asked to give a statement. Mr Saeed says that Mr Johnson called him during the interview and afterwards he attempted to leave the interview room. He says the police officers “seemed to panic

⁹⁹⁷ SBPI-00247 para 25

⁹⁹⁸ SBPI-00247, para 26

⁹⁹⁹ PIRC-00028

¹⁰⁰⁰ 41/126/23

¹⁰⁰¹ 41/100/23

¹⁰⁰² 41/125/8

¹⁰⁰³ 47/147/19

¹⁰⁰⁴ PIRC-00034

¹⁰⁰⁵ SBPI-00221 para 73

¹⁰⁰⁶ SBPI-00177 para 65

and jumped up and didn't know what to do". He says, "officer 2 said something in relation to my rights...I felt it was some sort of threat but I didn't hear all of what he said". Mr Saeed says that he walked into the corridor and had his hand on the fire exit when "officer 1 grabbed my left arm with his right hand by the bicep and held me. I said in a normal voice "this is assault"". He says he pulled his phone out of his pocket and one of the officers pulled it out of his hand. An officer he knew then came and spoke to him and asked him to cooperate. Mr Saeed says he decided to cooperate after that and was given his phone back. He says he was asked to give swabs and agreed even though he wasn't happy about it. He says his phone was eventually taken by the officers although he made it clear he didn't want to give it to them. He ends his statement by saying "When I was with the police I felt like I was being treated like a criminal, a suspect". Mr Saeed says during his Inquiry hearing appearance that he had more to say on the subject but was not able to speak about it during the Inquiry hearing¹⁰⁰⁷.

Detective Superintendent Campbell is asked about Mr Saeed being brought to Kirkcaldy Police Office around 2pm on 3 May 2015. He says Mr Saeed was interviewed as a significant witness and could have left at any time¹⁰⁰⁸.

16.5 Contact with PIRC and FLOs

Ms Bell says that the family liaison officers ('FLOs'), who she thinks were from PIRC rather than from Police Scotland arrived around 22:00 on 3 May 2015, "I felt like they were just there to watch us to gather information. I didn't feel like they were supportive". She says she remembers them being "very rude and quite aggressive" and that "I didn't get the sense that they were there to help"¹⁰⁰⁹.

Mr Johnson says that Deputy Senior Investigator Harrower and Inspector Alexander Maguire came to the house around 10ish. He says that one of them "did not want to be there" and was "arrogant with his approach"; "He came in saying they are in charge, and they are responsible for what's happening now". Mr Johnson says that they asked the investigator from PIRC¹⁰¹⁰ about this as Mr Johnson and Ms Bell were aware the police were still at Ms Bell's house and the PIRC FLO said he had only just been briefed. Mr Johnson says, "we saw them all as liars because he lied that they were in charge of everything, and it would be proven to him that he was lying". He says that the PIRC FLO's "main objective was for [Mr Bayoh's family] to give authorisation for the post-mortem to go ahead" and that "they appeared more interested in gathering information from us, whilst not providing any real details of what had happened to Sheku. They talked down to us as though we were idiots, Black people who didn't have a clue but of course like the police they were left in shock at the questions we asked and our failure to comply with their stereotypes"¹⁰¹¹.

Chief Superintendent McEwan says that he felt that PIRC had failed to prioritise engagement with the family. In his view it was necessary for PIRC to deploy FLOs in

¹⁰⁰⁷ 4/12/3 and 4/31/23

¹⁰⁰⁸ 48/114/6

¹⁰⁰⁹ SBPI-00247, paras 36, 40, 40/77/19

¹⁰¹⁰ SBPI-00247 para 23. Although Mr Johnson was not sure he believed that the investigator from PIRC that he was speaking with was either Keith Harrower or Alexander Maguire

¹⁰¹¹ SBPI-00248, paras 23, 24, 25

order to begin to build a relationship and keep the family informed as to progress of the enquiry¹⁰¹². Chief Superintendent McEwan says that at the third Gold Group meeting on 3 May 2015, Deputy Senior Investigator Harrower had said that PIRC had no staff available to visit the home of Mr and Mrs Johnson. Chief Superintendent McEwan says that he raised his concerns informally with Deputy Senior Investigator Harrower after that meeting¹⁰¹³.

Mr Johnson says that he was not told about the postmortem going ahead on the 4 May 2015, and did not give consent for this to happen, but he believes PIRC officers said that he had consented. Chief Superintendent McEwan says that the post mortem was discussed when he visited the home of Mr and Mrs Johnson on 3 May 2015 and that the family were clearly keen to have more information on the process that would follow. He says that the commitment that he gave was to raise the subject of the postmortem and the practical arrangements for it at the third Gold Group meeting¹⁰¹⁴. The task, namely to address all the issues raised by the family in relation to the postmortem, was recorded in the minutes of the third Gold Group meeting, but Chief Superintendent McEwan believed that it was for the whoever was in charge of the investigation, in this case PIRC, to ensure that this task is allocated and dealt with¹⁰¹⁵. PIRC Investigator Alistair Lewis¹⁰¹⁶ says that his understanding was that Mr Johnson had said during a phone call to Deputy Senior Investigator Harrower on 3 May 2015 that Mr Bayoh's family were refusing to take part in the formal identification of Mr Bayoh until Mr Bayoh's mother had arrived from England. Investigator Lewis says that whilst he could only hear Deputy Senior Investigator Harrower's side of the telephone conversation, he had said to Mr Johnson that they would need two people to take part in the identification process and that Mr Bayoh's mother did not have to be one of them. Investigator Lewis says that he was not aware that Mr Bayoh's family were asking for the postmortem to be delayed rather than refusing to take part at all but regardless of that fact COPFS had instructed that the postmortem was to take place on 4 May 2015¹⁰¹⁷. Mr Johnson says he first found out about the postmortem while at Aamer Anwar's office on 5 May 2015. He was further greatly upset by the limits on what they could see of Mr Bayoh's body when they were allowed to see him, and the fact that when they were given his body, it was in a bad state and they were not allowed to see it before burial¹⁰¹⁸. Investigator Lewis says that Mr Bayoh's family were able to view Mr Bayoh's body at Edinburgh City Mortuary on 6 May 2015¹⁰¹⁹. Investigator Lewis says that there were no visible injuries on the body of Mr Bayoh¹⁰²⁰. He says that in some previous cases where there have been facial injuries, he would have covered that part of the body and explained to the family why he had done that, but that that was not necessary in the case of Mr Bayoh¹⁰²¹.

¹⁰¹² 63/104/19

¹⁰¹³ 64/22/24

¹⁰¹⁴ 64/36/11

¹⁰¹⁵ 64/36/23

¹⁰¹⁶ PIRC Investigator Alistair Lewis was promoted to Deputy Senior Investigator prior to giving his evidence to the Inquiry.

¹⁰¹⁷ SBPI-00246 para 14 and 15

¹⁰¹⁸ SBPI-00248, paras 30-33

¹⁰¹⁹ SBPI-00432 para 95

¹⁰²⁰ SBPI-00432 para 96

¹⁰²¹ SBPI-00432 para 95

Chief Superintendent McEwan says in his evidence that it was wrong that the officers had been made aware of the outcome of the postmortem on the evening of 4 May 2015 but the family had not been aware of the fact that the post mortem had taken place or been provided with the findings of the post mortem until the following day, 5 May 2015¹⁰²².

Assistant Chief Constable Nicolson says that he had no direct involvement in the next of kin strategy¹⁰²³ but that the need for FLOs to be briefed on cultural sensitivities was discussed at the second Gold Group meeting on 3 May 2015¹⁰²⁴. He says that an awareness of these sensitivities would require the FLOs to have knowledge of the cultural issues and to note any specific death and funeral arrangements that ought to be passed to COPFS¹⁰²⁵.

Assistant Chief Constable Nicolson also says that he could not recall the reasons for the family having disengaged with Police Scotland, but was aware at the Gold Group meeting on 4 May 2015 that Chief Superintendent McEwan (due to his prior knowledge of the family) was attempting to re-engage with the family. However, since PIRC were dealing with family liaison they would be able to re-engage with the family independently of Police Scotland and address issues that need to be resolved¹⁰²⁶.

16.6 Seizure and search of houses

16.6.1 The Bell / Bayoh house

Ms Bell describes the officers attending her home after she reported Mr Bayoh missing: “I remember them not asking if they could have a look around”. She says she wasn’t shown a search warrant¹⁰²⁷. When asked whether she was aware of or asked for permission for her house to be searched, Ms Bell says she was not¹⁰²⁸. Detective Sergeant Dursley says that in his Inquiry statement that he did not know if consent for seizing Ms Bell’s property had been recorded or if warrants were obtained for the examinations that later took place. He had not been made aware of anyone refusing consent¹⁰²⁹. When questioned, he agrees that he should have checked what the legal basis was for seizing and searching the property¹⁰³⁰.

16.6.2 The Saeed House

At 13:40 on 3 May 2015 Detective Constables Kevin Petrie and Miller arrive at the Saeed home address. PC Fraser was already in attendance having been instructed to seize and secure the property. Detective Constable Miller and PC Fraser state that the original call for the house to be secured stated that it was empty¹⁰³¹. PC Fraser says

¹⁰²² 64/69/13

¹⁰²³ SBPI-00217 para 242

¹⁰²⁴ SBPI-00217 para 243

¹⁰²⁵ SBPI-00217 para 244

¹⁰²⁶ SBPI-00217 para 285

¹⁰²⁷ SBPI-00247, paras 7, 8

¹⁰²⁸ 40/27/14

¹⁰²⁹ SBPI-00228 para 131

¹⁰³⁰ 41/91/24

¹⁰³¹ PS17782, SBPI-00315, para 23

he would not have been sent to secure the house if it was known to have people inside¹⁰³². Detective Constables Miller and Petrie attended once they were informed that the house was not empty¹⁰³³.

Mr Ahmed and Mrs Rashid both describe the seizure and search of their house by the police on 3 May 2015. There were a number of family members there including Mrs Rashid's brother who was disabled and required specific equipment and care, and had carers attending at specific times to support him. Mr Ahmed's wife did not speak much English and required medication, and Mrs Rashid had a very young baby who was unwell and she was also recovering from the birth at the time¹⁰³⁴.

PC Rhuaridh Fraser attended the Saeed family house on 3 May. He is asked to describe the family and says they were wearing "traditional cultural clothing"¹⁰³⁵ and further describes Mrs Rashid's hijab as "wraps or something on the head"¹⁰³⁶ and that he "took [this] to mean they had a religious and cultural background different to mine...but...I couldn't assume what their religious and cultural – what meanings that gave to me"¹⁰³⁷. When asked whether he treated the family differently because they were Muslims and they were Pakistani, he says "no", and he says he would have treated them the same if they had been a white family. He says with hindsight he would have "gone further on the day to try and establish what the concern with me being in the house"¹⁰³⁸. He is asked about any concerns the women in the house may have had about speaking to men. He says "It's part of the same parcel: beliefs, religion and language. It didn't concern me that I was the one speaking to the women. I wouldn't have an issue speaking to them... unless it was pointed out to me that they're not happy speaking to me and why... I would assume that they would be signalling that they couldn't understand what I was saying"¹⁰³⁹. Asked if race played a part in any of his actions or decisions, PC Fraser says "I can't see how it would be. I would deal with them the same as any other. If it appears that they're not OK with the English language that would be dealt with appropriately, same with disability or medical issues...I say, deal with people the same way you would like to be dealt with yourself"¹⁰⁴⁰. When asked if he would have behaved differently at the house with his experience now, PC Fraser says "I would probably do the same again...assuming there are cultural, religious leanings isn't a problem...I can't assume that somebody has cultural leanings without being informed"¹⁰⁴¹. He is asked whether, if someone has a different culture from his own, they may not want to be treated in the way he would have liked to be treated. He says "yes. When I say treated the way I am treated, I meant politely, respectfully, as opposed to me myself as a male person"¹⁰⁴²... "Some people deviate from their religions by different amounts, and so I can't assume that they've deviated from the initial leanings or remain totally at it. And just by using calming hand signals and tone of voice and an empathetic manner I would look to establish even a small

¹⁰³² SBPI-00316, para 49

¹⁰³³ SBPI-00315, paras 23, 27

¹⁰³⁴ 39/4/17, SBPI-00260, SBPI-00249

¹⁰³⁵ SBPI-00316

¹⁰³⁶ 62/76/15

¹⁰³⁷ 62/78/2

¹⁰³⁸ 62/105/16

¹⁰³⁹ SBPI-00316, para 58

¹⁰⁴⁰ SBPI-00316, para 90

¹⁰⁴¹ 62/83/2

¹⁰⁴² 62/83/14

amount of “no male”, “no man”, anything basic. But... I couldn’t just assume it”¹⁰⁴³. “I can’t assume by someone’s appearance what they can and can’t do or what I can or can’t do. There has to be a bit of communication for me to know, and by seeing someone dressed in whatever manner, I can’t just assume that they can’t speak English or have cultural or religious leanings whereby, yes, my presence was not allowed”¹⁰⁴⁴. When asked how confident he was that he would have recognised any sort of racial discrimination at the house on the day he says “I could have recognised that straightaway, yes”¹⁰⁴⁵.

Mrs Rashid was there when the police arrived and told them the family would not leave unless the police had a warrant¹⁰⁴⁶. She says she was told that the police “didn’t need a warrant” and that “we didn’t have a choice and had to let them in because this was a crime scene and they need to seal the house...”¹⁰⁴⁷. In his evidence Detective Constable Miller says that where a decision had been taken by the SIO to seize a property there was no need to obtain a warrant¹⁰⁴⁸. The lawful order from the SIO gave them power at common law to enter the address and seize the property without a warrant¹⁰⁴⁹. Mrs Rashid says they were given “no explanation” as to why they needed to vacate the property¹⁰⁵⁰. As to whether Mrs Rashid and her family had given their consent to leave the property, Detective Constable Miller says that he did not think about recording the circumstances and if they had been advised that the family were not obliged to vacate the property¹⁰⁵¹. He added that “they weren’t consenting as such. They were begrudgingly leaving. They weren’t happy about having to leave and when Mr Ahmed came along the conversation was more towards the welfare of [Mrs Rashid’s brother], about trying to get him back into the address. That was their main focus if you like”¹⁰⁵². In a similar situation in the future, Detective Constable Miller says that he would want to make sure that the householders were given more information¹⁰⁵³, be made aware of their legal rights¹⁰⁵⁴, and for this to be recorded¹⁰⁵⁵.

Mrs Rashid says that “the tall officer forced himself into the house. He walked into the house, pushing me towards the sitting room...”¹⁰⁵⁶. She describes being told she could not phone anyone and having her phone taken from her, her call disconnected and her contacts looked through while she was on the phone to someone¹⁰⁵⁷. She also speaks about needing to get dressed as she had been in her pyjamas when they arrived, and she wanted some privacy to dress and make sure she was wearing her hijab. The male officer stood outside the door while she changed without asking for her permission to do so¹⁰⁵⁸. When she tried to leave in her car, the police searched

¹⁰⁴³ 62/83/21

¹⁰⁴⁴ 62/98/12

¹⁰⁴⁵ 62/103/7

¹⁰⁴⁶ SBPI-00260, para 4

¹⁰⁴⁷ SBPI-00260, para 4

¹⁰⁴⁸ 74/38/21

¹⁰⁴⁹ 74/36/25

¹⁰⁵⁰ 39/10/1

¹⁰⁵¹ 74/66/7

¹⁰⁵² 74/66/10

¹⁰⁵³ 74/67/12

¹⁰⁵⁴ 74/67/19

¹⁰⁵⁵ 74/67/23

¹⁰⁵⁶ SBPI-00260, para 9

¹⁰⁵⁷ SBPI-00260, paras 15, 16

¹⁰⁵⁸ 39/31/9

her car¹⁰⁵⁹. She also says that her mother does not speak any English and she had to translate everything that was happening. The police did not ask what language she spoke or make an effort to get an interpreter¹⁰⁶⁰.

She describes the officer she spoke to as “very pushy, abrupt and quite rude. I felt intimidated by him, I was frightened and scared and didn’t know what to do”¹⁰⁶¹. She describes the experience as “really scary and confusing”... “we were made to feel like criminals with no rights, we were treated like second-class citizens. We felt vulnerable and victimised”¹⁰⁶². She says “there was no compassion for [my brother]... he deserved better treatment. I would hate to think what would have happened if I wasn’t there because my poor mother doesn’t speak English and [my brother] can’t speak clearly and has disabilities”¹⁰⁶³. Detective Constable Miller says that he did not consider the need for an interpreter to assist Mrs Rashid’s mother as Mrs Rashid was interpreting for her. He says that he presumed that that would have been “more than adequate and probably easier for her mum speaking to somebody that she knows”¹⁰⁶⁴. He acknowledged that he did not however ask Mrs Rashid’s mother if she was happy for her daughter to translate or if she would prefer an independent translator to be brought in¹⁰⁶⁵. She says that when she explained that they couldn’t go to a family member’s house or a hotel because her brother needed specific equipment in the house “they didn’t care. They didn’t have any compassion, they didn’t care how he was, they didn’t care how I was, my mum, they just didn’t care about the whole situation of how we were going to manage being outside that house”¹⁰⁶⁶. She also says that when the officers were at the house, her mother was “Terrified, scared, kind of brought back memories to her from a previous event that she had gone through with the police”¹⁰⁶⁷.

She says of the police, “They were uncaring and I felt almost like we were being treated differently because we were Pakistani and Muslims”¹⁰⁶⁸, and “had that been anyone else, they would have been treated differently...by being a bit more compassionate towards us”¹⁰⁶⁹. When asked what the long-term impact of the day on her, she says “we’re not safe around the police any more...never mind being out in the streets, as you can see I’m a Muslim wearing a hijab, I don’t feel safe as it is, we don’t feel safe in our own homes anymore”¹⁰⁷⁰. She says she felt they were treated like “second class citizens” and that the experience would have been improved if “they treated us with a bit of respect...if they hadn’t removed us from our own home”. If they had to search the house, they should have made efforts “not to make us feel threatened, unsafe”¹⁰⁷¹.

¹⁰⁵⁹ 39/37/18

¹⁰⁶⁰ 39/48/10

¹⁰⁶¹ SBPI-00260, para 4

¹⁰⁶² SBPI-00260, paras 27 and 28

¹⁰⁶³ SBPI-00260, para 38

¹⁰⁶⁴ 74/109/1

¹⁰⁶⁵ 74/109/22

¹⁰⁶⁶ 39/36/19

¹⁰⁶⁷ 39/18/21. NB It is later clarified that this did not involve any alleged criminal behaviour or investigation of Saadia Rashid’s mother.

¹⁰⁶⁸ SBPI-00260, para 42

¹⁰⁶⁹ 39/51/19

¹⁰⁷⁰ 39/40/11

¹⁰⁷¹ 39/49/3

When asked about the evidence which Mrs Rashid gave that she was not permitted to recover a breast pump, express milk or medication for her mother, and further that officers would not go back into the property to recover them on their behalf, Detective Sergeant Dursley says that he was not aware of that¹⁰⁷².

On the subject of their authority to search the property, Detective Constable Miller says in his evidence that he cannot understand why Detective Superintendent Campbell, or other senior officers, thought that consent had been given to search their property¹⁰⁷³. He continues, “we had fed back that the family were quite unhappy about having to leave the address, so why they have thought that they were consenting to the search, I don’t know”¹⁰⁷⁴. Mr Ahmed was called by his daughter while at work and told about the search of the house. He went to the house and spoke to officers Detective Constable Miller and Detective Constable Petrie¹⁰⁷⁵. He was told he could not go inside and when he asked about assistance in arranging alternative accommodation was told by the police “that’s not our job”. He says the family were only allowed back to the house around 21:00, after he repeatedly called the police station and explained that his son had carers coming to help him go to bed, and they could not stay in a hotel¹⁰⁷⁶.

Mr Ahmed made an informal complaint about the incident with the assistance of the Fife Islamic Centre. He says that the “lack of information is why I wanted to complain”¹⁰⁷⁷. He says he eventually spoke to Inspector Tom Brown from Levenmouth Police Station and was told that he should have been given an explanation for why the family was asked to leave the house. He asked for an apology in writing and was told he would get one, but did not until the PIRC spoke to him some months later¹⁰⁷⁸.

Mr Ahmed says he has “nothing against the police” and “we’ve been very, very friendly with the police”. He was content with how the complaint was handled. He had complained about the police once before when the police were very rude to him, “an inquiry took place and nothing happened... otherwise I have no concern with the police”¹⁰⁷⁹. He says that the experience on the day was “very bad...put me off from the police, the way they were behaving”¹⁰⁸⁰ but that he does not think the same as Mrs Rashid, that they were treated like criminals for being Muslim, “Just that wasn’t explained...I don’t think it’s a racism or because we are Muslim”¹⁰⁸¹.

PC Fraser says he was “not aware of the females being uncomfortable speaking to males. I’m aware of that being an issue for people of some religious or cultural heritage. I would’ve been concerned about ramifications for them of uniformed police coming to the door and not knowing how much of a grasp of English they have. I would communicate with them!”¹⁰⁸². When asked if he attempted to identify the religion or

¹⁰⁷² 41/99/22

¹⁰⁷³ 74/44/11

¹⁰⁷⁴ 74/44/24

¹⁰⁷⁵ SBPI-00249, para 3

¹⁰⁷⁶ SBPI-00249, para 15

¹⁰⁷⁷ SBPI-00249, para 23

¹⁰⁷⁸ SBPI-00249, paras 24 to 30

¹⁰⁷⁹ SBPI-00249, paras 32, 33

¹⁰⁸⁰ 39/97/7

¹⁰⁸¹ 39/97/14

¹⁰⁸² SBPI-00316, para 57

culture of the women he says he did not, and it did not cross his mind that the family might be Muslim¹⁰⁸³.

Detective Constable Miller says he informed Mrs Rashid that they did not require a warrant as “on this occasion, because it was a serious incident that happened at that time the property had been seized as, we’ve got to protect the forensic integrity of it”¹⁰⁸⁴. He states that he recollects being invited into the property. He says that he and Detective Constable Petrie “tried to explain as best we could with the information that we had”¹⁰⁸⁵. Detective Constable Miller says that if they had known that it was simply clothing that they were looking for, then they might have been able to secure those items and that “would have reduced the stress levels on all involved”¹⁰⁸⁶. In hindsight, Detective Constable Miller says that they should have gone back to the SIO to try and establish exactly why the property was being seized¹⁰⁸⁷. Of Mrs Rashid’s mother he says “Mrs Rashid was translating to her mother backwards and forwards, and we made sure that she was happy, that she was understanding what was happening”¹⁰⁸⁸.

Detective Superintendent Campbell is asked about Mrs Rashid’s concerns about male police officers standing outside the door while she was changing. He says “with hindsight...there could have been further research done on the family unit itself around the fact that they were Muslims” suggesting they could have taken advice from ‘diversity colleagues’ or ‘lay advisers’. He goes on to emphasise that this was a “live-time real incident which is moving very, very quickly” and that is different from “playing a tabletop exercise or...best practice”¹⁰⁸⁹. Detective Superintendent Campbell is asked whether he would have expected the officers at the house that morning to understand that Muslim women would wish to be separated from male officers in this scenario. He says, “yeah I think they would have a general understanding and appreciation of that”. He suggests they could have contacted a diversity representative on the Gold Group if they had needed advice¹⁰⁹⁰. Detective Superintendent Campbell says that “the whole aspect of repatriation and the religious aspects were discussed at the forensic strategy meeting”¹⁰⁹¹. The forensic strategy meeting took place at 16:45 on 3 May 2015.

Assistant Chief Constable Nicolson also says in his evidence that when learning of the evidence already heard by the Inquiry that Zahid Saeed’s family were not permitted to stay in one part of their property¹⁰⁹² it caused him concern. The family ought to have been supported and treated with fairness and respect¹⁰⁹³.

¹⁰⁸³ 62/78/13

¹⁰⁸⁴ SBPI-00315, para 35

¹⁰⁸⁵ SBPI-00315, para 41

¹⁰⁸⁶ 74/85/24

¹⁰⁸⁷ 74/87/7

¹⁰⁸⁸ SBPI-00315, para 43

¹⁰⁸⁹ 48/89/17

¹⁰⁹⁰ 48/91/11

¹⁰⁹¹ 48/107/1

¹⁰⁹² 68/55/22

¹⁰⁹³ 68/56/4

16.6.3 The Dick / MacLeod house

Mr Bayoh and Mr Saeed had visited the home of Mr Martyn Dick¹⁰⁹⁴ and Miss Kirsty MacLeod¹⁰⁹⁵ in the early hours of 3 May 2015 to watch a boxing match. When asked why there was a need to seize Mr Dick's property Detective Sergeant Dursley says that there was a suggestion that drugs may have been consumed, and he surmised in his evidence that something that was consumed by Mr Bayoh may have ultimately contributed to his death¹⁰⁹⁶.

Detective Constables Bellingham and Finch were the principal officers involved in the seizure of their home at 13:05 on 3 May 2015.

Mr Dick describes multiple officers seizing his home and separating him and his partner. He says "It's something that's bothered Kirsty and I since it happened... I guess we've learned a hard lesson in terms of trusting the police... it feels like we were sort of... used in some way, manipulated into going along with something"¹⁰⁹⁷.

Detective Constable Bellingham says in his evidence that the reason that so many officers were sent to the property was that they did not know what had caused Mr Bayoh to behave in the way that they had, and in his view, there was the possibility that there could be other persons on the property that might behave in a similar manner¹⁰⁹⁸. The higher-than-normal number of officers were dispatched as a precaution "in case we were going to something that could be dangerous"¹⁰⁹⁹. That says, he confirmed that they had no information to suggest Miss MacLeod and Mr Dick might have been violent¹¹⁰⁰. Detective Constable Bellingham also says that if there were other persons within the property, then additional officers would be required to take statements from these persons¹¹⁰¹.

Detective Constable Bellingham says in his evidence that he had not spoken to Mr Dick directly and recalls that he only spoke to Miss MacLeod to reaffirm the general terms of the explanation of why their property was being seized, namely that there had been an incident between Mr Bayoh and the police and that Mr Bayoh had been at this property prior to the incident then it was being seized as part of the investigation¹¹⁰². With regard to the search Detective Constable Bellingham says that he had not personally asked Mr Dick for permission to search his property¹¹⁰³ and, that whilst he was in the house, he did not hear anyone asking either Mr Dick or Miss MacLeod if their house could be searched¹¹⁰⁴. He says that it would have been for the SIO to determine if there was a necessary sense of urgency to permit the property of Mr Dick and Miss MacLeod to be searched without consent or without a warrant¹¹⁰⁵.

¹⁰⁹⁴ Martyn Dick is now married to Kirsty MacLeod

¹⁰⁹⁵ Kirsty MacLeod is now married to Martyn Dick

¹⁰⁹⁶ 41/139/15

¹⁰⁹⁷ 37/33/11

¹⁰⁹⁸ 37/76/25

¹⁰⁹⁹ 37/74/16

¹¹⁰⁰ 37/75/21

¹¹⁰¹ 37/77/11

¹¹⁰² 37/115/7

¹¹⁰³ 37/98/1

¹¹⁰⁴ 37/98/4

¹¹⁰⁵ 37/99/1

Detective Constable Finch says that he was provided with the information at a briefing at 10:00 on 4 May 2015 that consent had been obtained to search both Mr Dick and Miss MacLeod's property¹¹⁰⁶ and Ms Bell's property¹¹⁰⁷ and he did not seek confirmation that a senior officer would have the necessary authority¹¹⁰⁸. He says that the senior officers at the briefing were Detective Chief Inspector Hardie and Detective Chief Inspector Houston but he believes it was Detective Chief Inspector Hardie who made reference to consent¹¹⁰⁹.

Mr Dick says during his Inquiry hearing evidence that when he and Miss MacLeod were told that their home was being sized he asked if they "will be able to get in later on? Specifically we will need dog food, if we're not allowed to stay in our house tonight, we're going to need food for the dog"¹¹¹⁰. He adds that they were told "that would be no problem, but later on we were told – I guess after we got out of the police station we were told we couldn't get access to the house"¹¹¹¹. Mr Dick also says that he wanted to get his keys for his car or van so that he and Miss MacLeod could drive to Miss MacLeod's mum's house¹¹¹². With regard to Mr Dick and Miss MacLeod being unable to retrieve Martyn's van keys and dog food from the property, Detective Constable Bellingham says that they had been instructed to secure the property in order to preserve the integrity of the scene. Therefore nobody, including police officers, would be allowed back into the property without proper authority to do so¹¹¹³. Detective Constable Finch says that, in general terms, if an occupier wanted to return to the property for something then the police would either supervise entry by the occupier or collect the particular belongings on behalf of the occupier if those items were not deemed relevant to the investigation¹¹¹⁴. In particular when asked he says that there would be no reason not to facilitate car keys¹¹¹⁵, pet food¹¹¹⁶, breast milk¹¹¹⁷, a breast pump¹¹¹⁸, or medicine¹¹¹⁹ being returned to the homeowner so long as other evidence within the property pertinent to the investigation would not be disturbed or disposed of in the process¹¹²⁰. Detective Sergeant Dursley says that if the property had been seized on the basis of consent, he would generally speak to the house holder and explain that if the item which they wish to retrieve is not essential, then it would be preferable if they did not to re-enter the scene in order to preserve its integrity¹¹²¹. He says that Detective Constable Parker and Detective Constable Mitchell¹¹²² had asked him for authority to recover breastfeeding equipment¹¹²³ from Ms Bell's property, and

¹¹⁰⁶ 38/97/1

¹¹⁰⁷ 38/97/11

¹¹⁰⁸ 38/97/7

¹¹⁰⁹ 38/109/13

¹¹¹⁰ 37/22/15

¹¹¹¹ 37/22/18

¹¹¹² 37/42/10. Mr Dick says during the Inquiry hearing that he "can't remember what I was driving at the time"

¹¹¹³ 37/119/15

¹¹¹⁴ 38/65/2

¹¹¹⁵ 38/65/14

¹¹¹⁶ 38/65/17

¹¹¹⁷ 38/65/19

¹¹¹⁸ 38/65/21

¹¹¹⁹ 38/65/23

¹¹²⁰ 38/66/63

¹¹²¹ 41/96/3

¹¹²² 41/97/13

¹¹²³ 41/96/19

he was happy to give them permission to do so. He says that he did not remember receiving any other requests from officers on the day to re-enter either of the two other properties to recover items which had been left behind¹¹²⁴.

Detective Constable Finch notes in his daybook that after the home of Mr Dick and Miss MacLeod had been seized, and during a search of the property “No signs of disturbance” and “herbal matter in jar in bed drawer”¹¹²⁵. With regard to the “herbal matter” found within the property of Mr Dick and Miss MacLeod, Detective Constable Finch says that a task was to photograph the property before there has been any disturbance by the police conducting a search¹¹²⁶. Detective Constable Finch says that the jar of herbal matter in an open drawer of the bed base was brought to his attention by Judith Harley¹¹²⁷. He also says that they were not carrying out an intrusive search requiring every drawer and cupboard to be thoroughly searched¹¹²⁸. He agreed that, as Mr Dick and Miss MacLeod said in their evidence, if the drawer had been closed when they left the property, that the drawer could have been opened by the police before Detective Constable Finch arrived at the property¹¹²⁹. Detective Constable Finch says that he has “no recollection of opening that drawer”¹¹³⁰ and adds that his recollection was that by the time he got to the bedroom and the herbal matter found within the drawer was brought to his attention, the drawer was open¹¹³¹. Notwithstanding that a warrant had not been obtained, Detective Constable Finch says that on the instruction of a senior officer¹¹³², he seized the item. Although there was no prospect of prosecution¹¹³³ he was duty bound to detect and prevent crime and to protect the public by removing the herbal matter¹¹³⁴.

16.6.4 Officers’ evidence on the seizure and search of houses

Detective Superintendent Campbell is asked if he carried out checks to ensure that correct legal authority was in place to carry out the search of homes. He says that he trusted Detective Chief Inspector Houston to “account for the search by consent and if there were any issues he would have made me aware of them...so I wasn’t particularly aware in drilling down into “can I just check with you if Ms Bell’s house – has she consented?...it was delegated down from my role”¹¹³⁵. Detective Superintendent Campbell does however say that he “totally agreed with and endorsed” Detective Inspector Robson’s decision to seize Ms Bell’s house¹¹³⁶. When he is specifically asked about the legal authority for seizing Ms Bell’s house, Detective Superintendent Campbell says “that would be under common law power...to seize a property linked to an unexplained death”. He is asked again whether he knew whether Ms Bell’s consent was obtained and says he “didn’t get into the details of that” but

¹¹²⁴ 41/97/19

¹¹²⁵ PS-18485 page 8

¹¹²⁶ 38/76/9

¹¹²⁷ 38/76/11

¹¹²⁸ 38/78/2

¹¹²⁹ 38/77/20

¹¹³⁰ 38/78/8

¹¹³¹ 38/78/19

¹¹³² 38/88/21

¹¹³³ 38/86/23

¹¹³⁴ 38/89/2

¹¹³⁵ 47/182/14

¹¹³⁶ 47/175/4

explains it is a common occurrence when there is a need to prevent loss of evidence to “seize initially a property and thereafter, depending on the requirement to search, we would either go through consent with the householder or we would look at the warrant around it”¹¹³⁷.

In his statement, Detective Chief Inspector Houston says that a lot was done at the searched houses before he started. He says about Ms Bell’s address, “There was a suggestion that the knife came from one of the addresses, so again, that would be your justification for shutting the scene down and seeing what was in there”¹¹³⁸. About the relocation of the Saeed family he says, “I would expect who was there would make arrangements”. When told that the Saeed family says they did not give permission for the search, he says he was not aware of that and would “dispute that they say they didn’t give permission. If we didn’t have permission, then we’d stay there until we had a warrant”¹¹³⁹.

Assistant Chief Constable Nicolson says that ultimately the responsibility for obtaining consent to search the property would be down to the officers who went to the property to search it¹¹⁴⁰. He also says that he was concerned when giving his evidence that it was apparently that Detective Chief Inspector Houston was unaware that no permission has been given to secure and search Mr Ahmed’s house¹¹⁴¹. He also says that after hearing Mrs Saadia Rashid’s evidence and that of Detective Constable Miller, that consent to seize and search the property had not been obtained¹¹⁴². On hearing the evidence of Ms Bell, Assistant Chief Constable Nicolson says in his evidence that it did not sound as if she had been given adequate information in order for her to give consent¹¹⁴³.

16.7 Contact with the Sierra Leonean Embassy

Ms Bell mentions getting a phone call from the Sierra Leone Embassy, saying they had been told Mr Bayoh had no family and had been asked if they would accept his body. She explains that Mr Bayoh’s father had the same name and had held public office but felt that contact with the embassy was an attempt to “take his body away from us”¹¹⁴⁴. This is mentioned in Detective Superintendent Campbell’s Inquiry statement and Inquiry hearing evidence as he says that “the whole aspect of repatriation and the religious aspects were discussed at the forensic strategy meeting”¹¹⁴⁵. Detective Superintendent Campbell says, “it’s pretty normal for any death of any foreign national within Scotland...I think it’s an investigation of death SOP...there is a reference to the fact that the consulate or FCO, Foreign and Commonwealth Office, should be informed of the death of one of their nationals”. He says he was aware that Mr Bayoh was a foreign national because Ms Bell told him

¹¹³⁷ 47/176/14

¹¹³⁸ SBPI-00214

¹¹³⁹ SBPI-00214

¹¹⁴⁰ 68/28/22

¹¹⁴¹ 68/18/17

¹¹⁴² 68/37/6

¹¹⁴³ 68/30/13 to 68/31/19

¹¹⁴⁴ SBPI-00247, para 46

¹¹⁴⁵ SBPI-00256

and they had information on police systems in respect of his nationality¹¹⁴⁶. He says these issues were handed over to PIRC on the evening of 3 May 2015¹¹⁴⁷.

16.8 Database searches

Detective Sergeant Dursley says that he asked for searches to be carried out on the Criminal History Scotland as information held on this database might assist in the identification of the male who had been involved in the contact with the police at Hayfield Road¹¹⁴⁸. He says that if Mr Bayoh had been white, he would have still asked for these same searches to be carried out as it is one of the first things that you would do following a death where they have not identified the person¹¹⁴⁹.

Assistant Chief Constable Nicolson says that there would have been no reason why a search on databases in relation to the family solicitor would have been beneficial¹¹⁵⁰.

17. Public response to the incident and community engagement

Inspector Combe says “Following the tragic incident, there were concerns that there could be a negative and adverse reaction from the ethnic minority community in Fife and a breakdown in our engagement with these communities which could manifest in demonstration and protest. However due to the continued [positive] community engagement and dialogue, this was avoided. Meetings took place with community leaders where any concerns could be addressed and discussed”¹¹⁵¹. She is asked how soon after the incident the concerns arose. She says she does not know exactly but it would have been “very quickly” afterwards, possibly the same day, and be a part of a Community Impact Assessment¹¹⁵². She says she does not remember a lot about the meeting but it was “just to have that engagement still with the community, so if there was any underlying issues, we could try to address them”¹¹⁵³. Asked if Mr Bayoh’s family were invited to the meeting she says “there was a member of Frae Fife there and a member of their family is quite influential member of Frae Fife” but she can’t remember the invite list to say whether the family was specifically invited¹¹⁵⁴. She says the Imam of the mosque attended, a leader of the Fife Arabic Community, Frae Fife, Business leaders. The member of Frae Fife was not a relative of Mr Bayoh¹¹⁵⁵.

Inspector Combe says she had the concern and would assume that senior management would have the same concern¹¹⁵⁶, and that the concerns must have been discussed before engagement with the community, but she does not remember

¹¹⁴⁶ 48/109/9

¹¹⁴⁷ 48/112/11

¹¹⁴⁸ 42/9/6

¹¹⁴⁹ 42/9/21

¹¹⁵⁰ 68/95/17

¹¹⁵¹ SBPI-00124, para 50

¹¹⁵² 17/98/23

¹¹⁵³ 17/106/16

¹¹⁵⁴ 17/107/9

¹¹⁵⁵ 17/108/9

¹¹⁵⁶ 17/99/14

the discussions¹¹⁵⁷. Asked why the concern occurred to her she says “well to be honest with you, it’s after anything – whether it’s worldwide or in the country, if it’s to do with an ethnic minority, the media will come on the back of that”¹¹⁵⁸. When asked whether she would have expected the officers in the canteen to have had the same kind of concerns, she says “it depends on their exposure to these kinds of incidents...if police officers have never dealt with the ethnic minority community they might not have those concerns, it might not be first and foremost in their mind”¹¹⁵⁹.

Inspector Combe is asked about a march on 7 June 2015, which stopped outside Kirkcaldy police station. She says “I wouldn’t class that as a demonstration or a protest, there was no hostilities that I am aware of, it was very dignified by all those involved”¹¹⁶⁰. She later clarifies that she acknowledges these can be “classed as a protest or demonstration” but there were “no hostilities”¹¹⁶¹. She does not remember banners saying “We want answers” and “without truth there can be no justice”¹¹⁶². She does not remember any other rallies or meetings in Kirkcaldy¹¹⁶³.

Mr Johnson says that “the police told us that we don’t have the right to have a vigil, to march”. Mr Johnson says that he “can’t recall the name of the people, but I do recall there was a meeting when we discussed them not giving us permission to do a march or a vigil”¹¹⁶⁴.

Detective Superintendent Campbell says “During the response to the death of Sheku Bayoh, there was genuine concern about how his race may negatively affect the perception by the public of the police response and his death. This also extended to the impact on, and perception of, the multi-cultural and diverse communities across Scotland and the community impact that may present itself”¹¹⁶⁵. Detective Superintendent Campbell goes on to talk about the fact that Mr Bayoh’s death “took place in a climate where there had been a number of well publicised deaths of Black males in custody – particularly in England and the USA - where restraint had been a potential contributory factor”.

Although the person that Chief Superintendent McEwan had contacted to appoint as a lay adviser, Adnan, had indicated that he was not comfortable to become involved in that role due to a close connection with the family, they agreed that should he get a sense that the community was feeling vulnerable, threatened, or insecure he would contact Chief Superintendent McEwan to discuss. Chief Superintendent McEwan says that fortunately this did not become necessary¹¹⁶⁶.

When asked whether he would have been equally concerned about the death of a white man in police custody could have led to looting, disorder and criminality, Chief Superintendent McEwan says that he had been involved earlier in his career as a

¹¹⁵⁷ 17/102/3

¹¹⁵⁸ 17/100/13

¹¹⁵⁹ 17/102/10

¹¹⁶⁰ 17/103/24

¹¹⁶¹ 17/105/15

¹¹⁶² 17/104/20

¹¹⁶³ 17/105/3

¹¹⁶⁴ SBPI-00248 Para 36

¹¹⁶⁵ SBPI-00256

¹¹⁶⁶ 64/43/12

junior officer where a white male had died in police custody. He says that police vehicles were set on fire on that occasion and therefore his concerns of looting, disorder and criminality following Mr Bayoh's death were not based on racial considerations¹¹⁶⁷

Assistant Chief Constable Nicolson says that in relation to the need to engage with the community Mr Bayoh's race was "an added dimension"¹¹⁶⁸ but that it was because that events had been declared as a critical incident that there was a need to engage with and understand tensions within the community. If an event involving a white male had been declared a critical incident, then there would be the same need to engage with the local community¹¹⁶⁹. Detective Chief Inspector Houston says that the purpose of declaring a critical incident is how the incident is going to be managed and documents and will depend on the individual circumstances of the incident. It would highlight the community impact and that that will be managed and documented¹¹⁷⁰. Detective Chief Inspector Houston says that he was not aware of any community tensions on 3 May 2015¹¹⁷¹. Chief Inspector Shepherd says that by definition the fact that this was declared a critical incident meant that there was expected to be an impact on the confidence of the community¹¹⁷² but that the impact on the community was the impact that the incident would have on everyone; not just the impact on the geographical area but the impact on people who visit, work, live, and have associations with the community¹¹⁷³. She says that she did recognise that the black community was part of that broader community¹¹⁷⁴.

Assistant Chief Constable Nicolson also says that there was a need to discuss counter terrorism in the first Gold Group meeting to consider the need to publicly confirm that this was not a terror incident¹¹⁷⁵. He says that following "a number of incidents"¹¹⁷⁶ across the world there had been a spike in racially motivated incidents.

18. Taking race into account

18.1 Mr Bayoh's race

Linda Limbert is asked, when Mr Bayoh arrived at the hospital, whether there was anything about the fact that he was black that they needed to consider. She says there was nothing she was aware of¹¹⁷⁷. When asked whether she had considered a condition called Sickle Cell Anaemia she said that this was not something she considered. She was just "getting on and dealing with his resuscitation"¹¹⁷⁸.

¹¹⁶⁷ 65/24/20

¹¹⁶⁸ SBPI-00217 para 258

¹¹⁶⁹ SBPI-00217 – para 255-258

¹¹⁷⁰ SBPI-00214 para 175

¹¹⁷¹ SBPI-00214 para 180

¹¹⁷² 50/152/15

¹¹⁷³ 50/153/1

¹¹⁷⁴ 50/153/11

¹¹⁷⁵ 67/77/21

¹¹⁷⁶ 67/76/15

¹¹⁷⁷ 5/73/2

¹¹⁷⁸ 5/73/10

The attending officers are all asked whether they would have behaved differently on the day of Mr Bayoh had been white, or if his race had impacted on their thoughts and decisions on the day.

PC Paton says he “100%” would have considered the need to issue immediate commands and use his spray if Mr Bayoh had been white¹¹⁷⁹. He says that Mr Bayoh’s race played no role “whatsoever” in how he decided to handle the situation. He says he did not consider Mr Bayoh a greater potential threat and he would not have been more likely to try communication if Mr Bayoh had been white¹¹⁸⁰. When asked if he made any assumptions in 2015 he says “no I treat everybody the same”¹¹⁸¹.

PC Walker says he did not anticipate communication problems with Mr Bayoh because he was black, and he would not have been more likely to engage Mr Bayoh in conversation if he had been white¹¹⁸². He says his assessment that the situation might be a “suicide by cop” was not influenced by the fact Mr Bayoh was black¹¹⁸³. He is asked whether Mr Bayoh’s race played a part in the assumptions he made about Mr Bayoh’s behaviour and the choices he made on the day. He says it did not: “Everything was intelligence-led on what we have seen when we arrived... the decisions were all based on the threat that was posed to ourselves and the members of the public”¹¹⁸⁴.

PC Short is asked whether the fact that this knife incident involved a black man made her more fearful or feel differently about the incident in comparison with previous knife incidents not involving black people. She says “his race had absolutely nothing to do with this, with how we handled the call or anything like that”. She cites the numerous calls about a knife, and the fact the spray had not worked, as her biggest concerns¹¹⁸⁵. She states there was nothing about the way she responded to the incident and the options she chose that were altered or different because he was black¹¹⁸⁶ and says she would have taken the same approach when she arrived at the incident regardless of Mr Bayoh’s skin colour. “I can’t emphasise enough how much that wasn’t a factor in the way we approached Mr Bayoh”¹¹⁸⁷. She says there is nothing she can think of that would indicate that Mr Bayoh’s race played a role in the choices she or anyone else made¹¹⁸⁸. She denies having ever put someone into a category for example “a Black person is a terrorist” because of their physical characteristics such as skin colour¹¹⁸⁹.

PC Smith is asked whether he would have treated a white man of the same height and weight who was suggested to have a knife differently that day, he says he wouldn’t; he wouldn’t have called an ambulance any sooner or treated him any sooner if Mr Bayoh had been white¹¹⁹⁰. He is also asked if he would have assumed that Mr Bayoh

¹¹⁷⁹ 20/161/25

¹¹⁸⁰ 20/162/25

¹¹⁸¹ 20/166/10

¹¹⁸² 6/177/19

¹¹⁸³ 6/49/13

¹¹⁸⁴ 7/135/10

¹¹⁸⁵ 8/158/18

¹¹⁸⁶ 8/159/10

¹¹⁸⁷ 8/168/16

¹¹⁸⁸ 8/169/14

¹¹⁸⁹ 8/160/6

¹¹⁹⁰ 11/188/18

was under the influence of drink or drugs, had a mental health crisis or that Excited Delirium was more of a factor if Mr Bayoh had been white. He says he would not and that race did not play any part in his actions or the actions of other officers¹¹⁹¹.

PC Gibson says that he was not aware of race before he got to the scene. He says Mr Bayoh's race had no bearing on his thinking on the way to the incident¹¹⁹².

Sergeant Maxwell is asked why PC Short was said to be the priority and there were fewer calls chasing up the ambulance for Mr Bayoh compared with for PC Short. He says "there's absolutely nothing to do with race involved in that, I will make that very clear". He explains it related to risk assessment and he was happy with what was happening with Mr Bayoh at the time he arrived as Mr Bayoh was breathing at that point¹¹⁹³. [In re-examination, it is put to him that he reported on Mr Bayoh's condition and requested an ambulance for him on four occasions whereas he only did so twice with respect to PC Short. Sergeant Maxwell agreed that this was correct.](#)¹¹⁹⁴ Asked if the fact Mr Bayoh was black and PC Short was white meant he treated Mr Bayoh less favourably, Sergeant Maxwell says "Absolutely not...there was no difference between the two". [Asked whether](#) there was some unconscious bias being demonstrated, he says "I certainly didn't feel that was the case. Certainly if anyone would like to point that out to me I would be happy to listen but I don't think that's the case"¹¹⁹⁵.

In his Inquiry statement Inspector Kay says that early in the day he isn't sure he knew that Mr Bayoh was black. "It's not relevant, even if I knew at the time. It would only be relevant, I imagine, if he went missing or there was a chase or whatever. It would be the same if he had a blue top on or if he had red hair"¹¹⁹⁶. He is asked whether there were any concerns raised when he returned to KPO on 3 May 2015, about potential allegations of racism being raised in relation to the events at Hayfield Road, he says he was not aware of any, and he was not aware of a discussion about Mr Bayoh being black¹¹⁹⁷.

Area Control Room Controller PC Masterton is asked whether it made any difference to him on the day that the man who was the subject of the calls was described as African or black. He says "only in that it was a good description to give to the officers to help identify the person"¹¹⁹⁸

Detective Superintendent Campbell says when asked whether race was a factor in his actions and decisions in the enquiry "None whatsoever. I have never made any decisions throughout my service, and also in my personal life, based on someone's race or ethnicity, or religion"... "no decisions I made were influenced negatively in anyway by race"¹¹⁹⁹. He says that his conclusions around treating the attending officers as witnesses was not impacted by Mr Bayoh's race; "I would have come to the

¹¹⁹¹ 11/189/2

¹¹⁹² 13/130/21

¹¹⁹³ 15/86/5

¹¹⁹⁴ 15/124/14 to 15/128/8

¹¹⁹⁵ 15/86/16

¹¹⁹⁶ SBPI-00036

¹¹⁹⁷ 24/99/17

¹¹⁹⁸ 25/57/17

¹¹⁹⁹ SBPI-00256 para 488

same conclusion no matter what race, colour or ethnicity of the individual involved”¹²⁰⁰. He says of the discussions during the Gold Group meeting at 11:30 on 3 May 2015, “Race was not a factor at all. There was discussion, not about race in particular, but if there was any aspect of the incident that might be terror-related or linked to counterterrorism. That would be pretty normal for any incident regardless of race”¹²⁰¹. He also says that he discussed the hypothesis that a black man had died after restraint with Deputy Senior Investigator Harrower during his 10:22 phone call, and “It was clear through all the Gold Group meetings as well that race was front and centre around the investigation. I mean, it was a consideration with everything we’d done around it. A conversation with Keith very early on was round about one of the hypotheses was: had death come as a result of restraint and by police action? And, again, that was very clear and the aspect to that was...was it racially motivated or was there some aspect of that racial aggravations which has brought about...force being excessive?”¹²⁰².

Detective Superintendent Campbell is asked whether there were concerns in May 2015 that there may be preconceived ideas about Mr Bayoh because of his race, and in particular that it might be terror related. He says, “It was one of the early hypotheses I had that we had to eliminate the potential that it was terror-related, but... we’ve done that fairly quickly, within the first two hours...and there was no inference at all that it was terror-related”¹²⁰³.

Detective Chief Superintendent Boal says that Detective Superintendent Campbell was the SIO in the first stages of the investigation¹²⁰⁴, which she referred to as the golden hour¹²⁰⁵. She explained that during the golden hour the SIO must attend to certain fast track actions but that the majority of these fast-track actions, such as the forensic recovery of Mr Bayoh’s might not have a significant bearing on establishing a hypotheses that the attending officers had acted criminally or there had been any racial motive or stereotypical views in play¹²⁰⁶. The first stage of the investigation would not enable any hypotheses being considered to be excluded, but the initial fast track actions require the relevant information to be obtained, secured, and managed to enable the investigative strategy to develop as the enquiry progresses¹²⁰⁷. However she would be surprised if Detective Superintendent Campbell had meant that race was not a factor in his thinking as whether or not any excessive force used might have been motivated by racial factors¹²⁰⁸. She also says that if PC Austin Barrett had shared with the investigative team the alleged comment by [PC Walker when he and PC Paton returned to Kirkcaldy Police Office](#) – “we’ve just killed somebody” – then this might have given the investigative team an indication of the level of restraint used¹²⁰⁹. Detective Chief Superintendent Boal says that that statement would not of itself probably been enough to give reasonable grounds to suspect that a crime had been committed, and consequently for the status of the person to change from witness to

¹²⁰⁰ SBPI-00256, paras 141, 145

¹²⁰¹ SBPI-00256 para 323

¹²⁰² 49/178/17

¹²⁰³ 49/140/17

¹²⁰⁴ 65/118/2

¹²⁰⁵ 65/116/4

¹²⁰⁶ 65/118/15

¹²⁰⁷ 65/119/3

¹²⁰⁸ 66/50/22

¹²⁰⁹ 66/96/3

suspect¹²¹⁰. Further evidence regarding the level of restraint used might have been necessary to form a view on this¹²¹¹

Detective Chief Superintendent Boal also says that she did not specifically ask Detective Superintendent Campbell if one of his hypotheses had been that the actions of the attending officers had been racially motivated¹²¹². She acknowledged that perhaps she should have but she believed that the presence of so many senior officers that a black male had died in police custody that it was “blindingly obvious”¹²¹³ that race was a factor. She went on to say that “... It was a critical incident, a black male had died following restraint by police officers. Of course race was... the main factor in terms of how the officers had dealt with him”¹²¹⁴. Although she could not recall if others attending the Gold Group meetings also believed that race was the main factor, her clear impression was how serious the incident was being taken because of Mr Bayoh’s ethnicity and the actions of the officers¹²¹⁵.

Detective Chief Superintendent Boal also says that she would be surprised by evidence already heard that the attending officers were not discussing race given the circumstances of the incident¹²¹⁶.

Assistant Chief Constable Nicolson is asked if race was perceived by the local community as being an issue which required to be addressed as part of the investigation. He says that he was aware of that and was open to the need for race to be taken into account¹²¹⁷.

Detective Chief Inspector Hardie says that on the basis that Mr Bayoh was black then race was definitely a consideration. However nothing came to light around this incident or the actions of the police being racist¹²¹⁸

Chief Inspector Trickett says that there was no discussion in the canteen regarding Mr Bayoh’s race and the impact that it may have on the media or the public perception of him¹²¹⁹

¹²¹⁰ 66/118/23

¹²¹¹ 66/119/19

¹²¹² 66/48/15

¹²¹³ 66/48/19

¹²¹⁴ 66/49/14

¹²¹⁵ 66/55/25

¹²¹⁶ 66/57/11

¹²¹⁷ SBPI-00217 para 310

¹²¹⁸ SBPI-00230 para 58

¹²¹⁹ 45/77/23

18.2 Officer assertions that race played no part in decision making

The attending officers were all asked in their Inquiry Statements to comment on whether race played a part in their decision-making in a number of areas.

Question: Did Mr Bayoh's race or perceived race play any part in how you assessed the risk?

PCs Walker¹²²⁰, Short¹²²¹, Tomlinson¹²²², Good¹²²³, Smith¹²²⁴, Gibson¹²²⁵, and McDonough¹²²⁶ and Sergeant Maxwell¹²²⁷ deny that Mr Bayoh's race or perceived race played any part in their risk assessment on the day, with PC Walker saying, "the only factors considered when assessing the risk were the words "big, muscular and carrying a knife"¹²²⁸.

Sergeant Maxwell is also asked whether the alleged perpetrator's race or perceived race played a part in how he assessed the risk, and whether the call would have been graded differently if the alleged perpetrator had been white¹²²⁹. Sergeant Maxwell says, "the race of the perpetrator in this incident had no bearing whatsoever on how the incident was managed"¹²³⁰.

PCs Walker¹²³¹, Paton¹²³², Short¹²³³ and Tomlinson deny that Mr Bayoh's race had any influence on their decisions on the day, with PC Tomlinson saying "a person's race or perceived race does not increase or reduce the risk to those involved in an incident. Race or perceived race did not feature as a thought in my mind and would never impact my decisions"¹²³⁴.

Question: To what extent did Mr Bayoh's race or perceived race impact your views?

PCs Walker¹²³⁵, Short¹²³⁶, Tomlinson, Good¹²³⁷, Smith¹²³⁸, Gibson¹²³⁹, and McDonough¹²⁴⁰ and Sergeant Maxwell¹²⁴¹ all deny that race had any impact on their views, with PC Tomlinson clarifying that this is in relation to Mr Bayoh as an individual

¹²²⁰ SBPI-00039 para 15

¹²²¹ SBPI-00041 para 8

¹²²² SBPI-00043 para 6

¹²²³ SBPI-00040 para 6

¹²²⁴ SBPI-00042 para 10

¹²²⁵ SBPI-00045 para 6

¹²²⁶ SBPI-00063 para 6

¹²²⁷ SBPI-00044 para 5

¹²²⁸ SBPI-00039 para 9

¹²²⁹ SBPI-00044 para 5

¹²³⁰ SBPI-00044 para 11

¹²³¹ SBPI-00039 para 89

¹²³² SBPI-00081 page 1

¹²³³ SBPI-00041 para 8

¹²³⁴ SBPI-00043 para 6

¹²³⁵ SBPI-00039 para 89

¹²³⁶ SBPI-00041 para 9

¹²³⁷ SBPI-00040 para 9

¹²³⁸ SBPI-00042 para 13

¹²³⁹ SBPI-00045 para 9

¹²⁴⁰ SBPI-00063 para 9

¹²⁴¹ SBPI-00044 para 13

and the situation as a whole. He says “a person’s race...would never impact the way in which I engage with members of the public”¹²⁴².

Question: Did Mr Bayoh’s race or perceived race play any part in how you approached Mr Bayoh or handled the incident?

PCs Walker¹²⁴³, Short¹²⁴⁴, Tomlinson¹²⁴⁵, Smith¹²⁴⁶ and Gibson¹²⁴⁷ deny that race played a part in how they approached Mr Bayoh or handled the incident, with PCs Good¹²⁴⁸, Smith¹²⁴⁹, Gibson¹²⁵⁰ and McDonough¹²⁵¹ saying that it would not have made a difference if Mr Bayoh had been white. Sergeant Maxwell was not asked this question.

Question: Did Mr Bayoh’s race or perceived race play any part in how you carried out the restraint?

PCs Walker¹²⁵², Tomlinson¹²⁵³, Good¹²⁵⁴, Smith¹²⁵⁵, Gibson¹²⁵⁶ and McDonough¹²⁵⁷ deny that race played any part in how they carried out the restraint, with PC Tomlinson saying “Race/ perceived race would never affect the way in which I handle or restrain individuals”. Neither PC Short nor Sergeant Maxwell were asked this question.

Question: Did Mr Bayoh’s race or perceived race play any part in the approach taken or the discussion about the incident?

PCs Walker¹²⁵⁸, Short¹²⁵⁹, Good¹²⁶⁰, Tomlinson, Smith¹²⁶¹, Gibson¹²⁶², and McDonough¹²⁶³ and Sergeant Maxwell¹²⁶⁴ all deny that race played any part in the approach taken or discussion of the incident at Kirkcaldy Police Office, with PC Tomlinson denying this “with certainty”¹²⁶⁵ and further stating that “Mr Bayoh’s race/ perceived race is in my view irrelevant to the way in which he acted at the locus and further irrelevant to the way in which the Police attended the incident”¹²⁶⁶.

¹²⁴² SBPI-00043 para 9
¹²⁴³ SBPI-00039 para 89
¹²⁴⁴ SBPI-00041 para 14
¹²⁴⁵ SBPI-00043 para 12
¹²⁴⁶ SBPI-00042 para 19
¹²⁴⁷ SBPI-00045 para 15
¹²⁴⁸ SBPI-00040 para 15
¹²⁴⁹ SBPI-00042 para 19
¹²⁵⁰ SBPI-00045 para 15
¹²⁵¹ SBPI-00063 para 15
¹²⁵² SBPI-00039 para 64
¹²⁵³ SBPI-00043 para 37
¹²⁵⁴ SBPI-00040 para 26
¹²⁵⁵ SBPI-00042 para 35
¹²⁵⁶ SBPI-00045 para 28
¹²⁵⁷ SBPI-00063 para 28
¹²⁵⁸ SBPI-00039 para 89
¹²⁵⁹ SBPI-00041 para 31
¹²⁶⁰ SBPI-00040 para 57
¹²⁶¹ SBPI-00042 para 71
¹²⁶² SBPI-00045 para 66
¹²⁶³ SBPI-00063 para 66
¹²⁶⁴ SBPI-00044 para 71
¹²⁶⁵ SBPI-00043 para 68
¹²⁶⁶ SBPI-00043 para 68

PCs Walker¹²⁶⁷, Short¹²⁶⁸, Good¹²⁶⁹, Smith¹²⁷⁰, Gibson¹²⁷¹, and McDonough¹²⁷² and Sergeant Maxwell¹²⁷³ add that nothing would have been different had Mr Bayoh been white.

Question: As far as you are aware, was race or the perceived race of Sheku Bayoh a factor in any of the advice given?

PCs Walker¹²⁷⁴, Good¹²⁷⁵, Smith¹²⁷⁶, Gibson¹²⁷⁷, and McDonough¹²⁷⁸ and Sergeant Maxwell¹²⁷⁹ all deny that race was a factor in any of the advice given.

PC Short states that Mr Bayoh's race or his perceived race was not a factor with regard to the completion of paperwork¹²⁸⁰.

PC Paton was asked all of the questions above¹²⁸¹. PC Paton says three times in his statement that Mr Bayoh's race or perceived race played no part in any decision or actions he made that day and does not explicitly answer the questions other than that¹²⁸². PC Walker also states that Mr Bayoh's race or perceived race had no bearing in any decisions taken¹²⁸³.

Inspector Stewart is asked whether it made any difference to the work he was doing in the control room, that Mr Bayoh was black. He answers "no"¹²⁸⁴.

Detective Constable Parker, who was instructed to secure Ms Bell's house at Arran Crescent on 3 May 2015, says "Him being Black, personally that categorically didn't factor into my mind. Never in my career have I ever come across police doing things differently because of race. I've come across the public racially abusing members of the public. Everyone gets dealt with the same fairness. That morning, because he's a Black male, I didn't think he was dealt with any differently. What we did was for the safety of the public... If there was a suggestion of racism we would've dealt with it...there was nothing that anybody said that was race-related until we passed the death message to the family and then it became race-related and there were comparisons to a case in America"¹²⁸⁵. Detective Constable Finch says that he believes that his actions on 4 May were not to any degree influenced by Mr Dick's

¹²⁶⁷ SBPI-00039 para 89

¹²⁶⁸ SBPI-00041 para 31

¹²⁶⁹ SBPI-00040 para 58

¹²⁷⁰ SBPI-00042 para 72

¹²⁷¹ SBPI-00045 para 67

¹²⁷² SBPI-00063 para 67

¹²⁷³ SBPI-00044 para 72

¹²⁷⁴ SBPI-00039 para 95

¹²⁷⁵ SBPI-00040 para 67

¹²⁷⁶ SBPI-00042 para 81

¹²⁷⁷ SBPI-00045 para 76

¹²⁷⁸ SBPI-00063 para 76

¹²⁷⁹ SBPI-00044 para 81

¹²⁸⁰ SBPI-00041 para 40

¹²⁸¹ SBPI-00054

¹²⁸² SBPI-00081, at page 1 (preamble), para 6, and page 7 (in giving a general answer to questions 6, 10, 13, 25, 42, 73, 74, and 84)

¹²⁸³ SBPI-00039 para 89

¹²⁸⁴ 5/204/8

¹²⁸⁵ SBPI-00238, paras 63, 64, 65.

association with Mr Bayoh¹²⁸⁶. He also says that he did not believe that any of his decisions or actions had been influenced by the fact that Mr Bayoh had died following contact with the police. He says that his actions were led by the SIO¹²⁸⁷. No actions have been taken by him in the major investigation team without the explicit instruction of an SIO¹²⁸⁸.

Detective Sergeant Dursley had also says in his evidence that there was no information that he had received which indicated that race was a factor in the events which led to Mr Bayoh's death¹²⁸⁹. As such race was not a factor.

Detective Inspector Robson says in his Inquiry statement that Mr Bayoh's race was not a factor in terms of the actions taken to respond to the incident itself but that race was a factor they considered in their interactions with Mr Bayoh's family. He added that witnesses, suspects and victims should be considered in terms of equality and diversity¹²⁹⁰.

Detective Superintendent Campbell says "I have been asked to what extent Sheku Bayoh's race was a factor in my actions and decisions in this enquiry [sic]. None whatsoever"¹²⁹¹. He added that "in the time I was involved in the investigation, race was never a factor in my outlook, decision-making or in any of the investigative strategies which I put in place"¹²⁹². Detective Superintendent Campbell, when asked if he had considered whether the force used might have been excessive and if so, if that had been motivated by racial considerations, says that the restraint came as a result of Mr Bayoh's behaviour, i.e. following reports that Mr Bayoh had been in the street with a knife and was acting erratically¹²⁹³. He does however say that until a racial motivation for the excessive use of force could not be discounted, it remained part of the hypotheses¹²⁹⁴. Detective Superintendent Campbell is asked whether he considered at the time that Mr Bayoh was black and there had been a number of very public Inquiries in England about issues arising where black men were restrained. He says "The fact that Mr Bayoh was Black didn't really have any bearing on my direction at the time". He says he was aware of "a number of incidents, investigations down south, in particular regarding Black males who have died following police contact or restraint... I was aware of that" but he says it had no impact on his response and he would have "carried out the same actions and managed it the same way if it was a White male"¹²⁹⁵. Detective Superintendent Campbell is asked how he reconciles his understanding of previous Inquiries into the death of black men in custody with his statement that Mr Bayoh's race was not a factor in the investigation. He says "race didn't impact on how I responded to that incident as an SIO...they are standard priorities that you would deal with for any unexplained death, no matter regarding any ethnicity"¹²⁹⁶. He later says of Gold Group meetings "...there was a wider appreciation

¹²⁸⁶ 38/106/5

¹²⁸⁷ 38/106/12

¹²⁸⁸ 38/92/10

¹²⁸⁹ 42/34/3

¹²⁹⁰ SBPI-00251 para 281

¹²⁹¹ SBPI-00256

¹²⁹² SBPI-00256 para 488

¹²⁹³ 49/110/9

¹²⁹⁴ 49/124/9

¹²⁹⁵ 47/97/24

¹²⁹⁶ 49/130/23

of what we were dealing with, and the community impact and the public perception around it...it did impact on my priorities, it did impact on my approach to the investigation in respect of Mr Bayoh being Black, but it was a wider consideration, not just for the investigation but for the complete Gold Group and the Police Scotland response to his death"¹²⁹⁷. He added that the challenge was the confusion around the officers not providing statements, their lack of understanding of the PIP process and Detective Superintendent Campbell suggested that this might have "prevented the investigation from moving as quickly as possible in the early stages"¹²⁹⁸.

Detective Chief Inspector Houston says that Mr Bayoh's race or religion did not impact or have any influence on the forensic strategy. He also adds that he did not think that Mr Bayoh's race or religion affected the public's perception of what had happened. Any incident which takes place in a public area, like Hayfield Road, could attract media attention¹²⁹⁹. He says that in carrying out his specific role he was involved in the investigation of an unexplained death of a person, and Mr Bayoh's race had nothing to do with his role. The actions he took and directions he gave to others followed procedures in investigating an unexplained death¹³⁰⁰.

Detective Chief Inspector Houston also says that he did note Mr Bayoh's faith was relevant and he says that he had acknowledged that that part would be considered but that he did not think that this meant that his actions would change¹³⁰¹. For example he noted on the Forensic Strategy Document (PS01298) that Mr Bayoh was a Muslim and that it would be for COPFS to identify what thereafter happens to the body at postmortem¹³⁰². He also says that cultural and religious factors should be highlighted to COPFS in the death report but that he was not involved in the preparation of the death report¹³⁰³.

Chief Superintendent McEwan says that his concern in terms of community impact was that the perception from the family and or the wider community would that Mr Bayoh had died as a result of the colour of his skin and that if that perception had manifested within the community it could have led to widespread disorder or criminality¹³⁰⁴. This concern was a factor in his decision to declare a critical incident¹³⁰⁵. He also took account of the adverse community reaction to instances of deaths of black men following police contact down south and was keen to prevent a similar adverse community reaction in Scotland¹³⁰⁶ should the perception manifest that he has died as a result of contact with the police.

Chief Inspector Trickett says in his evidence that the inaccurate initial description of events referred to on page 2 of the PIM log¹³⁰⁷, did not impact his perception of events,

¹²⁹⁷ 49/131/22

¹²⁹⁸ SBPI-00256 para 497

¹²⁹⁹ SBPI-00214 para 225

¹³⁰⁰ SBPI-00214 para 322

¹³⁰¹ SBPI-00214 para 323

¹³⁰² SBPI-00214 para 220

¹³⁰³ SBPI-00214 para 222

¹³⁰⁴ 63/45/17

¹³⁰⁵ 63/43/12

¹³⁰⁶ 63/44/15

¹³⁰⁷ According to PS-10934 (page 46), the Post Incident Manager (PIM) is required to open "a policy log and ensures all relevant information and decisions are recorded in it" and is referred to by Chief

the way in which he treated officers, or the way in which he handled the post incident process¹³⁰⁸.

When asked why he says¹³⁰⁹ that “I can’t remember if they said the deceased was black or not. It makes no difference to me carrying out my role as PIM” he says that the subject matter of the investigation and any aspects of race did not impact the implementation of the post incident procedure. He says that the SOP¹³¹⁰ had been equality impact assessed and that process was the one that he was following¹³¹¹. He further clarifies that the comment he made in his Inquiry statement that while he could understand how it could be understood negatively, he meant “here’s a process that my responsibility is to follow and actually the protected characteristics of the individual in the tragedy is not relevant to that process being carried through”¹³¹².

Assistant Chief Constable Nicolson says that he hopes that decisions he made and actions he took were not influenced by race but that ultimately it will be for the Inquiry to determine that¹³¹³.

Detective Sergeant Dursley says in his evidence that he would hate if anyone thought that the police officers on that day acted differently due to Mr Bayoh’s race¹³¹⁴. He adds that if a member of the police had acted differently due to Mr Bayoh being black, then that would have to be dealt with¹³¹⁵. Rather than being conflicted in his ability to investigate any wrongdoing by a police officer, Detective Sergeant Dursley says that if the actions of a police officer had been motivated by racial discrimination he would actually be “more determined to get them in jail or lock them up”¹³¹⁶.

Inspector Trickett as the PIM log. The PIM log is document PS-00387. In this case the initial description of events referred to on page 2 of PS-00387 is as follows “Reports, male machete in street. Police attend, male strikes one with machete, other officers use CS – no effect. Use batons, restrain. Collapses, CPR commenced by officers - ambulance - hospital. PLE 09:06. Declared Critical Incident”.

¹³⁰⁸ 45/110/19

¹³⁰⁹ SBPI-00257 para 88

¹³¹⁰ Chief Inspector Trickett is referring to PS-01934 (Firearms post incident procedures) when he is referring to the SOP.

¹³¹¹ 46/124/2

¹³¹² 46/124/15

¹³¹³ SBPI-00217 para 344

¹³¹⁴ 42/38/17

¹³¹⁵ 42/38/25

¹³¹⁶ 42/39/24

18.3 The effectiveness of “treating everyone the same” as a means of avoiding race discrimination

18.3.1 Attending officers

PC Paton is asked in the Inquiry hearing whether he makes assumptions or made assumptions about people based on their race in 2015 He says “no, I treat everybody the same” ¹³¹⁷.

When asked how she would implement her equality and diversity training, PC Short says she would always “treat people as they come” and “take the time to ask” if she didn’t know something¹³¹⁸.

PC Smith is asked about implementing his training, and he says “you try and treat everybody fairly and not treat them differently in respect of any differences they might have from you or might have from other people”¹³¹⁹.

PC McDonough is asked how he implemented his training, he says “I was always brought up to treat everyone the same anyway”... I think the thing that you take away from the college is never be too scared to ask questions if you’re unsure about certain things, especially when it comes to like religion or I don’t know, gender equality...just ask people if you’re unsure”¹³²⁰.

When asked if he was able to put any of his learning into practice, PC Gibson says “well, that was easy for me because I just treat everyone the same anyway”¹³²¹.

Sergeant Maxwell, when talking about the black community in Kirkcaldy says “they don’t get treated any different to – as I would deal with a white suspect or an Asian suspect, it’s not any different... I try to treat everybody as individuals, it’s not “well they’re black so they must be treated a certain way”, that just doesn’t happen”¹³²².

18.3.2 Others

Detective Constable Miller, who was involved in the seizure of the Saeed family house, when asked to comment on Mrs Rashid’s feeling that the family were treated worse because of their race and religion, says “We treat everybody in the same manner...we certainly didn’t treat anybody and differently for being Pakistani and Muslim”¹³²³.

Detective Constable Miller also says that “we certainly didn’t try to victimise Mrs Rashid or her family”¹³²⁴. He adds in his evidence that when he said that he treated everybody equally he meant that he treated everybody fairly and with respect¹³²⁵. He

¹³¹⁷ 20/166/10

¹³¹⁸ 8/161/7

¹³¹⁹ 11/184/22

¹³²⁰ 14/104/9

¹³²¹ 13/192/25

¹³²² 15/81/1

¹³²³ SBPI-00315, para 66

¹³²⁴ SBPI-00315, para 64

¹³²⁵ 74/114/21

also says that rather than treating everyone the same, with the additional knowledge that he now has about the Islamic religion, he would now be in a better position to consider addressing her unique or religious needs and treat Mrs Rashid differently¹³²⁶.

Detective Constable Finch, who was deployed as Crime Scene Management on 4 May 2015, is asked how he guards against unconscious bias. He says “I try...to treat people with compassion and impartiality and be professional, treat people the way I would expect myself or my friends and family to be treated”¹³²⁷. He also says that he believes that Mr Bayoh’s race had not had any impact on how he conducted himself in carrying out the duties allocated to him. He says that he felt great empathy for Mr Bayoh’s family particularly whilst in Mr Bayoh’s property and items within the property making it very clear that a child had lost their father¹³²⁸.

DC Mitchell also says that he “would like to think that no matter who the person is or what religion they are or the colour of their skin, I’d like to think that I treat everyone the same”¹³²⁹.

Sergeant Young says the impact of stereotypes on risk assessment was not included in training as “race should not play a part in an assessment of threat and harm”¹³³⁰.

18.4 Consideration of race as a factor in the investigation of events by Police Scotland

Detective Chief Superintendent Boal says “Chief Superintendent McEwan and I didn’t discuss the nature of the investigation. Race as a possibility was not discussed with Chief Superintendent McEwan. However, it is in the back of your mind when you’re thinking about all possibilities. In terms of hypotheses, one would have been that the male had been treated differently because he was a Black male”. She says she does not remember having a conversation with anyone about it “but the feeling I got was that everybody was thinking along the same lines as me that it was a possibility that the actions of the police officers or a police officer was because Mr Bayoh was Black”¹³³¹. When asked how the hypothesis would be investigated, she says she does not think it was on the radar during the first hours, and the focus was on securing loci and recovering evidence¹³³². Detective Chief Superintendent Boal notes that the death of Mr Bayoh in custody as a black man in Fife is “significant”. She says “I think everybody in the police was acutely aware, although nobody said it, of what could be implied or considered, that this could be a situation where excessive force had been applied because he was Black. The investigation was aware of that possibility”¹³³³. She says “The investigation could have highlighted that race was a factor. The police should not suppress any suggestion that the assault was racially-motivated...On the day I was involved in, it didn’t have an impact on the investigation”¹³³⁴. She adds that

¹³²⁶ 74/114/10

¹³²⁷ 38/104/21

¹³²⁸ SBPI-00189 para 142

¹³²⁹ 35/11419

¹³³⁰ 23/136/23

¹³³¹ SBPI-00223 para 121

¹³³² SBPI-00223 para 122

¹³³³ SBPI-00223 para 347, 348

¹³³⁴ SBPI-00223 para 349

the evidence gathered in, what she described as the first of the three stages in an investigation, provided little information on the motivation of the officers and whether Mr Bayoh's ethnicity was a factor. She says that "I can't see anything that was done in that first 24 hours that somebody could say, well, there was no evidence to suggest that race was a factor"¹³³⁵.

Detective Superintendent Campbell is asked about Detective Chief Superintendent Boal's comment that everyone was thinking that Mr Bayoh might have been treated differently because of his race. He says "I think it was a wider aspect of the impact that we had the death of a Black male within Kirkcaldy after police contact... the hypothesis around restraint and the aspect of Mr Bayoh being Black, there was nothing to indicate that that was a motivation for the officers that I could see at that particular time, but it was something I was aware of"¹³³⁶. When specifically asked whether he considered the hypothesis that Mr Bayoh was treated differently because of his race, Detective Superintendent Campbell says "That's Lesley's hypothesis, that's one of the things that she's saying she hasn't shared with anyone...but again I was keeping a very open and transparent approach to this...it was a significant aspect of the response to the investigation"¹³³⁷.

Detective Superintendent Campbell said that in addition to the areas as identified as priority actions in the investigation, he recognised and was open minded to the possibility of any racial motivation to the use of force/restraint and which might require further investigation once personal initial accounts are received¹³³⁸.

Assistant Chief Constable Nicolson says that he would have been surprised if evidence had been heard that officers had not actually been asked to provide initial operational statements on 3 May¹³³⁹. He added that you could not compel the officers to provide statements if they had refused¹³⁴⁰ but that gathering other available evidence in the meantime, can put you in a better position to interview the officers at a later stage once you had additional information¹³⁴¹. Assistant Chief Constable Nicolson says that it would not have been possible to rule out the hypothesis that race was a factor in the absence of statements from the attending officers. PIRC would likely investigate this when the enquiry was handed over to them¹³⁴².

Detective Superintendent Campbell was asked whether retrieving and examining the 999 calls/Airwaves logs were priority actions and said that they were not¹³⁴³. The question was asked in relation to whether the officers attending might have been influenced by racial stereotypes. Detective Superintendent Campbell says that this was something that would be dealt with in the coming days due to finite resources. Assistant Chief Constable Nicolson says that the appointment of Chief Inspector Trickett as PIM would support the investigation being carried out by SIO, Detective

¹³³⁵ 65/146/2

¹³³⁶ 49/121/15

¹³³⁷ 49/123/17

¹³³⁸ 49/134/1

¹³³⁹ 67/85/4

¹³⁴⁰ 67/85/21

¹³⁴¹ 67/86/18

¹³⁴² 68/76/13

¹³⁴³ 49/160/24

Superintendent Campbell. The PIM would be able to get anything required from the officers including operational statements¹³⁴⁴.

Chief Superintendent McEwan says that there was discussion about race at the first Gold Group meeting although he could not recall the details. He also says that he felt that with Detective Superintendent Campbell's experience and rank he was "absolutely tuned into that fact"¹³⁴⁵. He says that he believed that all the individuals within the Gold Group understood the significance of a critical incident being declared and the reasons why Chief Superintendent McEwan had done so¹³⁴⁶.

Chief Superintendent McEwan also says that he would have been surprised if possible racial discrimination had not been included as one of the hypotheses which was being considered in the early stages of the investigation¹³⁴⁷.

Detective Chief Inspector Hardie says in his evidence that the issue of transparency/independence was discussed at the Gold Group meeting on 3 May 2015 since, in his opinion the need for transparency was "massive"¹³⁴⁸. He says that the fact that a black male had died following police contact raised all sorts of concerns¹³⁴⁹ and, in particular, whether there was a racial element to the incident¹³⁵⁰.

Assistant Chief Constable Nicolson also says in his evidence that the investigation into the cause of death would have been PIRC's responsibility, and therefore "race" and whether it was a motivating factor in the events which unfolded at Hayfield Road could not be established at the very early stage of the investigation. He says that there was no evidence immediately available which demonstrated that race was a factor¹³⁵¹.

When Assistant Chief Constable Nicolson is told that evidence had been heard from the family that they raised on 3 May 2015 that race was a possible factor, he says that he did not recall that being raised in the Gold Group. He says that he would have expected that the family would have been asked for further detail of why they believed that to be the case and that the SIO would share this with PIRC so that they could take forward as part of their investigation¹³⁵².

Assistant Chief Constable Nicolson also says in his evidence that there would have been an expectation that an equality impact assessment would have been carried out and should have been addressed in a Gold Group meeting¹³⁵³, but he could not remember it being carried out¹³⁵⁴.

Detective Chief Superintendent Boal says in her evidence that despite there being no explicit conversations that she could recall, the hypothesis that Mr Bayoh's ethnicity

¹³⁴⁴ 67/42/24

¹³⁴⁵ 63/83/11

¹³⁴⁶ 63/83/17

¹³⁴⁷ 63/89/3

¹³⁴⁸ 50/81/14

¹³⁴⁹ 50/81/20

¹³⁵⁰ 50/81/22

¹³⁵¹ 68/88/2

¹³⁵² 68/90/14

¹³⁵³ 68/167/12

¹³⁵⁴ 68/167/25

had potentially impacted the treatment which Mr Bayoh had received, was also in the minds of other senior officers¹³⁵⁵. She says that the circumstances of this incident, namely that a black male had been restrained and become unresponsive, was not unique and had happened elsewhere in the UK and therefore the possibility that Mr Bayoh had been treated differently due to race would clearly have been in the minds of other officers¹³⁵⁶.

She also says that the description of the incident contained within the Airwaves messages, namely that “within seventy five seconds of their arrival, the van stopping at Hayfield Road, that Mr Bayoh had been hit to the head with a baton two or three times, he had been hit to the arms or body two or three times, PAVA spray had been discharged, CS Spray had been discharged and that he had been brought to the ground and brought into a restraint on the ground by multiple officers”¹³⁵⁷ perhaps supports the hypothesis that Mr Bayoh had been treated differently on the basis of his race rather than ruling it out. However the description of the event does not provide a full picture as it does not provide information on the threat that Mr Bayoh may have presented at the time¹³⁵⁸.

19. Media liaison and briefing

Ms Bell speaks about how the portrayal of Mr Bayoh in the media and by the police, as a violent man, had a big impact on her mental health “I feel like I’ve got this massive weight on my shoulders because I have to try and let everybody else know what a wonderful man that Shek was because it’s been put in the press that he was horrible... he was a gentleman all the time, he was really friendly. He wasn’t a zombie”¹³⁵⁹.

Ms Bell says in her statement “I felt like they kind of went after us to try and paint a picture that would help them”¹³⁶⁰. She clarifies in the Inquiry hearing that she means Police Scotland, the PIRC and COPFS, “I kind of just put them under one big umbrella”¹³⁶¹. I don’t trust any of them... I feel like they made it out that what happened to Shek was his own fault¹³⁶². I feel like they haven’t taken any blame as to what happened”¹³⁶³.

Ms Bell speaks about a tweet by Calum Steele which related to the incident, saying she felt “disgusted and so angry”¹³⁶⁴. She also speaks of Peter Watson making a statement saying that Mr Bayoh “presented a violent interface with the police”¹³⁶⁵.

Mr Johnson speaks of a member of the family who was at the house when the death message was given by Chief Superintendent McEwan, finding an article online about

¹³⁵⁵ 65/129/15

¹³⁵⁶ 65/130/7

¹³⁵⁷ 65/141/1

¹³⁵⁸ 65/141/18

¹³⁵⁹ SBPI-00247 para 71

¹³⁶⁰ SBPI-00247 para 58

¹³⁶¹ 40/92/18

¹³⁶² 40/92/24

¹³⁶³ 40/92/25

¹³⁶⁴ 40/108/15

¹³⁶⁵ SBPI-00247, 40/109/15

“15 officers on a Black man”, and later that Mr Bayoh had stabbed a police woman. “I think we saw the MSP’s comment about a policewoman being stabbed and them being in support of the police actions and so on and so forth”. He says Chief Superintendent McEwan told them not to look at the news¹³⁶⁶.

Detective Superintendent Campbell is asked how an enhanced media strategy could have assisted the investigation. Detective Superintendent Campbell indicated that the lack of a proactive media strategy could have been perceived as it was “a closed shop”¹³⁶⁷.

Chief Superintendent McEwan adds that when he visited the home of Mr and Mrs Johnson on 4 May, they raised the issue of an article in the Dundee Courier and the fact that they were unhappy that a quote in that article had been attributed to Chief Superintendent McEwan. He says that he advised the family during that meeting on 4 May that he did not have any control over what the media printed¹³⁶⁸. He also assured them that it was unlikely that he would be providing any further statements to the press as the enquiry now rested with PIRC but that if it was necessary, out of courtesy he would advise them whenever necessary¹³⁶⁹. Chief Superintendent McEwan says that although he did not think that Mr Bayoh would have been identifiable from that press article and it would not have alerted Mr Bayoh’s mother, he did apologise¹³⁷⁰. He says that the purpose of the media release was “to provide reassurance to the wider community”¹³⁷¹. When asked specifically how the Dundee Courier had a quote from him, Chief Superintendent McEwan says that “when there is a flurry of police activity, where you’ve got various police officers and police staff guarding various loci, five different addresses, the media hear about that sort of thing really quickly. Not from the police but from members of the public, or local media, ... the likelihood is they would then phone Police Scotland media department and say “What’s happening in Kirkcaldy? There seems to be a lot of police activity”. The short quote that I gave was about - it was a reassurance piece and that would have been what.... Police Scotland will have probably circulated to media outlets”¹³⁷².

Assistant Chief Constable Nicolson says in his evidence that a brief holding statement should have been issued to acknowledge that the enquiry was being handed over to PIRC¹³⁷³. Very little information about Mr Bayoh, if any, should have been shared. He was not clear on whether this was what happened but if media engagement had been the responsibility of PIRC they could have determined what information was shared¹³⁷⁴.

¹³⁶⁶ SBPI-00248, paras 20 and 21

¹³⁶⁷ 49/135/17

¹³⁶⁸ PS-03136 page 3

¹³⁶⁹ PS-03136 page 4, and 64/78/5

¹³⁷⁰ 64/79/14

¹³⁷¹ 64/79/7

¹³⁷² 64/81/11

¹³⁷³ 68//175/20

¹³⁷⁴ 68/176/17

Annex 1 – List of Witnesses

| Page no | Rank/ Title | Full name | Changes/ Promotion | Role/Description |
|---------|-------------|-------------------|--|---|
| 4 | PC | Alan Paton | Now retired | Attending Officer |
| 4 | PC | Craig Walker | None | Attending Officer |
| 4 | PC | Nicole Short | Now retired | Attending Officer |
| 4 | PC | Ashley Tomlinson | None | Attending Officer |
| 4 | PC | Alan Smith | None | Attending Officer |
| 4 | PC | Kayleigh Good | None | Attending Officer |
| 4 | PC | Daniel Gibson | None | Attending Officer |
| 4 | PC | James McDonough | None | Attending Officer |
| 4 | Sergeant | Scott Maxwell | None | Attending Officer (Acting Sergeant) |
| 5 | Mr | Harry Kolberg | None | Civilian eye-witness prior to police contact |
| 5 | Mr | Simon Rowe | None | Civilian eye-witness who observed Mr Bayoh with a "blade or a knife" in his hand at the junction of Templehall Avenue and Alloway Drive |
| 5 | | Linda Limbert | | Civilian eye-witness who observed Mr Bayoh with a knife in his hand at the roundabout at Hendry Road and Hayfield Road. |
| 5 | Mr | Sheku Bayoh | n/a | n/a |
| 8 | Ms | Collette Bell | n/a | Partner of Sheku Bayoh; house was seized; provided statement at KPO to Police Scotland on 3 May 2015 |
| 9 | Mr | Zahid Saeed | n/a | Friend of Sheku Bayoh who was with him on the evening of 2 May and morning of 3 May. Son of Saeed Ahmed and sister of Saadia Rashid. |
| 9 | Ms | Kate Frame | retired from role of Commissioner (PIRC) in 2019 | Commissioner (PIRC) |
| 9 | Mrs | Kadijartu Johnson | n/a | Sister of Mr Bayoh |
| 10 | Mr | Aamer Anwar | n/a | Solicitor for Mr Bayoh's family |
| 10 | DCI | Keith Hardie | Retired – his rank had not changed when he retired | Part of Major Incident Team |
| 11 | DI | Colin Robson | Promoted to Detective Chief Inspector prior to giving his evidence to the Inquiry. | Dealt with Immediate post incident management |
| 11 | DC | David Bellingham | Promoted to Inspector prior to giving his evidence to the Inquiry | Attended at Martyn Dyck's house |
| 11 | DCS | Lesley Boal | Now retired but her rank had not | Senior Officer – attended gold group meetings |

| Page no | Rank/ Title | Full name | Changes/ Promotion | Role/Description |
|---------|-------------|-------------------|--|---|
| | | | changed when she retired | |
| 11 | DSU | Patrick Campbell | Promoted to Detective Chief Superintendent prior to giving his evidence to the Inquiry. | Senior Investigation Officer |
| 12 | ACC | Ruaraidh Nicolson | Now retired from Police Scotland. Prior to his retirement he had been promoted to Deputy Chief Constable | Assistant Chief Constable – Gold Commander |
| 12 | CS | Garry McEwan | Now retired from Police Scotland. When he retired he had been promoted to National Policing Commander. | Senior Officer – Local Policing Commander for Fife |
| 12 | CI | Conrad Trickett | promoted to Chief Superintendent prior to giving his evidence to the Inquiry | Post Incident Manager under the Post Incident Procedure |
| 16 | PC | Brian Geddes | None | Seconded to work within Custody Division and working within the custody suite at KPO Witness to conversations within KPO |
| 16 | Inspector | Jane Combe | Now retired from Police Scotland. Her rank had not changed when she retired | Post incident management PIP – supporting CI Conrad Trickett as his liaison officer |
| 16 | CI | Nicola Shepherd | promoted to Superintendent prior to giving her evidence to the Inquiry | Inspector at Kirkcaldy police office / Local Area Commander for Glenrothes and Kirkcaldy |
| 17 | DS | Graeme Dursley | promoted to Detective Inspector prior to giving his evidence to the Inquiry | Detective Sergeant came in from Levenmouth to assist in Kirkcaldy. |
| 18 | PC | Rhuairidh Fraser | None | Attended at Zahid Saeed's address. (in his statement said that he was mainly involved in locus protection outside of property and had limited interaction with the family). |
| 18 | Inspector | Stephen Kay | Now retired from Police Scotland. When he retired his | Police Incident Officer (predominantly an office based role providing support to a number of police sergeants in different locations in Fife) |

| Page no | Rank/ Title | Full name | Changes/ Promotion | Role/Description |
|---------|-------------|--------------------|--|---|
| | | | rank had not changed | |
| 20 | PC | Amanda Givan | Retired from Police Scotland a few days after giving her evidence to the Inquiry | Scottish Police Federation representative who attended KPO and gave advice to officers |
| 22 | PC | Christopher Harris | None | "Sent to carry out observations of the high risk person in the custody suite at KPO". |
| 22 | DC | Robert Finch | None | Major Incident Team (MIT) - Attended Martyn Dick's house (Crime Scene Manager) |
| 23 | DC | Gordon Miller | Promoted to Sergeant prior to giving his evidence to the Inquiry | Involved in seizure of Saeed Ahmed household |
| 24 | DCI | Stuart Houston | promoted to Chief Superintendent prior to giving his Inquiry Statement | Detective Chief Inspector coming from Edinburgh Division to assist. Asked to be the Crime Scene Coordinator to manage the various crime scene managers. |
| 28 | DS | Samantha Davidson | Promoted to Detective Inspector prior to giving her evidence to the Inquiry | Attended Hayfield Road and arrived during the restraint of Mr Bayoh |
| 36 | PC | Gary Wood | None | Officer on duty within the Dog Section on 3 May 2015. Called to attend at Hayfield Road with his police dog but was stood down whilst making his way to Kirkcaldy from Edinburgh. |
| 38 | Sergeant | Eric Anderson | None | Custody Sergeant on 3 May 2015. Contradicts statement by PC Geddes raising issue of "ISIS" in the station with him. |
| 39 | ACC | Bernard Higgins | n/a | Referred to only in relation to a video on terrorist threat levels. No involvement on the day |
| 40 | Inspector | Steven Stewart | Retired from Police Scotland prior to giving his statement to the Inquiry. His rank had not changed when he retired | Inspector at ACR and Initial Tactical Firearms Commander on 3 May 2015 |
| 43 | PC | Scott Masterton | retired from Police Scotland prior to giving his statement to the Inquiry. His rank had not changed when he retired. | Working within Area Control Room covering the Kirkcaldy area on 3 May |
| 49 | Mr | Alan Pearson | None | Civilian eye-witness who observed Mr Bayoh on Hayfield Road with a knife in his hand |

| Page no | Rank/ Title | Full name | Changes/ Promotion | Role/Description |
|---------|-------------|--------------------|--|--|
| 49 | Mrs | Joyce Joyce | None | Civilian eye-witness who observed Mr Bayoh on Hendry Road with a knife in his hand |
| 50 | Mr | David Grey | None | Civilian eye-witness driving white Mercedes Sprinter van observed Mr Bayoh with "bladed weapon" in his hand prior to police contact |
| 50 | Mr | Adeyemi Johnson | None | Mr Bayoh's brother in law |
| 51 | Dr | Gillian Pickering | None | Registrar doctor who attended to Mr Bayoh following his admission at Accident & Emergency at Victoria Hospital |
| 54 | Mr | Kevin Nelson | None | Lives on Hayfield Road and witnessed the restraint |
| 54 | Mr | David Taylor | none | Paramedic who treated Mr Bayoh at Hayfield Road |
| 57 | Sergeant | James Young | Promoted to Inspector prior to giving his evidence to the Inquiry | National Officer Safety Training Coordinator. Sergeant Young had no direct involvement in matters relating to the death of Mr Bayoh |
| 58 | Mr | Saeed Ahmed | none | Father of Zahid Saeed and Saadia Rashid; house was searched |
| 58 | Mr | Martin Graves | None | Instructed by COPFS to produce a report on the use of force by the police in the restraint of Mr Bayoh |
| 59 | Dr | Maurice Lipsedge | None | Consultant psychiatrist providing evidence on the impact drugs consumed by Mr Bayoh had on his behaviour and whether the actions of the attending officers is indicative of the officers behaving as a group or as individuals |
| 59 | Ms | Lorraine Dewar | None | Employed as a Public Counter and Station Assistant at KPO on 3 May 2015. She did not give evidence directly to the Inquiry but she is referred to in the evidence of PC Geddes |
| 65 | Mr | Christopher Fenton | None | Civilian eye-witness. Driving along Hayfield Road observed the restraint of Mr Bayoh through the driver side window of his vehicle |
| 69 | Inspector | Alan Seath | Now retired from Police Scotland | Involved in Post Incident Procedures from 4 May 2015 |
| 73 | DSI | Keith Harrower | Promoted to Senior Investigator | PIRC Deputy Senior Investigator who attended KPO on 3 May 2015 |
| 78 | DC | Andrew Mitchell | Promoted to Police Sergeant prior to giving his statement to the Inquiry | Dealt with Collette Bell; death message to Kadi Johnson |
| 78 | DC | Wayne Parker | Promoted to Police Sergeant prior to giving his statement to the Inquiry | Dealt with Collette Bell; delivered death message to Mrs Johnson |

| Page no | Rank/ Title | Full name | Changes/ Promotion | Role/Description |
|---------|-------------|----------------|--|--|
| 86 | DC | Simon Telford | None | Major Incident Team (MIT) – Instructed to find Zahid Saeed and take a statement from him |
| 86 | DC | John McGregor | None | Major Incident Team (MIT) – Instructed to find Zahid Saeed and take a statement from him |
| 89 | DC | Kevin Petrie | Promoted to Sergeant prior to giving his evidence to the Inquiry but his Inquiry Statement not disclosed on website so have not referred to this | Involved in seizure of Saeed Ahmed household |
| 95 | Mr | Martyn Dick | Now married to Kirsty MacLeod | Friend of Sheku Bayoh; house was searched by Police Scotland; attended KPO |
| 95 | Miss | Kirsty MacLeod | Now married to Martyn Dick | Partner (now wife) of Martyn Dick. Was in house when Sheku Bayoh came over with Zahid Saeed; home searched by Police Scotland; statement taken by Police Scotland. |
| 98 | Ms | Saadia Rashid | None | Brother of Zahid Saeed and daughter of Saeed Ahmed |

Note of changes between this version and SBPI-00583

The first version of this inventory SBPI-00583 was disclosed to core participants in May 2024. A small number of changes have been made since then following input from core participants. SBPI-00666 was an updated version of the document disclosed to core participants in August 2024. A small number of errors were identified in that document. This version includes all changes made since SBPI-00583 which have been typed in blue and set out below for ease of reference.

- P.4 Correcting error in referring to number of attending officers
- P.11 Clarifying that Detective Chief Inspector Hardie was asked by Inquiry Counsel to repeat a racial term in order to provide an example
- P.33 Referring to an example of PC Gibson putting his training into practice
- P.39 Portions of text previously redacted in SPBI-00583 now removed
- P.42 Referring to Sergeant Maxwell's notes of 4 May 2015 as a self-penned statement, how he assessed the possibility of a terrorist threat upon his arrival at Hayfield Road, and that he discounted terrorism
- P.51 Correcting the previous erroneous reference to the fact that only one medical witness who gave a physical description of Mr Bayoh.
- P.52 Incorporating reference to the suggestion that Mr Bayoh may be "faking it" and to the "two pats" or "slap" administered by PC Paton to Mr Bayoh's face
- P.53 Referring to Sergeant Maxwell's notes of 4 May 2015 as a self-penned statement
- P.54 Including language used by paramedic Alan Finlayson to describe Mr Bayoh
- P.55 Including a comment by Mrs Johnson and the language she used to describe Mr Bayoh
- P.59 Including a document ID which had previously been redacted in SBPI-00583
- P.103 Including a question in relation to the number of times Sergeant Maxwell called the ambulance in respect of Mr Bayoh compared with PC Short. Also including the response to that question which was erroneously excluded from SBPI-00666
- P.104 Removing the erroneous reference to Sergeant Maxwell returning to Kirkcaldy Police Office with PC Paton. In place of reference to Sergeant Maxwell inserting PC Walker

Note of change between this version and a previous version of SBPI-00684

The first version of this inventory SBPI-00666 was disclosed to core participants in August 2024. Some errors in SBPI-00666 were brought to our attention. We addressed those errors and disclosed a further version to core participants in September 2024 under the Document ID SBPI-00684. A small change has been made since then following input from core participants. This version includes the change made since the version of SBPI-00684 disclosed in September 2024. The change has been typed in blue and set out below for ease of reference.

- P.1 Reference made to SBPI-00582 - Introduction to the Inventory of evidence about race