

**Assistant Solicitor to the Inquiry**

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Joanne Caffrey

[REDACTED]

**By email only**

Thursday 22 September 2022

Dear Ms Caffrey

**SHEKU BAYOH PUBLIC INQUIRY  
EXPERT REPORT ON TACTICAL OPTIONS AND USE OF FORCE**

Thank you for your attendance at our recent consultation which took place on Tuesday 13<sup>th</sup> September 2022. At the consultation, we discussed the role of management of the incident. We agreed to draft an additional question, to allow you to offer your opinion on this subject. Please find below the full list of questions which should be addressed within your report.

If there are any points arising from the consultation that you wish to discuss further, please get in touch. I would be grateful if you could please submit a fresh draft in either Word or PDF format. There is no need to provide a version with track changes, incorporating these additional comments.

**Report Timescales**

I would be grateful if you could prepare your report in draft by Tuesday 4<sup>th</sup> October 2022. Counsel to the Inquiry have agreed to hold a second consultation with you on Thursday 6<sup>th</sup> October 2022 at 9.00am. In the meantime, please let me know if the submission deadline and consultation date become unattainable.

**Questions**

I would be grateful if you could provide your opinion on the following issues (this list is not exhaustive; please offer a view on any other matters that are within your expertise and which you consider to be relevant):

*1. Management of the Incident: Command and Control*

Please note that a critical incident was declared by Chief Superintendent Gary McEwan at approximately 09:10, upon learning of Sheku Bayoh's death.

- In light of the information known to the ACR (terror threat level; date and time of call; 999 and 101 calls), what factors were relevant to the assessment of risk (i) to Mr Bayoh; (ii) to any response officers directed to attend the incident; and (iii) to the public?
- Would you expect an ACR in Edinburgh to be able to access local information about a locus in Kirkcaldy (in particular, whether the area was residential or commercial; proximity to hospitals, churches etc)? If so, how would this information be accessed? When would you expect these enquiries to be made?
- If not, would you expect a reasonable ACR Inspector to make; be making or have made, appropriate enquiries from the response team or others as to the nature of the locus? When would you expect these enquiries to be made?
- What conclusion would a reasonable ACR Inspector have reached as to the likely risk (i) to Mr Bayoh; (ii) to any response officers directed to attend the incident; and (iii) to the public; and why?
- How would that assessment inform a reasonable ACR Inspector's decision making in terms of (i) the categorisation of the incident, (ii) the resources to be allocated to the incident, and (iii) the ongoing management of the incident?
- How would a reasonable ACR Inspector have categorised the incident (in particular: Grade? Firearms? Critical?); and why? When would a reasonable inspector have taken this decision vis-à-vis the arrival of the response team?
- What resources would a reasonable ACR Inspector have deployed to the incident and why?
- In your opinion, would a reasonable ACR Inspector require feedback from response officers dispatched to the locus in order to complete his assessment as to the appropriate categorisation of the incident, and the resources and management it required? How long would a reasonable ACR Inspector wait for feedback? In the absence of feedback, what steps would a reasonable ACR Inspector take to seek or secure that feedback? How long would a reasonable ACR Inspector take to implement any such steps?
- If response officers were already en route to the locus by the time a reasonable ACR Inspector learned of the incident, how long would a reasonable ACR Inspector wait for feedback? In the absence of feedback, what steps would a reasonable ACR Inspector take to seek or secure that feedback? In the absence of any feedback, how long would a reasonable ACR Inspector take to implement any such steps?
- What directions, if any, would he have given to those officers and when?
- (Depending on your view as to how a reasonable ACR Inspector would have categorised the incident as firearms, critical etc) What procedures and steps would then have been implemented to manage the incident?
- Please describe the roles and responsibilities of the various personnel who would have been involved in the command and control of the incident, with particular reference to (i) the ACR; (ii) senior officers within Fife Police and Kirkcaldy Police Office; and (iii) individual response officers.
- In your opinion, had the incident been declared a firearms incident, what difference (if any) would that have made to the outcome? Please explain whether your views would alter, depending on whether a firearms incident had been declared at an early stage (prior to the arrival of officers at Hayfield Road) or at a later stage (after their arrival).

- In your opinion, had the incident been declared a firearms incident, what difference (if any) would that have made to the outcome? Please explain whether your views would alter, depending on whether a firearms incident had been declared at an early stage (prior to the arrival of officers at Hayfield Road) or at a later stage (after their arrival).
- In your opinion, had the incident been declared a critical incident, what difference (if any) would that have made to the outcome? Please explain whether your views would alter, depending on whether a critical incident had been declared at an early stage (prior to the arrival of officers at Hayfield Road) or at a later stage (after their arrival).

## 2. Risk assessment:

### (a) *En route to the locus*

- In light of the information known to the attending officers (airwave transmissions; terror threat level; day and time of call; proximity of locus to residential area, hospitals etc), what factors were relevant to the assessment of risk (i) to Mr Bayoh; (ii) to the attending officers; and (iii) to the public?
- What conclusion would a reasonable officer have reached as to the likely risk (i) to Mr Bayoh; (ii) to the attending officers; and (iii) to the public?
- Why?
- How would that risk assessment inform the available tactical options?

### (b) *First officers at locus: Constables Walker and Paton*

- In light of the information known to Constables Walker and Paton (as above, together with Mr Bayoh's behaviour/demeanour at the locus, and the absence of a visible knife), what factors were relevant to the assessment of risk (i) to Mr Bayoh; (ii) to the attending officers; and (iii) to the public?
- What conclusion would a reasonable officer, arriving first at the scene, have reached as to the likely risk (i) to Mr Bayoh; (ii) to the attending officers; and (iii) to the public?
- Why?
- How would that risk assessment inform the available tactical options?

### (c) *Second officers at locus: Constables Tomlinson and Short*

- In light of the information known to Constables Tomlinson and Short (as above, together with Mr Bayoh's behaviour/demeanour at the locus, and the absence of a visible knife), what factors were relevant to the assessment of risk (i) to Mr Bayoh; (ii) to the attending officers; and (iii) to the public?
- What conclusion would a reasonable officer, arriving second at the scene; have reached as to the likely risk (i) to Mr Bayoh; (ii) to the attending officers; and (iii) to the public?
- Why?

- How would that risk assessment inform the available tactical options?

### *3. Initial contact*

#### *(a) Constables Walker and Paton arrive at the locus*

- Please categorise Mr Bayoh's offender behaviour<sup>1</sup> at the time of the officers' arrival at the locus
- What impact would Mr Bayoh's behaviour have had on a reasonable officer's assessment of risk?
- What level of response<sup>2</sup> was appropriate?
- What tactical options were open to a reasonable officer?
- Please identify all factors relevant and material to your assessment of the option(s) available
- What option(s) would a reasonable officer have chosen?
- Why?
- On balance of probabilities, had that option been selected, what difference might that choice have made?
- Please categorise<sup>3</sup> and comment on the response(s) by Constables Walker and Paton at Hayfield Road. In particular, indicate to what extent, if any, their response(s) differed to that of a reasonable officer
- On Day 20, 21 June 2022, at page 91 to 94 inclusive, Constable Paton addressed in his evidence the possibility of an alternative course of action, namely parking in Gallagher's Pub car park, waiting for an Armed Response Unit, observing and monitoring Sheku Bayoh and providing feedback to the Area Control Room and airwaves transmissions to other officers on route. We invite your comments on this possible alternative course.

#### *(b) Constables Tomlinson and Short*

- Please categorise Mr Bayoh's offender behaviour at the time of the officers' arrival at the locus
- What impact would Mr Bayoh's behaviour have had on a reasonable officer's assessment of risk?
- What level of response was appropriate?
- In light of the apparent actions already taken by Constables Walker and Paton, what tactical options were open at that stage to a reasonable officer arriving at the scene?
- Please identify all factors relevant and material to your assessment of the option(s) available
- What option(s) would a reasonable officer have chosen?
- Why?

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<sup>1</sup> Chapter 4.6 of the Officer Safety Training Manual (PS 10933) and module 1, section 8 of the OST manual PS11538(a) 1 compliance; 2 verbal resistance and/or gestures; 3 passive resistance; 4 active resistance; 5 assaultive resistance; 6 serious/aggravated assaultive resistance

<sup>2</sup> Chapter 4.7 of the Officer Safety Training Manual (PS 10933) and module 1, section 8 of the OST manual PS11538(a); 1 officer presence; 2 tactical communications; 3 control skills; 4 defensive tactics; 5 deadly or lethal force

<sup>3</sup> See footnote 4

- On balance of probabilities, had that option been selected, what difference might that choice have made?
- Please categorise and comment on the response(s) by Constables Tomlinson and Short at Hayfield Road. In particular, indicate to what extent, if any, their response(s) differed to that of a reasonable officer

#### *4. Assault of Nicole Short*

##### *Hypothesis 1: punch to back of head (no stamp)*

- Please categorise Mr Bayoh's offender behaviour at the time of the assault
- What impact would Mr Bayoh's behaviour have had on a reasonable officer's assessment of risk?
- What level of response was appropriate?
- What tactical options were open to a reasonable officer?
- Please identify all factors relevant and material to your assessment of the option(s) available
- What option(s) would a reasonable officer have chosen?
- Why?
- On balance of probabilities, had that option been selected, what difference might that choice have made?
- Please categorise and comment on the response by Constable Tomlinson. In particular, indicate to what extent, if any, his response differed to that of a reasonable officer

##### *Hypothesis 2: punch to back of head, followed by stamp(s), as demonstrated by Constables Walker and Tomlinson in their evidence*

- Please categorise Mr Bayoh's offender behaviour at the time of the assault
- What impact would Mr Bayoh's behaviour have had on a reasonable officer's assessment of risk?
- What level of response was appropriate?
- What tactical options were open to a reasonable officer?
- Please identify all factors relevant and material to your assessment of the option(s) available
- What option(s) would a reasonable officer have chosen?
- Why?
- On balance of probabilities, had that option been selected, what difference might that choice have made?
- Please categorise and comment on the response by Constable Tomlinson. In particular, indicate to what extent, if any, his response differed to that of a reasonable officer

#### *5. Restraint - taking Mr Bayoh to the ground*

- Please categorise Mr Bayoh's offender behaviour at the time he was taken to the ground

- What impact would Mr Bayoh's behaviour have had on a reasonable officer's assessment of risk?
- What level of response was appropriate?
- What tactical options were open to a reasonable officer ?
- Please identify all factors relevant and material to your assessment of the option(s) available
- What option(s) would a reasonable officer have chosen?
- Why?
- On balance of probabilities, had that option been selected, what difference might that choice have made?
- Please categorise and comment on the response by Constable Walker. In particular, indicate to what extent, if any, his response differed to that of a reasonable officer
- Please comment on the manner in which Constable Walker took Mr Bayoh to the ground (i) on the hypothesis that he "shoulder charged" Mr Bayoh to the ground and (ii) on the hypothesis that he took Mr Bayoh to the ground in a "bear hug"

*6. Restraint: position of Sheku Bayoh; duration; number of officers involved; use (and position) of force and bodyweight applied to Sheku Bayoh*

*Hypothesis 1: prone restraint*

- Please categorise Mr Bayoh's offender behaviour during the restraint
- What impact would Mr Bayoh's behaviour have had on a reasonable officer's assessment of risk?
- What level of response was appropriate?
- What tactical options were open to the officers involved in the restraint (i) initially, and (ii) as the restraint progressed?
- Please identify all factors relevant and material to your assessment of the option(s) available
- What option(s) would a reasonable officer have chosen?
- Why?
- On balance of probabilities, what difference might the choice of that tactical option(s) have made?
- Please categorise and comment on the response by the officers. In particular, indicate to what extent, if any, their response differed to that of a reasonable officer or officers

*Hypothesis 2: supine restraint*

- Please categorise Mr Bayoh's offender behaviour during the restraint
- What impact would Mr Bayoh's behaviour have had on a reasonable officer's assessment of risk?
- What level of response was appropriate?
- What tactical options were open to the officers involved in the restraint (i) initially, and (ii) as the restraint progressed?

- Please identify all factors relevant and material to your assessment of the option(s) available
- What option(s) would a reasonable officer have chosen?
- Why?
- On balance of probabilities, what difference might the choice of that tactical option(s) have made?
- Please categorise and comment on the response by the officers. In particular, indicate to what extent, if any, their response differed to that of a reasonable officer or officers

## *7. Restraint: general*

We invite your comments on:

- The length of the restraint
- The number of officers involved in the restraint at different stages of the restraint
- The force applied to Mr Bayoh as he lay on the ground, insofar as you are able
- PC Paton's use of a baton during the restraint
- By reference to the enhanced Snapchat footage and stills from same; the evidence (which is in dispute) that Constable Walker (who weighed 25 stones) lay across Mr Bayoh's back
- The evidence (from a number of witnesses) that the restraint bore resemblance to a "collapsed rugby scrum"
- Whether a reasonable officer would have monitored or arranged to have monitored, Mr Bayoh's breathing during the restraint
- The significance of environmental factors (weather, temperature, Mr Bayoh's state of dress)

## *8. Miscellaneous*

Insofar as not already explored within the answers to preceding questions, please comment on the following:

- Waiting and observing;
- De-escalation: please describe de-escalation techniques and explain what they are designed to achieve and the possible outcomes when such techniques are employed;
- Acute Behavioural Disturbance/Excited Delirium/mental health crisis<sup>4</sup>: please offer a view as to how these matters were defined/taught to officers in 2015; a view as to how these may have been recognised by officers in the field; and whether any of the evidence indicated that Mr Bayoh displayed any signs or symptoms of ABD/ED/mental health crisis (drug induced or otherwise). If so: whether a reasonable officer would have had in mind the possibility of ABD/ED/mental health crisis; at what point in time would this possibility have crossed his mind; and what action would he have taken;

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<sup>4</sup> See Chapter 5 and 21.3 of the Use of Force SOP (PS10933); pages 23-25 of the OST PowerPoint (PS17208); and Module 1, section 11 of the OST manual **PS11538(a)**



- Positional asphyxia<sup>5</sup>: describe what a reasonable officer would have known of this risk in 2015; describe the steps a reasonable officer would have taken to mitigate the risk of positional asphyxiation (i) if Mr Bayoh were restrained in the prone position and (ii) if he were restrained in the supine position; and
- In what circumstances (if any) do you consider it would be appropriate for an officer to strike a suspect with a vehicle on arrival at a scene? Please refer to the evidence of PC Walker on Day 6, 19 May 2022 page 39, line 22; pages 64 line 23 to page 66 line 8. Please categorise and comment on this proposed response by an officer. In particular, indicate to what extent, if any, this response would differ to that of a reasonable officer or officers.

I would be grateful if you could acknowledge safe receipt of these instructions.

Yours sincerely



[Redacted Name]

**Assistant Solicitor**

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<sup>5</sup> See Chapter 21 of the Use of Force SOP (PS10933); pages 26 and 27 of the OST PowerPoint (PS17208); and Module 1, section 11 of the OST manual (PS11538(a)).