

The Sheku Bayoh Public Inquiry

Witness Statement

Mark Daly

Taken by [REDACTED] at BBC Pacific Quay, Glasgow on Wednesday 30 March 2022

Witness details and professional background

1. My full name is Mark [REDACTED] Daly. My date of birth is in 1974. The public inquiry has my contact details.
2. I've been a journalist since 1998. I graduated from Stirling University doing Film and Media in 1997. I did a post-grad in Journalism at Strathclyde University which I finished in 1998.
3. I started working at Clydebank Post and was there for a year, then The Scotsman for two, then The Daily Record for two. In 2002 I moved to London to work for the BBC and made a number of documentaries, including "The Secret Policeman", "The Boys Who Killed Stephen Lawrence", a Rough Justice programme about a miscarriage of justice and other things.
4. In 2003 I went undercover as a policeman in Greater Manchester. The backdrop of this was Stephen Lawrence's murder in 1993, which prompted the Macpherson Inquiry in 1998 and 1999, which concluded that the Met and potentially wider policing had a problem with institutional racism. The BBC

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decided that it wanted to test this a bit more and wanted to put someone undercover and generated a *prima facie* case that it was worth having a proper look at Greater Manchester Police, and they then tried to find someone to be the undercover policeman and that's how I got hired. I got asked to come do that job, and I spent eight months as a policeman in Greater Manchester secretly filming, recording my life there. We eventually got caught, I got arrested, I got jailed briefly and, although charges were later dropped, we made a documentary called "The Secret Policeman", which caused a furore and it was a bit of a national scandal that resulted in 10 officers getting fired, 15 were disciplined and it changed the face of police training forever.


5. There was an inquiry by the Commission for Racial Equality, as it was then. The inquiry made 100 recommendations, and so that was really the beginning of my relationship with the police and racism. I did another film after that, unrelated, about a miscarriage of justice, but then I got back into it in 2005 when I started investigating the Stephen Lawrence murder. For 18 months, I worked on that case and produced and recorded a film called "The Boys Who Killed Stephen Lawrence", which was a precursor to the Met reopening the case. The new police investigation led to two of the suspects being tried and convicted. I did another film called "The Secret Policeman Returns" in 2008, just five years on, just to try and take the temperature of policing and to see whether things had improved any. In 2011, I did another film about the Stephen Lawrence case in relation to the trial.
6. Most of my stories are police related, but the next police and race story was a film I did about the Independent Police Complaints Commission and then a film about the Criminal Cases Review Commission, and then I did Bayoh in 2015, and then it was Bayoh in 2018, and then Bayoh and [REDACTED] for Panorama in 2021.

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7. I came back to Scotland to work for BBC Scotland about 2009 where I've been an investigations correspondent. I work for BBC Disclosure, which previous incarnation was BBC Scotland Investigates, and I also work for Panorama. I suppose I've been fairly well decorated throughout the years and won quite a lot of awards for my work. I front the programmes, but I'm not a presenter. I am very, very involved in the research and usually I'm driving the journalism and speaking to the people myself and generating the leads and going and knocking the doors, and that's all stuff that I do, along with a team.

Investigative journalism and documentary making

8. Generally, how stories emerge is that usually I, but sometimes another member of the team or the editor, will say, "Here's an issue. We want to look at it." The way that our first story on Bayoh with Alan Paton emerged was simply that this was an issue we needed to get into because it was really big news.
9. Investigative journalism is a very grand title for what we do, which is actually just having a nose for a story, patience and the time to look at it and a curiosity, which goes a bit further, perhaps, than most. I think we have a few tools in our box, but generally it's about speaking to people and trying to see underneath, and often it might to the outside look a bit like a police investigation.
10. We'll maybe get a little office. If it's a sensitive investigation like some of them are we'll get an office and we'll have things on the wall. We'll have mind maps and we'll have circles: Bayoh, then Bayoh family, friends, the incident, who was there on the night, the police, who are they, what have they done, what's their history, who knows them. You get this big spidery mind map, and then you just start to methodically go through it all and ultimately try and speak to as many people as possible, try and build a picture of what happened.

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11. As well as wanting to get to the truth of matters in the public interest, we need to think, "Does this story lend itself to becoming a piece of watchable telly? Who can we get to speak? Who will come on the programme?". It's no use having 10 anonymous interviews. That just doesn't really help anybody. So, who can we get to speak? Can we say something new? This is licence fee payers' money. Does it justify it? What's the point of doing this? There's no point in doing a cuttings job of just rehashing what's been on the news. This is from our point of view. I'm not saying there's not value in that, but it's not what we do. We need to be bringing something new to the story, something people didn't know before, and there has to be an urgency to it. Why now? Why tell this story now?
12. Working in the public interest is enshrined in what we do. We are paid by the public. Everything we do has to have a justification. In this case we had documents and CCTV that some would say we shouldn't have had, and if those items were obtained just to make some scurrilous programme or for pure entertainment purposes, and not for bringing anything new to the story or bringing new information to the public, it'd be difficult to justify.
13. We need to justify what we do almost all the time because it's often quite sensitive stuff. There needs to be a public interest justification for us to have such sensitive material, and we believe there was in this case, and we go through a very, very robust internal testing process for all that. The team's own radar for this sort of thing is pretty good. I've got another story at the moment on another thing with information that normally would be private and we shouldn't have, but we've published it because it's in the public interest. If it's not in the public interest, then you can't justify it.
14. We also have an in-house legal team. We go out to counsel when required. For sensitive stories, we've got, as well as our own editor, who's the editor of Disclosure, the Head of News and Current Affairs. Then there's the Controller

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of the BBC. The very controversial stories go all the way up and they'll be signed off at the top. Nobody's freestyling when there's high-stakes stuff.

15. Disclosure is our leading current affairs strand. It's like Scotland's Panorama. It sits as part of the News and Current Affairs Department, which ultimately is led by [REDACTED] and the editor of Disclosure is [REDACTED]. She was editor for both the Disclosure and the Panorama. We make nine or ten Disclosures a year. We all come up with an idea and we'll pitch it to [REDACTED] usually she'll say yes or no, or sometimes she'll say, "I want you to go and look at this.". In the case of Bayoh, it was my idea to go do a Disclosure about that. I had a few contacts already. [REDACTED] commissioned it.

16. [REDACTED] was director on both of the Bayoh films. Any director worth their salt will work hand-in-hand with the reporter and it really was very much a double hander with [REDACTED] and I. I will be writing scripts, he will be checking in. Very, very loosely, I'm words and he's pictures, but both of us will be chipping in to each side. [REDACTED] will have better ideas for the script at some points. I'll have better ideas for the pictures at some point.

17. We all get a rough script ready. We'll go into an edit suite with an editor, and then the three of us will then be making rough cuts of the film. We've got two editors. We've got a craft editor, who's the person pulling the pictures together with the director and the reporter; we'll be in the edit together, crafting the cuts of the film. The editor of the programme, [REDACTED] will come in periodically to look at a rough cut and say, "Oh, I like that, I like that, change that, put that bit in the middle, take that bit out, not sure about that." or, "You know, actually, we're missing an expert on such and such. You're going to have to go out and shoot something else."

18. That's the process. It's sometimes two- or three-week process, and that all gets whittled down to a 29-minute film. Generally, we've got too much material and it all needs to be whittled down, and some things will end up on

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the cutting room floor and there's often lots of blood, tears about that. We all have our favourite little bits and our favourite contributors.

19. We try not to put interviewees through interviews if there's a chance they won't make it, especially if they've been through a lot, for example an abuse victim. We're never going to interview them unless we're sure they're going to make it, because you cannot and I never have put someone through baring their soul, and then you phone them up and say, "It's not going to make it". That's not on. By the time you start filming, you know the shape of your story. You know the journalism that's going to form the backbone of the piece. The story's already stood up.
20. That said, an essential part of our process is what's called the right of reply process. We have got to put all of our allegations to whoever is it who we're making allegations about in good time. At least a week, usually. Sometimes more if there are complicated questions. Every single claim we are making about someone has to be put to them. That was the case here. Sometimes we will get something back, and we go, "Oh. I wasn't expecting that.", and that will help us shape our programme, because somebody might be making an allegation which is not quite as right as they thought or we thought, or not quite as correct, or might just be wrong, so that's part of the process. We might get a response from someone who says, "No, that's never happened.", but if we're just satisfied that it did, then we will make that allegation and we'll still give them the right to reply. In this case, the Federation, each officer, Police Scotland, PIRC, Crown Office – everyone was given the right to reply.
21. The lawyer will be involved all the way through and way before if it's a sensitive one. If there's sensitive material I will always involve the lawyer early doors. It's always good to get the lawyer onside early.
22. At some point during that process, again, if it's sensitive, the big bosses will come in for a look because they want to be prepared for any backlash, any

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legal complaints, any editorial complaints. They would all come in once there's a fairly settled cut and we know pretty much what the film's going to look like, and they will have a look at it if it's a sensitive one.

Bayoh documentary in 2018

23. For both of our documentaries there was an urgency, the first one being that the news had just broken that there was not going to be any prosecutions. The October before our broadcast in 2018, the Lord Advocate had basically told the family there was not enough evidence to prosecute, and that was very interesting. It's not going to be a police investigation. It's sensitive if we start knocking on doors and the police are in the middle of a prosecution. I'm not saying we wouldn't, but it makes it complicated. So when the Lord Advocate told the family there was no prosecution, that, to us, was like a green light. It's like, "We will go and have a look and see what we can find," and that gave it a bit of urgency. And then as we probed and spoke to more people, we came across new and, I suppose, fairly classified information, documents, CCTV, you know, which presented fresh questions about the police account. To us, that felt important; that was in the public interest. What's more important than the police telling the truth about a man's death? It felt it fell in the public interest for us to pursue that and that's what we did.

Bayoh documentary in 2021

24. In terms of the Panorama, there's a slightly different process for that. BBC Scotland acts almost like an independent company from Panorama. We will make several Panoramas a year for London. There's a Panorama based in London. We will make the Panorama here, and it won't just be about Scotland. It might be about Scotland, but we will make a Panorama based out of Glasgow, and [REDACTED] will be an executive on that, but ultimately the final call lies with the Panorama editor. So the Panorama and the Disclosure

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were different. The Panorama in 2021, [REDACTED] was an editor, but the big editor was [REDACTED]

Sheku Bayoh's death

25. I can't quite remember how I first learned about Sheku Bayoh's death. There was vigils being held quite soon after. It was only a couple of days before they instructed a very high-profile lawyer, and whenever you see Aamer Anwar on the telly attached to a case, you know that it's probably going to have media legs. It was just a case that I just maintained a passing interest in for a while before I actually got involved.
26. This case was one of the biggest stories of the year, it was a big police story, and because of I've done a lot of stories about the police and I've done a lot of stories about racism, BBC Scotland kind of thought, "Well, you know, it's about time the BBC had a look at this case.". I had a brief foray into it for news in 2015. I did one story about Alan Paton, and then we revisited in 2018 and we made a half-hour Disclosure. That was kind of predicated on the decision not to prosecute, and I think that was the reason we got involved at that point. Then we did the follow-up Panorama because we came across the new evidence. This was before the Inquiry was confirmed and we thought that we would get this new evidence out there and that that might tip the balance one way or the other in terms of whether there was going to be an inquiry or not. That's the background to us getting involved.
27. I suppose this was the first big race and policing scandal in Scotland, certainly since I was back in Scotland. This seemed to be one of the most significant cases of that sort north of the border and it just seemed crazy for me not to be involved in it given my previous experience. There was things about it that didn't make sense to me. Very early on, we know that he's on the deck within a minute. We know he doesn't get up. Very early on, we see a

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very typical response from the Federation, some people would say using quite outdated racial stereotypes.

28. Secondly, one of our jobs is to try and give a voice to people, the voiceless. I'm not saying the Bayoh family were ever voiceless, but they felt and still feel the weight of the system was against them and that they were misled right from the very start about what happened to Sheku Bayoh. I think the evidence bears that out. They were given a variety of different bits of information from a variety of different officers and couldn't get a straight answer. The fact that they felt they were treated like suspects in the early hours. All this had shades of Lawrence to me. The cops that came to the house were looking around the house, you know, asking questions of him as if he was a suspect. That's how they felt. All these things are why I was interested. All these things to me were extremely, extremely interesting. You just know. You get a sense. Your journalistic senses tingle. You know this is going to be one of those stories that is going to be a big deal for years and years to come.

Investigating Sheku Bayoh's death

29. We knocked on every door around, including Kevin Nelson's. His was one of the doors we went to for the first investigation, and he wasn't in. I spoke to someone else, who said, "Oh, I'll let him know you called." Funnily enough we did get an email back from him, but we had no idea at that point that he was Witness [REDACTED]. We were always interested to find out who Witness [REDACTED] was. We didn't know for the first film. He didn't say he wasn't interested, but for whatever reason, it fell through the cracks and we didn't speak to him again in that first investigation.
30. We spoke to as many people as we could around the area. Nine times out of ten it was a complete red herring, or they weren't in, or didn't know anything. We attempted to identify and speak to all witnesses, and we think we spoke to

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some but it was impossible for us to verify. No other potential eye witnesses would talk to us on the record. We tried a couple of people who we think might have been good witnesses who would've been helpful but they wouldn't talk to us.

31. We tried to speak to as many of his friends as possible. I think we've interviewed one or two of them.

32. At some point, we came across the statements and the CCTV that are in the film, and that helped form the way that we looked at things in terms of going and getting a commission and an independent expert to say, "Look, can you look at this?" [REDACTED] was someone who was not known to us before. We came across him on Google. We got in touch to say, "Look, is there any reason you couldn't do this bit of work for us? We've got some sensitive material. You're an expert in this field, would you look at it and give us an expert opinion?". With that, you're taking a risk because obviously we can't just pick, unlike a criminal defence, an expert you like because they're going to give you the answer you want.

33. We'd obviously taken a punt on someone and he might tell us something about something that at our first glance, we think, "This doesn't look like it was the right way to do things in terms of trying to de-escalate a situation.". We go to an expert, and if they come back and say, "No, this looks fine to me," we'd have to, if we interviewed him and he said that, put him in the film. What we were looking for was an independent expert: someone who would tell us what they thought. He never says, "By the way, these guys are criminals. These guys are violent thugs.". He didn't see any of that. He said, "Look, these guys are under extreme pressure. This is one of the hardest jobs in the world. They've been told this guy's got a knife. There's no doubt that they would've been on high alert and under stress.". These are all the caveats, and those caveats we put in the film. He said, "But their training would have been to do

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this and not to do that," or, you know, such and such. We thought he gave a balanced, nuanced, expert view, so we put it in the film.

34. We had instructed [REDACTED] to give us an onscreen response. "Have a look at this stuff, take a couple of days, we'll come down and we'll do a chat about what you've seen, and we'll go through it bit by bit." I don't think we got a formal report from him, although I think he did what he did in the knowledge that at some time it'd be likely he'd end up getting a call from an inquiry or from the defence or something like that. I'm not sure we would've shown him Kevin Nelson's PIRC statement. We showed him the relevant police statements. We showed him the CCTV.

35. Often the way these things develop can be quite organic. When people find out you're working on a story, word gets out, and sometimes you'll get a call, you might get an envelope or a package, you get a phone call from reception saying, "Mark, there's somebody here for you." Sometimes that happens. It might've happened in this case. Generally people who want to help get in touch.

Findings of BBC investigations into Sheku Bayoh's death

36. Our findings are spread over both films, and I think the height of the headlines from our first film would be that having obtained the police's statements, as well as knowing what had previously been said in public by the Federation, and then obtaining the CCTV, it was clear to us that there were some important points to be made. In the first film, those points really were of that it was quite clear from the statements that officers had arrived with an immediate intention of using force, because by their own admission three of the four used CS spray within 30 seconds. By their own admissions, Bayoh had yet to use any violence against them and had been unresponsive. Two or three of them used batons within the first 30 seconds, and according to our use of force expert, [REDACTED] all these actions were escalatory and pretty

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much against the handbook. Everything was against the way that you should try and behave to de-escalate a potentially violent situation.

37. All that said, I know that they had been told he had a knife, and therefore there's a reason for them to be on alert. It's clear from the CCTV that he didn't have a knife, and in their own statements they admit that they never saw a knife. It seemed significant to us that, despite him not having a knife, despite him not initially behaving violently towards them, they chose to escalate to force so quickly, and that the CCTV, although grainy and inconclusive, suggested that there might not have been time for this violent stamping attack that Bayoh allegedly carried out on Nicole Short. My impressions of the officers' accounts, following seeing the CCTV, is that it didn't look possible for what they said had happened to have happened. Those are the main findings from the first film.
38. The second film was essentially the discovery of Kevin Nelson. The main takeaway points from that were that he saw the incident, and he believes that the police's statements were false, and secondly, that I think that his evidence raised huge questions about the PIRC investigation because they had his testimony and when they got the police's testimony, which was in apparent complete contradiction, nobody went back to ask him about that. Some people would ask if Kevin Nelson raised further questions or if he was saying the police had lied. He was basically saying that police lied in their statements and there was a question mark over why PIRC hadn't gone further with him because his testimony seemed to be in such stark contrast to the police's.

Background to interview with Kevin Nelson

39. The context of the interview with Kevin Nelson is that I already have concerns about the police account. I've seen his original statement to PIRC. I think it's important, because I had to be sure that what he was telling me was not

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contradictory to what he told PIRC. What he told PIRC was not contradictory, but PIRC's interview seems incomplete. The statement says:

"... the female officer and appeared to lunge at her with his left fist towards her face. I believe he struck her with his closed fist. I heard her scream, cannot be positive, but I believe one of his fists struck her. The black male now appeared to be face down on the pavement. I could no longer get a clear view of this male."

What happened in between there would've been my question if I was PIRC. "How did he get face down on the pavement? What happened after he hit her?". Kevin Nelson says that his account to me was identical to the account he gave to PIRC but I was asking in much, much more detail.

40. When PIRC eventually get statements from the cops and they hear what Bayoh has done, according to them, in between punching Nicole Short and being down on the pavement. They hear that, and they must look at this statement and go, "So, he doesn't mention that." And then, "But he seems to have seen the before and after. So I wonder what he saw? And why don't we know what he saw?". Nobody went back to ask him. This seems to display a lack of curiosity. I'm looking at this as a journalist and thinking, "Why has Witness [REDACTED] not seen the stamping incident?" He should've seen some of this, if that happened. We followed that up, before we even knew Kevin Nelson's name. We were like, "Where is this? Where is this? Where is this guy? And what's he seen?". We were always interested in this statement because looking at this, it wouldn't suggest that there had been this vicious stamping attack.

Engaging with Kevin Nelson

41. In June 2020 I get a tip that there was a guy who saw something, and it would be worthwhile me speaking to him. I phone him up and I say, "You're the guy

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I'm looking for.". He says, "Well, I think I am, actually.". I said, "You know, I've got this statement here. I don't know if it's you or not, can I read you a few lines?" He's like, "Yeah, that's me." I say, "All right. Can I come and see you?" He says, "Yes, sure." First, we have a brief chat. I say, "Look, just in your statement there's no mention of the stamping attack. Did you see it?" He says, "Never saw that." I ask, "Do you think it happened?" He says, "No, it never happened. In fact, after your first programme, I was going to call you up and tell you that it never happened. In fact, I discussed it with someone." I think something like that happened after my programme or the news coverage. There was something that happened that made him think, "That's not right.". He says, "Well, I've always thought someone would just come back and ask me." I say, "Right. Okay. Well, I'll come and see you."

42. Nelson had seen my film from 2018. I have been asked if I talked him through the CCTV and asked if it accorded with his memory of events. I don't think we did. I can't picture us sitting down with a laptop or anything like that. I guess I wanted his account, as he remembered it. I'm not sure I ever showed him his PIRC statement; I probably read it to him. I said, "Well, okay, how come that's not in here?" And he's like, "I don't know. They just came and sat and I told him what happened and then they got a statement, I signed it and they were away.". Then I did ask him, "Once you learned of what the police were saying about this incident, did you not think it was unusual that they hadn't come back?" He said, "Well, I did. But I always thought someone would come back.". He would've seen what the police said either in the news after the incident or in my first film.

43. When me and [REDACTED] went to see him in June, we kind of say: "Look, we've got a story. This is what your PIRC statement says. This is what these officers say. We think this is quite a big deal, and we think the public should hear this. But what we need to tell you is that this will be a shit-storm. You will be in the eye of a storm for days and days and days and will have to go and give evidence to the Public Inquiry. You may be subject to news stories.

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I'm not saying that this would be necessarily an easy ride for you. We can't pay you, and you don't get anything out of this, but if, as you say, you feel quite strongly about setting the record straight, this is the time to do it. This is the chance. We want to make a film about this, and I think what you've got to say is really important because these officers have said that this guy tried to kill this female officer, basically. They say that: 'I thought he was going to kill her.'. They have accused him of a murderous attack, and you're saying that it didn't happen, and, Kevin, whether you like it or not, that is a massive deal. And we would like you to tell the world about it. There could be an option to do it anonymously. The Federation will still know who you are, and ultimately, the Inquiry will still need to know who you are. But if we put this out there in any form, you will end up having to go and give evidence to the Inquiry and probably, you know, for years to come will be involved in this story."

We said that at the very first meeting. He said, "Ah, yeah. Okay. I'm not sure. I need to talk to my family about it." That was just at the end of June.

44. Had I had a further conversation with him about anonymity, I would have double checked he understood what we would be doing, of course. I would have done because I can't have someone turning up and saying, "Oh, I didn't realise I was going to be on the telly." It never happens on my watch. We properly discuss things with people. I need them to know, especially in high stakes stuff like this, what the implications are, what it actually is going to involve: we're going have to sit in a room maybe a couple of hours, it's going to be intense, you'll be knackered after it, don't make any plans for that evening. I talked to him a lot about what the impact was going to be at the time. I said "There's going to be a lot of heat around this. You're going to be in the eye of the storm for a few days.". I suggested that he gets out of town for a few days. I can't remember if he actually did that in the end. He may have gone to visit a friend.



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45. We exchanged messages. On 18 June 2020, I think this was just after the first time I phoned him. I wrote: *"Hi, Kevin. So good to talk to you yesterday. Can I just check, are you around today if I had to double check anything with you? It's Mark Daly here, by the way."* He wrote back: *"Yeah. At work 'til 5. Can't take calls at work, but lunch 12.45 to 1.30 if needed."* I wrote: *"That's helpful, thanks. I think we're going to hold for the time being anyway."* That's me saying that no matter what, nothing is urgent. There's no immediate plans for this.
46. On 25 June 2020 I wrote: *"Hi, Kevin. We're just wondering if at some point you'd be up for a meet, socially distanced, of course, in a park, maybe, sometime over the next week or two."*
47. I don't hear anything back until 12 August 2020. I wrote back again to him: *"Hi, Kevin. Hope this finds you well. Are you around this or next weekend any time? We'd be really keen to come through and see you for a chat."* Then he called me and I wrote back to him in a text: *"Just on the phone. Can I call you ASAP?"*. He wrote back: *"Yeah. Finished work for the day."*
48. What's happened there is there's been a phone call and an arrangement for [REDACTED] and I to go through. We go through, and we have a meeting. The first meeting face-to-face happened sometime between 17 and 27 August. I've laid all this out and explained that he could be part of a documentary.
49. I write back to him on 27 August, possibly eight or nine days after our meeting, *"Hi, Kevin. How are things? Just checking in, really, to see whether you've got any questions for us or wanted another chance to chat things through on the phone or in person if you need. Give us a shout if so. Talk soon."*
50. Four days later, and nothing happens in between that time because I remember thinking *"He's obviously decided he's not going to go for this."*, on

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31 August he says, *"Hi, Mark. I have had a think about it, and I would be willing to take part in your documentary. At the moment, no questions I have for you. But if there is, I will let you know."*

51. I just write back saying, *"That's great news, Kevin. I'll be in touch very soon."*. We spoke again on a number of occasions ahead of the filming.

52. My point is that this is very much a decision he reached on his own. I gave him the option of a platform. *"This is what we could do, Kevin. You would be the central piece of evidence in a new documentary about the Bayoh case."*. Kevin Nelson will tell you himself, in terms of any pressure that he was under, he had to make this decision on his own and there was no incentives, inducements, no money. In fact, it's in my interview. I actually ask him that.

Kevin Nelson's account

53. Me and [REDACTED] went to see him, in the same house, and we have this chat and we're pretty dumbstruck by how clear his memory was and what he'd seen. He's not a perfect witness because there is a barrier to what he sees. There's a hedge. He tells his story and we realise the difficulty with it and how it will be potentially viewed by the police in terms of what he saw, what he was able to see, what he can account for. We anticipated what the Federation might say: *"Oh, Kevin, he saw what he saw and then he was away. He would've missed what actually happened."* So, we say in the film that Kevin saw the upper part of Bayoh's body during the whole altercation.

54. In the film, I say to Nelson, *"You saw 100% of the incident,"* and he says, *"Yes."* and I think he would stand by that. He may not have seen 100% of Bayoh, but he saw Bayoh's upper body above the hedge. My question there will be in relation to 100% of the altercation with Nicole Short. I'm pretty sure that is what we're talking about there, because at the time he loses sight of Bayoh, the action has moved away from Nicole Short. Nelson sees her

Signature of witness..... [REDACTED]

moving away. What we are talking about is 100% of that altercation. The altercation with Nicole Short is over by the time Kevin loses sight of Bayoh. The reason we know that the altercation doesn't continue after he loses vision, is because we can see from the CCTV that as soon as he moves away he's down, and he never gets back up. In fact, you see Nicole Short getting back up a few seconds later and walking away. Then Nelson comes out and sees Bayoh on deck. PIRC's issue here, I think, is that they have had a complete lack of curiosity to analyse what they've subsequently got from the cops, and analyse that back with this statement to say, "What happened in between?".

Interviewing Kevin Nelson

55. I have been asked if I prepared Kevin Nelson for television in terms of his mannerisms, the way he was going to answer questions or the way he was going to speak. The answer is no. He asked me what he should wear and I told him, "Whatever you feel comfortable wearing."
56. The interview was filmed in a room we hired in a big club in Finnieston. We do an on-screen consent and explained to him just exactly what this is: "It's an interview for the BBC. We are going to edit this interview, but we'll edit it carefully into the meaning that we think you intend. We might use some parts of this interview on different platforms on the BBC. You know what you're doing is for a Disclosure or Panorama programme. Are you to the happy to proceed on this basis?". The only preparation he would have had was, "Look, this will be gruelling, it will be detailed.". He brought a family member who sat in. They were out of vision, but in the room, and there was me and there was [REDACTED] and there was a cameraman.
57. We worried that his responses to questions were just too clipped, a bit too to the point. He was very, very much, "No. Yes. No. Okay.". Short answers. "Look, I don't know, let me see that, but this is what I saw."

Signature of witness..... [REDACTED]

58. One of the other things which is interesting from the full interview is that he's not shying away from the fact that Bayoh did have quite a vicious punch against Nicole Short. Three times he thinks that he lunged at her and he connected once, and it was a big punch. He never knocked her flying, but he certainly put her down. He says Bayoh never knocked her off her feet, which is what they say, but it certainly was enough to put her down, and we were never shying away from that. He said, "Look, I don't know this guy. I don't know what he's like. He might be a bad one. He might be a whatever. This is just what I saw. It's just what I saw." What it came it down to for me was, yes, there's an issue about him not seeing Bayoh's lower body; yes, there's an issue about him going out of sight after the altercation with Nicole Short. What this comes down to is what Tomlinson and Walker said, if that had happened in the way they had said it happened, would he have seen it? Either they're lying or he's lying.

59. We sent the video of Kevin Nelson's interview to a transcriber and get a transcript back. We use that to do a paper edit before we get into the actual edit and we identify the best bits.

60. Ahead of broadcast I would've talked Nelson through the parts of his interview that we plan to use to make sure he was happy with how he's being represented. He had said in his interview, "I never saw her go down. I never saw her on the deck but I saw his upper body." Probably in the interview I could have and maybe should have just gone through that in a bit more detail, but what I did after interview and before broadcasting was go back to Kevin and say: "Just to be sure I understand exactly what it is you've seen: you never saw his feet?" "No, I didn't see his feet." "But you saw his upper body?" "I saw his upper body." "And therefore, you never saw him raising his arms?" "No, that did not happen. I saw him punch her and then I saw him move away. And after that, he's out of sight." For all he knows, Bayoh could've got back up and then done the stamping. That's a separate

Signature of witness..........

altercation if that's happened. The reason we know that didn't happen is because of the CCTV, and also because that's not what the cops say in their statements. My point is that he was satisfied that he had been accurately represented in the interview.

Kevin Nelson credibility

61. We have to think, "Is this guy credible? Is it likely that PIRC could have completely missed this part of the statement? Why is that?". What we had to do was to try and establish whether or not Kevin Nelson was a credible person. We also spoke to people he'd spoken to about it. We asked, "So, what did he say after the programme?" and they said, "That's what he said after the programme." We asked, "Is this what he told you after the incident?" and they said, "That's what told me.". We asked, "Are you surprised that it's not in the PIRC?". We had to get satisfied because ultimately, it's his word against theirs. We don't know what the other witnesses saw. We know what they claim they saw, but none of it really, from the witness statements I've seen, backs up the police and the stamping. No other witness backs that up apart from the police.

62. I deal with witnesses all the time. It's very, very rare you don't have a key witness with not necessarily an axe to grind, but mostly when people speak out in public about something that might land them in trouble, they've got a reason for it. They want this or they want that. Abuse victims, they want justice. This is a guy who never met the family, never had a bad experience with the police. [REDACTED] To all intents and purposes, he's a perfect independent witness, and nobody goes back to see him.

63. I have been asked if we would have broadcast the interview with Kevin Nelson had we not found him to be credible. The answer is no.

Scottish Police Federation

Signature of witness.....[REDACTED].....

64. Kevin Nelson and I were certainly in discussions, constant discussions post the programme. I was checking in with him every day because there were lots of things happening. He got a couple of visits to his door by men in suits. I suspect it was the Federation. There are people outside this door taking photographs in suits as if they were trying to potentially identify what his line of sight might have been. Possibly justifiable sort of kind of identification stuff, but very ostentatious so that they could be seen in the middle of the road, outside his door, big cameras, that sort of thing. He was obviously quite freaked out by that.

65. We learned that private investigators working for the Police Federation were going door-to-door claiming they were working for the Sheku Bayoh Fatal Accident Inquiry. They were leaving business cards saying "Sheku Bayoh Fatal Accident Inquiry", going round key witnesses, including Kevin Nelson. They get in the door, they say they're from the Police Federation. He's like, "Oh, right, police? Then come.". He tells them everything, and they start dripping poison in his ear about Bayoh. [REDACTED]

[REDACTED] This is in the un-broadcast interview. [REDACTED]
[REDACTED] Kevin says, "No, no, I just saw what I saw.".

66. It seemed the Federation were doing a parallel investigation into this case. They were allowing themselves to be perceived as official to the point that Kevin Nelson told them the whole story. He told them, "No, I never saw that stamp. No, I never saw that. That never happened.". They obviously weren't very happy with that because they went away, and he never heard from them again. They've also just left a card saying they're working for the Sheku Bayoh Fatal Accident Inquiry. Kevin was left feeling deceived by this encounter.

The Sun

Signature of witness..... [REDACTED]

67. I sent him a text on 18 January 2021, *"Okay, here we go"*, because that's when we started rolling out the news from the online stuff. He writes me back later on, *"Seems fair and balanced. Hate seeing and hearing myself, but what I said is what I saw."*
68. Then The Sun got in touch with Kevin Nelson, almost certainly briefed by the Federation. I have no issue with the Federation briefing journalists. It's up to them. It is however notable that they went after the witness and not the BBC.
69. I'm not sure if he responded to The Sun or not. As part of our duty of care to Kevin, I would have said, *"You get any enquiries, refer them to us."* I think I would have said something like that. *"If you're feeling uncomfortable or threatened in any way, you let us know. We've got a duty of care to our contributors, and you know we would make sure you are looked after."* We may have even offered to get him out of town for a few days if he was feeling vulnerable. I don't think it came to that.
70. Kadi sent a message after the programme, some of which I forwarded on to Kevin because Kadi was saying, *"The family are thankful and grateful to the witness for his bravery and honesty"*. I told Kevin, *"You might want to see this."* He said, *"Oh, thanks. I don't know how to respond to that. Incidentally, we had a couple of guys outside taking pictures from across the road. I never saw it, but a family member did."* I say, *"Do they look like press?"*. He said, *"There was a woman, tall blonde, smartly address, seemed to be directing the man. Two guys taking the photos with big coats on."*
71. On 21 January 2021 Kevin wrote: *"Hi, Mark. Sorry to bother you. I was left a voicemail from [REDACTED] at The Sun. Wants me to call him about a story they're doing on the case, on the basis about the time taken from me to see it to get to the garden. He has my statement through PIRC."* I replied:

Signature of witness.....[REDACTED].....

"He's been in touch with us. We will be issuing him with a strong statement backing our journalism. Feel free to ignore his calls."

72. Kevin says: *"How do you think he got my number? I can't recall giving it out to anyone apart from you."* I say, *"Could you have given it to the Federation?"*. He said, *"Possibly but I can't remember. It is possible as I thought at the time this was official."*

73. The reason for the Federation's and The Sun's story was they say they had a source saying Kevin Nelson couldn't have seen what he claimed to because he was away from his window at the time. He didn't say in our programme he saw the full incident; he says he saw the full altercation between him and Nicole Short. To conflate those two things is disingenuous. It says, [REDACTED] [REDACTED] has previously said there's compelling evidence of stamping." We asked him to show us that, he didn't.

Media coverage

74. I certainly think the early briefing by the Federation to the media helps to frame the narrative around this case in a way that campaigners would recognise as textbook, including the use of racial stereotypes and racial tropes. For example, that Bayoh had superhuman strength, muscles bulging, the kind of descriptors used to describe angry, dangerous black men.

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

May 17, 2022 | 9:59 AM BST

Date.....Signature of witness.. [REDACTED]

