

THE SHEKU BAYOH PUBLIC INQUIRY

LIST OF ISSUES

COPFS POST INCIDENT MANAGEMENT

EVIDENTIAL HEARING

The Inquiry's terms of reference require it "to examine the post-incident management process and the investigation up to, but not including, the making by the Lord Advocate of the prosecutorial decision communicated to the family of Sheku Bayoh on 3 October 2018 (and the Victims' Right to Review process that was undertaken by the Crown Counsel in 2019), including: (i) the effectiveness of procedures for gathering and analysing information, (ii) the securing and preserving of evidence, (iii) the roles and responsibilities of those involved, (iv) liaison with the family of the deceased and (v) compliance with any relevant Convention rights; and make recommendations, if any, for the future in respect of these matters;".

The Inquiry will lead evidence with a view to exploring the following issues in respect of the Crown Office and Procurator Fiscal Service's (COPFS) role in post incident management and the investigation following the death of Sheku Bayoh:-

1. The roles and responsibilities of those involved

- (a) The nature and scope of COPFS' duties and normal practice in respect of post incident management and investigation into deaths during or following contact with the police, including:
 - (i) investigations in which race may be a factor in the incident;
 - (ii) instruction of Police Scotland and PIRC;

- (iii) family liaison;
- (iv) post mortem examination;
- (v) liaison with SPA forensic examiners; and PIRC more generally;
- (vi) media engagement;
- (vii) instruction of expert witnesses, whether by COPFS or PIRC;
- (viii) investigations by COPFS, including taking precognitions of witnesses; and
- (ix) reporting the case to Crown Counsel.

(b) The extent to which COPFS fulfilled their duties and adhered to normal practice in post incident management and throughout the investigation, including the control, direction and guidance of PIRC's investigation.

(c) The reasons for any failures to comply with duties and/or deviations from normal practice, including accountability and consequences for the person involved.

(d) The sufficiency of COPFS' practice and procedures in fulfilling their duties.

2. The effectiveness of procedures for gathering and analysing information and the securing and preserving of evidence

(a) COPFS instructions to Police Scotland and PIRC, including:

- (i) the nature, scope and sufficiency of the initial instructions, if any, to Police Scotland and PIRC on 3 May 2015;
- (ii) the circumstances surrounding and the reasons for, any decision to change or add to the instructions;
- (iii) the extent to which race was sufficiently considered as a factor to investigate in Sheku Bayoh's death;
- (iv) the extent to which decisions, instructions, meetings and communications were fully and accurately recorded; and
- (v) the extent to which COPFS advised and consulted with Police Scotland and PIRC on the instructions and gave direction for their investigations.

(b) COPFS' role and responsibilities in the Police Scotland and PIRC investigation, including:

- (i) explore the distinction and significance of COPFS instructing an investigation of an unexplained death and an investigation of suspected criminal behaviour by the police;
- (ii) obtaining accounts of the incident from the attending officers, including the understanding of the officers' obligations to provide accounts and the issue of undertakings;
- (iii) the decision to treat the officers as witnesses rather than suspects; and the timing of same;
- (iv) the development of an understanding (or lack of understanding) of the incident and circumstances surrounding the incident; and how this affected COPFS' investigation;
- (v) the instruction of experts by PIRC, including exploring COPFS' involvement in the choice of experts and the extent to which they were provided full and clear instructions, all information provided and the relevance of same; and their reports reflected the instructions that were provided;
- (vi) the relevancy and usefulness, if any, in searches of police databases against the names of family and friends of Mr Bayoh and in connection with the legal representative(s) of the deceased's family and the classification of information arising out the searches, including as potential 'counter terrorism';
- (vii) COPFS' involvement, if any, in advising or suggesting misconduct or disciplinary proceedings being taken forward by Police Scotland;
- (viii) COPFS' understanding, awareness or concerns in relation to any "parallel investigation" carried out on behalf of the Scottish Police Federation, including in particular investigators discussing/providing information about Sheku Bayoh to witnesses;
- (ix) Any discussions concerning; liaison with; or consideration given to involving the Health and Safety Executive; and if so, the reasons for considering or inviting their involvement; and any views on whether

the resourcing of PIRC; or the sufficiency of the investigation carried out; the requirement for and the impact of additional resourcing required or provided by Police Scotland to PIRC;

- (x) COPFS' views on the PIRC report not being shared with Police Scotland, and the possible impact on a 'lessons learned' exercise, particularly when compared with other PIRC reports which are shared.

(c) COPFS' involvement with and the legal authority for the seizure and retention of property and other evidence, including:

- (i) securing the loci identified by Police Scotland on 3 May 2015;
- (ii) items seized from witnesses, including clothing, items found and recovered from the primary and secondary loci; and DNA; and the reasons why they were seized and whether they have been returned;
- (iii) Ashley Wyse' mobile phone and data, including her messages; and
- (iv) samples taken from Sheku Bayoh's body.

(d) COPFS' involvement in liaison with the media, including:

- (i) the basis of any decisions or instructions to Police Scotland and PIRC in relation to the media, including discussions or advice around the issuing of a statement by Police Scotland on 3 May 2015;
- (ii) the appropriateness of the language and reaction in response to media reporting;
- (iii) explore Dr Karch's comments to the media and COPFS reaction;
- (iv) COPFS's position on the approach to media engagement by the SPF;
- (v) the extent to which COPFS' investigation was influenced by what was reported; and
- (vi) the purported leak to the media of the decision not to prosecute, explore the sufficiency of the internal investigation into this issue and liaison with the family following the reporting of the decision.

(e) The extent to which a “prompt, thorough and effective” investigation was reported to Crown Counsel, including:

- (i) the reason for the length of time required to conclude the investigation and report the case;
- (ii) what further investigations were carried out by COPFS following the receipt of the PIRC report, including why precognitions were taken of certain witnesses and what lines of enquiry were undertaken or not undertaken, including consideration and understanding of the approach taken to Kevin Nelson and Ashley Wyse’ accounts; and Neil Morgan; and what decisions were taken in relation to further investigations arising out of receipt of the PIRC statements from the 9 attending officers;
- (iii) COPFS’ identification of skilled/expert witnesses; instruction of expert witnesses, including the terms of instruction; decisions regarding the order of instruction; the identification of documentation provided to those witnesses; any assessment of the completeness and accuracy of information provided and the consultations held with those witnesses; conclusions drawn regarding the opinions of same;
- (iv) explore COPFS involvement in the management, direction and timing of the forensic testing, particularly the issue of Nicole Short’s vest being sent for fingerprint testing; ;
- (v) the effectiveness of the liaison between Crown Counsel and the COPFS’ investigators;
- (vi) consider if all issues were fully and sufficiently addressed in the Crown Precognition, including analysis of whether race was a factor in the officers’ conduct; and

3. Liaison with the family of the deceased

- (a) COPFS' understanding of their role, if any, in family liaison at each stage of the investigation, standing the investigation was carried out in the first instance by PIRC and, to a lesser extent, Police Scotland.
- (b) Examine the contact and the relationship between COPFS and the Bayoh family and their legal representatives, including the handling of complaints and concerns of the family. Examine how the complaints and concerns of the family were handled compared to those of the police officers, for example Alan Paton and his wife; and those represented by Peter Watson.
- (c) Examine the meetings between the Lord Advocates and the family, including what undertakings were made, if any, and the extent to which the family's concerns were resolved; and explore the outcome of the relationship.
- (d) Contact with the family in relation to the post mortem examination, including whether the wishes of the family were known, understood and sufficiently taken into account. This includes religious and cultural issues being taken into account and the issue of whether COPFS were aware of threats being made, potentially at the post mortem examination, by a former spouse of one of the members of Sheku Bayoh's family.
- (e) Involvement of the family in the relation to the instruction of experts; or undertakings given in this regard.
- (f) The disclosure of information and evidence to the Bayoh family and their legal representatives, including the timescales of the investigation.
- (g) The involvement, if any, of the Victim Information and Advice service in family liaison, whether it was considered for use and the benefits in having a dedicated liaison service.

- (h) The extent to which the COPFS investigation, and their instructions to Police Scotland and PIRC, were influenced by liaison with the Bayoh family and their solicitor.

4. Compliance with any relevant Convention rights

- (a) The extent to which COPFS complied with their obligations under Article 2 of the European Convention on Human Rights, *“the right to life”*, including considerations of the independence, adequacy, promptness of the investigation and public scrutiny and participation of the Bayoh family in the process.
- (b) The extent to which COPFS complied with their obligations under Article 14 of the European Convention on Human Rights, *“Protection from discrimination”*, including if anything was done or not done in the course of COPFS investigation on the basis of Sheku Bayoh’s race.
- (c) The extent to which COPFS complied with their obligations under the Human Rights Act 2010.

5. Training

- (a) Identify the training of those involved in the investigation, including the following areas as they apply per the role of each witness:
 - (i) race issues and awareness
 - (ii) unconscious bias
 - (iii) investigation of allegations of racism, including race discrimination
 - (iv) instruction of Police Scotland and PIRC
 - (v) family liaison
 - (vi) post mortem examination
 - (vii) liaison with SPA forensic examiners
 - (viii) media engagement
 - (ix) instruction of expert witnesses

- (x) investigations by COPFS, including precognitions of witnesses
 - (xi) reporting the case to Crown Counsel
- (b) Explore what, if any, further training or development would have assisted those involved in the investigation and identify any gaps in the training regime.
- (c) What steps, if any, were taken by COPFS to learn lessons from the investigation or to improve or expand on training provided, including with reference to the PIRC report.

In addition, the Inquiry's terms of reference require it: "to establish the extent (if any) to which the events leading up to and following Mr Bayoh's death, in particular the actions of the officers involved, were affected by his actual or perceived race and to make recommendations to address any findings in that regard;". Accordingly, the influence of Sheku Bayoh's race on decisions and actions will be a factor to consider throughout all the above COPFS issues.