

Mr Ade Johnstone

Mrs Kadi Johnstone

Mrs Kosna Bayoh

Mrs Adama Jalloh

First meeting I am pleased finally to meet you. I've been wanting to meet you for quite some time but I was keen to meet you in person rather than to meet remotely. Now that our **office** is open and we are permitted to meet we thought that it would be good for you to come in here and **see the place** and have a **discussion**. I think that in a moment we should go around and show you the premises but

before we do that there are two things I'd like to say.

- **Condolences** First of all, as is the first time I've met you I would like to take this opportunity personally to express my condolences to you on the death of Sheku.
- **Events** I have read the accounts of the events of 3 May 2015 and I have reflected on what must have been a truly shocking and dreadful day for you all.

When we **come back** from viewing the hearing room and the associated rooms I would like you to tell me something of the **journey** that you've had from 3 May 2015.

- **Heart of inquiry** Next, I want you to be at the heart of this inquiry. I think that there are a number of ways in which you should feel at the heart of the inquiry:
 - **Physical** I hope that when you see the hearing room and the rooms provided for you that you will see that we have physically brought you to the centre of the inquiry: your seats in the hearing room are close to where the witnesses will sit.
 - **In the loop** I want to keep you in the loop as to what we are doing; I think that in the summer we rather lapsed in that regard and I am sorry for that;
 - **Regular meetings** since then your legal team has been having regular meetings with the inquiry legal team and while we cannot give you a running commentary on everything we are doing, we do want to keep you well informed;
 - **Representation** you are also at the heart of this inquiry through your representation. You have been well represented throughout.
 - The work which Mr Anwar and Dorothy Bain QC did in preparation for the terms of reference had

a very significant influence in the consideration by the Cabinet Sec for Justice and myself in determining the breadth of the terms of reference.

- That representation has continued with the arrival of Miss Mitchell.
- Your representatives have the opportunity to make representations and suggestions to the inquiry and will in due course be able to make opening and closing submissions.
- ***Pen portrait*** Another way in which I want to put you at the heart of this inquiry is to give you an opportunity at the beginning of the hearings, before the evidence begins, to give a presentation in memory of Sheku. Perhaps later we can discuss options and you can think about how you might want to do that.
- ***Photograph*** The photograph is now on the website and I think it looks good. I am pleased that you persuaded me to include it.
- ***Tour*** Shall we now go through and we can show you the hearing room and the adjoining rooms. The deputy secretary to the inquiry **Inquiry Staff** will show us around.

Trainee solicitor, AA&Co has helpfully provided an **agenda** for our meeting.

1. family experience to date

I would like to begin by inviting you to tell me a bit about your experience. As I said 3 May must have been a truly dreadful day for you and I have followed your journey since then and the frustrations that you've had along the way. I would like to hear a bit about that from you. Who would like to begin, Mrs Johnson?

2. inquiry timeframe and taking in 3(a) re framework document

Ask them what they think about progress.

Response:

Importance of background work

The public hearings are of course very important; that is where the evidence will be laid out in public and, in particular, where you will hear the evidence and form your own view about it. But to get to that stage of hearing evidence a very substantial amount of work has to be done in the background.

Set up The inquiry was set up in November 2020 and it was only then that we could begin the process of gathering in the existing material. On the day the inquiry was set up we served notices on the police, the PIRC and the Crown Office requiring them to produce their material to us. The process of delivering that material began towards the end of January of this year and has continued through the year.

Evidence and legal teams I have an evidence team which is meticulously cataloguing that evidence so that the legal team can then get to work on it analysing it in relation to the relevant

chapters of the hearings. Both the evidence team and the legal team have been working flat out throughout this year.

Disclosure We have been working towards disclosure of material to the core participants, including your legal team. That has begun.

All of this background work must be done with great care and thoroughness to make sure we have all the available material.

Framework document

Original plan Our original intention was to create a framework document covering all of the evidence and disclose the evidence and hold one set of hearings. About six months into the inquiry became apparent that the original plan was too ambitious and that it would have taken to the end of 2022 to get any disclosure.

Break up So we decided to alter the approach by breaking the framework document up into topics and have a series of hearings rather than issue one big framework document and having one big session of hearings. We shall still issue chapters of what would have been the framework document for each hearing. The work done in the first six months fed into that.

Easily managed From everybody's point of view that means working with more easily managed instalments. We are currently disclosing material that relates to the first hearing which will cover the events of 3 May up to Sheku's death.

Flexible approach

I believe that this is an example of the flexible approach which we are committed to. In the light of developing events, or the evidence as it emerges, or arguments or suggestions made to me, I am prepared to re-evaluate how best to deal with an issue and, if necessary, change my mind.

I was prepared to reconsider the issue of

- the ***photograph*** and
- we are currently reconsidering the issue of possibly appointing a ***consultant on race***.

In other words, we are constantly looking at how to make the inquiry work best.

GDPR

The law in relation to personal data is very strict. We can only disclose personal data if it is necessary for us to do so in order to

fulfil the work of the inquiry. Unnecessary detail has to be taken out by a process of redaction by blanking out the references. Examples will be addresses, unless they are relevant, and telephone numbers.

Number plates Let me give you a particular example: in the CCTV footage you can see cars which do not belong to persons who will give evidence. A car number plate is personal data because from it you can find out the owner of the car and that person's identity. That means that in order to comply with the law my team have to blur the number plates. That is not adding any value to the inquiry but the law requires that we do it and it is a very time-consuming exercise.

Preliminary hearing; first hearing; second hearing

As you know, there is a

- ***preliminary hearing*** on 18 November and we aim to start
- the ***first hearing*** on evidence on at the end of April 2022.

In another example of the flexible approach we have decided to move ***cause of death*** to the ***second*** hearing. I think that that will flow better and the evidence in it may cast some light back onto the interpretation of what happened on 3 May.

Statements/ Digital reconstruction

My legal team are about to start taking statements from the potential witnesses for the first hearing. In addition the inquiry has commissioned digital reconstruction. Ms Grahame has been rigorously testing the independence of the company ALI.

Length of inquiry

Two years At the beginning of this inquiry I hoped that I would be able to complete it in about two years. That has proved to be an unrealistic estimate and it's pretty clear from our current timetabling that we will still be hearing evidence in 2023.

Tension There is always a tension between trying to get things done quickly enough to meet the requirement, on the one hand,

- that an inquiry should be held within a reasonable timescale and, on the other hand,
- conducting the kind of independent, impartial and thorough inquiry which, I am sure you will agree with me, this must be.

So, we are in it for the ***long haul***.

3(b) weight and enforceability of report and recommendations

Government Ultimately it will be for the Scottish government to decide what to make of my report and my recommendations. The government will certainly not ignore the report or my recommendations. In setting this inquiry up it is clear that the government took the issues seriously and that was reflected in my own personal dealings with the Cabinet Sec for Justice.

Credibility What I have to do is to make sure that the report is credible and carries weight. If it is clear that the inquiry has been conducted in a thorough and independent way and has credibility, then the more likely it is that recommendations will be implemented.

4. question of race

Ask them for their thoughts

Assessors

I myself have no training on racism. Some of my team have had basic training. With appropriate advice I shall follow the evidence. That advice will come from my assessors.

Michael Fuller

Michael Fuller has considerable experience of investigating racially motivated crime and dealing with race and policing issues.

- He spent 10 years chairing police disciplinary panels as a chief officer.
- He founded the Black and Asian Police Association; and
- has been involved in supporting black and Asian officers who were victims of racism within the police.

Evidence based approach He has already given us advice on where to look to see whether race was a factor in Sheku's death and the subsequent investigations. He particularly stresses the

importance of an evidence based approach and drawing inferences or conclusions in relation to race. That may involve identifying failings on the part of police officers or investigators and assessing whether racism contributed to them.

CRER

I have also appointed CRER as a core participant. I intend to seek their support in the search for signs of racism.

Race hearing

The issue of race may emerge at various hearings in the inquiry and we intend to hold a hearing at the end drawing together strands in relation to race.

Possible team member

I am aware that your legal team have suggested that there is a need for someone built into the inquiry team itself who could make an assessment as to whether race was an issue.

Flexible Again, taking a flexible approach, I am prepared at least to reconsider that approach and await further information.

5. Delay by the inquiry in using legal powers

Ask them what it is they are referring to.

Assuming that they are referring to the “impasse” with Crown Office and Police Scotland in the summer.

Impasse

In the summer Crown office refused to consent to disclosure of documents because of representations made to them by Police Scotland. That resulted in an impasse.

Enforcement It would have been possible for the inquiry to go to the Court of Session under section 36 of the Inquiries Act 2005 to seek enforcement of the requirement for Crown Office to release the documents. But that would have taken up a ***lot of time*** and effort. Although we did lose some time over this matter, attempting enforcement would have led to a much longer delay.

Solicitor general In the event, there came a point when I spoke directly to the Solicitor General and told her that the position of the Crown was wholly unacceptable and untenable. The effect of

that was to break the logjam and within days the matter was resolved. That reinforced in my mind the importance of the inquiry being prepared if necessary to take a strong line.

Return to the pen portrait issue

I would like to give you the opportunity to commemorate Sheku publicly and to share with the inquiry, and the public, memories of him. This has been done in other public inquiries.

I would intend that that should be done before the evidence starts in the first hearing.

If you would like to do that, I would like you to think how you might want to do it. It could be done by

- an oral statement
- a written statement or
- a video or
- audio presentation or
- PowerPoint presentation

I suggest that you should think about that and discuss with your legal team and come up with some ideas. We can then discuss how best to take that forward.