

THE SHEKU BAYOH INQUIRY
SUBMISSION TO THE CHAIR 12 & 13th JUNE 2025
ON BEHALF OF THE CORE PARTICIPANTS (I) GOOD, (II) SMITH, and (III) TOMLINSON
(“THE OFFICERS”)

1. The Officers adopt the SPF’s submission, motion and their legal analysis. The Officers emphasise their association with paragraph 1 of that submission; that the events giving rise to this motion result from a well-intentioned wish to assist the family of Sheku Bayoh and share the greatest respect for the Chair.
2. We agree the Inquiry is subject to the rules of natural justice and fairness. It is an express and prescribed statutory obligation on this Inquiry (sections 9 and 17(3) of the Inquiries Act 2005), a common law obligation (*Kanda v Malaya* [1962] AC 322, page 337; *Greater Glasgow Health Board v The Chairman of the Scottish Hospitals Inquiry* 2025 SLT 205), and, regardless, the disapplication of the ordinary rules of fairness will only be effected by the clearest and most express statutory language and in the most exceptional circumstances (*Roberts v The Parole Board* [2005] AC 738, paragraph 30).
3. The Officers wish to explain, in ordinary language, why they support the motion.
4. The Officers are individuals who have been personally impacted by the events of 3rd May 2015. The effect of those events on them cannot be underestimated. They fundamentally disagree with the family’s view of the events and of their conduct. They are acutely aware of the human desire to give a grieving and campaigning family what they want. Which is partly why they consider objectivity in the resolution of two deeply opposing narratives to be critical in this Inquiry.
5. The facts underpinning the death of Sheku Bayoh are so controversial that they call to resolved by an independent inquiry having begun as a political campaign¹ in July 2015. On the one hand the family view Sheku Bayoh’s death as unlawful and pursue that cause through a campaign which seeks, *inter alia*, the conviction of Officers. The campaign draws a charged parallel with the murder of George Floyd, considers his restraint was

¹ <https://www.bbc.co.uk/news/uk-scotland-33658656>

unnecessary and that Sheku Bayoh's death is a result of racism. There could not be a more emotive or charged allegation against a police officer in Scotland.

6. On the other hand, the Officers view is that they are not racist, were in no way motivated by racism or unconscious bias but motivated by the need to protect the public. They responded to a call relating to a man behaving dangerously with a knife, presenting as a potentially very serious threat to the public. He had engaged in violence that day and was – *therefore* – dangerous, had consumed unlawful drugs, disobeyed a lawful order to bring him under control and charged and assaulted a police officer. He was lawfully restrained.
7. From the Officers' perspective they have had no chance to speak directly to the Chair in private to explain why they think the family's view of events is wrong or to sway the Chair and inquiry through sympathy. They have not been given the opportunity to establish a personal rapport with the Chair or impress him. Rather, the meetings have led to the Chair being impressed by the family (April 2022, the Chair commended a "*powerful account of the way in which you were treated*" whereby that account appears to have been delivered in private at an earlier meeting of the November 2021). If the Officers had been granted the same, they may too have impressed the Chair.
8. Each Officer has a compelling personal account to give the Chair were they afforded the opportunity of private meetings running in parallel to the inquiry. They could have spoken of their journey or calling to public office, their belief in equality, the need to protect the public from danger, their personal values, their integrity, the personal toll on them and their families, the stress officers face when encountering knives in public, address why men take knives onto the streets, their strength and integrity in remaining silent in the face of a misconceived and inaccurate public campaign falsely alleging racism, untruth and criminality.
9. As we have explained, the family's account is highly controversial and falls to be objectively and dispassionately resolved by the Chair. The family believe the death of Sheku Bayoh is a parallel of the murder of George Floyd who was murdered by a police officer, Derek Chauvin, in Minnesota. The crowd justice page² explains,

² <https://www.crowdjustice.com/case/justiceforsheku/>

“George Floyd was kneeled upon until he took his last breath. So was Sheku, only more weight and more officers kneeled upon him. George Floyd stated: “I can’t breathe”, so did Sheku.”

10. The solicitor to the family, believed to be speaking on their behalf, is reported to have said of the arresting Officers,

“This isn’t the end because, as we said to the chief constable today, charges must follow in Scotland” and that “those officers...have broken the law, to have engaged in criminality³”.

11. The family’s narrative, and political campaign, is not inert but highly controversial and disputed.

12. That campaign flies in the face of accepted principles of Scots Law in terms of which, the actions of Officers are generally strongly presumed to be no more than their duty and done honestly and bona fide (*Beaton v Ivory* (1887) 14 R 1057, page 1061; *Rae v Strathern* 1924 SC 147, First Division, page 152; *Whitehouse v Lord Advocate* 2020 C 133 paragraph 90(2)). The campaign of the family has put into the public domain claims that have no apparent evidential⁴ or rational foundation.

13. The Officers are, therefore, distressed to learn of the private meetings with the family and what was said by the family and their legal team to the Chair in private. This is because they assume the family have used those meetings, and by which we mean no criticism of them, to influence the decision maker and his team. Either expressly or by implication. They cannot discount the impact this has had on the Chair and Inquiry team nor the influence it may have had on issues of central importance to them.

14. To take some examples that illustrate the character of the meetings overall, and which support this concern, we highlight the following. At the meeting of 21st November 2022 there is discussion of the impact of racism which is linked to the 3rd of May along with a personal account of how it is upsetting to the family. That is highly disputed.

³ <https://news.stv.tv/east-central/sheku-bayohs-family-hold-brutally-honest-meeting-with-police-scotland-chief-jo-farrell>

⁴ See crowdjustice page, George Floyd and the image of SB’s body which fails to point out his actions before he was restrained (his assault on his friend, his damage to his kitchen and his assault of a police officer).

15. The family's lawyer has taken these opportunities to address the Chair on the credibility of evidence and thus to engage in private/secret advocacy directly to the Chair and team at that meeting, cf.,

"...I can't begin to think what this is like for a family. It is done to stop the family coming. Only so much the family can take. Incredibly important statement to make..."

(Minutes 21st November 2022, p44 'procedural hearing bundle')

16. More troubling is the allegation of lies discussed with the Chair, whereby the solicitor addressed the Chair on the credibility of evidence *in camera*;

*"what is coming from the PIRC/Crown [redaction] – **lied repeatedly** to the family [redaction] particularly difficult for the family to hear a seeing the disclosure what is being said".*

(Minutes 18th January 2024, p58)

17. Allegations of lying are serious and not challenged, contradicted or qualified.

18. On 18th January 2024 the personal impression of the family is expressed repeatedly, and further allegations of lying are made to the Chair *in camera*, as is a general suggestion that the witnesses are not acting in good faith,

*"we are suffering twice. Every single day is a reminder of the 3 May....why are people saying things? **Why are they lying?**...Grateful for the team and the way questions asked and put forward..."*

(Minutes 18th January 2024, p58)

19. The Officers are also concerned that questions were asked to, "*help SB*" (believed to refer to Sheku Bayoh, minutes, 21st November 2022, page 47). The Officers have not seen record of any questions designed to especially help them, rather, they expect even handedness, objectivity and to be treated fairly.

20. The tenor of the minutes gives rise to the general impression that the family ought to be at '*the centre*' or '*heart*' of the Inquiry and by implication the Officers held at the periphery,

"Ade also thanked the Chair and the Inquiry on behalf of the family for....keeping the family at the centre"

(Minutes 5th December 2024).

21. The family discussed the evidence generally with the Chair and expressed approval of questions,

*“AJ...a lot of good things came out...other side of things liked.....presenting evidence that contradicts their statements...what happens if lie under oath?”
(Minutes of 21st November 2022).*

22. The family took the opportunity of these meetings to directly persuade the Chair they are ‘the victims’,

*“KJ I want you to know that we are the victims”
(Minutes 21st November 2022)*

23. In respect of the private/secret advocacy of their solicitor it is, as discussed above, objectionable, unfair and unlawful. The point of advocacy is persuasion.

24. Except, perhaps, in the exceptional context of national security secret/private hearings, and ipso facto secret/private advocacy, to wit those witnesses ‘are lying’, is never permitted. See the judgment of Lord Neuberger. *Al Rawi v Security Service* [2012] 1 AC 531, paragraph 30,

“30 In our view, the principle that a litigant should be able to see and hear all the evidence which is seen and heard by a court determining his case is so fundamental, so embedded in the common law, that, in the absence of parliamentary authority, no judge should override it, at any rate in relation to an ordinary civil claim, unless (perhaps) all parties to the claim agree otherwise. At least so far as the common law is concerned, we would accept the submission that this principle represents an irreducible minimum requirement of an ordinary civil trial.”

25. From the perspective of the Officers the exceptional meetings given to the family is taken very seriously. In their view, those meetings give rise to the very strong impression that the Inquiry has given repeated and important opportunities to the family to persuade and build sympathies amongst the Chair and Inquiry team. The opportunities to persuade bears on the evidence and of their cause during contemporaneous meetings running in parallel, *in camera*, to the Inquiry and its evidence. It would be surprising if personal private meetings, with a family who have lost a loved one, did not have some effect in swaying the decision maker’s mind when resolving facts and making findings. Rather, the Officers do not need to speculate; the minutes suggest that the Chair considered one

private account to be a “powerful” one (April 2022 meeting). He expressed to the family in private that he had been “profoundly affected” by their public evidence (January 2024).

26. The Officers have remained silent in the face of the campaign against them. They do not speak out or seek to persuade the public through the media or contradict the campaign. They do not have personal access to the Lord Advocate, the media, Government Ministers or Senior Judges. Rather, they look to, and trust in, this Inquiry alone to be the *Authority* to deliver the truth. They are ordinary people who do an exceptional job. They are required to fulfil an important public duty and should be granted the same protections as anyone else. That protection includes a hearing which has the appearance of impartiality in order to resolve facts objectively and independently. They ought to be granted the same rights and privilege as the family.

27. The Officers have been excluded from those private personal meetings. Their lives have been very significantly damaged by the actions of Sheku Bayoh and by the misconceived campaign of his family. They are held at the periphery of the inquiry and not afforded private meetings running alongside the Inquiry; this is strongly suggestive that an objective and dispassionate report into the death of Sheku Bayoh, and their conduct, cannot be achieved.

Dan Byrne, KC

Carla Fraser, Advocate

22nd May 2025.