

In the Sheku Bayoh Inquiry

Submissions on behalf of Retired Officer Alan Paton on the application for recusal on behalf of (1) The Scottish Police Federation; (2) PC Craig Walker and (3) Ms Nicole Short

Alan Paton has lost confidence in the Chair to this inquiry. He is concerned that he can no longer be seen to be receiving a fair hearing, and that apparent bias has now arisen. He invites the Chair to recuse himself from further involvement in the Inquiry. He makes the same application regarding both assessors, Mr Bhatt and Mr Fuller.

The full and thorough submissions made by the Dean of Faculty on behalf of The Scottish Police Federation; PC Craig Walker and Ms Nicole Short are adopted by Mr Paton.

In addition to those submissions, Mr Paton will comment upon particular aspects of the application that relate to him. In particular, the discussion of his mental health and certain comments made during meetings.

At the outset the Chair made it clear the family were to be placed at the heart of the Inquiry. A meeting was held on 13 April 2022. At that meeting the Minutes record the Chair as stating ' When I spoke to you before when we met each of you gave me a very powerful account of the way in which you were treated on 3 May 2015 and subsequently". This was before any evidence was heard and these were matters in dispute. Such a description by the Chair would suggest to any impartial observer that the Chair had already formed a view

about a matter in dispute. The Chair did not hear prior to any evidence being led about the way in which Alan Paton had been treated in the media by the representative of the family and the catastrophic effect it had upon his health.

At the same meeting the Chair described a video which the family were putting together as “a very strong start to the hearings”.

A further meeting was held on 21 November 2022. At this meeting both Mr. Bhatt and Mr. Fuller were present as well as the Chair and others. These were supposed to be meetings to keep the family informed and in effect to be pastoral in nature. However, both a member of the family and their solicitor saw fit to address the Chair on matters of race and indeed to express opinions on the very matters the Inquiry was yet to determine. The Chair allowed this to take place. The tenor of this meeting is indicative of the fact that the family and their representatives saw these meetings as an opportunity to comment on the evidence and at no time were they told that such matters ought not to be discussed. Indeed Mr. Bhatt addressing the family and their representative stated, “but what we can (do) is try to help you achieve what you want”. It could not be clearer that what the family want is for police officers, including Alan Paton, to be prosecuted.

Neither the Chair, nor Mr. Fuller sought to disassociate themselves from that remark. At the same meeting a member of the family expressed their view in regard to how satisfied they were with the approach of Senior Counsel to the Inquiry in certain aspects and how there were contradictions in the evidence of police officers and querying about what would happen if someone lied under oath. At no point did anyone at the meeting suggest such

comments were inappropriate and that the assessment of evidence would be for the Chair in due course. Further matters of evidence were discussed at this private meeting about the post mortem process.

A member of the family queried the decision to allow Mr. Paton to give his evidence in the manner which he did. They contrasted it with their view of the way the witness Zaheer Zahid was treated. This was a matter which ought to have been immediately closed down by the Chair. He had by this time issued his decision. Not only did he allow this matter to be raised but he considered it appropriate to justify his decision. There are no circumstances in which it would be appropriate to have a discussion involving one core participant's medical records with another core participant in private. At this point Senior Counsel commented on the approach to Mr. Zahid's evidence commented "Maybe I did push him- encouraged him to help SB". It is at best unclear why she should be seeking to help Mr. Bayoh as Counsel to the Inquiry. The actual position regards the treatment of the witness Mr. Zahid is set out fully in the submissions on behalf of the SPF.

At the same meeting another member of the family stated "Alan Paton being given the opportunity to say not going to sit across the table from a black family-but happy to jump out of a van". This was a racial slur against Mr. Paton in circumstances where for years the solicitor for the family had been making claims of racism against him all of which were and are denied. In opening statements to the inquiry Mr McConnell Senior Counsel for Mr. Paton stated that 'He (Alan Paton) has been subjected to unjustified vilification on social media and in both written and broadcast media. He has been made the focus of attention from the representatives of Mr Bayoh's family and has been singled out falsely as being

motivated by race. There has been extensive media coverage naming him as being involved in the incident and alleging racism and violence on his part. Mr. Paton denies all of these various accusations' This was a very blatant example of the relationship between the Inquiry team, the Chair and the family having strayed far beyond any pastoral one into one where an impartial observer would have serious concerns. The Chair, Mr. Bhatt and Mr. Fuller appear to have allowed this racial slur, these comments about the evidence to go unchecked. It is apparent that the family and their representative considered they had right to address these issues at these private meetings and were never disabused of this.

At a further meeting on 18 January 2024 inter alia the Chair commented on how he was profoundly moved by the evidence of one family member. No other core participant has been given the opportunity to have such discussions with the Chair. Mr. Paton has not met in private with the Chair or the Inquiry team to hear how they view his journey since 3 May 2015. The fact that he was required to retire from the force through ill health and the catastrophic effect upon his mental health. In that meeting the family representative was permitted, without rebuke, to comment upon the veracity of the testimony of witnesses from PIRC and Crown.

The final meeting of which we are aware was on 5 December 2024. By this time the Chair had supported the family request for an extension of the terms of reference. As outlined in the submissions of the SPF there is a clear coincidence of language used by the family and the Chair to the Deputy First Minister. At this meeting the Chair considered it would be possible for the family to make a personal statement rather than just a legal one. This has

been viewed by the Chair as feasible. No one else has been afforded the opportunity to make a personal statement.

These submissions have been made following the disclosure of minutes of the various meetings. As early as February 2022 during the course of submissions, the legal representatives for the family referred to a personal letter written by the Chair to the inquiry to the family. A copy was requested by the legal representatives for Alan Paton. The inquiry team replied to that request on 4 February 2022 confirming that a letter was issued following a meeting with the family and that they would not share the letter with other core participants.

Given the unknown content of either the meetings or the letter our concern was raised during a meeting between Mr McConnachie KC and Senior Counsel to the inquiry on 7 February 2022, when she indicated at that time she would raise this with the Chair. No follow up was ever received. At this early point in proceedings, the Chair and Counsel for the inquiry were aware of our concern about the lack of transparency surrounding these meetings and correspondence.

It is evident from the minutes that the inquiry team, the family of Sheku Bayoh and those representing the family have been actively discussing the types of questions that should be asked and the treatment of witnesses. This goes well beyond them being at the heart of the inquiry. It is suggestive of them working collaboratively.

In her opening, Counsel to the inquiry stated that 'public trust in the inquiry is vital, and we hope to enhance this through increased openness' this approach does not seem to have

been followed. The inquiry has been conducted in close connection with the family and in a manner which suggests the aims of the Inquiry are inextricably linked to those of the family.

Apparent bias has been demonstrated by the comments and actions of the Chair and by Mr Bhatt. Their recusal is mandatory.

While it is accepted that Michael Fuller may not have actively participated in the meetings his role is one of assisting the decision maker.

He has been present during the meetings and heard those comments being made by family, Chair and Mr Bhatt and made no intervention or attempts to close down the conversations

The risk is that he would be influenced by what he has seen and heard and if apparent bias is shown, he may too be tainted therefore it follows that he too should recuse himself.

Brian McConnachie K.C

Laura Anne Radcliffe

Advocate

20 May 2025