

IN THE SHEKU BAYOH INQUIRY

SUBMISSION

on behalf of

Garry McEwan

on

THE APPLICATION FOR RECUSAL

by

THE SCOTTISH POLICE FEDERATION, CRAIG WALKER and NICOLE SHORT

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**Introduction**

1. These submissions are made in response to the invitation of the Chair to all parties to respond to the motion of recusal and supporting submissions intimated by the SPF and various individual officers.
2. Mr McEwan wishes to make plain that he has at no stage experienced anything other than courtesy and professionalism from the Chair, the other members of the panel or Counsel to the Inquiry. There is accordingly no criticism made of the Chair nor any suspicion of any actual bias on his part, or that of Mr Bhatt (to whom the motion also refers).
3. Mr McEwan is additionally very conscious of the time and resource that has been invested in this Public Inquiry. Like every Core Participant, he is very keen for this matter to be concluded without any further unnecessary delay or public expense.
4. That said, for any findings from an Inquiry (whether critical or exculpatory) to carry weight, this process requires to be of obvious and demonstrable fairness. For recommendations to be adopted with confidence going forward,

they must emerge from an Inquiry which commands the confidence of the public. The overwhelming public interest is in an Inquiry of unimpeachable integrity and fairness.

**The motion to recuse**

5. Mr McEwan adopts a position of concern over the issues raised by the SPF but, at this time, reserves his position on the motion.
6. The content of the SPF submissions and the documents disclosed by the Inquiry do *prima facie* cause Mr McEwan significant concern. The concerns are both in terms of the general perception of fairness to all core participants and, separately, specific references to matters which may have a bearing on Mr McEwan directly.
7. Despite those concerns, Mr McEwan currently reserves his position on the motion to recuse. The principal reason for doing so at this time is that he does not feel able to make a fully informed submission on such an important motion. Specifically it is noted that

- a) no detailed response to the motion has yet been made by the Chair.

Considering these matters outwith any context or detailed explanation the Chair chooses to give is extremely difficult. Doing so is also potentially unfair to the Chair. It is noted that by letter of 29<sup>th</sup> April 2025, the Solicitor to the Inquiry indicated that such a response from the Chair is to be given on 2<sup>nd</sup> June 2025.

- b) no detail of the opinion of the independent Counsel appointed by the Chair to review this matter is yet available.

Again, that person will doubtless have access to a fuller picture than that currently available to Core Participants. It is unknown whether this Opinion will be shared.

- c) a new Counsel to the Inquiry has also recently been instructed. He too will be making submissions at a later date which may have a bearing on the position ultimately adopted by Mr McEwan. It is noted those submissions will be also be made available on 2<sup>nd</sup> June 2025.

- 8. The consequences of granting this motion are plainly very significant. Mr McEwan therefore seeks that fuller explanation and context and meantime reserves his position.

**The question of apparent bias**

- 9. If the Chair refuses the motion, the question of apparent bias is plainly still a live one for the Court of Session. Mr McEwan offers no view on that in this forum but supports the submission that the question of whether apparent bias is established is plainly not one for either the Chair or his Counsel, or for the independent Advocate appointed. It is properly a matter to be resolved by an entirely independent Judge in the Court of Session.

Duncan Hamilton KC  
22nd May 2025