

Sheku Bayoh Public Inquiry

Conduct and Procedure Hearing - 12 and 13 June 2025

Volume 2 [of 4] Inquiry Documents

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Solicitor to the Inquiry
Sadif Ashraf

E: legal@shekubayohinquiry.scot
[REDACTED]



Professor Peter Watson
PBW Law
[REDACTED]

By email only

26 November 2020

Dear Peter

SHEKU BAYOH PUBLIC INQUIRY – START OF THE PUBLIC INQUIRY
PC ALAN SMITH
PC KAYLEIGH GOOD

The Scottish Government have announced a setting-up date of 30 November 2020. This means that the Inquiry can start investigating the circumstances of Mr Bayoh's death as per the terms of reference. The Chair, Lord Bracadale, will make an opening statement which will be available to view on the website (www.shekubayohinquiry.scot) on 30 November. Please note the website will not be available before the 30th.

As you act for PC Alan Smith and PC Kayleigh Good, I am writing to you to set out a number of matters that will be of interest to your clients. These relate to the conduct and procedure of the Inquiry including participation by your clients.

Where a deadline is specified, it will greatly assist the progress of the Inquiry if you were able to meet these timescales.

This Inquiry is a statutory inquiry under the Inquiries Act 2005 and those provisions, together with the Inquiries (Scotland) Rules 2007, are applicable. Subject to any provisions of the Act and Rules, the conduct and procedure of the Inquiry is for the Chair to determine.

I fully expect that you will have further questions – whether on the matters set out below or otherwise. I would like to invite you and your Counsel to a video conference

www.shekubayohinquiry.scot

with the Inquiry Legal Team and we'll endeavour to respond to everything you bring to our attention. If you could provide me with details of your availability and that of your Counsel, I'll make the necessary arrangements.

Investigation, Hearings and Report

There are three parts to the Inquiry: investigation, public hearing and report writing. The investigation will include retrieval of documents, disclosure to core participants and taking statements from witnesses. The hearings will be in public and allow a full consideration of the relevant evidence and examination of witnesses. The final stage will be the writing of the report.

Core participant status

From setting-up date, those with an interest in the Inquiry can apply for designation as core participants. Core participants may, for example, make opening and closing statements at the hearing.

The core participant protocol on the Inquiry website sets out how your clients can apply for core participant status. The deadline for applications is **15 January 2021**.

Legal representation

A person who, in the opinion of the Chair, has such a particular interest in the proceedings or outcome of the inquiry is eligible to apply for an award for costs of legal representation. The Minister's determination under section 40 which sets out the qualifications and conditions for awards has yet to be finalised. As soon as it has been signed and the protocol on cost of legal representation finalised, I will let you know.

Retrieval of documents and other evidence

The Inquiry cannot gather evidence until the setting-up date. On the 30th November, I will be issuing section 21 notices on behalf of the Chair to Police Scotland, the Crown Office and Procurator Fiscal Service and the PIRC to retrieve evidence they hold related to the Terms of Reference.

Rest assured, the Inquiry will be retrieving documents from other parties during the early course of the investigation including any held by PC Alan Smith and PC Kayleigh Good. However, there is a need to stage the retrieval in a structured manner. All documents and other evidence retrieved need to be logged and the Chair will also need to review any decision by those parties not to hand over documents e.g. relying on section 22.

Section 36 contains provision for civil enforcement of a section 21 notice. Section 35 contains a number of offences in respect of the conduct of the Inquiry. This includes a criminal offence of failing without reasonable excuse to do anything required by a notice under section 21. It is also an offence to distort, conceal or destroy evidence.

Further information can be found in the retrieval of documents protocol on the website.

Disclosure of documents

Once the Inquiry starts to receive the documents, the Inquiry Legal Team can begin the reading-in phase of the investigation.

Following receipt of the documents, the Inquiry Legal Team will consider their content and release relevant documents to core participants. The Inquiry is proposing to release bundles of documents throughout the investigation phase of the Inquiry rather than a single release of all documents at the end of the reading-in phase. The Inquiry will advise core participants of its document release schedule in due course.

Prior to disclosing any documents to core participants, we will advise the person or organisation who provided the documents that we intend to release the documents and any redactions we consider are required e.g. to remove home address details. At this stage, they may seek a restriction order under section 19 in respect of some or all of the documents provided. It will be for the Chair to decide whether to grant such an order. Separately, the Scottish Ministers have the power to restrict the documents by issuing a restriction notice to the Chair under section 19.

Involvement of core participants

A public inquiry is an inquisitorial process. It is for the Inquiry to undertake the investigative work and to do so impartially and thoroughly. The Inquiry is independent of any person or organisation.

To fulfil the Inquiry's terms of reference, the full co-operation of all parties, particularly core participants, will be important. Core participants will also have the opportunity to contribute to the investigation. At this early stage, I would like to invite you to contribute as follows.

Counsel to the Inquiry intends to produce a list of issues which will act as a guide to the issues on which the Inquiry's investigations will focus. For example, the cause of death. This will be an evolving document as more and more documents are retrieved. This has worked effectively in other Inquiries. Further, the Inquiry Legal Team will also be developing a list of witnesses.

I would like to invite your views on what should be investigated by the Inquiry and suggestions for witnesses. If you choose to submit a note, please do so by **1 February 2021** and keep the note to no more than 10 pages of A4.

This will be considered, along with contributions from other parties and the information from retrieved documents, by Counsel and she will prepare a draft list of issues. This will be shared with core participants. There will be a further opportunity for you, if your clients are designated core participants, to contribute to the final list of issues with the benefit of disclosed documents.

Finally on this point, if there are specific documents that you are aware of being held by a person or organisation that are relevant to the terms of reference, please do let me know by **1 February 2021**.

Public streaming of hearings

While it is too early to set out how the hearings will be conducted, not least because of the implications of Covid-19, the intention is that the hearings will be publicly streamed. This will meet the twin aim of transparency and accessibility. This will be in addition to members of the public and press being able to attend the hearings. If you wish to raise any issues in relation to public streaming of the hearing, please provide a written submission of no more than 8 pages of A4 by **8 February 2021**.

Any correspondence or submissions should be marked for my attention and emailed to legal@shekubayohinquiry.scot.

I am looking forward to working with you during the course of the Inquiry to ensure the terms of reference are met.

Yours sincerely

Sadif Ashraf



Welcome. I am Lord Bracadale, chair of the Sheku Bayoh Inquiry.

It is now five months since my team and I began our work. In my opening statement I made a point of saying that transparency and openness would be at the heart of this Inquiry.

With that in mind I want to update you on progress and outline the approach we will be taking in the months to come.

I am acutely aware that almost six years have passed since the death of Sheku Bayoh and, consequently, a lengthy period of time has elapsed without his family receiving answers to fundamental questions.

I want to assure them, and all who have an interest in the inquiry, that we are moving forward with focus and determination and I hope that that is reflected in what I am about to tell you.

Evidence gathering

Let me begin with the gathering of evidence. Following the setting-up of the Inquiry on 30 November 2020 the solicitor to the Inquiry immediately issued legal notices requiring the Chief Constable, the Police Investigations and Review Commissioner and the Lord Advocate to hand over documents related to the terms of reference.

Much of my team's effort during the last five months has been focussed on working with these parties to identify the documents the Inquiry needs, take possession of these, meticulously catalogue them, and check their relevance. This work is ongoing. The Inquiry team is also requesting documentation from various other parties.

And I repeat my earlier call for all those who believe they may have information relevant to the Inquiry to contact us via the website.

Core participants

At the same time, on 30 November 2020 I invited applications for core participant status. Core participants are individuals, groups or organisations with a significant interest in the work of the Inquiry.

After carefully considering the applications, I designated a number of individuals and organisations as core participants. The full list is on the Inquiry website.

Relevant documents retrieved by the Inquiry will in due course be disclosed to the core participants and they will have the opportunity to make opening and closing submissions during the public hearings.

In addition, my legal team has held constructive meetings with legal representatives of all the core participants. The meetings are used to advise on progress, outline the approach the legal team is taking to retrieval and analysis of evidence and, importantly, take into consideration the views of core participants on that approach.

I am confident that working in this collaborative way will ensure that everyone involved will have the opportunity fully to engage with the work of the Inquiry.

Assessors

In addition to working with the core participants, my team and I are drawing on the experience of the Inquiry's assessors, Raju Bhatt and Michael Fuller. As I explained in my opening statement, their respective experience and expertise in relation to the issues in the Inquiry are of great assistance. I anticipate that their involvement will only increase as the documents retrieved provide details of the events leading up to, surrounding, and following the death of Mr Bayoh.

Framework Document

My legal team, led by senior counsel to the Inquiry, has begun working on a framework document. The framework document will work through the terms of reference in detailed chapters, including, for example:

- a timeline of events;
- the cause of death;
- post-incident management;
- liaison with the family;

- and race and equalities.

The framework document will be developed from the information available in the evidence gathered; comments and input from core participants and the assessors; and relevant information from any other source that is brought to our attention. It will continue to evolve and be modified as more evidence is collated. As I described earlier, discussion with core participants has already begun.

This framework document will act as a roadmap for the Inquiry's investigation.

I consider that this phase of the Inquiry is vitally important. It lays the foundation for later stages of the Inquiry, including public hearings on evidence.

Inquiry hearings

I can confirm that the public hearings will be held at Capital House, Festival Square, just off Lothian Road in central Edinburgh. Capital House will also house the Inquiry's offices.

It is not possible at this stage to say when the hearings will take place, which I appreciate will be frustrating for some. While it is inevitable that the hearing stage will garner most attention, as I have explained, it is vital that thorough investigation and preparation takes place ahead of any hearings.

As soon as we are able, we will provide information about timescales for hearings and how members of the public can attend. The hearings will also be broadcast on the Inquiry website and its YouTube channel so everyone can view proceedings.

In the meantime, we will continue to provide further updates via our website to ensure that everyone is kept informed of the progress being made. Thank you.

From: [Ashraf S \(Sadif\) \(Sheku Bayoh Inquiry\)](#)
To: [REDACTED] [April Meechan](#); [Aamer Anwar](#)
Cc: [Sheku Bayoh Inquiry – legal enquiries](#)
Subject: RE: Family's agenda for meeting on Thursday
Date: 02 November 2021 15:12:00
Attachments: [image001.jpg](#)

Good afternoon [REDACTED]

On the additional points that don't form part of the agenda for Thursday:

- The variation of the section 40 determination is with the sponsor team.
- The photograph is with the Chair for a decision which I expect fairly shortly.
- I'll get the section 21 notices collated and share them with you together with a reply to the points. I am not sure I'll get that done before our meeting tomorrow at 10.

Thanks

Sadif

Sadif Ashraf
 Solicitor to the Sheku Bayoh Public Inquiry
 [REDACTED]



From: [REDACTED]
Sent: 01 November 2021 13:20
To: Ashraf S (Sadif) (Sheku Bayoh Inquiry) <[REDACTED]>
 [REDACTED] April Meechan [REDACTED] Aamer
 Anwar [REDACTED]
Cc: Sheku Bayoh Inquiry – legal enquiries <legal@shekubayohinquiry.scot>
Subject: Family's agenda for meeting on Thursday

Dear Sadif,

Please find attached the family's agenda for Thursday. I've included some of the specific questions the family want to raise in the hope that the Chair or a member of the inquiry team will be in a position to provide answers.

The family have a number of questions that might be best suited to be answered by the inquiry team rather than the Chair.

- What has the inquiry asked for from those served s21 notices?

- Who has been asked to provide what?
- Are those who have been asked to provide information the same individuals who were involved in the investigation at the time?

We thought these questions might be best answered by way of a schedule of the s21 notices.

The family are also still awaiting an answer in relation to the variation of the s40 determination and for the picture of Sheku to go on the inquiry website. Again, these are matters we can deal with through the inquiry team rather than the meeting with the Chair.

I think it would be beneficial if we could deal with any of the above in advance of Thursday so we can inform the family of any progress

Kind regards,

[REDACTED]

[REDACTED]

Trainee solicitor

Aamer Anwar & Co

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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.

Chair of the Inquiry
The Rt. Hon. Lord Bracadale

E: [REDACTED]



Mr and Mrs Johnson

By email only

8 November 2021

Dear Mr and Mrs Johnson

Thank you for meeting with me and my team on Thursday.

I feel humbled and honoured that you shared the story of your loss and the frustration you feel at the subsequent actions of the police and those investigating your brother's death.

I want you to know that I heard your concerns about race. It is central to this Inquiry and constantly in the mind of my team as they go through all the evidence. It will be considered as part of every hearing and all of those strands will also be pulled together in a hearing after all other evidence has been considered.

I am committed to putting you and the rest of Mr Bayoh's family at the heart of this Inquiry. I am committed to finding the truth of what happened to your brother on 3 May 2015 and identifying any failures and what can be done to ensure that they do not happen again. You can hold me accountable in delivering on these commitments and those I made at the start of the Inquiry. You will be able to tell [REDACTED] that you have done everything to get justice for [REDACTED].

I look forward to meeting with you again to discuss how you would like to remember your brother at the start of the hearings next May.

Yours sincerely

A handwritten signature in black ink, appearing to read "RCL", on a light blue rectangular background.

**The Right Hon Lord Bracadale
Chair, Sheku Bayoh Public Inquiry**

Chair of the Inquiry
The Rt. Hon. Lord Bracadale



Mrs Jalloh

By email only

8 November 2021

Dear Mrs Jalloh

Thank you for meeting with me and my team on Thursday.

I appreciate you making the journey from [REDACTED]. It is a journey you and [REDACTED] have had to make many times over the past 6 years as you have sought to get answers on how your brother died on 3 May. I have said I want you and your family to be at the centre of the Inquiry. Part of that is making sure that your expenses are reimbursed so you can come to the hearings and meetings such as these. My team is working with the Scottish Government on this matter. I noted that you have [REDACTED] too and I will make sure that we give good notice of the start date of hearings, so you are able to plan [REDACTED]

I feel humbled and honoured that you shared the story of your loss and the frustration you feel at the subsequent actions of the police and those investigating your brother's death.

I want you to know that I heard the concerns about race. It is central to this Inquiry and constantly in the mind of my team as they go through all the evidence. It will be considered as part of every hearing and all of those strands will also be pulled together in a hearing after all other evidence has been considered.

I am committed to finding the truth of what happened to your brother on 3 May 2015 and identifying any failures and what can be done to ensure that they do not happen again. You can hold me accountable in delivering on the commitments I made to you yesterday and publicly at the start of this Inquiry.

I look forward to meeting with you again to discuss how you would like to remember your brother at the start of the hearings next May.

Yours sincerely

The Right Hon Lord Bracadale
Chair, Sheku Bayoh Public Inquiry

Chair of the Inquiry
The Rt. Hon. Lord Bracadale



Mrs Bayoh

By email only

8 November 2021

Dear Mrs Bayoh

Thank you for meeting with me and my team on Thursday.

I appreciate you making the journey from [REDACTED]. It is a journey you and [REDACTED] have had to make many times over the past 6 years as you have sought to get answers on how your brother died on 3 May. I have said I want you and your family to be at the centre of the Inquiry. Part of that is making sure that your expenses are reimbursed so you can come to the hearings and meetings such as these. My team is working with the Scottish Government on this matter.

I feel humbled and honoured that you shared the story of your loss and the frustration you feel at the subsequent actions of the police and those investigating your brother's death.

I want you to know that I heard the concerns about race. It is central to this Inquiry and constantly in the mind of my team as they go through all the evidence. It will be considered as part of every hearing and all of those strands will also be pulled together in a hearing after all other evidence has been considered.

I am committed to finding the truth of what happened to your brother on 3 May 2015 and identifying any failures and what can be done to ensure that they do not happen again. You can hold me accountable in delivering on the commitments I made to you yesterday and publicly at the start of this Inquiry.

I look forward to meeting with you again to discuss how you would like to remember your brother at the start of the hearings next May.

Yours sincerely

A handwritten signature in black ink, appearing to read "A. Bracadale", on a light blue rectangular background.

The Right Hon Lord Bracadale
Chair, Sheku Bayoh Public Inquiry

Transcript of the Sheku Bayoh Inquiry

1

Thursday, 18 November 2021

(10.30 am)

Lord Bracadale Opening Remarks and Assessor Introductions

LORD BRACADALE: Good morning and welcome to this

preliminary hearing in the Sheku Bayoh Inquiry. I am

Lord Bracadale, I am the chairman of the Inquiry, and

I am accompanied today by my Assessors, Raju Bhatt who

is on my right, and Michael Fuller who is on my left.

I shall introduce them more fully in a moment, but

before I do so, I would like to say this: that my

Assessors and I, and the Inquiry team, have throughout

been very conscious, and continued to be very conscious,

that the core subject of this Inquiry is the sudden,

unexpected and untimely death of Sheku Bayoh, who died

on 3 May 2015, aged 31 years.

We wish to take this opportunity to express in

public our condolences to all members of the family.

I want them to be at the heart of this Inquiry and,

in due course, before the evidence begins, I will give

an opportunity for members of the family to speak

publicly about the person that Sheku Bayoh was, what he

meant to them and the impact of his death on them.

I have already begun discussion with family members

about what form that might take.

I pause at this stage to mention two practical

Transcript of the Sheku Bayoh Inquiry

2

1 matters in relation to today's hearing.

2 First, realtime transcription is available and the
3 transcript will thereafter be placed on the website.

4 Second, the proceedings are being broadcast on the
5 Inquiry's YouTube channel and again will be available
6 later on the website.

7 Now, let me introduce the Assessors. I have the
8 assistance of two Assessors appointed under section 11
9 of the Inquiries Act 2005. Assessors are persons who
10 have a particular expertise which will be of assistance
11 to the Inquiry.

12 Raju Bhatt is a solicitor and a partner in the
13 London-based solicitors firm Bhatt Murphy. He has
14 a particular history of work with families who have lost
15 members through death in custody. He has regularly
16 represented such families at inquests. Over a long
17 period, he has been responsible for many significant
18 developments in this and related areas. His expertise
19 and experience has regularly been drawn on by various
20 organisations. In 2009, he was appointed special
21 adviser to the Parliamentary Joint Committee on Human
22 Rights, in relation to its scrutiny of the Coroners and
23 Justice Bill. He is one of the founding members of the
24 Police Action Lawyers Group and INQUEST Lawyers Group.

25 He was appointed to the Hillsborough independent

Transcript of the Sheku Bayoh Inquiry

3

1 Inquiry panel, which reported to the Home Secretary in
2 September 2012.

3 Mr Bhatt was a member of the reference group in the
4 independent review of deaths and serious incidents in
5 police custody, conducted by Dame Elish Angiolini QC,
6 which reported to the United Kingdom Government in
7 January 2017. And he represented the family of
8 Daniel Morgan, whose murder in 1987 led to the
9 establishment of the Daniel Morgan independent tribunal.
10 The remit of the panel, which reported in 2021, included
11 examining the conduct of the police.

12 Michael Fuller had a long and distinguished career
13 in the Police Service. He rose to the rank of
14 Deputy Assistant Commissioner in the
15 Metropolitan Police, and in 2004 he was appointed
16 Chief Constable of Kent Police Force.

17 During 26 years in the Metropolitan Police, he was
18 instrumental in setting up the Racial and Violent Crime
19 Taskforce. He drew up the Metropolitan Police action
20 plan in response to criticism arising from the
21 Stephen Lawrence Inquiry. This included recommendations
22 as to how the Metropolitan Police should investigate
23 racial hate crime and respond to critical incidents,
24 along with race awareness training. All of Mr Fuller's
25 recommendations were accepted and implemented.

Transcript of the Sheku Bayoh Inquiry

4

1 He was the founding chairman of the Black and Asian
2 Police Association and set up a support network in the
3 Metropolitan Police to provide support to many black and
4 Asian police officers who were victims of racism within
5 the police.

6 Throughout his service as a chief officer, Mr Fuller
7 chaired disciplinary panels and determined disciplinary
8 sanctions in relation to charges brought against police
9 officers. On retirement, he was appointed as
10 Her Majesty's Chief Inspector of the Crown Prosecution
11 Service and Serious Fraud Office. He currently runs his
12 own criminal justice consultancy.

13 It will be clear that the combined expertise and
14 experience of the Assessors has the potential to provide
15 a formidable degree of assistance to my Inquiry. While
16 I recognise that ultimately I must take responsibility
17 for the decisions in the Inquiry, each of the Assessors
18 has already given valuable assistance and I expect that
19 support only to increase as the Inquiry progresses.

20 The purpose of this preliminary hearing is to allow
21 me, with the assistance of senior counsel to the
22 Inquiry, to make some general points in relation to the
23 Inquiry, to identify the core participants and their
24 legal representation, to update the core participants,
25 members of the public and the media about the progress

Transcript of the Sheku Bayoh Inquiry

5

1 of the Inquiry to date, and to outline the approach the
2 Inquiry intends to take as it moves towards public
3 hearings on evidence. In addition, the preliminary
4 hearing provides an opportunity for the legal
5 representatives of core participants to raise issues of
6 a preliminary nature.

7 I shall begin with a few general points about the
8 Inquiry.

9 The purpose of the Inquiry is spelled out in the
10 terms of reference. The full terms of reference are
11 available on the Inquiry's website. They are stated in
12 broad terms, which will allow the Inquiry to follow the
13 evidence and thoroughly explore the issues.

14 In summary, they allow the investigation of the
15 immediate circumstances leading to the death of
16 Mr Bayoh, how the police dealt with the aftermath of the
17 incident, the conduct of the Lord Advocate and the
18 Police Investigations and Review Commissioner of the
19 investigation into the death, and whether the issue of
20 race was a factor at any stage.

21 The terms of reference include a requirement to
22 examine the post-incident management process and the
23 investigation, in terms of compliance with any relevant
24 convention rights.

25 Article 2 of the European Convention on Human Rights

Transcript of the Sheku Bayoh Inquiry

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1 provides that everyone's right to life shall be
2 protected by law, and has been held by the European
3 Court of Human Rights to impose a procedural requirement
4 on the state to carry out an independent, adequate and
5 effective investigation when a person dies in police
6 custody, and that includes a requirement that the family
7 of the person must be involved in that process, in order
8 to protect their legitimate interests. I am also
9 conscious that these Article 2 requirements apply to the
10 Inquiry itself. So I am required to report to the
11 Scottish Ministers on these matters and make
12 recommendations.

13 The next general point is that in terms of section 2
14 of the Inquiries Act, the Inquiry cannot make any
15 determination as to criminal or civil liability. Its
16 purpose is to seek to ascertain the truth, and to that
17 purpose, I am fully committed. I am independent of
18 government and have a responsibility to ensure that the
19 Inquiry is carried out in an independent, impartial,
20 fair and effective manner. Again, I am fully committed
21 to fulfil that responsibility.

22 In that endeavour, I am supported by an Inquiry
23 team, the members of which have already demonstrated
24 commitment, dedication and efficiency in implementing
25 the work of the Inquiry.

Transcript of the Sheku Bayoh Inquiry

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1 Next, I turn to the issue of core participants.

2 I have designated a number of individuals and
3 organisations as core participants. In general, having
4 regard to Rule 4 of the Inquiries (Scotland) Rules 2007,
5 core participants are likely to be individuals or
6 organisations who played, or may have played, a direct
7 and significant role in relation to the matters to which
8 the Inquiry relates, or who may have a significant
9 interest in an important aspect of these matters, or who
10 may be subject to significant or explicit criticism
11 during the proceedings of the Inquiry or in its report.

12 The full list of core participants is on the website
13 and in a moment I shall ask senior counsel to the
14 Inquiry to identify the core participants and their
15 legal representatives. Before I do that, I wish to say
16 something about the role of a core participant.

17 I would expect core participants to have a key role
18 in the Inquiry, on the basis of their particular
19 interest. Core participants and their recognised legal
20 representatives may attend all or, depending on their
21 particular interest, some of the sessions of the
22 Inquiry. They may make opening and closing statements.
23 They may suggest possible lines of enquiry and
24 questioning to counsel to the Inquiry. They may, where
25 appropriate, with my permission, ask questions of

Transcript of the Sheku Bayoh Inquiry

8

1 witnesses through their own legal representatives.

2 In relation to that last issue, namely the
3 examination of witnesses by representatives of core
4 participants, it is important to bear in mind that the
5 procedure is inquisitorial and investigative. It is not
6 the adversarial procedure that is normal in the courts.
7 I anticipate that, in the main, questioning of witnesses
8 will be conducted by counsel to the Inquiry and there
9 will not be routine cross-examination on behalf of core
10 participants.

11 Core participants will have the opportunity to
12 suggest lines of questioning for counsel to the Inquiry
13 to pursue. Where a core participant does wish to
14 examine a witness, it will be necessary to make
15 an application under Rule 9.4 of the rules and, in due
16 course, prior to the first hearing, I shall issue
17 guidance in respect of the procedure for making such
18 applications and for suggesting possible lines of
19 questioning to counsel to the Inquiry.

20 I am now going to ask senior counsel to the Inquiry
21 to identify herself and her own team, and thereafter the
22 core participants and their legal representatives.

23 Ms Grahame.

24 Inquiry Counsel Introductions

25 MS GRAHAME: Thank you, sir.

From: [REDACTED]
To: ema address, AA&Co
Cc: Email address o April Meehan
Subject: Bayoh family - family's meeting with Lord Bracadale - 22 February 2022
Date: 22 February 2022 12:36:00
Attachments: [image001.png](#)

[REDACTED]

The Chair is due to meet with the family on Thursday this week. Given that he is currently considering the issue of the undertakings we think it is best to reschedule to after he has issued his ruling. You will appreciate that we need to guard against any possible perception of partiality. Although the meeting is not to discuss the undertakings sought the Chair thinks it would be more appropriate to have the meeting next week. Would 5.30 on Thursday 3 March be suitable? Apologies for the inconvenience caused to the family in having to re-schedule.

Many thanks

[REDACTED]



[REDACTED]

Deputy Solicitor to the Sheku Bayoh Public Inquiry

[REDACTED] | [REDACTED]

Working pattern: [REDACTED]

From: [REDACTED]
Sent: 08 February 2022 19:45
To: email address, SBPI deputy solicitor
Subject: Re: family's meeting with Lord Bracadale

Dear [REDACTED],

The family have confirmed that Thursday the 24th February suits for them to meet with Lord Bracadale. It will be Kadi, Ade, Kosna and Adama from the family in attendance and I will confirm tomorrow who from the legal team will also join.

Kind regards,

[REDACTED]

[REDACTED]

Trainee solicitor
Aamer Anwar & Co

[REDACTED]

[REDACTED]

[REDACTED]

T [REDACTED]

Bayoh Family – meeting with the Chair
- 13 April 2022

In attendance:

Adama Jalloh

Kosna Bayoh

Ade Johnson

Kadi Johnson

Sadif Ashraf

Laura Thomson

Lord Bracadale

Michael Etienne

Inquiry staff

April Meechan

Member of AA&co team

LB AG can't be with us – make sure you know everyone. You will remember meeting Sadif. And **Inquiry staff** and LT. Michael Etienne – barrister I have appointed to junior counsel to the Inquiry – brings the number up to 3. Michael was recommended to me by Raju Bhatt. Michael has experience of representing families in death in custody and racial discrimination. Important addition to the Inquiry legal team. As I explained to you before, I want the 10 May to be your day. Your opportunity to tell me the CPs, and the public, about Sheku, who he was, what he was like, what he meant to you, the impact of his death. An opportunity to give a pen portrait of SB. Include that material in my report. 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. I will want you to give evidence in due course about that. I see day 1 about something different. I know you have been working on this and have ideas and consulted with a film maker. Hear from you what your ideas re hearing 1.

AJ Good evening = the plan for the portrait – working on it just now. The plan is we will start with a short speech and do a video and conclude with a short speech. That is what we have in mind to do.

LB Who would do the speeches.

AJ Myself and other sisters but still deciding on that.

LB What form do you think the video will take?

AJ Meeting this weekend. Because of short notice – just starting it now. Start this weekend.

AJ Filming is going to start on Friday – family and friends talking about who SB was to them, the impact he made in his life and also about the contribution they knew SB made to the community. Focus more about who he really was as a person so is going to take a journey from before born all the way to his death. He was with the family the night before – up to 10pm that night. Film of less than an hour.

LB You will all take part in it?

AJ Yes –

LB One thing we need to make sure – the video works on our technology. We will need to have some sort of arrangement beforehand. CC happy – practise where speeches.

KJ Appreciate that – that is good.

LB SA and CC organise that for you. Helpful if a member of the legal team watch the video with you and see your speeches – nothing in them that might provoke and interruption or objection. Very pleased with your thinking.

KB Exactly as they have said – we will taking it from my mum all the way down – who he was and how he impacted our lives. Finalise things – having our recording on Monday.

SA I will get in touch with April and liaise re dates for rehearsal. Make sure the hearing room is available.

LB Think that will be a very strong start to the hearings. We won't do anything else that day.

KJ What time it will start? People have been asking us.

LB Follow normal court hours – 10 am – 4pm. Hour break between 1 -2 pm.

ME Just wanted to say I wanted to express condolences – all very raw and going through these processes can make it feel like – take the opportunity to say that.

Bayoh Family meeting with the Chair – 21 November 2022

In attendance:

Chair

Raju Bhatt

Michael Fuller

Angela Grahame KC

Laura Thomson

Inquiry staff

Sadif Ashraf

Lee Hegarty

Ade Johnson

Kadi Johnson

Kosna Bayoh

Aamer Anwar

April Meechan

AA&co staff

Impact of the racism

AJ Impact on the young people [REDACTED]. Things like “come back where you came from” [REDACTED]. How are they going to build impact – if nothing done about it, start to feel ok, part f life. It is not ok. What happened on 3 May 2015 should never have happened. All asking for is to get the truth. Plunged more into seeing how society is. Colour of skin. Day to day re-living the incident. This on top of it, it is crushing us. It is a heavy load to carry.

[REDACTED]

AA Over the years have had to come used to regular death threats and racist abuse. Debilitating. Attempt as a lawyer – stop you doing what you are doing. I don’t think it is acceptable but learned to know/expect it. 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 made.

RB Sad to hear what I am hearing – won’t come as a surprise. What we can do is support you – don’t have the magic wand to change the world but what we can is try to help achieve what you want. Hopefully you get the strength to face. Would be lying to you if I was to say the Inquiry can stop this. Lived reality when put head above parapet. Process is stressful. Hearing will have been very draining. In order to get to the bottom – this is the process we have.

AC Is there anything we can do for the young people.

AC Condemning it tomorrow – start. When the reps making statements/comments in the corridors – for us to be triggered and we ignore that – that is something I believe you can take a step.

AC Appalled at the idea legal reps behaving inappropriately. AG speaking to them tomorrow and thereafter if you identify any individuals – get AA or CM to speak to us about it.

AG Know it was raised this morning - could see people's reactions. Not acceptable. You said you raised with one member in particular. Be aware you are being watched – I can raise with the Chair and consider what to do.

AJ Reason why raising again – if people having conversations – walking past and making comment direct to us.

AC Disclosure point – became apparently it would take years before we reached a hearing and had to do it in stages. Overlaps in the stages – revisit things. Do our best to disclose what we can in good time but in order to do a thorough job there are times when the legal team will interview a witness – something emerges and follow up other statements. JC report threw up a number of issues requiring us to take further statements. If something emerges later of significance.

AA One example – received several hundred pages of disclosure for this week. 5pm on a Friday. To have to tell the family as the weekend approaches. Impossible to get instructions.

AC There has been a particular difficulty – JC report – huge task – follow up process for that. We do try to get docs as soon as possible. MG statement – 63 pages – know that is not ideal – we try to get the fullest possible information. AG and LT get it at the same point in time – not deliberate. We are trying to follow every lead that comes up. Investigation thorough – maybe some

KJ we like to walk into the Inquiry knowing what going to hear – so we can take notes and feedback to AA and the team.

AJ We try to feed into the rule 9 side of things. We see that as a window lost. Our process within the family takes a long time.

AG If things do come up and I have not asked them - let us know – even after. You will know we have a witness coming back this week. Always the opportunity – even if after reading you can raise this with us.

AJ Hearing 1 – engagement with SB, impact and their role – there is a lot to explore. There are a lot of good things came out – approach – got the witness to step out side and demo – other side of things liked – presenting evidence that contradicts their statements. Questions family and friends asking – what happens if lie under oath. What happens after that?

AC That would be a matter for the Crown to decide – whether the evidence untrue sufficient to merit some action. Can I move on to specific matters raised re PM report.

AJ Want to know a bit more about how they came about putting that report together re- other witness statements- doctor brought in for Nicole Short – Anderson? Rudi

Crawford- mis quoting the medical records. At the moment – sitting with PM report – legal team seems to be ok with it – advised us that that medical report/PM as it is. We were not allowed to see the full body of SB – not allowed to touch SB – a lot of questions. What is below that?

AC A lot of prep done – hearing in CoD – in May. The timetable we are working towards – end of Jan, running through Feb/March – then we stop for Ramadan and Easter – during May hearing on CoD.

AG AA had asked if we could set out some thoughts on the PM.

LT Team pulled together a reading list – more than 50 pages long. In process of noting – 60-70% of noting. Much of the material will be disclosed. All the relevant reports will be disclosed. As I prepare my notes, summarising key detail and every question/concern I have. It would be incredibly helpful – to pull those concerns together

AA Within 48 hour of SB dying – asked for Pm to be held back – so Mrs Bayoh could see her son. LA agreed to that – PIRC went ahead –

AG Important point AA raised with us previously – not just CoD but also PIRC/COPFS. Number of issues re PM, alleged repatriation and they are definitely issues going to explore. Those issues might not be in the CpD because in the medical side – PIM of PIRC/COPFS.

AJ You can imagine why suspicious – went ahead. Tried to send the body away where ebola and mass burial.

AG Emailed RM – PIM stuff –

AC CCTV – whether ALI could improve it and another company. Peter Watson identified a man called Kennedy – he was on our target list. Agency indicated to CP didn't work in Scotland. Proved not to be the case. Rather than have him under the control of PW – under control of Inquiry. Worth trying anything to see if we can the footage even a bit improved. Ultimately I will have to decide what I can see. He says he can do tracking – think this has the risk of straying into my function. Take step by step – let's get us to tell him if he can improve.

AJ If can be improved good – why now? Why 7 years after? COPFS made a decision on the basis of what had then. Why now?

AC I can only look at it from my point of view – can only get this as clear as I can –

MF Satisfied – whole approach is being thorough. Had delays – evidence late. Important thing for me – thoroughness. Think that is important for everyone. Every confidence in the approach. Support you in getting to the truth. Patience needed but thoroughness needed albeit frustrating.

AC There will be times when I have to make decisions with which you do not agree. Always make decisions based on evidence. Where appropriate take advice of

assessors and give reasoned decisions. Hope you will understand that. I do want you to continue to be at the heart of the Inquiry both in terms of being in the room and your representation. Regular meetings between your legal team and our legal team.

KJ I want you to know that we are the victims. We were a bit stunned – approach taken towards Zahid and Alan Paton. Saw a big difference – we felt there was a lot of attention given to Alan Paton. For him to have been given such privilege – surprised at that and the approach to ZS – felt a bit firm and sitting there – feeling sorry for him. Hits us as well – ZS very close to SB. For him to be in that position – up until now still vulnerable. Using Alan Paton's vulnerability.

AC Could I perhaps deal with Paton – fully understand hugely important witness and you wanted to see him live in the room. Received reports from Dr [REDACTED] [REDACTED]. His very firm indication was Mr Paton would not be able to give evidence and wouldn't have it at all. Difficult decisions based on evidence. Had to make a choice – forcing him against very serious medical evidence or to find a special measure to enable you to hear his evidence on the basis of his recording. I do understand how difficult it was. In the case of Zahid Saeed.

AG We had the Inquiry statement in the March. Hoped ZS. I wanted ZS would admit to having taken the drugs. Took the view reading his statement – good comparison in the situation. Maybe I did push him – encouraged him to help SB. It was for that reason – to try to get really good evidence. He is the only witness I would have had to that. Tried everything I could and maybe

AJ Everything else that you or anything else – not getting through. [REDACTED]. ZS is a person who has seen a lot – [REDACTED], you approach/plan was ok when laid out but not taking into consideration [REDACTED].

AG On the day ZS gave evidence – became clear need support of legal representative. Talked about ZS – suggested.

AJ AP 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.

AA ZS [REDACTED] – losing his best friend. War of words – climate of fear. Smearing of him repeatedly. [REDACTED] It might be the statement read in.

AJ Like the questioning AG put to witnesses – like them to give more examples – worked with or come into contact – white/black and comparison in approaches.

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Judge condemns racist abuse faced by Bayoh family

🕒 22 November 2022

Sheku Bayoh death inquiry



PA MEDIA

| Sisters of Sheku Bayoh, Kadi Johnson and Kosna Bayoh outside Capital House in Edinburgh

A judge has condemned the racist abuse experienced by Sheku Bayoh's family during a public inquiry into his death.

Lord Bracadale said that in some instances the abuse "may amount to a hate crime" and he called for it to stop.

Sheku Bayoh, 31, died after he was restrained on the ground by six police officers responding to a call in Kirkcaldy in May 2015.

The inquiry into his death entered its second stage on Tuesday.

It is investigating the circumstances around Mr Bayoh's death and whether race was a factor in the way the police handled the incident.

'Upsetting' abuse sent to Sheku Bayoh's sister

Coverage of the Sheku Bayoh inquiry

Lord Bracadale said family members of Sheku Bayoh had received the abuse "on social media or in writing".

Kadi Johnson, Mr Bayoh's sister, received the abuse after she told the inquiry that she no longer felt safe in Scotland.

The abuse was revealed in a BBC Disclosure programme called **How Did Sheku Bayoh Die?**

"I abhor such abuse, whatever its source and against whomever it is directed," said the judge.

"Recently it has been reported to me that the family of Sheku Bayoh and their solicitor have been subjected to racist abuse.

"I am sure that everyone associated with this inquiry will agree with me that such behaviour is despicable and entirely unacceptable.

"In some instances it may amount to hate crime. "



| Sheku Bayoh died in Fife in 2015

He said it caused "pain, distress and harm" to the recipients and members of their family.

"The families of Sheku Bayoh remain at the heart of this inquiry. The inquiry strongly condemns such treatment of them and calls for it to cease," he added.

About 100 campaigners from trade unions across Scotland gathered outside Capital House in Edinburgh before the inquiry resumed on Tuesday morning.

Ms Johnson told the crowd she was sent racist messages on Monday night.

"It has been a tough journey and along the way we have faced a lot of disappointment as well as racist abusive messages, even up to last night I had racist messages sent to me," she said.

"But we welcome a meeting with Lord Bracadale yesterday and his condemnation of the racist abuse to our family and threats made to our lawyer.

"We are in for a long haul with the inquiry and your support gives me the strength and the courage to keep pressing on till justice prevails."



| Lawyer Aamer Anwar with the sisters of Sheku Bayoh; Adama Jalloh, Kadi Johnson and Kosna Bayoh

Mr Bayoh died after being restrained by officers who were called after he was seen behaving erratically with a knife in a Kirkcaldy street.

He was restrained for five minutes before falling unconscious and was pronounced dead in hospital a short time later.

Police officers involved in the restraint gave evidence to the inquiry during the summer.

Related topics

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'Upsetting' abuse sent to Sheku Bayoh's sister

21 November 2022

Transcript of the Sheku Bayoh Inquiry

Tuesday, 22 November 2022

(10.00 am)

LORD BRACADALE: Well, good morning and welcome to this evidential hearing in the Sheku Bayoh Public Inquiry.

Before we begin to hear evidence, there are certain matters which I wish to mention. Core participants and members of the public will be aware that I appointed a procedural hearing for Wednesday 16 November 2022 and subsequently cancelled it. I wish to explain why I took these steps.

On 8 November the Chief Constable of the Police Service of Scotland, who is a core participant, lodged a written application moving me to postpone until a later hearing the evidence of certain witnesses who were due to give evidence in the hearing starting today.

I carefully considered the application. I had regard to a number of considerations, including the extent of the evidence, subject to the motion to postpone, the importance of that evidence to the Inquiry, the reasons advanced for postponement, the impact of postponement on this hearing, its impact on subsequent hearings of the Inquiry and the proximity to this hearing.

I concluded that the matter was of such significance that it should be dealt with at a procedural hearing, at

Transcript of the Sheku Bayoh Inquiry

1 which I could hear arguments for and against
2 postponement. I directed that the application should be
3 circulated to other core participants in anticipation of
4 the procedural hearing.

5 In the event, in the course of the week before the
6 hearing, senior counsel for the Chief Constable
7 approached Senior Counsel to the Inquiry and they
8 engaged in fruitful discussions. Senior counsel for the
9 Chief Constable then indicated that, as a result of
10 these discussions, they were reassured to the extent
11 that postponement of the evidence was not necessary.
12 The Chief Constable's application would be withdrawn.

13 I think that it is unfortunate that that approach by
14 senior counsel for the Chief Constable was not made
15 before the decision was made to lodge the application.
16 Had it been, the issues could have been resolved
17 rendering the lodging of the application, consideration
18 of it and the making of the necessary arrangements to
19 hold a procedural hearing, unnecessary.

20 I would encourage the legal representatives of core
21 participants to raise such issues in first instance with
22 Counsel to the Inquiry and the Inquiry's legal team.
23 Only if such discussion does not bear fruit should it be
24 necessary for an application to be made seeking a ruling
25 by me.

Transcript of the Sheku Bayoh Inquiry

1 It is also important to bear in mind that this is an
2 inquisitorial and investigative Inquiry. It is of
3 a rolling nature and involves an iterative process. As
4 the Terms of Reference are extensive, it is necessary
5 for me to break the hearings into blocks, but these
6 blocks are not hermetically sealed and there will be
7 a degree of overlap. Issues may be revisited, so, for
8 example, in this hearing aspects of training, as it was
9 conducted in May 2015, will be the subject of evidence.
10 At a later hearing I would anticipate evidence of
11 a comparative exercise between training as it was in
12 2015 and training as currently provided.

13 Another aspect of the rolling approach is that it
14 would be premature to form any concluded views on the
15 evidence at this stage.

16 I now want to say a little about the timetable of
17 the Inquiry. The Inquiry was set up in November 2020,
18 on 30 November. Only then could I begin to gather the
19 evidence and, as it became available in the course of
20 2021, start considering it. The first hearing was held
21 in May and June [2022] and focused on the events in
22 Hayfield Road on 3 May 2015 leading up to the death of
23 Sheku Bayoh.

24 In the hearing beginning today in addition to
25 evidence relating to training which I have already

Transcript of the Sheku Bayoh Inquiry

1 mentioned, the Inquiry will hear evidence in relation to
2 police command and control on 3 May 2015, expert
3 evidence in relation to the options open to various
4 officers in the stages leading up to and including the
5 events in Hayfield Road, certain forensic evidence and
6 the final report prepared by Advanced Laser Imaging.

7 Looking forward, I anticipate that there will be
8 a series of hearings in the course of 2023 and into the
9 early part of 2024. On 31 January 2023 I intend to
10 convene a hearing on evidence relating to the
11 post-incident management by officers of Police Scotland.
12 That will be followed by a hearing on cause of death.
13 At that point I shall invite closing submissions in
14 relation to the events on 3 May 2015.

15 The Inquiry will then go on to hold hearings in
16 relation to the investigations conducted by the Police
17 Investigations & Review Commissioner and the
18 Lord Advocate. There will be further hearings in
19 relation to training and certain other matters.

20 While the issue of race will continue to be examined
21 in the course of each of the hearings, I expect to hold
22 a dedicated hearing on the issue of race in the
23 concluding stages of the oral hearings.

24 I consider that the timetable which I have outlined
25 is necessary in order to conduct the kind of full and

Transcript of the Sheku Bayoh Inquiry

thorough Inquiry to which I committed myself at the outset. I do not think that the extensive Terms of Reference could be fully explored in any lesser timescale.

I want now to turn to another matter. It has come to my attention that core participants in this Inquiry have been subject to abuse on social media or in writing. I abhor such abuse, whatever its source and against whomever it is directed. Recently it has been reported to me that the family of Sheku Bayoh and their solicitor have been subjected to racist abuse. I am sure that everyone associated with this Inquiry will agree with me that such behaviour is despicable and entirely unacceptable. In some instances it may amount to hate crime. In every instance it causes the recipients and members of their family, some of whom may be quite young, pain, distress and harm.

The families of Sheku Bayoh remain at the heart of this Inquiry. The Inquiry strongly condemns such treatment of them and calls for it to cease.

I'm now going to adjourn briefly in order that the first witness can be settled in.

(10.13 am)

(Short Break)

(10.21 am)

Bayoh Family meeting with Lord Bracadale

18 January 2024

In attendance:

Kadi Johnson

Ade Johnson

Adama Jalloh

Kosna Bayoh

Aamer Anwar

April Meechan

Clare Connolly

Claire Mitchell

Chair

Inquiry staff

Sadif Ashraf

Laura Thomson

Gill Surfleet

LB: Few introductory remarks about where we are - when first met with you said in this for the long haul and hoped you would come with – and you have. Grateful for perseverance, Encouraged by the commitment you have to the Inquiry. Want to assure you = remain at heart of Inquiry. Commitment to the Inquiry – commitment to memory of SB and determination we share to get to the truth of 3 May and ensuing times. 75 days of hearings. Published many additional statements on the website. Covered in depth the events of 3 May – detailed examination of officers of police Scotland in the aftermath. Certain officers sat for days answering questions. Medical evidence and cause of SB's death and training. Looking forward programme for rest of this year. Next month – chapter on the PIRC including evidence of investigators and towards end of hearing, Kate Frame. Continue practise of not sitting during Ramadan. April/May – COPFS. Certain evidence on media at that stage. June hearing on race – prep for this hearing going ahead. Rachel Barrett – new junior on race. This hearing will of course take place against background of former CC accepting that PS is institutionally racist. Worthy of note that evidence CC heard at this Inquiry one of the drivers in reaching that conclusion. Profoundly affected by your evidence Kadi. Submissions towards the end of the year. Demanding year.

KJ For me the Inquiry has been a good thing. We have learned a lot about how SB died. Public have learned about how SB died. Taken some burden off us as a family. We felt all the time we had to justify that SB not what media portrayed him to be. Inquiry done a great job there – pleased with way things going. Not easy at all hearing the evidence but know it has to be said and out there. Not easy when hear how loved one treated, how we were treated. Life in general has been hard. For me to be here I have had to forgo a lot of things – [REDACTED]
[REDACTED] Grateful to the Inquiry – hope have the energy/courage to see through to the end.

Kosna: Very challenging, draining as a family especially me being in London. I need to represent as an elder sister. We have learnt a lot – another year ahead of us. We know where we are with how SB died. We need to pull together as a family.

Chair: How is your mother?

Kosna: She is ok.

KJ She will come over but it has been extremely hard for her. She has lost her only son. When she used to come it was a happy time but over the years seen a big change in her. [REDACTED]. Scotland is not how she used to visit in the past.

AJ: Thank you. Inquiry has been very very challenging for us. Before the Inquiry we had a lot of questions from community, societies and organisations. We got to the Inquiry where we are able to see some of the facts and I is hard to swallow because some of the issues are first hand, we were involved in, immediate aftermath. It is hard to sit quietly and not react when someone saying something different before the Inquiry. We go home and that is where the explosion happens. WE are suffering twice. Every single day is a reminder of the 3 May – we go through the same thing every day. Asking what could have done differently; why are people saying things? Why are they lying? You eventually through questioning get the answer but why is it that way. Grateful for the team and the way questions asked and put forward. If not for creativity of your team and our team it would not come out.

AJ [REDACTED] – when I am bombarded with a massive amount of disclosure – deadline to get back to the team for you to get back to our team. Difficult for us to meet those deadlines.

AC We have been committed to a thorough approach – relevant materials. Members of the legal teams take statements from the witnesses – extremely time consuming – length of the statements – extraordinary length. New lines and then we have to pursue these. When the statement has been put together – then it goes to witnesses for them to revise and that can take time. Also – there is a safety net if things appear haven't been through.

AA What is coming from the PIRC/Crown [REDACTED] – lied repeatedly to the family. [REDACTED] – particularly difficult for the family to hear an see in disclosure what is being said.

CM Issue for this Inquiry is that it isn't a case of AJ reading a disclosure – he needs to leave the table because of what he feels.

AJ It is particularly difficult because we met with these people.

AC Changes of Inquiry days.

KJ Appreciate Inquiry tries – [REDACTED]. Soon after that got an email. [REDACTED]

AJ [REDACTED]. When you turn down something based on something else – you can't then change your position. Yesterday got an email about sitting on Monday.

AC Think I can say reasonably confident – broadly the timetable will hold. Within the blocks days when things change but I do hope – set out the timetable for the whole of the rest of the evidence.

AJ Kadi [REDACTED] – we wouldn't have an Inquiry without her

AJ In terms of where heading for our life prospect before Sheku's death and now we are in a position we are chasing our own tail [REDACTED]

AC Conscious of the need to do that – brings us on to the next two points. Aware changes of staff and there was an impact and issues re reimbursement. Have these issues been resolved.

KJ We had issues and there was a lot of back and forth. [REDACTED]

AC [REDACTED]. We are working within the constraints of the rules placed upon us.

GS We certainly don't want you to feel like you are justifying yourselves but we do need evidence to justify public accounting. [REDACTED]

[REDACTED] We have thought what we can do within those rules. I think we have moved forward on that. Discussion end of November – lines of communication open but hoping we are in a better place on that. Reiterate I am always available. [REDACTED].
Tricky line

KJ [REDACTED] SBPI staff has been great with us.

CM Give example – just park and give a ticket at the end of the week – [REDACTED]. Appreciate if lines of comms could stay open.

AC Can I leave it that Gill will work with you. Move to breaks at upcoming sessions. Always willing to allow breaks where necessary but have a very full timetable.

AJ Mainly this session coming up. We might be upset because no other way of reacting. Get up and leave but at the same time we want to hear what they are saying and be able to communicate with our team. If you leave the room while putting yourself together.

AA This is going to be extremely difficult for the family – we can ask for a short adjournment. Advising you that potentially might happen.

AC Proceed on the basis of the normal break in the afternoon/morning – no problem if prefer to watch on the tv from the room.

AA You will know there is a hearing room supervisor – in contact with those at the horseshoe – if that feels appropriate – can request an adjournment.

AJ Witness sitting position – witness cannot be seen. Issue with inquiry st sitting where she is.

AC Hopefully a practical solution to that problem can be found.

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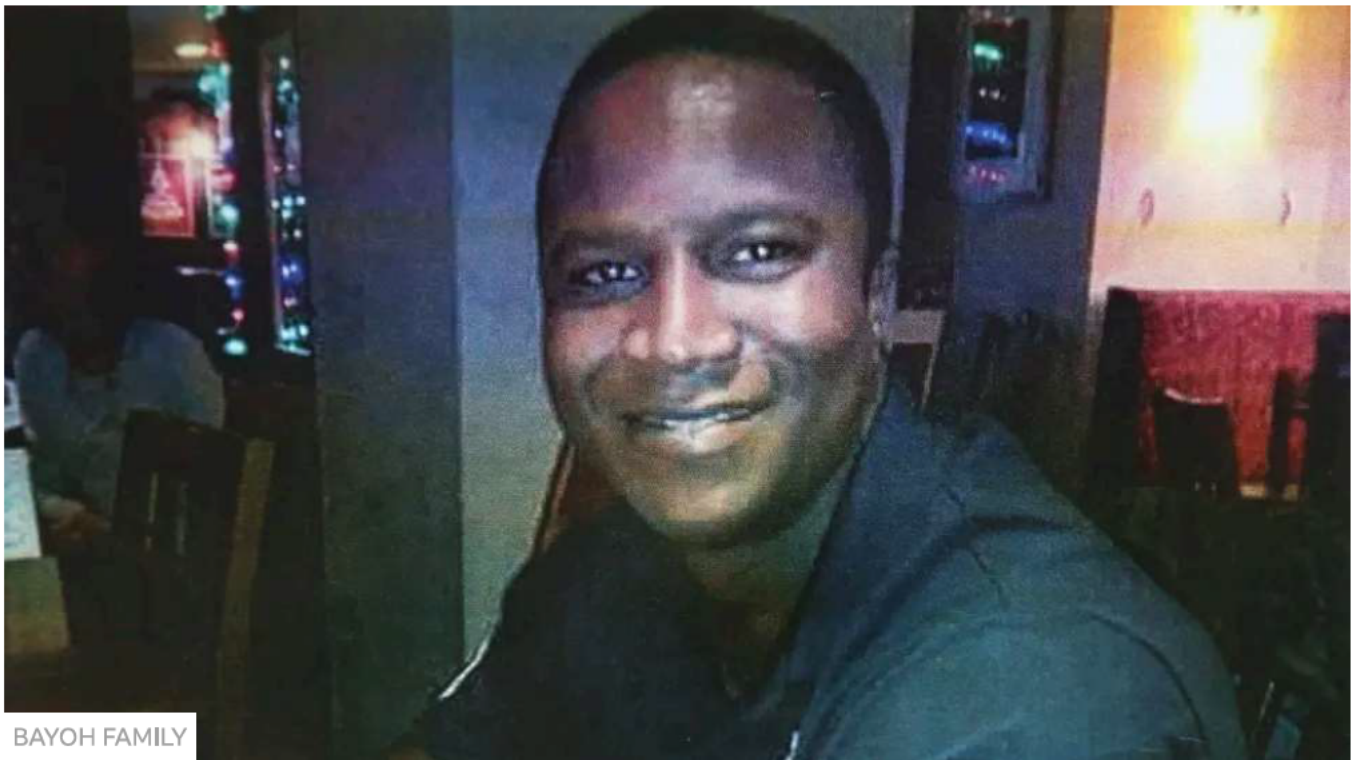
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Bayoh family repeat call for Crown Office inquiry



BAYOH FAMILY

| Sheku Bayoh died after a confrontation with police in 2015

5 December 2024

The family of Sheku Bayoh have repeated their call for the Scottish government to expand the remit of the public inquiry into his death, to cover Crown Office decisions not to prosecute anyone involved.

The 31-year-old died after being restrained by six police officers on a Kirkcaldy street in 2015.

accessed from <https://www.bbc.co.uk/news/articles/ckgz7rrj50ro> on 28 April 2025

Mr Bayoh's family say they have written to Kate Forbes on a number of occasions asking the deputy first minister to extend the inquiry's terms of reference.

Forbes says she has written to all the core participants to ensure her decision is fair and will respond as quickly as she can.

Since November 2022 a public inquiry has been examining the circumstances of Mr Bayoh's death, how it was investigated and whether race was a factor.

He lost consciousness after being restrained by six officers on Hayfield Road, Kirkcaldy, on the morning of 3 May 2015.

The father-of-two was under the influence of drugs, carrying a knife and behaving erratically when members of the public first contacted the police.

However, by the time officers arrived, he was no longer in possession of the blade.

A violent confrontation followed and Mr Bayoh was taken to hospital, where he later died.

His family have called for the inquiry to look into why the Crown Office decided not to prosecute the officers involved.

Earlier, his family met the judge leading the inquiry, Lord Bracadale.

'Statutory duty'

In a statement released after the meeting, the family's lawyer Aamer Anwar said they had written to Forbes on four occasions since they met her in the summer.

He said they were entitled to answers in relation to the decisions taken by the public bodies involved.

"After all the work that has been done, after a nine-year struggle by the loved ones of Sheku Bayoh, for these final critical questions not to be answered as we almost reach the end, would be unconscionable," he said.

"Unanswered questions do not go away, they fester and they grow and act against the public interest.

"With respect, if Kate Forbes cannot make a decision, then she should step aside and let someone else fulfil the promises made to the Bayohs by the Scottish government that the truth will prevail."

Speaking to BBC Scotland News, Forbes defended the time it was taking to respond to the Bayoh family.

"Bearing in mind that the formal request only came in in September, as the inquiry was nearing the end of the oral evidence after a number of years of the inquiry being established," she said.

"I have been moving as quickly as I can, consulting with the chair, which is my statutory duty as well as consulting with the other core participants".

A Scottish government spokesperson said: "Following the family's request to extend the inquiry's terms of reference, the Scottish government started the process of gathering views, including consulting with the chair of the inquiry.

"All relevant matters will be given full and careful consideration. This work is ongoing and a decision will be made as soon as possible."

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A spokesperson for the Crown Office and Procurator Fiscal Service said: "The Crown examined the death of Sheku Bayoh in great detail and has reserved its right to prosecute should evidence in support of that become available.

"The consequences of changes to the terms of reference have potential to be far reaching, not just for this inquiry but for any case involving a decision not to prosecute.

"The Crown continues to be supportive of the inquiry, and respectful of the position of the Bayoh family, and is carefully considering the requests made. The Crown's position will be shared through appropriate channels as soon as is possible."

A spokeswoman for the Sheku Bayoh Inquiry said Lord Bracadale had stated throughout that the families of Sheku Bayoh were "at the heart of" the inquiry.

"An important part of this commitment is providing opportunities for them to meet the chair from time to time. Lord Bracadale held a private meeting with members of the family today," she said.

"The families of Mr Bayoh sought an extension to the terms of reference. The chair did not request an extension. The deputy first minister consulted the chair in line with the statutory obligation to do so and he responded on 18 November.

"The decision on whether to extend the terms of reference is a matter for Scottish ministers."

The inquiry was announced in **November 2019** and began **a year later**. It has cost more than £20m so far. [PH-00017 15/4](#)

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Minutes – Bayoh Family Meeting with the Chair – 5 December 2024

Participants:

Alastair Campbell

Angela Grahame

Laura Thomson

Gill Surfleet

Inquiry staff

Sadif Ashraf

Inquiry staff

Aamer Anwar

Claire Mitchell

April Meechan

Inquiry staff

Kadi Johnson

Ade Johnson

Adama Jalloh

Kosna Bayoh

Item 1 – Opening remarks by Chair, including progress of Inquiry to date and consideration of Terms of Reference by the Scottish Government

The Chair started by stating this is his fourth meeting with the family and explained the purpose of this meeting is for him to hear from the family on any issues they would like to discuss. He acknowledged that the family has requested an extension to the terms of reference to include the prosecutorial decision and the VRR and that we are currently waiting on this decision. He explained that he has had a meeting with and written to the DFM regarding the extension and believes the family has read this letter, which they confirmed. He asked the family to discuss how they have been coping.

All family members expressed their gratitude for how the inquiry has run so far and for following through on the intention of keeping the family at the centre of the inquiry. They also noted that the delay is preventing them from being able to move on as a family and they would like a decision to be made quickly.

Kadi said that the Inquiry has been good, it has taken time to look into evidence and she is happy with the way things have gone. We have gone to the centre of it, and she is grateful for that.

Ade also thanked the Chair and the Inquiry on behalf of the family for following through on their initial promises and keeping the family at the centre. He mentioned that there have been very few inquiries like this before and that their views of inquiries were negative in the past. People told them that they would be wasting their time asking for an inquiry, but the Chair has given them an opportunity to learn something different. The family want to promote that and think this Inquiry should be used as a benchmark for the future and he hopes promoting this approach to inquiries forms part of the recommendations. He stated that we have led by example, by doing what we say we are going to do, which has given them the opportunity to be heard.

Alastair stated he was grateful for the family's remarks.

Aamer also expressed his thanks to the Chair and the team for being the only authority in nine years that has managed to retain the family's trust. He emphasised that the family would like a decision to be made to put an end to the ongoing back and forth and they are not sure how else to push this forward other than to publicly appeal. He mentioned that they will be writing to the SPF, Police Scotland and Crown to ask if they support an extension to the terms of reference, since they originally supported the Inquiry.

Item 2 – The format of submissions

Ade asked if the family would be given the opportunity to present something during the closing submissions from a personal perspective rather than a legal perspective. He explained that they would like to read a statement, similar to what they did at the beginning of the inquiry, to express the impact this inquiry has had on the family.

Alastair said he believes this should be feasible. Sadif agreed, saying it could be looked into and worked into the schedule.

Item 3 – How the report will be structured

Alastair explained that the report is still in the very early stages and the structure will be dictated by the terms of reference and chapters based on evidence heard. He asked the family if there was any particular matter they wanted to discuss.

Ade asked whether there would also be an 'easy-to-read' version with less legal jargon to allow people without a legal background to better understand it.

Aamer also raised the suggestion of publishing the report in different languages, with Claire emphasising the importance of making it as accessible as possible given the subject matter of race. Aamer also raised the issue of potential leaks and asked how far in advance the family would be able to read the report to allow them to absorb the information and prepare any responses.

Gill responded that the Inquiry has been considering an easy-to-read option and publishing the report in different languages. They have also been discussing timelines for the publication and reassured the family that they will be kept informed throughout the process.

Item 4 - Update from Inquiry Secretary on Inquiry accommodation

Gill mentioned that the family were previously told that Capital House was put up for sale. She confirmed that an offer has been made and we are not sure if this has been accepted, but she will keep the family updated. She also noted that timescales have not been confirmed yet but if another hearing is to take place the Inquiry will ensure there is suitable accommodation.

Alastair stated that from his point of view, he is now awaiting the DFM's decision in order to move forward. He thanked the family for attending today's meeting.

Meeting closed and Chair left:

Kadi reiterated Ade's previous comments, stating this inquiry should be an example for future inquiries.

Aamer Anwar also emphasised his previous comments, stating that this is the first time in 25 years that he can say they have kept their promises.

Ade mentioned that he is grateful to Gill and [REDACTED] and wants to acknowledge their contributions. They help with their understanding of how the inquiry works behind the scenes and keep them updated with staffing changes, and getting these small things right is important as these can build into bigger things. He added that they hope to have the truth at the end of the day and want to know where accountability needs to be held.

Chair of the Inquiry
The Rt. Hon. Lord Bracadale

E: enquiries@shekubayohinquiry.scot



Private and Confidential

Chief Constable of Police Scotland
By email only; [REDACTED]

4 February 2025

Dear Chief Constable

Last year the families of Sheku Bayoh requested the Scottish Ministers to extend the terms of reference of the Inquiry. The request was considered by the Deputy First Minister who will make the decision. On 23 January 2025 you raised a judicial review of the process adopted by the Deputy First Minister in making the decision.

In your petition you averred that the process was characterised by secrecy and lack of transparency to such an extent that a fair-minded person would consider there to be a real possibility of bias on the part of the Deputy First Minister as the decision-maker. In support of that ground of review you contend that meetings (i) between the Chair and the Deputy First Minister, and (ii) between the Chair and the family of Mr Bayoh without any detail of those meetings and what was discussed at them being made available to core participants are apt to give rise to suggestions of apparent bias.

In the course of the consultation with me conducted by the Deputy First Minister as required by section 5(4) of the Inquiries Act 2005 there have been three substantive interactions. I met the Deputy First Minister on 5 September 2024. On 6 September the solicitor to the Inquiry wrote to you and other core participants outlining what I had said to the Deputy First Minister. To date, that is the only meeting I have had with the Deputy First Minister. On 18 November 2024 I wrote at some length to the

Deputy First Minister outlining my thinking at that stage. I copied that letter to you and other core participants. On 14 January 2025 the Deputy First Minister wrote to me and, separately, to core participants raising new matters. On 16 January 2025 I replied to her expressing my views on these matters. I copied my letter of 16 January 2025 to you and the other core participants. I have been entirely transparent with you and other core participants in my dealings with the Deputy First Minister.

As to my meeting with members of the families of Mr Bayoh on 5 December 2024, this was not a meeting to discuss the proposed extension to the terms of reference. Since the setting up of the inquiry I have from time to time met with members of the families as part of my commitment to keep them at the heart of the Inquiry. The only reference at this meeting to the application before the Deputy First Minister was an acknowledgement by me that the families had made the application and confirmation by them that they had seen my letter to the Deputy First Minister dated 18 November 2024; there was no further discussion of the matter.

At the outset of the Inquiry I made a public commitment to transparency and independence. I have endeavoured throughout the Inquiry to act in a transparent way. You have not previously raised any concern about a lack of transparency on my part. Although the petition has now been withdrawn I remain concerned about the nature of the averments in relation to apparent bias which are of a very serious nature. I would be grateful if you can confirm whether, in the light of the answers lodged on my behalf and summarised above, you have now departed from the allegations as they relate to me.

I intend to copy this letter to the other core participants.

Your sincerely

A handwritten signature in dark ink, appearing to read 'JPC', is written on a light blue rectangular background.

The Rt. Hon. Lord Bracadale

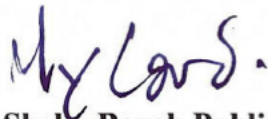
PBW LAW
SOLICITOR ADVOCATE

Lord Bracadale
Sheku Bayoh Public Inquiry

Our ref: SCOTT01-07 PBW/MM

Date: 06 February 2025

Sent by Email



Sheku Bayoh Public Inquiry
SPF, Short and PC Walker

We refer to the recent Petition for Judicial Review, and to Your Lordships' letter to the Chief Constable of 4 February 2025. We write following discussion with counsel and our clients and do so with the concurrence of R S Vaughan and Gordon Williams in respect of those they represent. Revelations made in the Answers to the Petition and in that letter cause us some surprise, and indeed concern. We explain as follows.

The background to the letter was of course the Petition, which in turn stemmed from a proposal to extend the Terms of Reference. We do not think it unfair to suggest that Your Lordship has expressed the view that the evidence which he has heard means that an extension would be appropriate. We leave to one side, for the moment, the argument that any such extension would be unconstitutional and inconsistent with the established position of the Lord Advocate.

In the letter, in seeking to address what Your Lordship understood to be a suggestion of apparent bias, he disclosed as follows:

"Since the setting up of the inquiry I have from time to time met with members of the families as part of my commitment to keep them at the heart of the Inquiry."

It is this revelation which causes the surprise and concern. We will require to consider this with our clients. In order that we may give them advice on a fully informed basis, we would respectfully ask that the following questions be answered:

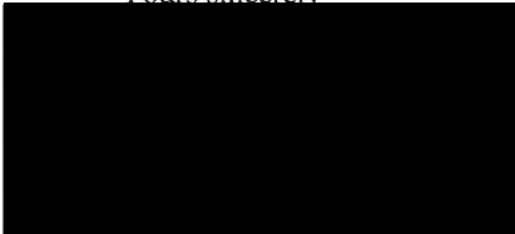
1. It is a fundamental aspect of the law of apparent bias that a decision maker should, in general, not have private meetings with one party: *Kanda v Malaya* [1962] AC 322 at 337-8. What, if any, consideration was given to this principle in arranging meetings with the family of Mr Bayoh?
2. Has Your Lordship met, during the currency of the Inquiry, with any of the other Core Participants? If so, with whom, when, and with what purpose?

PBW LAW
SOLICITOR ADVOCATE

3. From the Answers to the Petition, it would seem that at least five meetings have taken place with the family. When did they occur? What was the purpose and content of these meetings?
4. Were minutes or notes of any such meetings taken? If not, why not?
5. If notes or minutes were taken, can they be disclosed? If not, why not?
6. In said letter, Your Lordship explains his dedication to the requirement of transparency. Having regard to that requirement, why was disclosure of the fact that he has met with the family of Mr Bayoh on various occasions not made previously, and only made in response to the Chief Constable's Petition?

As Your Lordship's letter of 4 February 2025 makes clear, accusations of apparent bias should not be lightly made. We do not intend to transgress in that regard. It is of fundamental importance that there be confidence, on the part of Core Participants and indeed on the part of the public, in the integrity of the process. However, we hope it is clear and understood that we require more fully to understand the background in order to advise our clients in light of what has been disclosed.

Yours sincerely



Professor Peter Watson
Solicitor Advocate

Solicitor to the Inquiry
Sadif Ashraf

E: legal@shekubayohinquiry.scot



Legal Representatives

By email only

5 March 2025

All,

MEETINGS WITH MR BAYOH'S FAMILIES

The Chair has been made aware of concerns that have been raised relating to his meetings with Sheku Bayoh's families. This letter is in response to those concerns.

The terms of reference of the Inquiry include issues directly relating to the families of Sheku Bayoh. The Inquiry is required to conduct an examination of the post-incident management process and the investigation, including liaison with the family of the deceased and compliance with any relevant Convention rights.

In relation to race the Inquiry is required to examine 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.

The engagement of the families with the Inquiry is crucial to the effectiveness of the Inquiry in fulfilling its terms of reference. If the inquiry failed to obtain and retain the confidence of the families its effectiveness would be prejudiced.

Over the years from 2015 the families lost confidence in the various state institutions with which they had dealings – Police Scotland, the Police Investigations and Review Commissioner, and the Crown Office. There was a real prospect that they would not engage at all with the Inquiry process or at some point would cease to engage with it.

The Inquiry has been mindful of the obligation under article 2 ECHR to involve the next of kin in the Inquiry. From the beginning the Chair has publicly expressed his intention to keep the families at the heart of the inquiry. Core Participants have publicly expressed their support for this approach.

For these reasons the Chair considered that it was reasonable and appropriate to meet members of the Bayoh families from time to time in order to reassure them that they remained at the heart of the Inquiry, to maintain their confidence in the Inquiry and encourage them to continue to participate fully in it.

The first meeting took place on 4 November 2021, about one year into the Inquiry. With the exception of the meeting on 13 April 2022, meetings thereafter were held on a more or less annual basis: 21 November 2022; 18 January 2024 and 5 December 2024. At the 4 November 2021 meeting there was a discussion about the families' approach to their presentation on the life of Sheku Bayoh to be made on 10 May 2022 at the beginning of the first hearing. The Chair specifically referred to this at the preliminary hearing on 18 November 2021:

I want them to be at the heart of this Inquiry and, in due course, before the evidence begins, I will give an opportunity for members of the family to speak publicly about the person that Sheku Bayoh was, what he meant to them and the impact of his death on them. I have already begun discussion with family members about what form that might take.

The meeting of 13 April 2022 was essentially a follow up meeting to discuss the details ahead of the presentation.

The purpose of the annual meetings was to address issues relating to the welfare of family members as the Inquiry progressed and the impact on family members of the processes and procedures of the Inquiry. The Chair made it clear that anything of an evidential nature would require to be examined in evidence in the Inquiry. In the course of the Inquiry evidence of family members was introduced and the Inquiry heard extensive evidence of the investigation as it related to the families.

The Chair is clear that in making any finding, determination or recommendation in the report he will take into account only evidence introduced in the Inquiry whether in evidential hearings or in relevant documents lodged in the Inquiry. All core participants will have an opportunity to make closing submissions. Any person who may be criticised in the report will have an opportunity to make submissions through the statutory warning notice procedure.

The families have remained committed to the Inquiry. The Chair continues to be committed to the independence, impartiality and transparency of the Inquiry; and to keeping Mr Bayoh's families at the heart of the Inquiry.

If your clients have any further concerns please do let me know as soon as possible. Absent any further correspondence on this matter, I will arrange to have this letter published on the website on 11 March. Please treat the contents in confidence until published.

Yours sincerely

Sadif Ashraf

Agenda for family meeting with Lord Bracadale**Thursday 4th November 2021.**

1. Family giving statement on their experience to date.
 - Hear from Kadi, Adama, Kosna and Ade.
2. Inquiry time frame.
3. Inquiry procedure
 - Question of why has it changed from the framework approach at this late stage?
 - Content of report and recommendations- what weight will be given and will they be enforceable?
4. Tackling the question of race.
 - Who trained the inquiry on racism?
5. Legal powers of the inquiry.
 - We know the inquiry has powers but why have they delayed using them?

DATE: 2 May 2025

Your Ref:

Our Ref: LSE19159M/JD/AN/BFM

Ms. Sadif Ashraf

Solicitor to the Inquiry

Sheku Bayoh Public Inquiry



By email only:

legal@shekubayohinquiry.scot

Legal Services Department
Police Scotland, Clyde Gateway
2 French Street
Dalmarnock
Glasgow
G40 4EH
DX512100

Tel: [REDACTED]

Fax: [REDACTED]

E-mail: [REDACTED]

Dear Sadif,

PROCEDURAL HEARING

CONDUCT AND PROCEDURE OF THE INQUIRY BY THE CHAIR

I write on behalf of the Chief Constable to express concern regarding the plan to hold a hearing on 12 and 13 June 2025 on the *'fairness of the conduct and procedure adopted by the Chair in meeting with the families of Mr Bayoh'*. Your letter is silent as to the proposed conduct of such a hearing in terms of procedure.

This letter is copied to all core participants.

Purpose, appropriateness and necessity of the hearing

The Chief Constable is compelled by her public duty and commitment to the Inquiry to draw attention to the fact that the process which the Inquiry plans to adopt is unnecessary and, without further information of format, at the very least, problematic.

As you point out in your letter, the loss of confidence by a core participant in the general fairness of the conduct of the procedure is a matter of concern. The draft petition on behalf of the concerned core participants has raised the issue of apparent bias.

The Chief Constable is committed to the Inquiry and wishes to see it reach a conclusion through a fair and independent process. It is entirely regrettable that these issues have arisen, particularly given the extensive engagement by Police Scotland in support of the work of the Inquiry. However, if a serious matter such as this has been raised by core participants, through responsible legal representation, which calls for an answer, care must be taken to adopt the proper process for determination of the complaint.

The Chair acting properly must, of course, consider the issues raised and consider his position. However, at present, it is not clear what the intention is as regards the conduct of the hearing and what decision is to be under consideration by the Chair.

Whilst a decision maker could decide voluntarily to recuse themselves because of the appearance of bias, it is not for the decision maker to determine that they are or are not biased in fact. The legal test is an objective one: whether a fair-minded person would consider there to be a real possibility of bias.

It is not known how this procedure of the fixing of a hearing came to be determined. If there has been a formal application for the Chair to recuse himself then we would suggest he could take a view of this on the basis of the material already available to him, failing which on the basis of written submissions.

We note the entirely appropriate plan to instruct independent counsel to advise the Chair on this issue. It is respectfully suggested that the independent counsel could advise the Chair on the issue of apparent bias on the basis of the material available to date including the minutes of the meetings. Alternatively, they could advise on sight of the SPF submissions called for by 8 May 2025. It is entirely possible that independent counsel could advise the Chair that there is apparent bias, in which case, what is the purpose of the hearing?

If one core participant has an issue, that is not going to be resolved by asking other core participants their views whether supportive or against the position stated. The SPF is concerned about apparent bias against their members who are core participants. In that context it is difficult to see how the opinions of other core participants would further matters. The key is the assessment of the reasoned and articulated concerns of the SPF. At this stage the Chief Constable is concerned with the process by which that is to be achieved and at this stage does not offer her views as to the substance of the matter.

If the plan is for the Chair to test the submissions of parties, this would, it is suggested cross the line in terms of what is appropriate. It is noted that the matter has been removed from the remit of the Inquiry counsel team as they were present at the meetings. Independent Counsel is to be appointed. It is illogical to consider that the Chair remains immune from any suggestion that he, likewise, should not be part of any decision making process in such a hearing. If the holding of the hearing is simply to hear the positions of the core participants to inform his consideration of whether he should recuse himself, this does not justify the holding of an oral hearing. This brings me to the next concern which is the cost of the hearing.

Cost of the hearing to Police Scotland

The proposed process adopted by the Inquiry for a two day hearing is likely to cost Police Scotland around £200,000. It seems tolerably clear that there would still be the very real prospect of a judicial review following the hearing.

In a judicial review there would be some control over the costs with regard had to efficiencies of representation of joint interests, whereas the procedure adopted by the Inquiry has none of that. The full cost of the representation of core participant officers as well as that of the organisation will require to be met by Police Scotland. Section 17 (3) of the Inquiries Act 2005 is clearly engaged. Police Scotland do not have funds to meet this extra cost. The peremptory fixing of a hearing has placed the Chief Constable in an impossible position regarding this funding without consultation or choice. It is not clear whether or not any consideration has been given to whether the holding of the oral hearing is necessary or is a proportionate way of achieving the aim of giving due consideration to the concerns of the SPF as regards apparent bias.

The Chief Constable has made clear her duties in respect of the delivery of policing and the management of resources. These hearings would likely be a waste of public funds which, in so far as her remit is concerned, would be better spent on the continuous improvement of policing and the delivery of policing commitments. The actions of the Chair in respect of the holding of an oral hearing have a direct consequence on the operation of Police Scotland by diverting funds from policing.

Chief Constable engagement

For the avoidance of doubt I can confirm that at no time in the course of the Inquiry has the Chief Constable, or her predecessor, met with the Chair regarding this Inquiry, nor been invited to do so. All matters have been dealt with by the respective legal teams. In relation to the letter sent on 4 February 2025 (PH-00011) directly to the Chief Constable by the Chair and referred to by you in your letter, the Chief Legal Officer responded on 6 March 2025 on behalf of the Chief Constable by writing to you and explaining that the appropriate route for such correspondence is between the instructed agents.

The letter of 6 March 2025 also provided the response sought by the Chair in his letter of February and an explanation of the context and legal meaning of the pleadings. That letter is attached, referred to for its terms and disclosed given that you had only produced one side of the correspondence. As can be seen, the response is important having regard to the matters under consideration.

I look forward to hearing from you.

Yours sincerely,

A large black rectangular box redacting the signature of the Solicitor.

Solicitor,
Legal Services Manager

Deputy Solicitor to the Inquiry

[REDACTED]

E: legal@shekubayohinquiry.scot



[REDACTED]

Solicitor, Legal Services Manager

Police Scotland

By email only

6 May 2025

Dear [REDACTED]

Procedural Hearing on 12th/13th June 2025

Thank you for your letter of 2nd May 2025.

Your letter raises a number of procedural points. My understanding is that they cover three main concerns:

- (i) first, that a hearing is not necessary because a decision-maker cannot determine that a fair-minded person would not conclude there to be a real possibility of bias – they can only decide to recuse themselves because of apparent bias;
- (ii) second, that a hearing is not necessary because the issue of apparent bias could be determined by the Chair on the basis of the existing materials (alternatively following the making or written submissions); and / or
- (iii) third, that the procedural hearing is likely to be a waste of public funds, which would be better spent on policing.

Submissions can be made on points of procedure, including these points, in writing and at the hearing on 12/13 June if appropriate. As they have been raised by you at this stage, they will be addressed in this letter of response, however it is not our intention to continue this discussion outside of the procedure already set out.

Each of these points is addressed in turn below.

(i) A decision-maker can only decide that they are apparently biased – they cannot decide that they are not apparently biased

In your letter you state:

“Whilst a decision maker could decide voluntarily to recuse themselves because of the appearance of bias, it is not for the decision maker to determine that they are or are not biased in fact.”

“It is illogical to consider that the Chair remains immune from any suggestion that he, likewise, should not be part of any decision-making process in such a hearing.”

The Chief Constable’s position appears to be that if a decision-maker (whether a judge in litigation; a member of a tribunal; or the chair of an inquiry) is faced with an allegation that they are apparently biased, then they must either agree with the suggestion and recuse themselves from all further participation in the proceedings, or recuse themselves from the decision as to whether a fair-minded person would conclude there to be a real possibility of bias.

That suggestion is not in accordance with the law – the authorities are replete with cases, decided in both Scotland and England and Wales, where an issue of the apparent bias of the decision-maker has arisen and the decision-maker has themselves determined whether a fair-minded person would conclude there to be a real possibility of bias. By way of example only, in the leading case of *Porter v Magill* [2002] 2 AC 357 the auditor himself took the decision as to whether he was apparently biased.

Beyond this, any judgement made in relation to the apparent bias of a court or tribunal must consider the proceedings as a whole, rather than simply looking at the issue or conduct about which immediate complaint is made (see e.g. *Singh v Secretary of State for the Home Department* [2016] EWCA Civ 492, at [36]). Determining the issue of apparent bias within the Inquiry (rather than raising it outside the Inquiry for the first time) will allow this more rounded approach to be taken.

Moreover, it is the fair thing to do and the Chair has obligations under s.17(3) of the Inquiries Act 2005 to act with fairness. It means that other Core Participants in the Inquiry are given fair notice of the alleged apparent bias and can make reasoned representations about it. As matters stand, the SPF have essentially invited the Chair to take a decision on the basis of one set of submissions – i.e. their draft petition. As far as I am aware, the Inquiry was not informed that the content of this petition had been disclosed to other core participants until receipt of your letter. On a matter of this seriousness, making this decision on the basis of written submissions by the SPF (in the form of a draft petition for judicial review or the submissions requested by the Inquiry) could easily invite criticism from other core participants at not being given the opportunity to make representations.

(ii) *Determination of the issue of apparent bias on the basis of the existing materials, alternatively following written submissions*

As to the suggestion that the Chair should determine the question whether he should recuse himself from further involvement in the Inquiry on the grounds of apparent bias "...on the basis of the existing materials" (including the SPF's draft submission), the Inquiry considers that this would not be a fair process.

First, only the SPF have made submissions on this issue only in the form of a draft petition for judicial review. A fair process requires that all of those with a proper interest in the Inquiry should be able to make reasoned submissions, especially in relation to such an important issue. Although the effect of the Chief Constable's submission in your letter may suggest otherwise, it cannot be assumed that any core participant would be satisfied for the Chair to take a decision on the basis of only one set of arguments.

Second, the SPF's petition was drafted and provided at a stage when there had not been disclosure of the materials relating to the five meetings held by the Chair with the families of Mr Bayoh. That disclosure has now occurred. Taking a decision on the basis of one set of submissions that were prepared before the disclosure of such material would not be fair.

Third, your letter states that "If one Core Participant has an issue, that is not going to be resolved by asking other core participants their views..." The principal purpose of holding a hearing is not to resolve the concerns of the Core Participant which has made a submission of apparent bias by allowing other Core Participants the opportunity to set out their views. It is to ensure fairness (in accordance with s.17(3) of the 2005 Act) and to seek to place the Chair in the best position possible to make a fair and balanced decision.

It is not considered appropriate for the Chair to determine the issue of whether he should recuse himself from further involvement in the Inquiry on the grounds of apparent bias raised in the SPF's draft submission, after only written submissions and without an oral hearing. First, it would mean that the opportunity for Core Participants to respond to what others have said would be lost. Second, the Inquiry has previously adopted the process of directing that written submissions be made in advance of oral submissions at a procedural hearing (e.g. in relation to the request for undertakings from the Solicitor General and the Chief Constable) and there is no clear reason to diverge from this process in relation to this significant issue. Third, an oral hearing will give the Chair the opportunity to ask for clarification or elucidation of submissions to the extent that he considers this is necessary and/or appropriate. For clarity, in your letter you state that "If the plan is for the Chair to test the submissions of parties, this would, it is suggested cross the line in terms of what is appropriate" – this will be a matter for the Chair to determine, rather than something to litigate in correspondence.

Finally, your letter suggests that in place of a hearing independent counsel could "...advise the Chair that there is apparent bias, in which case what is the purpose of the hearing?" However, the decision falls to be made by the Chair, not by independent counsel.

(iii) A waste of public funds, which could be better spent on policing

Consideration was given by the Chair to the necessity and proportionality of a hearing before determining that it was necessary to hold one.

Provision of submissions and attendance at the hearing is not mandatory and it is open to any core participant to determine whether their presence through legal representation is necessary, and, if so, whether to share representation with any other Core Participant in relation to the issue being determined.

In deciding to hold a public hearing, the Chair has taken care to adopt the proper process for determining the complaint of apparent bias. The outcome of the hearing has not been determined. It is possible that if the Chair decides not to recuse himself, further court procedure may follow. This will be aided by his decision which will have been based on submissions by the core participants. If the Chair decides he must recuse himself, a lengthy and costly court process might not be pursued.

This reply will be copied to the legal representatives of all core participants.

Yours sincerely

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[Home](#) > [Publications](#)

Publication - Speech/statement

Ministerial statement: Humza Yousaf statement on Sheku Bayoh - Next steps

Published: 12 November 2019

Topic: [Law and order](#), [Law and order](#), [Law and order](#)

CABINET SECRETARY FOR JUSTICE – PARLIAMENTARY STATEMENT ON SHEKU BAYOH – NEXT STEPS – TUESDAY 12 NOVEMBER 2019

Thank you Presiding Officer.

As members will be aware, the Lord Advocate met with the family of Sheku Bayoh yesterday to inform them of the outcome of the Victim's Right to Review process in connection with the circumstances of Mr Bayoh's tragic death in 2015.

Mr Bayoh died in the course of an operation by police officers to restrain him and I know the thoughts of members across the Chamber will be with his family and friends at this difficult time.

Following what has been a complex and thorough investigation and review, the Lord Advocate has confirmed that, on the basis of the evidence available, there will be no criminal proceedings against Police Scotland or individual police officers in connection with Mr Bayoh's death.

The First Minister and I met with the family today to express our deepest condolences and assure them of our commitment to establishing the facts surrounding this tragic incident. They are right to expect a full public examination of the circumstances of Mr Bayoh's death and I stated my determination to put in place a process to deliver that.

Today, I can confirm that I will establish a statutory Public Inquiry under the Inquiries Act 2005 into the circumstances leading up to and following Mr Bayoh's death.

Indeed, all deaths in police custody are subject to a mandatory Fatal Accident Inquiry under the Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. The responsibility for establishing the FAI sits with the Procurator Fiscal, under the direction of the Lord Advocate. FAIs examine the cause of death and consider steps to prevent other deaths in similar circumstances.

In this case, however, the Lord Advocate, as head of the system for the investigation of deaths in Scotland, considers the remit of a FAI would not allow all the issues which require to be investigated to be addressed. FAIs can examine circumstances and factors leading up to a death, but not what follows after, and in this case, the Lord Advocate has identified questions, raising issues of public interest and importance, about the early stages of the post-incident management of the investigation that an FAI simply could not examine.

That being the case, it is imperative that the circumstances leading up to Mr Bayoh's death and the events that followed are examined in full and in public.

I am conscious that public inquiries are significant undertakings and this is not a decision to be made in haste.

As members will be aware, Mr Bayoh's family have been calling for a Public Inquiry for a number of years and the First Minister made clear it was definitely an option. When I met the family last year, I assured them that this Government shared the family's commitment to getting answers.

On that basis, it is one option I have been considering in advance of the confirmation yesterday of the Lord Advocate's decision – not to pre-empt that decision but to be prepared for this outcome.

Now that we have confirmation there will be no criminal proceedings in this case, and having examined all other options, I believe that as a Government it is right that we should hold a Public Inquiry. I have discussed this with Mr Bayoh's family, honouring my commitment to update them first. They were very clear in their determination to get to the facts surrounding Mr Bayoh's tragic death and a Public Inquiry is now the surest way to do this.

The terms of reference of the Public Inquiry will determine the scope, direction and parameters of the Inquiry, so it will be important to take the time to get them right. It will cover matters which would be covered by a FAI and also a range of other issues such as the post-incident management of the investigation. The formulation of the terms of reference will require discussion with the person appointed to Chair the inquiry; and I will also wish to discuss the draft terms of reference with those most directly affected by the Inquiry, with a view to shaping a remit that is clearly focused.

We must not lose sight of the purpose of this Inquiry: to establish the circumstances leading to and following the tragic death of Mr Bayoh in order to identify any steps which could prevent

deaths in similar circumstances – and to improve the post-incident management following such deaths.

For any independent scrutiny of this case to be rigorous and credible, it must address the question of whether or not Mr Bayoh's race played a part in how the incident was approached and dealt with by the Police. In saying that, I am not prejudging the answer to that question; that will be for the Inquiry, which will be independent of Ministers.

In order to do this effectively, the Inquiry must be equipped with the necessary diversity of expertise and background to scrutinise the extent to which race was a factor in this case.

I will be discussing how we can build diversity into the structures of this Inquiry with the Chair, who will also be instrumental in helping to shape the terms of reference. The formal process directed to appointing a Chair will begin shortly and it will be important to ensure the Chair will command the confidence of those involved and the public. This will include ensuring an appropriate level of expertise in taking forward the remit of the Inquiry. This, too, will take time but I will return to the Chamber to provide a full statement confirming the Inquiry's terms of reference and the Chair early next year.

If systemic issues emerge that were causal or contributory factors in this case, then it is right that the Inquiry address these. While we must be careful not to expand the terms of reference beyond its core purpose, not least to avoid further delaying the process for all involved, it is important that all relevant issues are covered.

However, it is not intended that this Inquiry will consider the wider framework for investigations into serious incidents involving the police given that, as members will be aware, Dame Elish Angiolini is currently reviewing law and practice for complaint handling, investigations and misconduct in relation to policing. There may be areas of shared interest between the Review and this Public Inquiry but Dame Angiolini's Review is not investigating individual cases, whereas the primary purpose of this Inquiry will be to examine the circumstances of this specific case.

I am of course aware of other families who have lost loved ones in tragic circumstances and are looking for answers. My thoughts – and those of colleagues in this Chamber – remain with those families. In a number of cases, complex investigations are still underway, while others may be subject to other processes, including the FAI process. Each of these cases will have its own distinct features and it is important to allow those processes to run their course.

As I set out in my letter to the Justice Committee last week, I recognise there are questions about the arrangements within the SPS and NHS for handling deaths in prison custody. That is why I have asked Her Majesty's Chief Inspector of Prisons to undertake a review into the handling of deaths in prison custody. In addition to HMCIPS, I have asked Professor Nancy Loucks of Families Outside to work alongside and provide external expertise. The review will have a sharp human rights focus and ensure the voice of families of those in prison is heard.

Turning back to policing, it is worth noting that since the establishment of Police Scotland, public scrutiny of policing has never been greater and understandably so. It is essential that public and

parliamentary confidence in the police remains strong and I know members will share my view that the police officers and staff across Scotland work hard to keep us all safe.

The 2018/19 annual report by Her Majesty's Inspectorate of Constabulary in Scotland stated that: "we continue to be impressed by the determination of officers and staff to delivering an effective policing service to the communities they serve."

The majority of adults (57%) also said that the police were doing a good or excellent job in their local area. As a Government, we remain committed to excellence in policing and our commitment to protect Police Scotland's revenue budget has seen the annual budget increase by more than £80 million since 2016/17.

Of course, policing by consent depends upon accountability and it is vital that the police are held to account when things go wrong. I know, having spoken to the Chief Constable regularly, that he values this accountability.

I am clear that a Public Inquiry will provide the independent and robust mechanism needed to give us that clear understanding. As with all statutory Inquiries, it will be inquisitorial rather than adversarial. It will also identify lessons and improvements for the future to help prevent deaths in similar circumstances and build trust and confidence in policing.

Let me finish, Presiding Officer, by expressing my condolences once again to Mr Bayoh's family and friends, who have been unwavering in their search for answers. I am confident that a statutory Public Inquiry under the 2005 Act will provide the best means of establishing the circumstances leading to and following Mr Bayoh's tragic death.

END

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Protocol on the role and appointment of Assessors

1. The purpose of this protocol is to outline the role of Assessors appointed under section 11 of the Inquiries Act 2005 (“the 2005 Act”). It also explains who may appoint Assessors.

Role of Assessors

2. The Assessors will have expertise in respect of one or more areas relevant to the terms of reference of the Inquiry.
3. The Chair may ask an Assessor to give him any assistance in relation to any matter relevant to the Inquiry within the scope of the Assessor’s expertise.
4. During the preparation phase of the Inquiry, the Assessors will be expected to familiarise themselves with the Terms of Reference and the areas that the Inquiry will seek to investigate which are within their area of expertise. This is likely to involve reading relevant documents, witness statements and experts’ reports. The Assessors may be asked to advise on matters related to those expert reports, potential avenues of inquiry, chair seminars in any area of their expertise, etc.
5. During the oral hearings, when evidence is being taken in relation to matters within the scope of their expertise, Assessors will be expected to attend hearings, follow any live-streaming or, where this is not possible, read the transcript. Assessors will not ask questions of witnesses, but they may be

asked to confer with and suggest lines of questioning to Counsel to the Inquiry on matters falling within their area of expertise.

6. In preparing the report to the Scottish Ministers (including any preliminary report), the Chair may ask the Assessors to consider provisional recommendations falling within their area of expertise. Any recommendations, conclusions, etc., made in the report to the Scottish Ministers remain a matter for the Chair to determine.
7. The Chair expects that most advice and assistance will be given informally, but if he obtains formal advice in writing from an Assessor which he intends to take into account in reaching his decision, he will provide a copy to the Core Participants and publish it on the Inquiry's website, unless he considers that it would be inappropriate to do so.
8. The Core Participants may submit observations about the formal advice to the Inquiry within 3 working days of receipt, subject to any extensions granted by the Chair.
9. No Assessor may give evidence to the Inquiry and no Assessor will be asked questions or be cross-examined at the Inquiry.
10. Any issues arising during the course of the Inquiry in relation to the Assessors should be raised directly with the Chair.

Appointment of Assessors

11. One or more Assessors may be appointed to assist the Chair on matters related to the Terms of Reference for the Inquiry.
12. Before 30 November 2020 (the setting-up date of the Inquiry), a person can be appointed as an Assessor by the Scottish Ministers, following consultation with the Chair. During the course of the Inquiry, the Chair may appoint further Assessors.

13. A person may only be appointed as an Assessor if it appears to the Scottish Ministers or the Chair that the person has expertise that makes them a suitable person to provide assistance to the Chair.

14. The Scottish Ministers have appointed 2 Assessors: Raju Bhatt and Michael Fuller QPM. Further details of the appointments can be found on the Inquiry website.

Issued under the authority of the Chair on 30 November 2020.

From: [Campbell A \(Alastair\)](#)
To: [Ashraf S \(Sadif\) \(Sheku Bayoh Inquiry\)](#); [REDACTED]; [Grahame A \(Angela\)](#); [Thomson L \(Laura\)](#)
[\(Sheku Bayoh Inquiry\)](#); [REDACTED]
Subject: meeting with solicitor general
Date: 24 September 2021 10:12:23
Attachments: [Note for meeting with solicitor general.docx](#)

Suitably attired, I had a positive meeting with the solicitor general this morning. My presentation was based on the attached briefing note which I prepared last night.

Re you available this morning for a brief meeting to report on the meeting?

Alastair

Introduction

I am aware that

- Laura has told you something of the background from the inquiry's point of view and that
- you have been briefed by your own officials.
- You will be aware that we are at something of an impasse.

Preliminary hearing

I have appointed a preliminary hearing on 18 Oct but hope that at least some of the issues can be resolved before that. Stress importance to inquiry of cooperation with core participants. Want to narrow the issues.

My position

I wonder if I could just briefly set out my own position. It had been our intention last week to disclose a body of material relating to the first hearing:

- volumes 1 and 2 of the PIRC report
- a core bundle of statements taken by PIRC at the direction of the Crown
- a framework document prepared by counsel to the inquiry identifying the chapters to be covered in the first hearing and the issues which require to be addressed.

We wanted to disclose that as a package that would allow the core participants to feed into the inquiry.

Police Scotland problem

Over the past two months or more there has been developing an issue in relation to concerns raised by Police Scotland.

When PIRC embarked on their investigation under the direction of the Crown, PIRC took possession of a large amount of documents from Police Scotland. Surprisingly, neither organisation has any inventory of what was taken.

Police Scotland object to disclosure of documents originating from them unless their concerns are met.

Three issues

There are three issues I would like to discuss with you today.

1. Blanket ban

The first is that:

Against the background of Police Scotland's position, last week the procurator fiscal informed the solicitor to the inquiry that the Crown objected to disclosure of *all* statements and productions as well as volumes 1 and 2 of the PIRC report.

I am calling that the "blanket ban" and I am bound to say that I consider a blanket ban of that kind to be unnecessary and unreasonable.

No Police Scotland input

Many of the statements have nothing to do with Police Scotland and could not on any view touch on their concerns. There are many statements taken from

- civilian witnesses
 - people who interacted with Sheku Bayoh during the night before
 - people who encountered him on his walkabout
 - civilian eyewitnesses to the arrest
 - medical staff; and
 - professional witnesses.

There seems to me to be no reason whatsoever why the statements of such witnesses cannot be released and disclosed. So my first request is that the Crown revisit this and identify those statements that fall into that category and consent to their immediate disclosure.

Freeing up of the statements which cannot relate to the concerns of police Scotland would allow a significant tranche of the core bundle to be disclosed.

The other side of that coin is the Crown should be able to identify statements which *might* contain material having a bearing on the concerns raised by the police Scotland. We assess that that will only arise in a small number of cases.

In terms of narrowing down the issues, this is an issue that can be resolved independently of the concerns of Police Scotland.

Discuss

2. Crown Office redactions

My second request relates to the Crown office's own redactions.

General approach

The inquiry's approach has been that it will itself carry out a redaction exercise for relevance and GDPR and give the provider of a document the opportunity to propose redactions, and, if necessary, apply for a restriction order, before disclosure of the document.

That is a practical, workable approach. I issued a protocol to that effect.

Crown Office

So, in relation to the PIRC report vols 1 and 2 and the statements the inquiry made its own redactions and thereafter in accordance with the protocol gave them to the Crown as the providers of the material to indicate if they wish to make any further redactions. In relation to the statements the procurator fiscal did send a number of proposed redactions and the inquiry legal team responded last week by suggesting various compromises. As of yesterday there had been no response to that and I would request that should be expedited to allow disclosure.

3. how to resolve the issue of Police Scotland's concerns

The concerns are that the chief Constable has a duty

- to protect serving officers and staff and those who have retired (ref to GDPR)
- to protect the public and complainers, or informants, who have provided information;
- to preserve the security of general policing practices, policies, strategies and tactics.

There are a number of points that I would like to make:

- It seemed to me that experienced prosecutors familiar with police practices on a daily basis would have no difficulty in identifying material that might raise these concerns.
- Not public disclosure
- There are already in place three layers of protection:
 - the inquiry has carried out an exercise in redaction;
 - the Crown Office has carried out an exercise in redaction; and
 - a robust restriction order in relation to onward disclosure and publication has been put in place.

Police Scotland should be fortified by these protections.

- Allowing Police Scotland to review the PIRC report before disclosure to other core participants would raise issues of special treatment of one core participant in a highly sensitive inquiry. In addition, if such a special dispensation was given in respect of Police Scotland it would be likely that the individual police officers who are core participants would seek the same dispensation.

- The procurator fiscal raised the possibility of the Crown Office applying for a restriction order as a result of which Police Scotland could see the material under rule 11 of the Rules.
 - It is, of course, open to Crown Office to apply for a restriction order and if it does the inquiry will require to deal with that.
 - But a word of caution:
 - Difficulty with specification
 - It has the flavour of a device in order to enable Police Scotland to view the material under rule 11.
 - Rule 11 is discretionary

- I very much hope that the Crown Office; Police Scotland; and PIRC can find a way through this

- Positive step: Laura has produced a table that can identify all the documents in the core bundle for hearing 1, the provenance of which is Police Scotland, and that we could share a revised version which made that clear. That would allow Police Scotland to

examine their own copy of these documents which might also narrow down the issues.

From: [Campbell A \(Alastair\)](#)
To: [Ashraf S \(Sadif\) \(Sheku Bayoh Inquiry\)](#)
Cc: [REDACTED]; [REDACTED]; [Grahame A \(Angela\)](#); [Thomson L \(Laura\) \(Sheku Bayoh Inquiry\)](#)
Subject: RE: Call with the Solicitor General
Date: 04 October 2021 16:26:14
Attachments: [solicitor general - briefing note for telecon 4 October 2021.docx](#)
[image001.jpg](#)

Sadif

As arranged, I spoke to the solicitor general this afternoon on the phone. I took the opportunity to speak to the attached brief. She seemed much reassured and did not make any pleas for the Crown to be granted absolution after 28 September.

The only other thing that she mentioned was to remind me that the police officers who attended the scene were subject to a “no pro meantime” letter which could be revisited. I told her that I was very much aware of that. I am not sure why she was mentioning that in the context of a discussion about disclosure but she may just have been making a general point. I did not follow it up. I do not think that it has any bearing on disclosure, particularly as the Crown have not objected to disclosure of their statements, which were taken as witness statements.

So, nothing really to report.

Alastair

From: Ashraf S (Sadif) (Sheku Bayoh Inquiry) <[REDACTED]>
Sent: 04 October 2021 09:19
To: Campbell A (Alastair) <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: Call with the Solicitor General

Alastair,

The Solicitor General would like to speak with you today. My guess is that it will be about disclosure and the preliminary hearing.

We have finalised the redactions to volumes 1 and 2 of the PIRC Report with COPFS, so subject to the issues with PS are free to disclose. From the discussion with Alastair Duncan, I think they would probably want the Inquiry to somehow make it clear to all participants that that COPFS is no longer the blocker to disclosure.

Would you be free for a telephone call with the Sol Gen today?

Sadif

Sadif Ashraf

Solicitor to the Sheku Bayoh Public Inquiry

[REDACTED]



Would it be helpful if I brought you up to date with what has been happening as things have been developing apace.

I am very grateful for your intervention after we spoke. Last week I was informed that the Crown no longer objects to disclosure of vols 1 and 2 of PIRC report and the other material we want to disclose at this stage.

That is very helpful indeed. It is a big step forward.

The Police Scotland issue is not quite resolved yet but we are well on the way to resolving it. The inquiry itself has embarked on a process which will allow

- immediate disclosure of a significant amount of material; and
- will lead, I am confident, to full disclosure in early course of the material we want to disclose at this stage.

After the meeting with your counsel at which he informed the inquiry legal team that the lord advocate no longer objected to disclosure, the solicitor to the inquiry wrote to the solicitor for Police Scotland

- advising him of the Crown's position; and
- setting out the detailed categories of document that we intended to disclose at this stage.

She explained that

- a. Police Scotland should respond with any continued objection, properly focused, by close of business last Friday; and

- b. That I intended to rely on the advice of senior counsel to the inquiry in deciding whether to disclose and
- c. that senior counsel was willing to be briefed by a senior police officer about the concerns.

In response the solicitor for Police Scotland has now indicated that they have no objection to a significant number of documents being disclosed immediately. My team will now carry out disclosure of these documents.

In relation to the remaining, now much narrower, but still important list of items, including vols 1 and 2 and the statements of the police who attended a briefing meeting has been arranged for Thursday 7th October at 10 am. Senior counsel will then review that material and advise me whether in her view they can be disclosed in their present state or whether any further redactions should be made. I shall make a decision based on that advice. As senior counsel is already familiar with the documents she should be able to complete that exercise quickly.

I am pretty confident the preliminary hearing set down for 18 October 2021 will not be required but not yet in a position to cancel it.

From: [REDACTED]
To: [REDACTED] [Ashraf S \(Sadif\) \(Sheku Bayoh Inquiry\)](#); [April Meechan](#); [Aamer Anwar](#)
Cc: [Sheku Bayoh Inquiry – legal enquiries](#)
Subject: Bayoh Family - Letter responding to queries regarding the section 21 notices and letter with action points from meeting - 3 November 2021
Date: 03 November 2021 18:05:00
Attachments: [image001.png](#)
[Bayoh Family - letter confirming action points after 3 November 2021 meeting - 3 November 2021.docx](#)
[Bayoh family - section 21 notices - overview of notices to state parties & SPF - 02 November 2021.doc](#)
[Bayoh Family - Letter re Composition of Teams - 3 November 2021.docx](#)

Aamer,

Further to [REDACTED] email below please find attached a letter setting out the composition of the teams from Police Scotland, PIRC and Crown Office in terms of handling the section 21 notices. I also attach an overview of the section 21 notices we have issued to date. There may well be further section 21 notices issued in the future. Please let me know if you require anything further in response to the points set out below.

I am also attaching a letter setting out the action points from today's meeting. Please let me know if you think there is anything missing from the list.

Many thanks

[REDACTED]



[REDACTED]
Deputy Solicitor to the Sheku Bayoh Public Inquiry
[REDACTED] | [REDACTED]

Working pattern: [REDACTED]

From: [REDACTED]
Sent: 01 November 2021 13:20
To: Ashraf S (Sadif) (Sheku Bayoh Inquiry) [REDACTED]; [REDACTED]
[REDACTED]; April Meechan [REDACTED]; Aamer Anwar [REDACTED]
Cc: Sheku Bayoh Inquiry – legal enquiries <legal@shekubayohinquiry.scot>
Subject: Family's agenda for meeting on Thursday

Dear Sadif,

Please find attached the family's agenda for Thursday. I've included some of the specific questions the family want to raise in the hope that the Chair or a member of the inquiry team will be in a position to provide answers.

The family have a number of questions that might be best suited to be answered by the inquiry team rather than the Chair.

- What has the inquiry asked for from those served s21 notices?

- Who has been asked to provide what?
- Are those who have been asked to provide information the same individuals who were involved in the investigation at the time?

We thought these questions might be best answered by way of a schedule of the s21 notices.

The family are also still awaiting an answer in relation to the variation of the s40 determination and for the picture of Sheku to go on the inquiry website. Again, these are matters we can deal with through the inquiry team rather than the meeting with the Chair.

I think it would be beneficial if we could deal with any of the above in advance of Thursday so we can inform the family of any progress

Kind regards,

[Redacted]

[Redacted]

Trainee solicitor

Aamer Anwar & Co

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

SECTION 21 NOTICES OVERVIEW

Police Scotland

30 November 2020

All documents* and other evidence related to the Inquiry's terms of reference including, but not limited to, the following.

1.
 - a) The names of the officers involved in restraining Mr Bayoh on 3 May 2015, or present at the time of his restraint,
 - b) their rank at 3 May 20015 and current rank,
 - c) their race and ethnicity,
 - d) the number of years served as at 3 May 2015,
 - e) any documents and other evidence that relate to their height and weight at or around 3 May 2015,
 - f) any document and other evidence related to their training record since they commenced their probationary training with the police up to 30 November 2020,
 - g) any document and other evidence related to their annual reviews and disciplinary records since they started serving with the police up to 30 November 2020,
 - h) any documents and other evidence related to allegations or expressions of concern by their colleagues or members of the public regarding racism, and
 - i) any documents and other evidence related to allegations or expressions of concern by their colleagues or members of the public regarding excessive use of force.
2. Any documents and other evidence that relate to:
 - a) when, how and who alerted the police to the presence of Mr Bayoh on the morning of 3 May 2015, including transcripts of any 999 calls made,
 - b) internal communication that resulted in police officers being sent to Mr Bayoh's location on 3 May 2015 (including the names and ranks of those involved, and the identity of the officer in charge),
 - c) instructions given to the officers attending the scene by the officer in charge,
 - d) the time at which those officers arrived on scene and the names of those officers,
 - e) details of any communication by those officers with each other and police personnel not at the scene (including any requests for support),
 - f) the time further officers arrived on the scene and the names and ranks of those officers,
 - g) details of actions taken by each police officer at the scene before, during and after detention of Mr Bayoh,
 - h) details of any medical assistance given to Mr Bayoh by police officers,
 - i) details of who requested the presence of the Scottish Ambulance Service and at what time,
 - j) transcripts of any 999 calls made to the Scottish Ambulance Service, and requests to the police control room that an ambulance be dispatched,
 - k) details of the actions of the paramedics including communication with police officers at the scene, and

- l) details of ongoing communications between the police officers attending and any other police personnel not at the scene.
3. Any documents and other evidence that relate to:
- a) details of who attended the scene following the notification of Mr Bayoh's death including their role,
 - b) details of the actions each of them took while attending the scene,
 - c) details of any communication -
 - i. between the police officers present during the restraint of Mr Bayoh,
 - ii. between those police officers and others persons at the scene during the restraint, and
 - iii. between those police officers and others who later attended the scene,
 - d) details of when the police officers who detained Mr Bayoh returned to the police station including: who advised them to return to the police station, when and who was in the vehicle with them,
 - e) details of communications between the police officers and other personnel on return to the police station,
 - f) details (including medical reports and photographs) of any injuries sustained by any of the officers and medical treatment provided,
 - g) details of any interactions or communications by those police officers with each other and with other personnel during the course of the day,
 - h) details of any communications between those police officers and with other personnel between 3 May 2015 and 30 November 2020,
 - i) any report prepared in connection with the use of force,
 - j) any report prepared in connection with the use of incapacitant spray, and
 - k) any report prepared into the circumstances of the restraint of Mr Bayoh.
4. Any documents and other evidence that relate to actions taken by Police Scotland to secure the scene and evidence including:
- a) details of the personnel involved in securing the scene and evidence including who was responsible for leading that process,
 - b) any photographs taken at the scene,
 - c) statements taken by Police Scotland of witnesses including the police officers and paramedics at the scene,
 - d) details of the officers who noted those statements,
 - e) emails, calls or text messages between the officers involved in, or present at the scene during, restraining Mr Bayoh,
 - f) investigation of any offence allegedly committed by Mr Bayoh immediately preceding his death,
 - g) details of what personnel were involved in that investigation including who was responsible for leading that investigation,
 - h) any warrants obtained for the search of property and/or the seizure of evidence in connection with that investigation,
 - i) any schedules of search recording evidence seized,
 - j) any statements taken from personnel serving with the police and civilian witnesses in connection with that investigation,
 - k) any record of previous convictions held by Mr Bayoh,
 - l) any documents relating to Mr Bayoh's medical or psychiatric history, and
 - m) the outcome of that investigation including the standard prosecution report.

5. Any documents and other evidence that relate to:
 - a) the communication of the death of Mr Bayoh to his family and friends including who was advised, when and by whom,
 - b) any subsequent liaison with Mr Bayoh's family and friends up to November 2020, and
 - c) any complaints by Mr Bayoh's family and friends and the handling of any such complaints up to 30 November 2020.
6. Any documents and other evidence that relate to when the Chief Constable was advised of Mr Bayoh's death in custody including:
 - a) when he was advised, and
 - b) the actions he took on 3 May 2015 to 30 November 2020.
7. Any documents and other evidence that relate to liaison between Police Scotland and the Crown Office and Procurator Fiscal Service related to the death of Mr Bayoh and any criminal investigation to 30 November 2020.
8. Any documents and other evidence that relate to liaison between Police Scotland and the Police Investigations and Review Commissioner related to the death of Mr Bayoh and any criminal investigation to 30 November 2020.
9. Any documents and other evidence that relate to liaison between Police Scotland and the Scottish Police Federation on the death of Mr Bayoh and any criminal investigation to 30 November 2020.
10. Any documents and other evidence that relate to liaison between Police Scotland and the media on the death of Mr Bayoh.

In respect of all of the above paragraphs, all versions of documents should be provided e.g. drafts that may include comments or track changes and not only the final versions. The metadata[^] should also be provided.

* "Document" includes information recorded in any form. This can mean it is in paper or in electronic form. It will include but is not limited to text messages, emails, social media posts, letters, statements, manuscript notes, meeting/attendance notes, legislation, reports, guidance, codes of conduct, protocols, photographs, video and audio recordings and metadata.

[^] "Metadata" is data that describes other data. For example, who created a particular word document, who modified that document and the date of both.

06 August 2021

Any and all documents* and other evidence showing or tending to show the following.

1. Guidance, protocols, memoranda of understanding, practice notes, standard operating procedures, internal rules and regulations and training materials, applicable as at 03 May 2015 and during the course of any investigations resulting from or in connection with the death of

Sheku Bayoh in which Police Scotland participated or otherwise engaged (including Police Scotland's own post-incident response), that relate to:

- a) reporting to the appropriate body or bodies incidents that could be investigated under sections 33A(b) or (c) and 41B(1)(a) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 ("the 2006 Act");
- b) insofar as not covered by subparagraph (a):
 - i. investigations into deaths at the time of or following police contact, including deaths in police custody ("police contact or custody deaths"), including complying with obligations under Article 2 of the European Convention on Human Rights;
 - ii. insofar as not covered by head (i), the roles and responsibilities during investigations of police contact or custody deaths of the officers present at or otherwise involved in, and the officers, including senior officers, investigating the death;
 - iii. securing and preserving evidence including video / CCTV footage following police contact or custody deaths;
 - iv. gathering and managing information (e.g. procedure setting out what types of information should be ingathered and how it should be logged) following police contact or custody deaths;
 - v. collating statistics in relation to police contact or custody deaths;
- c) the roles and responsibilities of police officers in relation to a post-mortem examination ("PME"), including but not limited to:
 - i. liaison with the next of kin as regards the performance of a PME and any religious / cultural sensitivities associated therewith; and
 - ii. attendance of police officers at a PME;
- d) identifying deceased persons;
- e) repatriating deceased persons;
- f) liaison with the following organisations, including their roles and responsibilities, in relation to police contact or custody deaths:
 - i. the Crown Office and Procurator Fiscal Service ("COPFS");
 - ii. the Police Investigations and Review Commissioner and those employed for or on her behalf ("PIRC"); and
 - iii. the Scottish Police Federation;
- g) liaison with the Health and Safety Executive in the event of police contact or custody deaths;
- h) liaison with family and friends of the deceased in the event of police contact or custody deaths, including but not limited to sharing information as to the circumstances of the death and making arrangements for identification of the body;
- i) all communications with the media and dealing with press enquiries in relation to police contact or custody deaths;
- j) prevention of the unauthorised release of confidential and / or sensitive material in relation to police contact or custody deaths;
- k) compliance with the data protection regulatory framework;
- l) the following operational / policing matters:
 - i. responding to incidents in which an individual is considered to be potentially:
 - (aa) under the influence of alcohol;
 - (bb) under the influence of drugs (illicit or otherwise);
 - (cc) experiencing a mental health crisis / mental ill health;
 - (dd) experiencing Acute Behavioural Disorder ("ABD") / 'excited delirium';
 - (ee) violent;
 - (ff) in possession of a knife or bladed weapon; or

- (gg) engaged in terrorism-related activity;
- ii. de-escalation (e.g. of violent situations);
- iii. formal and dynamic risk assessment by:
 - (aa) service advisors / area control rooms staff members receiving and responding to calls from the public;
 - (bb) officers responding to incidents; and
 - (cc) insofar as not covered by sub-heads (aa) and (bb), Police Scotland officers and staff that are relevant to incidents such as that involving Mr Bayoh;
- iv. use of force (including but not limited to the use of batons and CS / PAVA sprays);
- v. deployment of armed response units;
- vi. deployment of dog units;
- vii. officers reporting use of force (including but not limited to the use of batons and CS / PAVA sprays), and their completion of the appropriate reporting forms;
- viii. officers providing initial and operational statements, and statements to PIRC;
- ix. officers writing up notebooks;
- x. misconduct / disciplinary procedures, including but not limited to action resulting from an officer's failure to adhere to processes re. completing paperwork, submitting statements, writing up notebooks and search / seizure of property;
- xi. conferral / discussion between officers after an incident, and management of same including the roles of senior officers (i.e. what is expected of officers re. conferral and how that is enforced);
- xii. PIM procedures specific and / or otherwise relevant to incidents such as that involving Mr Bayoh;
- xiii. PIM procedures other than those referred to in head (xii) that were enacted, referred to, considered or otherwise utilised in response to the incident involving Mr Bayoh, including but not limited to PIM procedures relating to firearms incidents;
- xiv. insofar as not covered by heads (xii) and (xiii), the role of a Post Incident Manager and their superiors;
- xv. declaring, managing and responding to serious, major and critical incidents;
- xvi. the purpose and conduct of gold group meetings;
- xvii. seizing and searching property;
- xviii. delivering "death messages";
- xix. taking statements from bereaved persons;
- xx. insofar as not covered by head (xix), taking statements from persons bereaved as a result of police contact or custody deaths; and
- xxi. accessing and use of Police databases;
- m) diversity, race and Islamic cultural sensitivities;
- n) equality impact assessments and documents related to the materials referred to in the preceding subparagraphs that were produced in compliance with, or in pursuance of best practice under, the Equality Act 2010;
- o) insofar as not covered by subparagraphs (l)(x) and (n), investigation and handling of complaints against officers and employees of Police Scotland, including in particular those relating to allegations of racist behaviour; and
- p) monitoring and testing of serving police officers' health and fitness, including but not limited to minimum standards of fitness and eyesight that officers are expected or required to maintain.

In respect of all of the above paragraphs, all versions of documents should be provided e.g. drafts that may include comments or track changes and not only the final versions. The metadata[^] should also be provided.

* “Document” includes information recorded in any form. This can mean it is in paper or in electronic form. It will include but is not limited to text messages, e-mails, social media posts, letters, statements, manuscript notes, meeting / attendance notes, legislation, reports, guidance, codes of conduct, protocols, photographs, video and audio recordings and metadata.

[^] “Metadata” is data that describes other data. For example, who created a particular word document, who modified that document and the date of both.

PIRC

30 November 2020

All documents* and other evidence related to the Inquiry’s terms of reference including, but not limited to, the following.

1. Any documents and other evidence that relate to:
 - a) the date and time the PIRC first became aware of the death of Mr Bayoh,
 - b) the details of the person who advised the PIRC,
 - c) who they advised in the PIRC, and the contents of the communication.
2. Any documents and other evidence that relate to:
 - a) the directions by COPFS under section 33A(b) of the 2006 Act,
 - b) any instructions under section 41A of the 2006 Act,
 - c) any matters investigated by the PIRC in terms of section 33A(d) of the 2006 Act,
 - d) any communication with the COPFS as to:
 - i. how the investigation should be undertaken,
 - ii. the scope of the investigation, and
 - iii. how COPFS would be kept updated of progress,
 - e) the identity and role of the individuals in the PIRC and COPFS involved in the above agreement or direction.
3. Any documents and other evidence that relate to:
 - a) the name of any persons designated by the PIRC under paragraph 7B(1)(a) of schedule 4 of the 2006 Act to take charge of the investigation,
 - b) the name of any persons designated by the PIRC under paragraph 7B(1)(b) of schedule 4 of the 2006 Act to assist the person designated to take charge of the investigation,
 - c) the role, qualifications, expertise, race and ethnicity of those designated under paragraph 7B(1) of schedule 4 of the 2016 Act,
 - d) decisions as to how they were selected to carry out this investigation,
 - e) any concerns expressed about:
 - i. the performance, behaviour or approach of any person designated under paragraph 7B(1), or otherwise involved in the investigation,

- ii. the performance, behaviour or approach of any person from COPFS working on the investigation,
 - iii. any policies or procedure used or adopted by PIRC or any individual employed by them in the investigation into Mr Bayoh's death, or the lack of any policy or procedure.
- 4. Any documents and other evidence that relate to:
 - a) internal planning on how the investigation was to be undertaken,
 - b) when the PIRC first contacted Police Scotland regarding the investigation, who they contacted and for what reason,
 - c) the information gathered from –
 - i. Police Scotland,
 - ii. Scottish Ambulance Service,
 - iii. Mr Bayoh's GP, and
 - iv. any other parties for the purpose of the investigation,
 - d) all statements and precognitions noted by the PIRC for the purposes of their investigation and notes of any interviews conducted,
 - e) any exercise of power or privilege in terms of para 7B(3) of Schedule 4 to the 2006 Act,
 - f) the investigation carried out by the PIRC,
 - g) all reports prepared by the PIRC, including interim or draft versions, for the COPFS including annexes,
 - h) any further directions or requests by COPFS that additional work be undertaken by the PIRC following submission of their report(s),
 - i) any follow-up work carried out by the PIRC, whether on the direction of the COPFS or otherwise,
 - j) all correspondence, emails and notes of discussions with COPFS regarding the investigation,
 - k) any lessons learned exercises or feedback discussions following completion of the investigation, internal or with other parties, and
 - l) compliance with the European Convention on Human Rights.
- 5. To the extent not already provided above, any documents and other evidence that relate to liaison between the PIRC and Police Scotland on the death of Mr Bayoh to 30 November 2020.
- 6. To the extent not already provided above, any documents and other evidence that relate to liaison between the PIRC and COPFS on the death of Mr Bayoh to 30 November 2020.
- 7. To the extent not already provided above, any documents and other evidence that relate to liaison between the PIRC and the HSE on the death of Mr Bayoh to 30 November 2020.
- 8. Any documents and other evidence that relate to:
 - a) liaison between the PIRC and Mr Bayoh's family or friends on the death of Mr Bayoh to 30 November 2020, and
 - b) any examination of the handling of any complaint by the family of Mr Bayoh in terms of section 35(1) of the 2006 Act, and any conclusions reached, actions taken or directions issued thereafter.
- 9. Any documents and other evidence that relate to liaison between the PIRC and the Scottish Police Federation on the death of Mr Bayoh to 30 November 2020.

10. Any documents and other evidence that relate to liaison between the PIRC and the media on the death of Mr Bayoh to 30 November 2020.

In respect of all of the above paragraphs, all versions of documents should be provided e.g. drafts that may include comments or track changes and not only the final versions. The metadata[^] should also be provided.

The references to the PIRC include those employed or appointed by the PIRC and those instructed by the PIRC to act on her behalf.

* “Document” includes information recorded in any form. This can mean it is in paper or in electronic form. It will include but is not limited to text messages, emails, social media posts, letters, statements, manuscript notes, meeting/attendance notes, legislation, reports, guidance, codes of conduct, protocols, photographs, video and audio recordings and metadata.

[^] “Metadata” is data that describes other data. For example, who created a particular word document, who modified that document and the date of both.

06 July 2021

Any and all documents* and other evidence showing or tending to show the following:-

1. Guidance, protocols, memoranda of understanding, practice notes, standard operating procedures, internal rules and regulations and training materials applicable as at 3 May 2015 and during the course of the Police Investigation and Review Commission (“PIRC”) investigations resulting from or in connection with the death of Sheku Bayoh that relate to:
 - a) carrying out of investigations under section 33A, 41A and 41B of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the 2006 Act”);
 - b) insofar as not covered by the above, investigations into deaths during or following police contact, including deaths in police custody, including complying with obligations under Article 2 of ECHR;
 - c) insofar as not covered by the above, the identification of suitable experts and instruction of expert reports;
 - d) insofar as not covered by the above, the investigation of allegations of racism by police officers;
 - e) instruction of post-mortems and religious sensitivities associated therewith;
 - f) securing and preserving evidence including video/CCTV footage, following a death during or following police contact, including a death in police custody,
 - g) gathering and managing information (e.g. procedure setting out what types of information should be ingathered and how it should be logged),
 - h) liaison with the following organisations, including their roles and responsibilities, in relation to a death during or following police contact, including a death in police custody:
 - i. the Crown Office and Procurator Fiscal Service (“COPFS”),
 - ii. Police Scotland, including Post Incident Management,
 - iii. the Scottish Police Federation,
 - i) liaison with the Health and Safety Executive in the event of a death during or following police contact, including a death in police custody;

- j) liaison with family and friends of the deceased in the event of a death during or following police contact, including a death in police custody including, but not restricted to, sharing information as to the circumstances of the death, arrangements for identification of the body and the need for a post-mortem examination,
 - k) all communications with the media and dealing with press enquiries,
 - l) prevention of the unauthorised release of confidential and/or sensitive material,
 - m) compliance with the data protection regulatory framework,
 - n) diversity, race and Islamic cultural sensitivities, including all equality impact assessments and documents produced in compliance with, or pursuance of best practice under, the Equality Act 2010, and
 - o) investigation and handling of complaints against PIRC, including investigation of complaints of racist behaviour by members of staff, that applied on 3 May 2015.
 - p) Investigation and handling of complaints by PIRC, including investigation of complaints of racist behaviour, as part of a Complaints Handling Review, that applied on 3 May 2015.
2. Any and all statistical records relating to investigations of deaths during or following police contact, including deaths in police custody conducted by or under the supervision of PIRC from 1 April 2013 to the end of the PIRC's involvement in the investigation into Mr Bayoh's death, including, where applicable, the investigation by COPFS and any and all audits, reports, targets, analysis and commentary thereof, in draft or otherwise; including but not limited to:
- a) reported deaths during or following police contact, including deaths in police custody;
 - b) annual records of investigations newly instructed, ongoing and completed,
 - c) the age, gender and ethnicity of the deceased;
 - d) deaths during or following police contact, including deaths in police custody in which the drug use of the deceased, illicit or otherwise, was a factor, and
 - e) deaths during or following police contact, including deaths in police custody in which restraint of the deceased by the police was a factor.
3. Staff survey results, statistical records relating to grievances raised by PIRC employees, or similar information related to experiences of the following:-
- i. racial discrimination;
 - ii. religious discrimination experienced by Muslims;
 - iii. attitudes to race; and
 - iv. attitude to Islamic religion and culture
- held by those working for or on behalf of PIRC from 1 April 2013 to the end of the PIRC's involvement in the investigation into Mr Bayoh's death, including, where applicable, the investigation by COPFS.
4. The report produced by PIRC following an investigation into the use of incapacitant spray by officers of Police Scotland at the Victoria Hospital, Kirkcaldy on 18 October 2014.

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^ "Metadata" is data that describes other data. For example, who created a particular word document, who modified that document and the date of both.

COPFS

30 November 2020

All documents* and other evidence related to the Inquiry's terms of reference including, but not limited to, the following.

1. Any documents and other evidence that relate to:
 - a) the time at, and manner in, which COPFS was alerted to the death of Mr Bayoh,
 - b) who alerted COPFS,
 - c) what was said about the incident at that point,
 - d) who in COPFS received that message,
 - e) any instructions given by COPFS as to the conduct of the police investigation into Mr Bayoh's death,
 - f) any instructions given by COPFS as to the investigation of the possibility that any officer involved in Mr Bayoh's restraint may have committed an offence, and
 - g) what steps were taken by COPFS.
2. Any documents and other evidence that relate to:
 - a) directions to Police Scotland regarding the investigation of –
 - i. any criminality on the part of Mr Bayoh,
 - ii. the circumstances of Mr Bayoh's death, and
 - iii. the actions of the police officers involved in or present at the time of Mr Bayoh's restraint,
 - b) any communication with Police Scotland during those investigations,
 - c) any report prepared by Police Scotland following those investigations,
 - d) any requests for further work to be carried out by Police Scotland following the submission of any report, and
 - e) the outcome of any request for further work.
3. Any documents and other evidence that relate to:
 - a) directions to the PIRC under section 33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006,
 - b) instructions to the PIRC under section 41A of the 2006 Act,
 - c) communication with the PIRC during the course of that investigation,
 - d) any reports prepared by PIRC during that investigation, including draft and interim reports,
 - e) any requests for further work to be carried out by the PIRC following receipt of any draft or interim reports and the final report, and
 - f) the outcome of those further requests.
4.
 - a) The name of the Fiscal responsible for leading on the investigations being undertaken by Police Scotland and the PIRC,
 - b) the names of any other COPFS personnel involved in the investigations,
 - c) the qualifications, expertise, race and ethnicity of those involved in the investigation,

- d) any documents and other evidence related to diversity or racial awareness training undertaken by those personnel prior to carrying out the investigation, and
 - e) any documents and other evidence that express concern about -
 - i. the performance, behaviour or approach of any individual working for or on behalf of Police Scotland, the PIRC or COPFS on the investigation into Mr Bayoh's death,
 - ii. any policies or procedure used or adopted by COPFS in the investigation into Mr Bayoh's death, or the absence of any policies or procedures.
5. Any documents and evidence that relate to the investigation undertaken by COPFS into the investigation of Mr Bayoh's death including:
 - a) expert reports into the cause of death, including interim or draft reports,
 - b) expert reports from psychologists or psychiatrists;
 - c) expert reports on toxicology,
 - d) precognitions,
 - e) the Precognition provided to Crown Counsel, and
 - f) compliance with the European Convention on Human Rights
 6. Any documents and other evidence that relate to liaison between COPFS and Mr Bayoh's friends and family to 30 November 2020.
 7. Any documents and other evidence that relate to liaison between COPFS and the Scottish Police Federation on the death of Mr Bayoh and any criminal investigation to 30 November 2020.
 8. Any documents and other evidence that relate to liaison between COPFS and the police officers, involved in or present at the time of Mr Bayoh's restraint, on the death of Mr Bayoh and any criminal investigation to 30 November 2020.
 9. Any documents and other evidence that relate to liaison between the COPFS and the media on the death of Mr Bayoh and any criminal investigation to 30 November 2020.

* "Document" includes information recorded in any form. This can mean it is in paper or in electronic form. It will include but is not limited to text messages, emails, social media posts, letters, statements, manuscript notes, meeting/attendance notes, legislation, reports, guidance, codes of conduct, protocols, photographs, video and audio recordings and metadata.

^ "Metadata" is data that describes other data. For example, who created a particular word document, who modified that document and the date of both.

28 July 2021

Any and all documents* and other evidence showing or tending to show the following:-

1. Guidance, protocols, memoranda of understanding, practice notes, Standard Operating Procedures, internal rules and regulations and training materials as applicable at 3 May 2015 and during the course of the Crown Office and Procurator Fiscal Service investigations resulting from or in connection with the death of Sheku Bayoh that relate to:

- a) instructions to the Police Investigations and Review Commissioner and those employed for or on her behalf (“PIRC”) under Sections 33A and 41A of the Police, Public Order and Criminal Justice (Scotland) Act 2006;
- b) insofar as not covered by the above, investigations into deaths during or following police contact, including deaths in police custody;
- c) gathering and managing information (e.g. procedure setting out what types of information should be ingathered and how it should be logged);
- d) identification of suitable experts and instruction of reports;
- e) instruction of autopsies and religious sensitivities associated therewith;
- f) liaison with the following organisations, including their roles and responsibilities, in relation to a death during or following police contact, including a death in police custody:
 - i. PIRC;
 - ii. Police Scotland; and
 - iii. the Scottish Police Federation;
- g) liaison with the Health and Safety Executive in relation to a death during or following police contact, including a death in police custody;
- h) liaison with next of kin, family and friends in relation to a death during or following police contact, including a death in police custody;
- i) communication with the media and dealing with press enquiries;
- j) prevention of the unauthorised release of confidential and/or sensitive material;
- k) compliance with the data protection regulatory framework;
- l) diversity, race and Islamic cultural sensitivities, including all equality impact assessments and documents pursuant to compliance with the Equality Act 2010; and
- m) obligations to collate statistics relating to a death during or following police contact, including a death in police custody.

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SPF

18 January 2021

All documents* and other evidence related to the Inquiry’s terms of reference including, but not limited to, the following.

1. Any documents and other evidence that relate to:
 - a) The date, time and means and method by which SPF became aware of the death of Mr Bayoh,
 - b) The details of the person(s) who informed SPF of the death of Mr Bayoh,
 - c) The identity of the person within SPF who received intimation of the death and the detail of the communication.

2. Any documents or other evidence that relate to:
 - a) The date, time and means by which SPF was first in contact with each individual police officer (“the individual officers”) involved in the incident leading to the death of Mr Bayoh (“the incident”),
 - b) The details of the person(s) within SPF who were first in contact with the individual officers,
 - c) All communication between SPF and the individual officers in respect of the incident including, but not limited to, (i) details of the identities and roles of persons within SPF with whom they communicated, (ii) notes of those communications, however recorded, (iii) details of the ongoing support and advice offered to the individual officers including any advice given to the individual officers in respect of their cooperation with Police Scotland and the PIRC such as the giving of statements,
 - d) The names of the individual officers to whom SPF were providing support and/or advice in respect of the incident,
 - e) The detail of any discussions SPF had with the individual officers (including any advice provided by SPF) regarding (i) the incident; (ii) any request by PS or PIRC that the officers provide statements; and (iii) the content of those statements,
 - f) Any documents and other evidence related to allegations or expressions of concerns made against the individual officers by colleagues or members of the public regarding excessive use of force,
 - g) Any documents or other evidence related to allegations or expressions of concern made against the individuals officers by colleagues or members of the public regarding racism,
 - h) Any documents or other evidence regarding disciplinary matters arising out of the incident involving any of the individual officers and SPF involvement in those disciplinary procedures.
3. Any documents or other evidence that relate to:
 - a) Any investigation carried out by SPF into the death of Mr Bayoh,
 - b) The details of those involved in those investigations,
 - c) Statements taken by SPF of witnesses, including the individual officers at the scene.
 - d) Details of the individuals who noted those statements.
4. Any documents or other evidence that relate to:
 - a) Liaison, discussion and any other interaction between SPF and Police Scotland in relation to the incident leading to and the death of Mr Bayoh and any criminal investigation into same between the incident and 30 November 2020.
 - b) Liaison, discussion and any other interaction between SPF and PIRC in relation to the incident leading to and the death of Mr Bayoh and any criminal investigation into same between the incident and 30 November 2020.
 - c) Liaison, discussion and any other interaction between SPF and the Crown Office and Procurator Fiscal Service in relation to the incident leading to and the death of Mr Bayoh and any criminal investigation into same between the incident and 30 November 2020.
5. Any documents or other evidence that relate to:
 - a) Minutes from SPF Committee meetings in which the death of Mr Bayoh was mentioned or discussed.
 - b) Joint Central Committee circulars or documents that relate to the death of Mr Bayoh or the Public Inquiry.
6. Any documents or evidence that relate to:

- a) press releases made by or on behalf of SPF in which reference is made to the circumstances surrounding the death of Sheku Bayoh or the individual officers,
- b) statements made by or on behalf of the SPF to any media organisations, including but not limited to, print media, radio, television and the internet, in which reference is made to the circumstances surrounding the death of Sheku Bayoh or the individual officers involved,
- c) any social media content made by SPF, any person employed by SPF and any person acting on behalf of SPF in which reference is made to the circumstances surrounding the death of Sheku Bayoh or the individual officers including but not limited to twitter, Facebook and Instagram.

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[REDACTED]; 'Aamer Anwar' [REDACTED]

Subject: Preliminary Hearing - 18 November

All,

I refer to my previous email intimating the date of the Preliminary Hearing: 18 November 2021.

I am writing to invite all legal representatives to intimate by **1 November** if there are any preliminary issues that they would like to raise at the Preliminary Hearing. The Chair will consider all responses before setting out what matters will be considered at the Preliminary Hearing. Please note that the Preliminary Hearing is procedural only. There will be no opening statements at this hearing; opening statements will be heard at the substantive hearings.

The Chair is minded to set a date of 25 April 2022 for Hearing 1. Hearing 1 is anticipated to last 6 – 8 weeks. The Chair will be interested in preparedness for the start of Hearing 1. If not by 1 November, then for the Preliminary Hearing on 18 November, legal representatives should be prepared to advise on readiness.

As always, if you have any questions please call or email.

Kind regards

Sadif

Sadif Ashraf

Solicitor to the Sheku Bayoh Public Inquiry

[REDACTED]



SECTION 21 NOTICES OVERVIEW

Police Scotland

30 November 2020

All documents* and other evidence related to the Inquiry's terms of reference including, but not limited to, the following.

1.
 - a) The names of the officers involved in restraining Mr Bayoh on 3 May 2015, or present at the time of his restraint,
 - b) their rank at 3 May 20015 and current rank,
 - c) their race and ethnicity,
 - d) the number of years served as at 3 May 2015,
 - e) any documents and other evidence that relate to their height and weight at or around 3 May 2015,
 - f) any document and other evidence related to their training record since they commenced their probationary training with the police up to 30 November 2020,
 - g) any document and other evidence related to their annual reviews and disciplinary records since they started serving with the police up to 30 November 2020,
 - h) any documents and other evidence related to allegations or expressions of concern by their colleagues or members of the public regarding racism, and
 - i) any documents and other evidence related to allegations or expressions of concern by their colleagues or members of the public regarding excessive use of force.
2. Any documents and other evidence that relate to:
 - a) when, how and who alerted the police to the presence of Mr Bayoh on the morning of 3 May 2015, including transcripts of any 999 calls made,
 - b) internal communication that resulted in police officers being sent to Mr Bayoh's location on 3 May 2015 (including the names and ranks of those involved, and the identity of the officer in charge),
 - c) instructions given to the officers attending the scene by the officer in charge,
 - d) the time at which those officers arrived on scene and the names of those officers,
 - e) details of any communication by those officers with each other and police personnel not at the scene (including any requests for support),
 - f) the time further officers arrived on the scene and the names and ranks of those officers,
 - g) details of actions taken by each police officer at the scene before, during and after detention of Mr Bayoh,
 - h) details of any medical assistance given to Mr Bayoh by police officers,
 - i) details of who requested the presence of the Scottish Ambulance Service and at what time,
 - j) transcripts of any 999 calls made to the Scottish Ambulance Service, and requests to the police control room that an ambulance be dispatched,
 - k) details of the actions of the paramedics including communication with police officers at the scene, and

- l) details of ongoing communications between the police officers attending and any other police personnel not at the scene.
3. Any documents and other evidence that relate to:
- a) details of who attended the scene following the notification of Mr Bayoh's death including their role,
 - b) details of the actions each of them took while attending the scene,
 - c) details of any communication -
 - i. between the police officers present during the restraint of Mr Bayoh,
 - ii. between those police officers and others persons at the scene during the restraint, and
 - iii. between those police officers and others who later attended the scene,
 - d) details of when the police officers who detained Mr Bayoh returned to the police station including: who advised them to return to the police station, when and who was in the vehicle with them,
 - e) details of communications between the police officers and other personnel on return to the police station,
 - f) details (including medical reports and photographs) of any injuries sustained by any of the officers and medical treatment provided,
 - g) details of any interactions or communications by those police officers with each other and with other personnel during the course of the day,
 - h) details of any communications between those police officers and with other personnel between 3 May 2015 and 30 November 2020,
 - i) any report prepared in connection with the use of force,
 - j) any report prepared in connection with the use of incapacitant spray, and
 - k) any report prepared into the circumstances of the restraint of Mr Bayoh.
4. Any documents and other evidence that relate to actions taken by Police Scotland to secure the scene and evidence including:
- a) details of the personnel involved in securing the scene and evidence including who was responsible for leading that process,
 - b) any photographs taken at the scene,
 - c) statements taken by Police Scotland of witnesses including the police officers and paramedics at the scene,
 - d) details of the officers who noted those statements,
 - e) emails, calls or text messages between the officers involved in, or present at the scene during, restraining Mr Bayoh,
 - f) investigation of any offence allegedly committed by Mr Bayoh immediately preceding his death,
 - g) details of what personnel were involved in that investigation including who was responsible for leading that investigation,
 - h) any warrants obtained for the search of property and/or the seizure of evidence in connection with that investigation,
 - i) any schedules of search recording evidence seized,
 - j) any statements taken from personnel serving with the police and civilian witnesses in connection with that investigation,
 - k) any record of previous convictions held by Mr Bayoh,
 - l) any documents relating to Mr Bayoh's medical or psychiatric history, and
 - m) the outcome of that investigation including the standard prosecution report.

5. Any documents and other evidence that relate to:
 - a) the communication of the death of Mr Bayoh to his family and friends including who was advised, when and by whom,
 - b) any subsequent liaison with Mr Bayoh's family and friends up to November 2020, and
 - c) any complaints by Mr Bayoh's family and friends and the handling of any such complaints up to 30 November 2020.
6. Any documents and other evidence that relate to when the Chief Constable was advised of Mr Bayoh's death in custody including:
 - a) when he was advised, and
 - b) the actions he took on 3 May 2015 to 30 November 2020.
7. Any documents and other evidence that relate to liaison between Police Scotland and the Crown Office and Procurator Fiscal Service related to the death of Mr Bayoh and any criminal investigation to 30 November 2020.
8. Any documents and other evidence that relate to liaison between Police Scotland and the Police Investigations and Review Commissioner related to the death of Mr Bayoh and any criminal investigation to 30 November 2020.
9. Any documents and other evidence that relate to liaison between Police Scotland and the Scottish Police Federation on the death of Mr Bayoh and any criminal investigation to 30 November 2020.
10. Any documents and other evidence that relate to liaison between Police Scotland and the media on the death of Mr Bayoh.

In respect of all of the above paragraphs, all versions of documents should be provided e.g. drafts that may include comments or track changes and not only the final versions. The metadata[^] should also be provided.

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06 August 2021

Any and all documents* and other evidence showing or tending to show the following.

1. Guidance, protocols, memoranda of understanding, practice notes, standard operating procedures, internal rules and regulations and training materials, applicable as at 03 May 2015 and during the course of any investigations resulting from or in connection with the death of

Sheku Bayoh in which Police Scotland participated or otherwise engaged (including Police Scotland's own post-incident response), that relate to:

- a) reporting to the appropriate body or bodies incidents that could be investigated under sections 33A(b) or (c) and 41B(1)(a) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 ("the 2006 Act");
- b) insofar as not covered by subparagraph (a):
 - i. investigations into deaths at the time of or following police contact, including deaths in police custody ("police contact or custody deaths"), including complying with obligations under Article 2 of the European Convention on Human Rights;
 - ii. insofar as not covered by head (i), the roles and responsibilities during investigations of police contact or custody deaths of the officers present at or otherwise involved in, and the officers, including senior officers, investigating the death;
 - iii. securing and preserving evidence including video / CCTV footage following police contact or custody deaths;
 - iv. gathering and managing information (e.g. procedure setting out what types of information should be ingathered and how it should be logged) following police contact or custody deaths;
 - v. collating statistics in relation to police contact or custody deaths;
- c) the roles and responsibilities of police officers in relation to a post-mortem examination ("PME"), including but not limited to:
 - i. liaison with the next of kin as regards the performance of a PME and any religious / cultural sensitivities associated therewith; and
 - ii. attendance of police officers at a PME;
- d) identifying deceased persons;
- e) repatriating deceased persons;
- f) liaison with the following organisations, including their roles and responsibilities, in relation to police contact or custody deaths:
 - i. the Crown Office and Procurator Fiscal Service ("COPFS");
 - ii. the Police Investigations and Review Commissioner and those employed for or on her behalf ("PIRC"); and
 - iii. the Scottish Police Federation;
- g) liaison with the Health and Safety Executive in the event of police contact or custody deaths;
- h) liaison with family and friends of the deceased in the event of police contact or custody deaths, including but not limited to sharing information as to the circumstances of the death and making arrangements for identification of the body;
- i) all communications with the media and dealing with press enquiries in relation to police contact or custody deaths;
- j) prevention of the unauthorised release of confidential and / or sensitive material in relation to police contact or custody deaths;
- k) compliance with the data protection regulatory framework;
- l) the following operational / policing matters:
 - i. responding to incidents in which an individual is considered to be potentially:
 - (aa) under the influence of alcohol;
 - (bb) under the influence of drugs (illicit or otherwise);
 - (cc) experiencing a mental health crisis / mental ill health;
 - (dd) experiencing Acute Behavioural Disorder ("ABD") / 'excited delirium';
 - (ee) violent;
 - (ff) in possession of a knife or bladed weapon; or

- (gg) engaged in terrorism-related activity;
- ii. de-escalation (e.g. of violent situations);
- iii. formal and dynamic risk assessment by:
 - (aa) service advisors / area control rooms staff members receiving and responding to calls from the public;
 - (bb) officers responding to incidents; and
 - (cc) insofar as not covered by sub-heads (aa) and (bb), Police Scotland officers and staff that are relevant to incidents such as that involving Mr Bayoh;
- iv. use of force (including but not limited to the use of batons and CS / PAVA sprays);
- v. deployment of armed response units;
- vi. deployment of dog units;
- vii. officers reporting use of force (including but not limited to the use of batons and CS / PAVA sprays), and their completion of the appropriate reporting forms;
- viii. officers providing initial and operational statements, and statements to PIRC;
- ix. officers writing up notebooks;
- x. misconduct / disciplinary procedures, including but not limited to action resulting from an officer's failure to adhere to processes re. completing paperwork, submitting statements, writing up notebooks and search / seizure of property;
- xi. conferral / discussion between officers after an incident, and management of same including the roles of senior officers (i.e. what is expected of officers re. conferral and how that is enforced);
- xii. PIM procedures specific and / or otherwise relevant to incidents such as that involving Mr Bayoh;
- xiii. PIM procedures other than those referred to in head (xii) that were enacted, referred to, considered or otherwise utilised in response to the incident involving Mr Bayoh, including but not limited to PIM procedures relating to firearms incidents;
- xiv. insofar as not covered by heads (xii) and (xiii), the role of a Post Incident Manager and their superiors;
- xv. declaring, managing and responding to serious, major and critical incidents;
- xvi. the purpose and conduct of gold group meetings;
- xvii. seizing and searching property;
- xviii. delivering "death messages";
- xix. taking statements from bereaved persons;
- xx. insofar as not covered by head (xix), taking statements from persons bereaved as a result of police contact or custody deaths; and
- xxi. accessing and use of Police databases;
- m) diversity, race and Islamic cultural sensitivities;
- n) equality impact assessments and documents related to the materials referred to in the preceding subparagraphs that were produced in compliance with, or in pursuance of best practice under, the Equality Act 2010;
- o) insofar as not covered by subparagraphs (l)(x) and (n), investigation and handling of complaints against officers and employees of Police Scotland, including in particular those relating to allegations of racist behaviour; and
- p) monitoring and testing of serving police officers' health and fitness, including but not limited to minimum standards of fitness and eyesight that officers are expected or required to maintain.

In respect of all of the above paragraphs, all versions of documents should be provided e.g. drafts that may include comments or track changes and not only the final versions. The metadata[^] should also be provided.

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PIRC

30 November 2020

All documents* and other evidence related to the Inquiry’s terms of reference including, but not limited to, the following.

1. Any documents and other evidence that relate to:
 - a) the date and time the PIRC first became aware of the death of Mr Bayoh,
 - b) the details of the person who advised the PIRC,
 - c) who they advised in the PIRC, and the contents of the communication.
2. Any documents and other evidence that relate to:
 - a) the directions by COPFS under section 33A(b) of the 2006 Act,
 - b) any instructions under section 41A of the 2006 Act,
 - c) any matters investigated by the PIRC in terms of section 33A(d) of the 2006 Act,
 - d) any communication with the COPFS as to:
 - i. how the investigation should be undertaken,
 - ii. the scope of the investigation, and
 - iii. how COPFS would be kept updated of progress,
 - e) the identity and role of the individuals in the PIRC and COPFS involved in the above agreement or direction.
3. Any documents and other evidence that relate to:
 - a) the name of any persons designated by the PIRC under paragraph 7B(1)(a) of schedule 4 of the 2006 Act to take charge of the investigation,
 - b) the name of any persons designated by the PIRC under paragraph 7B(1)(b) of schedule 4 of the 2006 Act to assist the person designated to take charge of the investigation,
 - c) the role, qualifications, expertise, race and ethnicity of those designated under paragraph 7B(1) of schedule 4 of the 2016 Act,
 - d) decisions as to how they were selected to carry out this investigation,
 - e) any concerns expressed about:
 - i. the performance, behaviour or approach of any person designated under paragraph 7B(1), or otherwise involved in the investigation,

- ii. the performance, behaviour or approach of any person from COPFS working on the investigation,
 - iii. any policies or procedure used or adopted by PIRC or any individual employed by them in the investigation into Mr Bayoh's death, or the lack of any policy or procedure.
- 4. Any documents and other evidence that relate to:
 - a) internal planning on how the investigation was to be undertaken,
 - b) when the PIRC first contacted Police Scotland regarding the investigation, who they contacted and for what reason,
 - c) the information gathered from –
 - i. Police Scotland,
 - ii. Scottish Ambulance Service,
 - iii. Mr Bayoh's GP, and
 - iv. any other parties for the purpose of the investigation,
 - d) all statements and precognitions noted by the PIRC for the purposes of their investigation and notes of any interviews conducted,
 - e) any exercise of power or privilege in terms of para 7B(3) of Schedule 4 to the 2006 Act,
 - f) the investigation carried out by the PIRC,
 - g) all reports prepared by the PIRC, including interim or draft versions, for the COPFS including annexes,
 - h) any further directions or requests by COPFS that additional work be undertaken by the PIRC following submission of their report(s),
 - i) any follow-up work carried out by the PIRC, whether on the direction of the COPFS or otherwise,
 - j) all correspondence, emails and notes of discussions with COPFS regarding the investigation,
 - k) any lessons learned exercises or feedback discussions following completion of the investigation, internal or with other parties, and
 - l) compliance with the European Convention on Human Rights.
- 5. To the extent not already provided above, any documents and other evidence that relate to liaison between the PIRC and Police Scotland on the death of Mr Bayoh to 30 November 2020.
- 6. To the extent not already provided above, any documents and other evidence that relate to liaison between the PIRC and COPFS on the death of Mr Bayoh to 30 November 2020.
- 7. To the extent not already provided above, any documents and other evidence that relate to liaison between the PIRC and the HSE on the death of Mr Bayoh to 30 November 2020.
- 8. Any documents and other evidence that relate to:
 - a) liaison between the PIRC and Mr Bayoh's family or friends on the death of Mr Bayoh to 30 November 2020, and
 - b) any examination of the handling of any complaint by the family of Mr Bayoh in terms of section 35(1) of the 2006 Act, and any conclusions reached, actions taken or directions issued thereafter.
- 9. Any documents and other evidence that relate to liaison between the PIRC and the Scottish Police Federation on the death of Mr Bayoh to 30 November 2020.

10. Any documents and other evidence that relate to liaison between the PIRC and the media on the death of Mr Bayoh to 30 November 2020.

In respect of all of the above paragraphs, all versions of documents should be provided e.g. drafts that may include comments or track changes and not only the final versions. The metadata[^] should also be provided.

The references to the PIRC include those employed or appointed by the PIRC and those instructed by the PIRC to act on her behalf.

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[^] “Metadata” is data that describes other data. For example, who created a particular word document, who modified that document and the date of both.

06 July 2021

Any and all documents* and other evidence showing or tending to show the following:-

1. Guidance, protocols, memoranda of understanding, practice notes, standard operating procedures, internal rules and regulations and training materials applicable as at 3 May 2015 and during the course of the Police Investigation and Review Commission (“PIRC”) investigations resulting from or in connection with the death of Sheku Bayoh that relate to:
 - a) carrying out of investigations under section 33A, 41A and 41B of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the 2006 Act”);
 - b) insofar as not covered by the above, investigations into deaths during or following police contact, including deaths in police custody, including complying with obligations under Article 2 of ECHR;
 - c) insofar as not covered by the above, the identification of suitable experts and instruction of expert reports;
 - d) insofar as not covered by the above, the investigation of allegations of racism by police officers;
 - e) instruction of post-mortems and religious sensitivities associated therewith;
 - f) securing and preserving evidence including video/CCTV footage, following a death during or following police contact, including a death in police custody,
 - g) gathering and managing information (e.g. procedure setting out what types of information should be ingathered and how it should be logged),
 - h) liaison with the following organisations, including their roles and responsibilities, in relation to a death during or following police contact, including a death in police custody:
 - i. the Crown Office and Procurator Fiscal Service (“COPFS”),
 - ii. Police Scotland, including Post Incident Management,
 - iii. the Scottish Police Federation,
 - i) liaison with the Health and Safety Executive in the event of a death during or following police contact, including a death in police custody;

- j) liaison with family and friends of the deceased in the event of a death during or following police contact, including a death in police custody including, but not restricted to, sharing information as to the circumstances of the death, arrangements for identification of the body and the need for a post-mortem examination,
 - k) all communications with the media and dealing with press enquiries,
 - l) prevention of the unauthorised release of confidential and/or sensitive material,
 - m) compliance with the data protection regulatory framework,
 - n) diversity, race and Islamic cultural sensitivities, including all equality impact assessments and documents produced in compliance with, or pursuance of best practice under, the Equality Act 2010, and
 - o) investigation and handling of complaints against PIRC, including investigation of complaints of racist behaviour by members of staff, that applied on 3 May 2015.
 - p) Investigation and handling of complaints by PIRC, including investigation of complaints of racist behaviour, as part of a Complaints Handling Review, that applied on 3 May 2015.
2. Any and all statistical records relating to investigations of deaths during or following police contact, including deaths in police custody conducted by or under the supervision of PIRC from 1 April 2013 to the end of the PIRC's involvement in the investigation into Mr Bayoh's death, including, where applicable, the investigation by COPFS and any and all audits, reports, targets, analysis and commentary thereof, in draft or otherwise; including but not limited to:
- a) reported deaths during or following police contact, including deaths in police custody;
 - b) annual records of investigations newly instructed, ongoing and completed,
 - c) the age, gender and ethnicity of the deceased;
 - d) deaths during or following police contact, including deaths in police custody in which the drug use of the deceased, illicit or otherwise, was a factor, and
 - e) deaths during or following police contact, including deaths in police custody in which restraint of the deceased by the police was a factor.
3. Staff survey results, statistical records relating to grievances raised by PIRC employees, or similar information related to experiences of the following:-
- i. racial discrimination;
 - ii. religious discrimination experienced by Muslims;
 - iii. attitudes to race; and
 - iv. attitude to Islamic religion and culture
- held by those working for or on behalf of PIRC from 1 April 2013 to the end of the PIRC's involvement in the investigation into Mr Bayoh's death, including, where applicable, the investigation by COPFS.
4. The report produced by PIRC following an investigation into the use of incapacitant spray by officers of Police Scotland at the Victoria Hospital, Kirkcaldy on 18 October 2014.

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COPFS

30 November 2020

All documents* and other evidence related to the Inquiry's terms of reference including, but not limited to, the following.

1. Any documents and other evidence that relate to:
 - a) the time at, and manner in, which COPFS was alerted to the death of Mr Bayoh,
 - b) who alerted COPFS,
 - c) what was said about the incident at that point,
 - d) who in COPFS received that message,
 - e) any instructions given by COPFS as to the conduct of the police investigation into Mr Bayoh's death,
 - f) any instructions given by COPFS as to the investigation of the possibility that any officer involved in Mr Bayoh's restraint may have committed an offence, and
 - g) what steps were taken by COPFS.
2. Any documents and other evidence that relate to:
 - a) directions to Police Scotland regarding the investigation of –
 - i. any criminality on the part of Mr Bayoh,
 - ii. the circumstances of Mr Bayoh's death, and
 - iii. the actions of the police officers involved in or present at the time of Mr Bayoh's restraint,
 - b) any communication with Police Scotland during those investigations,
 - c) any report prepared by Police Scotland following those investigations,
 - d) any requests for further work to be carried out by Police Scotland following the submission of any report, and
 - e) the outcome of any request for further work.
3. Any documents and other evidence that relate to:
 - a) directions to the PIRC under section 33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006,
 - b) instructions to the PIRC under section 41A of the 2006 Act,
 - c) communication with the PIRC during the course of that investigation,
 - d) any reports prepared by PIRC during that investigation, including draft and interim reports,
 - e) any requests for further work to be carried out by the PIRC following receipt of any draft or interim reports and the final report, and
 - f) the outcome of those further requests.
4.
 - a) The name of the Fiscal responsible for leading on the investigations being undertaken by Police Scotland and the PIRC,
 - b) the names of any other COPFS personnel involved in the investigations,
 - c) the qualifications, expertise, race and ethnicity of those involved in the investigation,

- d) any documents and other evidence related to diversity or racial awareness training undertaken by those personnel prior to carrying out the investigation, and
 - e) any documents and other evidence that express concern about -
 - i. the performance, behaviour or approach of any individual working for or on behalf of Police Scotland, the PIRC or COPFS on the investigation into Mr Bayoh's death,
 - ii. any policies or procedure used or adopted by COPFS in the investigation into Mr Bayoh's death, or the absence of any policies or procedures.
5. Any documents and evidence that relate to the investigation undertaken by COPFS into the investigation of Mr Bayoh's death including:
 - a) expert reports into the cause of death, including interim or draft reports,
 - b) expert reports from psychologists or psychiatrists;
 - c) expert reports on toxicology,
 - d) precognitions,
 - e) the Precognition provided to Crown Counsel, and
 - f) compliance with the European Convention on Human Rights
 6. Any documents and other evidence that relate to liaison between COPFS and Mr Bayoh's friends and family to 30 November 2020.
 7. Any documents and other evidence that relate to liaison between COPFS and the Scottish Police Federation on the death of Mr Bayoh and any criminal investigation to 30 November 2020.
 8. Any documents and other evidence that relate to liaison between COPFS and the police officers, involved in or present at the time of Mr Bayoh's restraint, on the death of Mr Bayoh and any criminal investigation to 30 November 2020.
 9. Any documents and other evidence that relate to liaison between the COPFS and the media on the death of Mr Bayoh and any criminal investigation to 30 November 2020.

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28 July 2021

Any and all documents* and other evidence showing or tending to show the following:-

1. Guidance, protocols, memoranda of understanding, practice notes, Standard Operating Procedures, internal rules and regulations and training materials as applicable at 3 May 2015 and during the course of the Crown Office and Procurator Fiscal Service investigations resulting from or in connection with the death of Sheku Bayoh that relate to:

- a) instructions to the Police Investigations and Review Commissioner and those employed for or on her behalf (“PIRC”) under Sections 33A and 41A of the Police, Public Order and Criminal Justice (Scotland) Act 2006;
- b) insofar as not covered by the above, investigations into deaths during or following police contact, including deaths in police custody;
- c) gathering and managing information (e.g. procedure setting out what types of information should be ingathered and how it should be logged);
- d) identification of suitable experts and instruction of reports;
- e) instruction of autopsies and religious sensitivities associated therewith;
- f) liaison with the following organisations, including their roles and responsibilities, in relation to a death during or following police contact, including a death in police custody:
 - i. PIRC;
 - ii. Police Scotland; and
 - iii. the Scottish Police Federation;
- g) liaison with the Health and Safety Executive in relation to a death during or following police contact, including a death in police custody;
- h) liaison with next of kin, family and friends in relation to a death during or following police contact, including a death in police custody;
- i) communication with the media and dealing with press enquiries;
- j) prevention of the unauthorised release of confidential and/or sensitive material;
- k) compliance with the data protection regulatory framework;
- l) diversity, race and Islamic cultural sensitivities, including all equality impact assessments and documents pursuant to compliance with the Equality Act 2010; and
- m) obligations to collate statistics relating to a death during or following police contact, including a death in police custody.

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SPF

18 January 2021

All documents* and other evidence related to the Inquiry’s terms of reference including, but not limited to, the following.

1. Any documents and other evidence that relate to:
 - a) The date, time and means and method by which SPF became aware of the death of Mr Bayoh,
 - b) The details of the person(s) who informed SPF of the death of Mr Bayoh,
 - c) The identity of the person within SPF who received intimation of the death and the detail of the communication.

2. Any documents or other evidence that relate to:
 - a) The date, time and means by which SPF was first in contact with each individual police officer ("the individual officers") involved in the incident leading to the death of Mr Bayoh ("the incident"),
 - b) The details of the person(s) within SPF who were first in contact with the individual officers,
 - c) All communication between SPF and the individual officers in respect of the incident including, but not limited to, (i) details of the identities and roles of persons within SPF with whom they communicated, (ii) notes of those communications, however recorded, (iii) details of the ongoing support and advice offered to the individual officers including any advice given to the individual officers in respect of their cooperation with Police Scotland and the PIRC such as the giving of statements,
 - d) The names of the individual officers to whom SPF were providing support and/or advice in respect of the incident,
 - e) The detail of any discussions SPF had with the individual officers (including any advice provided by SPF) regarding (i) the incident; (ii) any request by PS or PIRC that the officers provide statements; and (iii) the content of those statements,
 - f) Any documents and other evidence related to allegations or expressions of concerns made against the individual officers by colleagues or members of the public regarding excessive use of force,
 - g) Any documents or other evidence related to allegations or expressions of concern made against the individuals officers by colleagues or members of the public regarding racism,
 - h) Any documents or other evidence regarding disciplinary matters arising out of the incident involving any of the individual officers and SPF involvement in those disciplinary procedures.
3. Any documents or other evidence that relate to:
 - a) Any investigation carried out by SPF into the death of Mr Bayoh,
 - b) The details of those involved in those investigations,
 - c) Statements taken by SPF of witnesses, including the individual officers at the scene.
 - d) Details of the individuals who noted those statements.
4. Any documents or other evidence that relate to:
 - a) Liaison, discussion and any other interaction between SPF and Police Scotland in relation to the incident leading to and the death of Mr Bayoh and any criminal investigation into same between the incident and 30 November 2020.
 - b) Liaison, discussion and any other interaction between SPF and PIRC in relation to the incident leading to and the death of Mr Bayoh and any criminal investigation into same between the incident and 30 November 2020.
 - c) Liaison, discussion and any other interaction between SPF and the Crown Office and Procurator Fiscal Service in relation to the incident leading to and the death of Mr Bayoh and any criminal investigation into same between the incident and 30 November 2020.
5. Any documents or other evidence that relate to:
 - a) Minutes from SPF Committee meetings in which the death of Mr Bayoh was mentioned or discussed.
 - b) Joint Central Committee circulars or documents that relate to the death of Mr Bayoh or the Public Inquiry.
6. Any documents or evidence that relate to:

- a) press releases made by or on behalf of SPF in which reference is made to the circumstances surrounding the death of Sheku Bayoh or the individual officers,
- b) statements made by or on behalf of the SPF to any media organisations, including but not limited to, print media, radio, television and the internet, in which reference is made to the circumstances surrounding the death of Sheku Bayoh or the individual officers involved,
- c) any social media content made by SPF, any person employed by SPF and any person acting on behalf of SPF in which reference is made to the circumstances surrounding the death of Sheku Bayoh or the individual officers including but not limited to twitter, Facebook and Instagram.

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1 to as a black man. We have discussed this matter with
2 the legal representatives of the relatives and family of
3 Sheku Bayoh and they have agreed that they are happy
4 with that description for the purposes of the work of
5 this Inquiry. For that reason, we will use the words
6 and expressions "black" or "white" during questioning.

7 We do not want those engaged with the work of the
8 Inquiry to shy away from asking probing questions or
9 raising issues for fear of offending where particular
10 terms may be used. So those engaging with the Inquiry
11 should feel free to use the same terms during any
12 discussions or questioning.

13 In this Inquiry, we will be carefully examining
14 every choice made, every action and omission, and asking
15 whether the fact that Mr Bayoh was a black man made
16 a difference. We will be asking: had Mr Bayoh been
17 white, would he and his family have been treated in the
18 same way? Had Mr Bayoh been white, would the
19 investigations have proceeded in the same way? Had
20 Mr Bayoh been white, would different choices have been
21 made about the appropriate course of action? At every
22 stage, we will be making this comparison and asking
23 ourselves that question.

24 Those complete my comments, sir.

25 LORD BRACADALE: Thank you very much, Ms Grahame.

Ruling by Chair of the Sheku Bayoh Inquiry

On a request for undertakings from the Solicitor General and Chief Constable

Executive summary

[1] I have decided to request the Solicitor General to give an undertaking that in any future prosecution of a police officer or former officer, arising out of the events at Hayfield Road on 3 May 2015 and the post-incident management, she will not use against that officer evidence which that officer has provided to the Inquiry. In addition, I have decided to request the Deputy Chief Constable to give an undertaking that in any future disciplinary proceedings against an individual serving officer arising out of these matters, she will not seek to rely on evidence given to the Inquiry by that officer.

[2] I have taken these decisions because I am satisfied that without these undertakings the Inquiry is likely to be seriously impeded in fulfilling its function in relation to the terms of reference. I am satisfied that in the absence of undertakings officers and former officers would be highly likely to exercise their right against self-incrimination and would not give full, frank and uninhibited evidence to the Inquiry.

[3] It is vitally important that all should understand the limited nature of the undertakings which I request. The requests do not seek immunity from prosecution or disciplinary proceedings. In the event that new evidence against officer A emerges in the Inquiry it will be open to the Solicitor General and the Deputy Chief Constable

to make use of that material as they think fit. The undertaking is restricted only to the use of evidence provided to the Inquiry by officer A.

[4] It is also important to note that the undertakings do not extend to evidence of an incriminating nature that one officer gives about another. In other words, officer B would not have the benefit of the undertaking in respect of incriminating evidence against officer B given by officer A.

[5] There is an important public interest in the Inquiry ascertaining the truth as to what happened on 3 May 2015. That will involve a consideration by me of the whole evidence in order to find facts proved and draw inferences from proved facts. The terms of reference require me to establish the circumstances of the death of Sheku Bayoh and examine the post-incident management process. Without the undertakings, my ability to do that will be severely undermined.

[6] The terms of reference include the remit “to establish the extent (if any) to which the events leading up to and following Mr Bayoh’ 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”. I am satisfied that in the absence of the undertakings, my ability to satisfy this aspect of the terms of reference will be severely limited.

[7] The terms of reference will require me to hold individual officers accountable for their actions, both in relation to events at Hayfield Road, and subsequently. In order to do that I will require the full and frank evidence of officers and former officers to be available to the Inquiry. Without the undertakings my ability to hold individuals to account will be severely limited.

[8] I am conscious that the family of Sheku Bayoh were opposed to the making of the requests, but they have a strong interest in hearing the fullest account of what happened on 3 May 2015 leading to the death of Sheku Bayoh. Hearing the full evidence of the key witnesses is essential to achieving that. I am satisfied that in the absence of the undertakings the family are most unlikely to hear the full evidence of the officers in relation to events at Hayfield Road and subsequent events. I very much hope that they will come to understand that.

Introduction

[1] Three core participants, Sgt Scott Maxwell, PC Daniel Gibson and PC James McDonough (the applicants), who are serving police officers who attended Hayfield Road on 3 May 2015, invited me to request (a) the Solicitor General for Scotland, to whom the Lord Advocate has delegated responsibility for her dealings with the Inquiry, to give certain undertakings in respect of any future prosecutions of these core participants; and (b) the Chief Constable to give similar undertakings in respect of any future disciplinary proceedings. After receiving written submissions on behalf of the applicants and other core participants, on 22 February 2022 I held a preliminary hearing at which I heard oral submissions from Ms Grahame QC, senior counsel to the Inquiry, Ms McCall QC on behalf of the applicants, Ms Mitchell QC on behalf of the family of Sheku Bayoh, the Dean of Faculty on behalf of the Scottish Police Federation (SPF) and Mr Jackson QC on behalf of PC Kayleigh Good, PC Alan Smith and PC Ashley Tomlinson, each of whom is a core participant.

[2] The Solicitor General accepts that it is competent for her to give an undertaking. Although in written submissions senior counsel for the Chief Constable had maintained that it was not competent for the Chief Constable to give such an undertaking, prior to the preliminary hearing she departed from that position. The Chief Constable now accepts that it is competent for the Deputy Chief Constable, designated under The Police Service of Scotland (Conduct) Regulations 2014, to give an undertaking.

[3] In essence, the undertaking sought from the Solicitor General is that in any future prosecution of officer A she will not use against officer A, evidence which that officer has provided to the Inquiry. It is important to stress at the outset that this is not a request for immunity from prosecution. None of the core participants seek immunity from prosecution. It is an undertaking limited to the possible use to which the evidence given by officer A to the Inquiry might be used in a subsequent prosecution of officer A. Undertakings of this kind have been given in other public inquiries.

[4] In similar vein I am asked to request the designated Deputy Chief Constable to undertake that she will not in any future disciplinary proceedings against officer A seek to rely on evidence given to the Inquiry by officer A. Again, it is important to understand that the request is not for an undertaking that no disciplinary proceedings will be raised against officer A. Similar undertakings have been given in other public inquiries.

[5] It is also important to note that it is not sought to extend the undertakings to evidence of an incriminating nature that one officer gives about another. In other words, officer B would not have the benefit of the undertaking in respect of incriminating evidence against officer B given by officer A.

[6] In addition to the applicants, a number of other officers and former officers are core participants. PC Craig Walker, PC Kayleigh Good, PC Alan Smith, PC Ashley Tomlinson, and Nicole Short and Alan Paton (both retired constables) also attended Hayfield Road on 3 May 2015; Temporary Assistant Chief Constable Patrick Campbell, Chief Superintendent Conrad Trickett and Chief Superintendent Garry McEwan (now retired) were involved in post-incident management.

[7] While, in written submissions, these core participants reserved their position, all have indicated that undertakings from the Solicitor General may be necessary. In addition, Temporary Assistant Chief Constable Campbell, Chief Superintendent Trickett, PC Good, PC Smith, and PC Tomlinson have indicated that they may also require an undertaking from the Deputy Chief Constable. Senior counsel to the Inquiry recommended that, given the limited period of time available between now and the first hearing, I should make requests now in respect of each of the officers and former officers who seek or may seek undertakings. She advised me that she had intimated to each of these core participants that she intended to make that recommendation and all had either confirmed that they were content with that approach or had raised no objection. I shall proceed on the basis of the recommendation.

[8] The Sheku Bayoh family opposed the application to request undertakings. The Coalition for Racial Equality and Rights (CRER) took a neutral position. Senior counsel to the Inquiry recommended that I should request the undertakings sought from both the Solicitor General and the Deputy Chief Constable.

Background

[9] On 11 November 2019 the Lord Advocate wrote to the Chief Constable of Police Scotland and the solicitors acting on behalf of the officers involved in the restraint of Sheku Bayoh. The letters were in the following terms:

“Death of Sheku Bayoh - 3 May 2015, Kirkcaldy

I write to advise you that Crown Counsel have instructed that no criminal proceedings will be instituted against any police officer in relation to the death of Sheku Bayoh in Kirkcaldy on 3 May 2015 on the basis of the current available information.

You will be aware that there is an obligation on the prosecutor to keep cases under review. This includes cases in which the prosecutor has decided to take no action. The Crown therefore reserves the right to prosecute any of the officers at a future date.”

[10] In the event of new or further evidence coming to light in the course of the Inquiry, such evidence would be available for consideration in a review of the case by the Crown and could be led in any future prosecution. In particular, something of a self-incriminating nature said by officer A in the course of evidence to the Inquiry would be available against officer A in any subsequent prosecution of him/her.

The privilege against self-incrimination

[11] It is clear from section 22 of the Inquiries Act 2005 that the privilege against self-incrimination extends to witnesses in a public inquiry.

[12] At common law, a witness is entitled to refuse to answer a question if a truthful answer could lead to conviction of the witness for a crime. “It is a sacred and inviolable principle ... that no man is bound to incriminate himself.”¹ The privilege is enshrined in Article 6 ECHR:

¹*Livingstone v Murrays* (1830) 9 S 161; per Lord Gillies at 162

“...there can be no doubt that the right to remain silent under police questioning and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6”.²

[13] The privilege has a wide scope. It applies not only to a direct question as to whether the witness has committed a specific crime, but also to examination on facts which indirectly infer guilt or may form links in a chain of evidence³. The privilege extends to evidence which might be used for the purposes of deciding whether to bring proceedings against the person who gives it⁴. In addition, it extends to the use of an answer which may set in train a line of inquiry⁵.

The position of the family of Sheku Bayoh

[14] Ms Mitchell on behalf of the of Sheku Bayoh family moved me to decline to make requests for undertakings from both the Solicitor General and the Deputy Chief Constable. She submitted that the family had a legitimate expectation that police officers would give every assistance after a serious incident and that expectation extended to attending a public inquiry and answering all and any legitimate and relevant questions put to them by the Inquiry. She pointed to the duties of police officers found in the declaration each officer makes on taking up office, which was to be found in the Police and Fire Reform (Scotland) Act 2012, the code of ethics of Police Scotland and the statutory standards of professional behaviour. She made reference to the recent Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing, conducted by Dame Elish Angiolini QC, published in November 2020, where Dame Elish concluded:

² *Murray v United Kingdom* (1996) 22 EHRR 29 at para 44-45; *Saunders v United Kingdom* (1997) 23 EHRR 313 at para 68

³ Dickson, *Evidence* (3rd edn), para 1789

⁴ *Den Norske Bank ASA v Anonatas* [1999] QB 271 per Lord Justice Waller at p 289A

⁵ *Rank Film Distributors Ltd v Video Information Centre* [1982] AC 380 per Lord Wilberforce at p 443D

"... all of which to some extent express or imply a statutory, ethical or procedural duty on that person to assist in the investigation of a serious incident and to uphold Convention rights."⁶

[15] She also stressed the duty of candour which existed on police officers. Dame Elish made a recommendation that the duty of candour should be put beyond any doubt by statute and whilst this recommendation had not yet been implemented, the duty nonetheless existed.

[16] The difficulty with Ms Mitchell's submission is that as a matter of law these duties are subject to the right against self-incrimination which may be exercised by a witness in giving evidence, as Dame Elish recognised.⁷

Power to make requests

[17] In terms of section 17 of the Inquiries Act 2005 I have a wide discretion to direct the procedure and conduct of the Inquiry, subject to the requirement to act with fairness and with regard also to the need to avoid unnecessary cost. It is common ground that in directing the conduct of the Inquiry in terms of section 17 I may request the undertakings. There was some difference of view between senior counsel to the Inquiry and Ms McCall as to the test that I should use in deciding whether to make the request. Essentially, the issue was whether, on the one hand, I should foreshadow the decision ultimately to be made by the Solicitor General in balancing the public interest in establishing the truth in the Inquiry against any negative effect on the administration of justice, or, on the other hand, whether I was restricted to considering only the question as to whether the Inquiry would be hampered in the absence of the undertakings. I do not think that in the circumstances of the issue before me in this Inquiry much turns on the difference of approach. I consider that Ms McCall goes too far in submitting that I may only have regard to the impact on the inquiry in the absence of an undertaking. While that will inevitably be the main driver, I would wish to take into account considerations such as the limited nature of the undertaking, which does not amount to immunity from

⁶ At para 7.108

⁷ At paras 7.109 and 7.115

prosecution and does not extend to other witnesses. I consider that I should have regard to the circumstances in the round and decide whether to make the requests.

Whether I should make the requests

[18] As a general proposition, the exercise of the right against self-incrimination by a witness can have a significant impact on the ability of an inquiry to find facts proved and draw inferences from proved facts. For example, at the inquest in 1997 into the death Stephen Lawrence the five men suspected of involvement in his murder refused to answer any questions asked of them. Sir William MacPherson of Cluny, in his subsequent report following a public inquiry, observed:

“This part of the inquest must have been both frustrating and indeed almost farcical to the jury. We fully understand the coroner’s reasons for summoning the five suspects to court and calling them. Although the fact is that calling them did, in fact, achieve nothing.”

[19] I have repeatedly stressed the important public interest in striving to ascertain the truth in the Sheku Bayoh Inquiry. My task is to search for the truth through the evidence. That will involve a consideration of the whole evidence, making of findings in fact and drawing inferences from proved facts. If the exercise by witnesses of the right against self-incrimination is likely significantly to inhibit that process, and the examples cited above suggest that that would be the case, then a strong case may emerge in favour of seeking an undertaking from the Solicitor General.

[20] The terms of reference require me to establish the circumstances of the death of Sheku Bayoh and examine the post-incident management process. The nine police officers who attended the scene are key eye witnesses to the events in Hayfield Road and subsequent events. The three senior officers are key witnesses to the subsequent events. Each of the officers and former officers is a crucial witness in respect of highly important and potentially controversial aspects of the terms of reference. The exercise of the right against self-incrimination by these witnesses would be likely to have a profound effect on my ability to reach the truth of what happened, both at Hayfield Road, and subsequently.

[21] I have committed to ensure that the family of Sheku Bayoh are at the heart of this Inquiry. They have a strong interest in hearing the fullest account of what happened on 3 May 2015 leading to the death of Sheku Bayoh. The full evidence of the key witnesses is essential to achieving that. I hope that they will come to understand that in the absence of the undertakings they are most unlikely to hear the evidence of the officers in relation to events at Hayfield Road and subsequent events. It was very clear from the observations of the Dean of Faculty and Mr Jackson that the clear advice given to the officers as witnesses would be to refuse to answer questions because of the risk of self-incrimination. As Ms McCall observed, the breadth of the terms of reference may give rise to a range of possible offences in respect of which witnesses might well be concerned about the risk of self-incrimination. In exercising the right to refuse to answer questions the witnesses would simply be exercising their legal rights and could not be criticised for doing so.

[22] While all these witnesses gave statements to the investigators on behalf of PIRC, and these are available to the Inquiry, it is necessary for the Inquiry to hear their oral evidence and, in anticipation of doing so, take full statements from them. The Inquiry is an inquisitorial inquiry which requires to conduct its own investigation. The terms of reference are much wider than the investigation conducted by PIRC and extend to an examination of the quality of that investigation itself. All of the issues to be explored in the hearings were not explored by PIRC when the initial statements were obtained. The assessment of the Inquiry team of the available material is that there are key issues of fact to be explored. In order to resolve these and make appropriate findings in fact, the Inquiry requires to have the benefit of the full, frank and uninhibited evidence of the officers and former officers identified above.

[23] The Inquiry will require to explore contradictions in the evidence and resolve discrepancies and assess the demeanour of witnesses. Assessment of credibility and reliability will be difficult if I do not see and hear the officers and former officers give full evidence.

[24] The terms of reference include the remit “to establish the extent (if any) to which the events leading up to and following Mr Bayoh’ 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". The issue of race will be explored as a thread throughout the hearings. This is an area which may very much depend on drawing inferences from a body of circumstantial evidence. More than one inference may be capable of being drawn from the same body of evidence. Explanations for acts or omissions of officers might require to be taken into account. In the absence of undertakings it is likely that explanations would not be available. I consider that fulfilling the remit in relation to race will require full exploration of the actions of the officers and former officers concerned, including full, frank and uninhibited evidence from them as witnesses.

[25] The terms of reference will require me to hold individual officers accountable for their actions, both in relation to events at Hayfield Road, and subsequently. The task of the Inquiry in carrying out that exercise will be enhanced if the full and frank evidence of the officers and former officers is available to the Inquiry. Conversely, without the undertakings, the evidence of the officers available to the Inquiry may be limited to the statements given by the officers to the PIRC investigators with the limitations noted above. Without the undertakings the ability of the Inquiry to hold individuals to account for their actions would be significantly impeded.

Request to Solicitor General

[26] The undertaking from the Solicitor General, as drafted by the applicants, is designed to reflect the scope of the privilege against self-incrimination described above. It is worth repeating that it does no more than that. Such an undertaking would be limited in its effect: it does not grant any immunity from prosecution; it does not apply to any statements or documents already in the possession of the Inquiry; and it does not prevent the Crown from making use of answers given by one witness in furtherance of proceedings against another.

[27] I recognise that the Solicitor General is bound to act fairly and in the public interest. She will require to balance competing public interests. She has indicated that she will consider any request made with an open mind. It is for her to decide whether it would be appropriate for her to give an undertaking and, if so, the terms of any undertaking.

[28] For the reasons which I have set out in detail above, I have come to the view that without undertakings from the Solicitor General the Inquiry is likely to be seriously impeded in fulfilling its function in relation to the terms of reference. In these circumstances I conclude that I shall request the Solicitor General to give appropriate undertakings.

Request to Deputy Chief Constable

[29] While the privilege against self-incrimination does not extend to disciplinary proceedings, I am concerned that any barrier to the giving of full, frank and uninhibited evidence by the witnesses who are serving police officers should be removed. I agree with the statement of principle by the chair of the Undercover Policing Inquiry:

“It is a commonplace that witnesses are more likely to be frank and honest with their inquisitor if there will be no adverse consequences to them arising from their evidence, such as the use of their evidence in a criminal prosecution or disciplinary proceedings against them... the Inquiry can, in the public interest, invite the Attorney General or an employer to consider whether it would be appropriate to grant an undertaking giving some measure of protection to witnesses.”⁸

[30] Undertakings were sought in the Al Sweady Inquiry:

“...I did form the view that I should seek appropriate undertakings to protect witnesses from the risk of their evidence or information being used against them in criminal proceedings and, possibly, in administrative or disciplinary procedures falling short of criminal proceedings. As it seemed to me, such a provision would properly serve to achieve the full and frank accounts from witnesses that the Inquiry requires.”⁹

[31] As noted above, the Chief Constable no longer insists that that it is incompetent for the designated Deputy Chief Constable to give an undertaking. I recognise that

⁸ [160526-ruling-undertakings.pdf \(ucpi.org.uk\)](https://www.ucpi.org.uk/160526-ruling-undertakings.pdf)

⁹ [rulingonimmunitiesandrelatedundertakingsfollowingfirstdirectionshearingof21june2010f.pdf \(nationalarchives.gov.uk\)](https://www.nationalarchives.gov.uk/rulingonimmunitiesandrelatedundertakingsfollowingfirstdirectionshearingof21june2010f.pdf)

the Chief Constable and the Deputy Chief Constable have a duty in the public interest to maintain discipline and ensure public confidence in policing. The Deputy Chief Constable will require to balance that against the public interest in establishing the truth in the Inquiry through full, frank and uninhibited evidence. An undertaking given by the Deputy Chief Constable would be limited in its effect: it would not prevent the Deputy Chief Constable from instigating disciplinary proceedings against the officer in respect of whom the undertaking is made; and it does not prevent her from making use of answers given by one witness in furtherance of disciplinary proceedings against another. Importantly, it does not apply to any statements or documents already in the possession of the Inquiry: that means that the Deputy Chief Constable would have available to her the earlier statements made by the officers.

[32] I shall request the Deputy Chief Constable to give appropriate undertakings to the specified core participants who are serving police officers. It will be a matter for her whether she decides to do so, and if she does, what the terms of any undertaking would be.

[33] A list of the officers (and former officers) in respect of whom I make the requests for undertakings from the Solicitor General and/or Deputy Chief Constable is to be found at Annex 1 to this ruling. A number of Core Participant officers (and former officers) drafted a suggested form of words for the undertakings, for the consideration of the Solicitor General/Deputy Chief Constable. The drafts are to be found at Annex 2 to this ruling.

[34] In order to allow the Inquiry to make progress in taking statements prior to the hearing on 10 May, I would be grateful if the Solicitor General and the Deputy Chief Constable could respond to my requests by 15 March 2022.

The Rt Hon Lord Bracadale 1 March 2022

Annex 1: officers and former officers in respect of whom I request undertakings

Solicitor General

Sergeant Scott Maxwell

PC Daniel Gibson

PC James McDonough

PC Craig Walker

Ms Nicole Short (retired Constable)

PC Kayleigh Good

PC Alan Smith

PC Ashley Tomlinson

Mr Alan Paton (retired Constable)

Chief Superintendent Conrad Trickett

Mr Garry McEwan (retired Chief Superintendent)

Temporary Assistant Chief Constable Patrick Campbell

Deputy Chief Constable

Sergeant Scott Maxwell

PC Daniel Gibson

PC James McDonough

PC Kayleigh Good

PC Alan Smith

PC Ashley Tomlinson

Chief Superintendent Conrad Trickett

Temporary Assistant Chief Constable Patrick Campbell

Annex 2: wording of undertakings proposed by applicants and others

Undertakings to be sought from the Solicitor General

Wording proposed by PC Gibson, PC McDonough and Sgt Maxwell

It is undertaken that no evidence given to the Inquiry by PC Daniel Gibson, PC James McDonough and Sergeant Scott Maxwell, whether orally or by written statement, or in any statement made preparatory to giving evidence, or in any document, information or item produced by that officer to the Inquiry:

- (i) will be used against them in any criminal proceedings either in the future or on appeal from a conviction; or
- (ii) will be used when deciding whether to bring such proceedings

except proceedings where they are charged with having given false evidence in the course of this Inquiry, or with having conspired with or compelled any other person to do so, or are charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or compelled others to commit such an offence.

It is further undertaken not to use in criminal proceedings against any of the above-named officers any evidence which is itself the product of an investigation commenced as a result of the provision by that officer of any evidence, document, thing or information to the Inquiry.

For the avoidance of doubt, this undertaking does not preclude the use of a document and/or information and/or evidence identified independently of the evidence provided by that officer to the Inquiry.

Wording proposed by PC Walker and Ms Short

1. To undertake in respect of any person who provides evidence to the Inquiry that no evidence he or she may give before the Inquiry, whether orally or by written statement, nor any written statement made preparatory to giving evidence nor any document produced by that person to the Inquiry will be used in evidence against him or her in any criminal proceedings, save as provided for in paragraph 2 herein:

2. Paragraph 1 does not apply to:

a) Proceedings where he or she is charged with having given false evidence in the course of this Inquiry or having conspired with or procured others to do so, or

b) In proceedings where he or she is charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or procured others to commit such an offence.

3. Where any such evidence is provided to the Inquiry by a person, it is further undertaken that, as against that person, no criminal proceedings shall be brought (or continued) in reliance on evidence which is itself the product of an investigation commenced as a result of the provision by that person of that evidence.

Wording proposed by Mr Alan Paton

It is undertaken that no evidence to the Inquiry by Alan Paton, whether orally or by written statement, or in any statement made preparatory to giving evidence, or in any document, information or item produced by him to the Inquiry:

- (i) Will be used against him in any criminal proceedings either in the future or on appeal from a conviction; or
- (ii) Will be used when deciding whether to bring such proceedings,

Except proceedings where he is charged with having given false evidence in the course of this Inquiry, or with having conspired with or compelled any other person to do so or is charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or compelled others to commit such an offence.

Any evidence which is itself the product of an investigation commenced as a result of the provision by him of any evidence, document, thing or information to the Inquiry will not be used in criminal proceedings against Alan Paton.

For the avoidance of doubt, this undertaking does not preclude the use of a document and/or information and/or evidence identified independently of the evidence provided by him to the Inquiry.

Such undertaking is given in perpetuity and binding on the office of the Lord Advocate.

The applicants' proposed wording is adopted by Chief Superintendent Trickett, Mr McEwan and Temporary Assistant Chief Constable Campbell

No form of words was proposed by PC Good, PC Smith or PC Tomlinson.

Undertakings to be sought from Deputy Chief Constable designate

Wording proposed by PC Gibson, PC McDonough and Sgt Maxwell

It is undertaken that no evidence given to the Inquiry by PC Daniel Gibson, PC James McDonough and Sergeant Scott Maxwell, whether orally or by written statement, or in any statement made preparatory to giving evidence, or in any document, information or item produced by that officer to the Inquiry:

- (i) will be used against them in any misconduct investigation or misconduct proceedings under the Police Service of Scotland (Conduct) Regulations 2014; or
- (ii) will be used when deciding whether to bring such a misconduct investigation or misconduct proceedings,

except in misconduct proceedings that arise as a result of that officer being charged with having given false evidence in the course of this Inquiry or with having conspired with or compelled any other person to do so or are charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or compelled others to commit such an offence.

It is further undertaken not to use in misconduct proceedings against the above-named officers any evidence which is in itself the product of an investigation commenced as a result of the provision by that officer of any evidence, document, thing or information to the Inquiry.

For the avoidance of doubt, this undertaking does not preclude the use of a document and/or information and/or evidence identified independently of the evidence provided by that officer to the Inquiry.

Wording proposed by Chief Superintendent Trickett and Temporary Assistant Chief Constable Campbell

As per the wording proposed by the applicants, with the addition of the following:

If written or oral evidence given to the Inquiry by a witness who is a [current or former member of the relevant body] may tend to indicate that:

(1) the same witness previously failed to disclose misconduct by himself or some other person, or

(2) the same witness gave false information on a previous occasion in relation to such misconduct,

Then I undertake that the [relevant body] will not use the evidence of that witness to in the Inquiry in any disciplinary proceedings against that witness where the nature of the misconduct alleged is the failure to give a full, proper or truthful account on that previous occasion.

No form of words was proposed by PC Good, PC Smith or PC Tomlinson.

WRITTEN OPENING STATEMENT

ON BEHALF OF THE CHIEF CONSTABLE, POLICE SCOTLAND

In The Sheku Bayoh Inquiry

Introduction

1. **Thank you, Sir, for allowing me the opportunity to make an opening statement on behalf of the Chief Constable, Iain Livingstone, QPM, head the Police Service of Scotland.**
2. **On the first day of this Inquiry, we were privileged to hear from Mr Bayoh's families, who shared their memories of him. No one could fail to be moved by the eloquence, courage and dignity shown in that presentation or fail to understand the devastating loss they have suffered. The death of a young person causes unimaginable grief. No mother should have to suffer the loss of her son.**
3. The presentation was a poignant reminder of what this Inquiry is about - it is about the death of Sheku Bayoh - a much loved son, father, brother, uncle, cousin, nephew, partner and a good friend - – a young black man - who was a member of the Scottish community, the Kirkcaldy community, - a fellow citizen who died following an interaction with officers of Police Scotland.
4. **The written statement will address matters in the following chapters:**
 - 1 Address to the family
 - 2 Policing in Scotland and the issue of racism
 - 3 Approach **to** the events on 3 May 2015 and the immediate aftermath
 - 4 Practice and Procedures in 2015 in the context of legacy forces

Chapter 1

Address to the family

The Chief Constable, who is present here today, has asked that I address my first remarks to you, his family.

5. You are at the heart of this Inquiry. The Chief Constable wishes to express his support for this Inquiry to you in person and publicly.: -

5.1 Today, he offers his condolences to you for the loss of your loved one;

5.2 The Chief Constable was powerfully affected by Kadi's statement that she does not feel safe in Scotland and fears for her children and for her nieces and nephews. As Chief Constable, he leads a police service whose very purpose is to improve the safety and wellbeing of the people and communities of Scotland. That mission is, and must be, for the benefit of all citizens and, as Chief Constable, he is clear Police Scotland has a major role in ensuring Scotland is a safe, secure and welcoming place.

5.3 The Chief Constable has committed Police Scotland to support the Inquiry's aims and objectives with absolute candour;

5.4 At his direction, extensive resources have been applied and continue to be applied to assist in the provision of material to the Inquiry and ensure the fullest possible engagement with the Inquiry.

5.5 He agrees that it is essential to understand all that happened in Kirkcaldy on 3 May 2015 and whether or not race or perceived race had any part in the tragic outcome or the subsequent events;

5.6 You can be reassured that any omissions or failures on the part of the police service will be acknowledged, that lessons have been learned, will continue to be learned and that there will be a constant striving for continuous improvement; and

5.7 There is no doubt about the importance of this Inquiry to you and your families; to the communities of Scotland and in particular, to those within the black community and other minority communities. The Chief Constable knows

how vital it is to maintain and build the confidence of all communities served by the Police.

Chapter 2

Policing in Scotland and the issue of racism

6. Policing in Scotland is done with and by the consent of the public. The Chief Constable has consistently underlined that Police **Scotland draws its legitimacy from the consent of, and bond of trust it has with its fellow citizens.**
7. Effective policing is enabled and enhanced by the trust and confidence of the public. The main purpose of policing in Scotland is to improve the safety and well-being of people and communities. That purpose is, of course, to serve all people and all communities.
8. The Chief Constable regards this Inquiry as one of the most important opportunities to address the issue of racism and policing publicly. It is critical for the future of policing in Scotland. Without question, it is fundamental to furthering the aims of Police Scotland to serve all communities. The scope of this issue must be properly understood, acknowledged where it exists, and zero tolerance of racism actively upheld and enforced.
9. The question of whether or not race or perceived race played any part in what happened on 3 May 2015 to Mr Bayoh and thereafter is a serious and grave matter for policing in Scotland and its relationship with the public.
10. The Chief Constable reaffirms his public position that racism or discrimination of any kind is utterly deplorable, completely unacceptable and should have no place in society and no place in policing. Police officers and staff are drawn from the different experiences and backgrounds of the public they serve. What unites them are Police Scotland's values of integrity, fairness, respect, a commitment to upholding human rights and a shared mission to keep people safe. He is clear that improving how policing reflects, represents and serves all communities is not only an operational necessity. It is a moral imperative.

11. The Chief Constable wishes to reassure the communities of Scotland that: as **leader of Police Scotland, he will continue to implement necessary change to build and maintain that bond of trust with all communities and provide everyone with fair, just and effective policing.**
12. Police officers have substantial powers and duties. Accordingly, the onus is on the police service to reassure the public that such responsibilities will be exercised fairly, without malice or ill will based on their race or perceived race.
13. The Chief Constable is aware that it is not enough to be alert to racism and deal with it on a case by case basis when it comes to light. Nor is it enough, simply to be non racist. Police Scotland needs to be **ANTI RACIST**. He has thought carefully about the actions which need to be taken in order for an organisation to be **ANTI RACIST**. He uses that term to mean that the organisation should seek to address and challenge the existence and workings of racism at all levels -personal, cultural and institutional. . This goes beyond simply delivering training in equality, diversity and inclusion but includes following up that that training with a determination to seek out and combat racism in any form. It means developing policies, structures and systems followed by actions to deconstruct racism and address issues of power, justice and inequality.
14. His message will be made clear at all levels of the organisation to ensure that the whole culture is **ANTI RACIST**. Each individual needs to ask these questions of themselves –
- ‘How can **I** be ANTI RACIST?
How can **I** combat racism?
How can **I** counter RACISM? ‘
15. The Chief Constable has a duty and an opportunity to strive for a change now which is unquestionably and **absolutely morally and ethically right**. There is still work to be done to strengthen public confidence in the police. Recent events nationally across the UK and

internationally have demonstrated that. The Chief Constable is listening to all communities, is committed to understanding their issues and is taking positive and effective action.

16. Disadvantage and injustice persist in society – discrimination by individuals, through cultural norms and in the structures of institutions remains. Police Scotland is not immune from these challenges - that was underlined by Dame Elish Angiolini's review of police complaints in 2020. The Chief Constable is acutely aware that, given the essential role policing has in society, he has a duty to lead, uphold and inspire change that improves the experiences and lives of the public served by the police in Scotland.
17. In discharge of that duty, he is determined, that under his command and leadership, the Police Service of Scotland **will** become **an actively anti-racist service.**
18. Prior to 2015, there were procedures and processes in place which sought to ensure that there was no place for racism within the Police Service of Scotland following its creation on 1 April 2013. This will be the subject of further evidence as the inquiry progresses. At this opening stage attention is drawn to the following:
19. Police officers take an oath of office, adhere to a code of ethics and must adhere to the Standards of Professional Behaviour.
20. It is important for the public to be aware that from 1 April 2013, in order for appointment as a police officer to take effect, it has been essential that a declaration is made before a Sheriff, a Summary Sheriff (from 1 April 2016) or Justice of the Peace. Their declaration or the 'oath of office', in terms of Section 10 of the Police and Fire Reform (Scotland) Act 2012 is this:

*"...[they] solemnly, sincerely and truly declare and affirm that [they] will faithfully discharge the duties of the office of constable with **fairness, integrity, diligence and impartiality**, and that [they] will **uphold fundamental human rights and accord equal respect to all people, according to law.**"*

21. **All** officers who were members of a police service in Scotland prior to the creation of the national force, the Police Service of Scotland, in 2013, are deemed to have made this oath by virtue of the transitional provisions of the Police and Fire reform 2012 Act.
22. Every officer on duty as at 3 May 2015 and subsequently, had taken, or was deemed to have taken, this oath.
23. Work was progressed on Diversity and Equality in furtherance of the wider police reform programme in Scotland commenced in 2012. Police reform offered an opportunity to look at culture and behaviours. The service undertook significant work to develop the purpose, vision and values of Police Scotland. A national programme of engagement took place to identify cultural issues relevant to police reform.
24. As a result, in 2013 Police Scotland became the first British police service to introduce and embed in its organisation a **Code of Ethics for Policing**. It sets out the standards expected of those who contribute to policing in Scotland. It reflects the values of the Police Service of Scotland. It includes the obligation to act with **integrity, fairness and respect** and in a manner which reflects the values of policing in Scotland. **Impartiality and a requirement to ensure that all people have fair and equal** access to police services according to their needs are part of that Code. Officers of Police Scotland are required to maintain an open attitude, continue to improve their understanding and awareness of cultural, social and community issues, carry out their duties in a fair manner and be guided by the principles of **impartiality and non-discrimination**. Respect is key – each officer requires to show respect for **all people and their beliefs, values, cultures and individual needs and to have respect for all human dignity**. There requires to be an acknowledgement that an individual attitude and behaviour contributes to the consent communities have for policing.
25. Behaviour that is antithetical to the Code is likely to be subject to scrutiny under misconduct procedures.

26. Police officers **must** adhere to the Standards of Professional Behaviour ('the Standards') set out in Schedule 1 to the Police Service of Scotland (Conduct) Regulations 2014. Failure to adhere to them is a matter of misconduct. As well as the requirement to act with honesty, integrity and to treat all members of the public and colleagues with respect and courtesy, there is a specific standard regarding **Equality and Diversity, namely that 'Constables act with fairness and impartiality. They do not discriminate unlawfully or unfairly'**.
27. In addition, as has been emphasised by the Lord Justice Clerk, the Right Honourable Lady Dorrian, in *BC v the Chief Constable*, [2021 SC 265 paragraph 98], police officers are not simply employees. They are the holders of the public office of constable who are subject to a strict regulatory framework which is essential for the preservation of public confidence and the proper discharge of their duties as police officers. The Standards of Behaviour include the obligation to **"report, challenge or take action against the conduct of other constables which has fallen below the Standards of Professional Behaviour."** Accordingly, there is a clear obligation on officers to challenge colleagues who breach the standard of equality and diversity and exhibit racist or discriminatory behaviour.
28. The Professional Standards Department of Police Scotland investigates and deals with allegations of racist behaviour exercising the statutory powers available under the misconduct regulations. A good example of such a challenge is the case of *BC* to which reference has already been made.
29. A National Decision Making Model for Police Scotland was adopted placing the core values and human rights at the centre of all decision making. Staff were encouraged to reflect on their particular role and how equality should be advanced and discrimination prevented.
30. **All** newly appointed Police Officers to Police Scotland attend the Scottish Police College and, as part of their initial training, receive Diversity Training. That training explores attitudes and values and causes officers to consider their own prejudices. It covers the principles of equality and diversity, prejudice, discrimination and unacceptable behaviour and the impact of that. A Probationer Officer cannot achieve the rank of Constable

without undergoing this training. There is a Staff Appraisal scheme which reviews officers in terms of their 'Respect for Diversity'.

31. In 2016, Police Scotland became one of the first Police Services to introduce Human Rights considerations into its existing equality impact assessments.
32. In 2017, Police Scotland established an award winning Positive Action Team to encourage people from underrepresented groups to apply to be police officers. Ethics panels were introduced to provide colleagues with a forum to discuss ethical dilemmas
33. The Chief Constable has personally ensured that there is renewed action on inclusion and diversity within Police Scotland which is subject to external independent oversight, challenge and scrutiny. Police Scotland has the benefit of an Equality, Diversity, Inclusion and Human Rights Independent Review Group ('IRG') with an independent chair. Diversity Action Plans have been introduced after consultation with diversity staff associations and working groups established to deliver on these plans. In addition, Leadership development programmes have been reviewed to ensure equality, diversity and inclusion sit at the heart of them and there is a commitment to increase development opportunities for underrepresented groups.
34. It has the benefit of an independent Professional Reference Group the ('PRG') which also provides guidance as well as critical oversight to ensure that the issues are understood properly, and the action taken is directed accordingly to achieve the aims.
35. The Chief Constable and the Deputy Chief Constable, Mrs Fiona Taylor, QPM, have led steps to direct and deliver real change. They recognise that training and espoused values are one thing, but to be really effective, what is essential, is that the necessary core values are an integral part of **the culture of the organisation at every level**.

36. There is an awareness that ‘culture’ can be defined in many ways and that there will be more than one level of culture operating in any organisation. They understand that this is a complex matter. It requires the re-examination of the interrelationship between the basic assumptions of individuals and the core values of Police Scotland. It requires the embedding of core standards of behaviour to ensure that the culture of every division and department in Police Scotland is **ANTI RACIST** and that all behaviours and attitudes are in line with that culture.
37. This will be achieved through evidence-based actions – leadership, campaigns, empathy building, positive narratives, awareness building, rigorous adherence to legal duties, training and peer support all of which will be continuously assessed and evaluated for effect. Each member of the organisation needs to think and act in accordance with Police Scotland’s shared core values in order to be **ANTI RACIST**.
38. The Chief Constable is absolutely determined that processes set in train under his command will lead to progressive change – a trajectory that will one day lead to there being no question but that the Police Service of Scotland is an **ANTI RACIST Service**.
39. The Chief Constable is sending a very clear and strong message that, if you hold racist, misogynist or discriminatory views, you are unwelcome in policing.
40. It is imperative that progress is made. Words and good intent are not enough. There will be action; practical, firm, progressive, visible action.
41. **The Chief Constable declares:**

That upholding the core values of the Police Service of Scotland demands that it be ANTI RACIST; and

That the Police Service of Scotland will aim to become a truly anti-racist service.

Police Scotland will aim to act at all times in accordance with that declaration.

Chapter 3

Approach to the events on 3 May 2015 and the immediate aftermath

42. The Chief Constable welcomes an open and fresh review of the events by the Inquiry.
43. As this was a death in police custody, the procedures immediately put in place meant that the investigation and all material available at that time was placed in the hands of an independent body, namely the PIRC. Police Scotland has, in the course of the Inquiry to date, received disclosure of material back from that organisation and the Crown via the Inquiry. In respect of statements from witnesses, other than those taken at the direction of PIRC at the material time, none have been taken by Police Scotland as this is not permissible in terms of the statutory procedures in place. For example, the only statements Police Scotland have regarding the evidence of the officers who took part in the restraint comes from those disclosed by the Inquiry. The Chief Constable may hear evidence on some issues for the first time in this Inquiry.
44. In support of the Inquiry an unprecedented retrieval process has been undertaken by Police Scotland to provide the Inquiry with the fullest possible disclosure of material to assist the Inquiry in its deliberations. This reflects the Chief Constable's commitment to cooperate fully and transparently with the Inquiry.
45. The Chief Constable's engagement with the facts will be such as is necessary to assist the Inquiry to have all relevant material before it. His agenda is one of a determination to assist in the ascertainment of the true facts with fairness, balance and candour. The Chief Constable reiterates that the family, the public and the Inquiry can be assured that all evidence will be reviewed and assessed as regards implications it may have for policing and action taken accordingly.

Chapter 4

Practice and Procedures in 2015 in the context of legacy forces

46. In advance of this hearing the Chief Constable has provide a detailed position statement dealing with the issues which the Inquiry seeks to address in hearing 1. The position statement is, at the request of the Inquiry, restricted to matters as they stood at 2015. As evidence becomes available that statement will be updated.
47. In May 2015, Police Scotland was still in a transitional period following the amalgamation of eight police services, known as legacy forces, on 1 April 2013. All the legacy force systems and procedures had to be assimilated across into the new complex organisation. For example, procedures for the handling of calls to the police were already undergoing review from early 2014 to have all legacy force call handling integrated into a national model. A Contact Assessment Model (CAM) now in place, allows Police Scotland to make a more enhanced assessment regarding the needs of the caller (public and partners) based on an assessment of **Threat, Harm, Risk, Investigative opportunity, Vulnerability,** and third party **Engagement (THRIVE)** to identify and direct the most appropriate and proportionate policing response at first point of contact. This enhanced assessment of the caller's needs and any associated risks, improves decision making regarding the dispatch of officers and permits a greater resolution of non-urgent matters at the first point of contact. This will be explored in due course in later hearings.
48. There have been many other substantial changes in the law and practice in the 7 years since May 2015, but the detail of that is out with the scope of this first hearing. In due course the Inquiry will hear about those which include changes to the law on arrest and detention, changes and improvements to the use of force models and training (including dealing with acute behavioural disturbance), provision of equipment including Taser, CS Spray and Pava, post incident management, crime scene management, recruitment and many equality and diversity initiatives. Evidence on these matters will be presented to the Inquiry in accordance with the Inquiry's hearing plans.

49. Review and improvement of policing responses and services is a continuing dynamic process with the aim to always provide the best service for all the communities of Scotland. Lessons will be learned from this Inquiry as it proceeds and further change implemented where necessary.

Conclusion

50. This Public inquiry has the full support and commitment of the Chief Constable and the whole of Police Scotland. There is a shared aim to understand the events and the causes and to address matters as they arise. There will be absolute candour from Police Scotland. The Chief Constable will continue to support the Inquiry in all its investigations and aims.

Submitted on behalf of the Chief Constable of Police Scotland together with the oral opening statement

Maria Maguire Q.C.

11 May 2022

Statement by Chair of the Sheku Bayoh Inquiry

Mr Paton did not attend the Inquiry for the recording of the permitted Rule 9 questioning. He provided a medical certificate to the effect that he was unfit to attend. I am advised that a further supplementary report will be provided in due course. Once that report has been received I shall be in a position to decide how best to take this matter forward.

You will recall that when Mr Paton's evidence was being played I explained that references to certain names had been edited out. I should also now advise that some further names have been edited from the recording and transcript of the playing of the evidence of Mr Paton. After the core participants were given the opportunity to submit any relevant further questions arising from that evidence, counsel to the Inquiry considered that identification of these individuals was not necessary for the Inquiry to fulfil its terms of reference and I am satisfied that that is the case.

Today concludes this particular block of public hearings. Senior counsel to the Inquiry has advised that in addition to the oral evidence we have heard over the past

22 days, we are now ready to publish a large number of statements taken from witnesses by the Inquiry team. The entire content of all of these statements constitutes evidence to the Inquiry and is available to me for further consideration. In addition, we will publish a number of statements taken by the Police and Investigations Review Commissioner, at a time closer to the events, as well as an audio tape of a 999 call by Mrs Joyce Joyce.

Senior counsel has also advised that we will publish on the website a timeline, which is an innovative approach to the presentation of evidence, using witness statements and multimedia to create a curated snapshot of the key events at Hayfield Road on 03 May 2015. As part of this timeline we will also publish, for the first time, the full evidence video timeline, sections of which have been used during the evidential hearing with witnesses. This is the combined audio recordings and visual footage obtained by the Inquiry, played out against the real time clock.

There are three outstanding matters arising from this block. Evidence of these matters will be led in the November 2022. These are:

- the final report from Advanced Laser Imaging;
- expert evidence on officer safety training; and
- expert evidence of further forensic examination of the vest of Nicole Short.

Thereafter, in due course there will be further blocks of hearings which will include:

- examination of the post incident management conducted by Police Scotland;
- the cause of death;
- the investigation conducted by the PIRC and the Lord Advocate; and

- the issue of race.

Preparation in respect of these hearings is ongoing.

Finally, I would like to remind all core participants that it is for the Inquiry to conduct the investigation into the terms of reference. I expect as part of the commitments given by all core participants to co-operate with the Inquiry on that investigation, including the taking of statements from current or prospective witnesses, will be a matter for my Inquiry team alone.

Lord Bracadale

30 June 2022

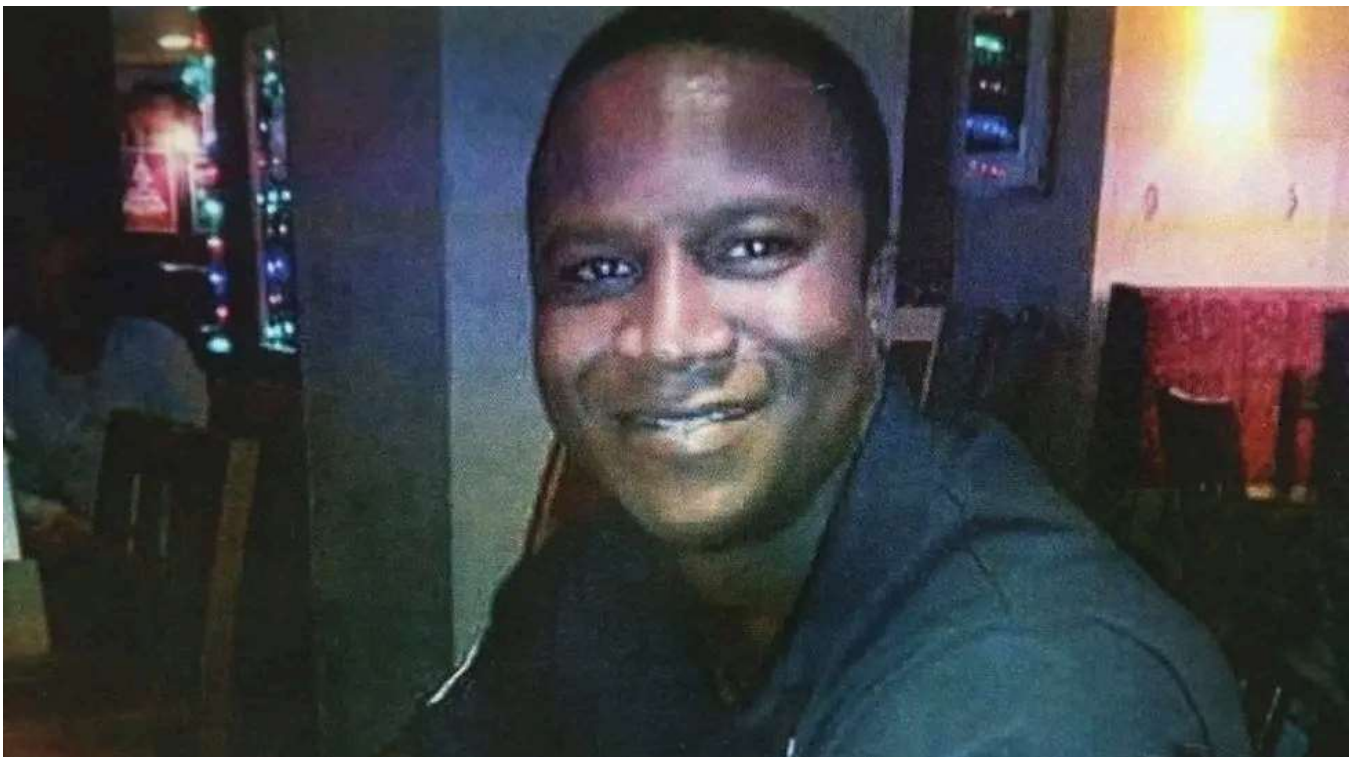
The statement was amended on 05 September and 29 September to remove personal information. The content of the statement has not changed.

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Sheku Bayoh family walk out of inquiry over delay to police evidence

🕒 9 December 2022

Sheku Bayoh death inquiry



| Sheku Bayoh died in police custody in 2015

By David Cowan

Home affairs correspondent, BBC Scotland

Members of Sheku Bayoh's family staged a walkout at the public inquiry into his death, over the postponement of evidence from a police officer.

It brought the Edinburgh hearing to a temporary halt, with the family saying they were being treated unfairly.

Pre-recorded testimony was due to be heard from witness PC Alan Paton.

The former officer was one of the first at the scene after Mr Bayoh was seen carrying a knife and behaving erratically in Kirkcaldy in May 2015.

The 31-year-old was unarmed when officers found him but a violent confrontation followed. He died after being restrained on the ground by six officers, including Mr Paton.

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The questioning of Mr Paton had been taped in a closed hearing for medical reasons.

Inquiry chair Lord Bracadale said that Mr Paton's lawyer had "made representations about the conditions in which the tape would be played".

He said he needed to consider this and decided to postpone the playing of the evidence until a later date.



Lord Bracadale said: "I acknowledge that the late change may cause inconvenience to members of the public who wanted to watch the evidence, but sometimes changes do have to be made at short notice."

Mr Bayoh's sisters Kadi Johnson and Kosna Bayoh walked out of the inquiry room and the hearing was adjourned.

Ms Johnson said: "We are so upset. We came here today to hear his evidence. We feel he has special treatment over everybody else, and we are asking, why is that?"

"They promised us that we would be at the centre of this but at the moment we are not feeling like that. We have waited seven years. Why should we wait any longer?"

The hearing later resumed with evidence from forensic scientist Paul Ryder, who was asked by the inquiry to examine the boots Mr Bayoh was wearing on the day of the incident and a high-vis vest worn by PC Nicole Short.

The inquiry's heard contested allegations that Mr Bayoh stamped on PC Short after punching her to the ground.

Expert criticises police over Sheku Bayoh tactics

Death inquiry lawyers told off for using phones

'Upsetting' abuse sent to Sheku Bayoh's sister

Mr Ryder compared the tread on Mr Bayoh's boots to small black marks on PC Short's vest, but said the marks were too poorly defined for any meaningful comparison.

In his report he said: "No features were present ... that I would expect to see if they were related to an item of footwear being brought down in forceful contact with this vest."

Questioned by a lawyer representing two of the officers, Mr Ryder agreed he could not rule out the possibility that the marks had been caused by Mr Bayoh's footwear.

But he added: "If the entirety of that mark was a single contact with that boot, what I'm seeing isn't what I would expect to see."

Professor Lorna Dawson from the James Hutton Institute in Aberdeen examined three soil marks on PC Short's vest with soil found on Mr Bayoh's boots.

She said two of the soil marks on the vest were "consistent" with having come from Mr Bayoh's footwear.

The inquiry junior counsel Lorna Thomson asked: "Members of the public watching the evidence might wonder whether you are saying that the soil on areas one and three on the vest did come from Sheku Bayoh's boots, is that what you are saying?"

Prof Dawson replied: "I think we are saying that it's consistent with having come from there. We can't categorically say that it came from Mr Bayoh's boots."

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From: [REDACTED]
To: [Sheku Bayoh Inquiry – legal enquiries](#); [REDACTED]
[REDACTED]
Cc: [Sheku Bayoh Inquiry – legal enquiries](#)
Subject: All agents - Submissions to the Chair during hearings - Guidance note - 25 January 2023
Date: 25 January 2023 17:27:39
Attachments: [image001.png](#)
[Guidance on submissions during a hearing.pdf](#)

Dear all,
Further to my email below sent during the previous set of hearings, the Chair has formalised his position on the issue of oral submissions that arise during hearings and has put this into guidance. I attach that guidance for your information. I would be grateful if you could ensure to circulate this guidance to all counsel in advance of the hearings starting next week.

Any questions please just let me know.

Kind regards

[REDACTED]



[REDACTED]

Deputy Solicitor to the Sheku Bayoh Public Inquiry

[REDACTED]

Working pattern: [REDACTED]

From: [REDACTED]
Sent: 09 December 2022 09:49
To: [Sheku Bayoh Inquiry – legal enquiries](#); [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: URGENT All agents - Submissions to the Chair during hearings - 9 December 2022

Importance: High

Dear all,
During the course of this set of hearings there have been a number of instances when counsel for core participants have sought to make an oral submission to the Chair during the hearing. The Chair has reflected on the process for doing so. He has asked all legal representatives to make their counsel aware that should they wish to make an oral submission to the Chair during the course of the proceedings the appropriate way in which to do this is for either counsel or the solicitor to email the legal enquiries mailbox legal@shekubayohinquiry.scot explaining the purpose of the proposed oral submission and why they require to make that submission orally as opposed to in a written form. Myself and Sadif monitor the mailbox at all times during the hearings. We will pick these requests up immediately, consider and place before the Chair. If the Chair is satisfied that it should be heard orally he will invite counsel to make the submission. If he considers it more appropriate for the submission to be made in writing he will direct you to do so.

Kind regards

[REDACTED]



[REDACTED]

Deputy Solicitor to the Sheku Bayoh Public Inquiry

[REDACTED]

Working pattern: [REDACTED]

Guidance on making submissions in the course of a hearing

Where, in the course of a hearing, a matter arises in respect of which the legal representative of a core participant wishes to make a submission, the following guidance will apply:

- In most cases it should not be necessary to interrupt the proceedings to make an immediate oral submission. Counsel for the core participant should send an email to the legal enquiries mailbox legal@shekubayohinquiry.scot explaining the purpose of the proposed submission and why they require to make that submission orally rather than in writing.
- On receipt of the email the solicitor to the inquiry will make counsel to the inquiry aware of the application and place it before the chair. This will generally be done at the next break. The chair will decide (a) whether, and, if so, when, an oral submission may be heard; or (b) whether the matter should be dealt with, at least in first instance, by a written submission. It may be that as part of this process counsel to the inquiry will have a discussion with counsel for the core participant.
- There may be exceptional circumstances, in which there is an urgent, pressing need for counsel for a core participant to raise a matter during a hearing. In these circumstances counsel should explain to the chair the basis of the urgency and why the email procedure set out above cannot be complied with.

THE SHEKU BAYOH INQUIRY

INTERIM SUBMISSIONS FOR THE CHIEF CONSTABLE, POLICE SERVICE OF SCOTLAND

23 June 2023

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THE SHEKU BAYOH INQUIRY

INTERIM CLOSING SUBMISSIONS

on behalf of

**THE CHIEF CONSTABLE,
POLICE SERVICE OF SCOTLAND**

1. INTRODUCTION

1. These submissions are presented on behalf of Sir Iain Livingstone, QPM, the Chief Constable of the Police Service of Scotland ('Police Scotland'), who was appointed in August 2018 and had served as Interim Chief Constable since September 2017, who is a Core Participant in the Inquiry.
2. At this stage the Inquiry wishes to receive interim submissions in respect of the matters relating to the terms of reference which were the subject of the evidential hearings held in May/June 2022, November/December 2022, January, February and March 2023 and May 2023.¹
3. The Chief Constable has affirmed his support for the Inquiry. The Chief Constable has committed Police Scotland to support the Inquiry's aims and objectives with absolute candour.

¹ Guidance on Closing Submission 31 January 2023

4. At his direction, extensive resources have been applied and continue to be applied to assist in the provision of material to the Inquiry and ensure the fullest possible engagement with the Inquiry.
5. There has been an unprecedented level of disclosure of information by Police Scotland. There has been very substantial engagement by the Chief Constable to further the aims of the Inquiry and he continues to fulfil his commitment with absolute candour.
6. As this was a death in police custody, the procedures immediately put in place meant that the investigation, and all material available at that time, were placed in the hands of an independent body, namely the Police Investigations and Review Commissioner ('PIRC'). Police Scotland has, in the course of the Inquiry to date, received disclosure of material back from that organisation and the Crown via the Inquiry. In respect of statements from witnesses, other than those taken at the direction of PIRC at the material time, none were taken by Police Scotland as this was not permissible in terms of the statutory procedures in place. Apart from statements taken to inform position statements, which have been requested by the Inquiry on training matters, no statements have been taken on behalf of the Chief Constable regarding the events in question.
7. In his opening statement², the Chief Constable stated that his engagement with the facts would be such as is necessary to assist the Inquiry to have all relevant material before it. His agenda remains one of a determination to assist in the ascertainment of the facts with fairness, balance and candour. The Chief Constable reiterates that the families, the public and the Inquiry can be

² SBPI-00091

assured that all evidence is being reviewed and assessed as regards implications it may have for policing in Scotland and that action is being taken accordingly.

8. In the course of the Inquiry material has been disclosed back to Core Participants by the Inquiry. Not all evidence disclosed to the Inquiry by the Chief Constable has been disclosed back to Core Participants at this time. In line with the Guidance,³ reference in these submissions has only been made to material which has been disclosed by Police Scotland to the Inquiry and disclosed back to other Core Participants or material which has been disclosed by other Core Participants and disclosed back. The Chief Constable does not have access to material disclosed to the Inquiry from other Core Participants which has not been disclosed back or which is in the hands of other parties which has not been disclosed to the Core Participants by the Inquiry.
9. The Chief Constable has assisted the Inquiry by providing ten Position Statements to date⁴.
10. It is clearly in the public interest that all relevant matters are reviewed, addressed and weighed. It is in the furtherance of that public interest, in which the Chief Constable is acutely engaged, that these submissions are made. These submissions have been prepared and submitted without sight of the submissions of any other Core Participant or the submissions to be made by Senior Counsel to the Inquiry.
11. It is proposed to make submissions of general application as preliminary matters. Thereafter with the exception of race, which will be addressed first

³Guidance on Closing Submission 31 January 2023 – 3rd and 4th pages (unnumbered document)

⁴ Ruling of the Chair on Position Statements dated 3 February 2022

given its importance to the families, the communities served by Police Scotland and the Police Scotland community, these submissions will broadly follow the same order as the matters are listed in the Chair's Guidance on Submissions, in so far as appropriate.⁵ There is also reference therein to the List of Issues for Hearing 1.⁶ Submissions are not invited in respect of actions such as crime scene management, recovery of evidence or post incident management.

2. PRELIMINARY MATTERS

2.1 Role of the Chief Constable

12. The role of the Chief Constable is one in which, as head of the Police Service of Scotland, he has an obligation to review matters in terms of the maintenance of public confidence in the police. He must consider organisational responsibility and learning. The Chief Constable is also responsible in terms of the Police and Fire Service (Scotland) Reform Act 2012 ('the 2012 Act') for the maintenance of a properly disciplined police service. The Police Service of Scotland (Conduct) Regulations 2014 ('the 2014 Regulations') are promulgated under and in terms of the powers set out in sections 48 and 125 of the 2012 Act. In terms of those Regulations the Chief Constable must designate a Deputy Chief Constable to exercise functions under the 2014 Regulations.⁷ The Deputy Chief Constable so designated then exercises those functions exclusively of the Chief Constable. The designated Deputy Chief Constable is Mrs Fiona Taylor QPM.

⁵ Guidance on Closing Submission 31 January 2023 – 3rd and 4th pages (unnumbered document)

⁶ SBPI-00003 (it is understood that the list of issues should only be addressed up to and including number 6, the Victoria Hospital and, therefore does not include 'Items recovered at the Scene' including the recovery of knife)

⁷ Regulation 5 of the 2014 Regulations

13. It is important to note that, if there are reasons to suspect a criminal offence has been committed by an officer, then the matter must be referred to the Crown Office and Procurator Fiscal Service ('COPFS'), currently via a specialised unit.

14. The 2014 Regulations provide as follows:

“9.— Alleged offences

(1) If the deputy chief constable considers that it can reasonably be inferred that a constable may have committed a criminal offence, the deputy chief constable—

(a) must refer the matter to the appropriate prosecutor; and

(b) may suspend or postpone any proceedings under these Regulations until the appropriate prosecutor intimates that—

(i) criminal proceedings are not to be brought in respect of any matter mentioned in the misconduct allegation; or

(ii) any criminal proceedings which have been brought have been concluded.”

15. The Chief Constable must also comply with any lawful instructions given by the appropriate prosecutor in relation to the investigation of offences and or on the instructions of the Lord Advocate.⁸

16. Undertakings were sought by the Chair from the Solicitor General in respect of criminal proceedings and from the Deputy Chief Constable, Mrs Taylor, as regards disciplinary proceedings.⁹ There have been no undertakings given by the Solicitor General as regards the question of prosecution. There have been

⁸ Section 17(3)(a) and (b) of the 2012 Act

⁹ Ruling by the Chair on request for undertakings dated 1 March 2022

no undertakings given by Mrs Taylor as regards consideration of disciplinary matters.¹⁰

17. This means that there must be no interference by the Chief Constable with the discretion of those decision makers when exercising their respective roles. It would therefore not be appropriate for the Chief Constable to engage in matters in relation to the Chair's findings of responsibility or general accountability of individual officers. Each of the Core Participant officers have separate legal representation and it will be for their advisors to make such representation as appropriate.

18. The Chief Constable will confine himself to those matters which relate to organisational responsibility and, if appropriate, a submission of general considerations, as may apply. He will draw attention to facts, in so far as it is necessary to do so, in the interests of fairness and completeness. The Chief Constable is committed to supporting the Inquiry. Matters of credibility and reliability are for the Chair. The Chief Constable will address the evidence where it may be helpful, but only with a view to assisting the Chair in his determinations and without agenda or bias.

2.2. Standard of Proof

19. Section 2 of the Inquiries Act 2005 Act ('the 2005 Act'), specifically prohibits an Inquiry from determining civil or criminal liability, as follows:

"No determination of liability

¹⁰ Letter dated 25 March 2022 from Deputy Chief Constable Taylor QPM in her role as Deputy Chief Constable [designate] under the 2014 Regulations

- (1) An inquiry is not to rule on, and has no power to determine, any person's civil or criminal liability
- (2) But an inquiry panel is not to be inhibited in the discharge of its function by any likelihood of liability being inferred from the facts that it determines or recommendations that it makes."

20. The Chair will require to consider the standard of proof. The 2005 Act makes no express provision as to the standard of proof to be applied by an Inquiry when making findings of fact or recommendations. In civil proceedings, in Scotland and England, it is well settled that the standard of proof in civil proceedings is the balance of probabilities. In Scotland, this is clear from the well known case of *Mullan v Anderson*¹¹ ('*Mullan*'), a five bench decision.

21. In *Mullan*, Lord Morison stated the position clearly at paragraph 842, as follows:

"the well established principle that in civil cases the standard of proof required of a pursuer is that he prove his case on a balance of probabilities, and the suggestion that there exists in Scotland some standard intermediate between a balance of probabilities and beyond reasonable doubt has expressly been rejected in *Brown v Brown*, 1972 SLT at p 145, *Lamb v Lord Advocate*, 1976 SLT at pp 153 and 156, and *B v Kennedy*, 1987 SLT at p 768. My view that any civil case, including this one, must be determined on a balance of probabilities does not ignore the obvious fact that it is more difficult to prove, according to the required standard, an allegation of murder or serious crime, because it is inherently unlikely that a normal person will commit such a crime.

¹¹ 1993 SLT 835. For a detailed review of its application in police misconduct proceedings in respect of an allegation of rape see the judicial review brought by the Chief Constable of Fife in *Wilson, Petitioner* 2008 SCLR 598.

Certain English authorities cited, including the similar case of *Halford v Brookes*, appear to have proceeded on the basis that this difficulty is to be reflected in a variation of the normal standard of proof, but in my view there is no justification in Scotland for that approach, and if it were applied it might well lead to uncertainty in any case where an allegation of serious criminal or immoral conduct was made.”

22. Lord Prosser agreed at page 846:

“The only alternative to proof on a balance of probabilities is proof beyond reasonable doubt (*Brown v Brown*), and I can see nothing in authority or principle which suggests that the higher standard should be adopted in a civil action, simply because that higher standard would be required in proving the same facts in a criminal trial. Whichever standard of proof is being applied, the party upon whom the onus of proof is laid may succeed merely by proving quite bare circumstances. Or he may have to provide a vast wealth of detailed evidence. General assumptions may make the task easy, or they may make it close to impossible, on either standard. Lord Reid's observations in *McWilliams v Sir William Arrol & Co*, 1962 SLT at p 126, appear to me to show with great clarity the way in which general assumptions as to probabilities determine the magnitude or otherwise of a pursuer's task. Having regard to general probabilities, I do not doubt that a pursuer's task is one of some magnitude, if he seeks to prove that a murder has been committed, even on a balance of probabilities. On the other hand, if he can prove detailed facts and circumstances, leading to death, he might require little more, even to satisfy the higher standard of proof. Whichever standard has to be attained, one may have a long way to go, or a short way to go, once the basic facts are proved. I see no justification for departing from the ordinary civil standard of proof in

those cases where initially, because of the gravity of his allegations, a pursuer apparently has a long way to go. I would only add that I am not sure that Lord Neaves, in *Arnott*, at p 74, was really talking about higher standards of proof. It seems to me that he may merely have meant that in certain circumstances, a pursuer will have a long way to go before he can even establish his case on a balance of probabilities.”

23. A line of child welfare cases in England had suggested that the standard of proof may vary depending on the seriousness of the alleged misconduct or the consequences thereof. Confusion appeared to have arisen from the opinion of Lord Nicholls in *In re H (Minors) (Sexual Abuse: Standard of Proof)*¹² on the approach to inherent probabilities when he explained this in relation to the standard of proof:

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the

¹² [1996] AC 563 at 586

seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.”

24. This was clarified in the House of Lords in *Re B (Children) (Care Proceedings: Standard of Proof) CAFCASS intervening*¹³(‘*Re B (Children)*’) in which it was authoritatively determined that there is only one civil standard of proof applicable in cases of consideration of child protection or child welfare.¹⁴ Baroness Hale, with whom Lord Hoffman, agreed cited with approval Dame Elizabeth Butler-Sloss P in *In re U (A Child) (Department for Education and Skills intervening)*¹⁵ describing her as restoring clarity and certainty when she stated the following at pages 143-144:

“We understand that in many applications for care orders counsel are now submitting that the correct approach to the standard of proof is to treat the distinction between criminal and civil standards as ‘largely illusory’. In our judgment this approach is mistaken. The standard of proof to be applied in Children Act 1989 cases is the balance of probabilities and the approach to these difficult cases was laid down by Lord Nicholls in *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563. That test has not been varied nor adjusted by the dicta

¹³ [2009] 1 AC 11

¹⁴ See Baroness Hale at paragraphs 67-69 and Lord Hoffman at paragraphs 12 and 13.

¹⁵ [2005] Fam 134

of Lord Bingham of Cornhill CJ or Lord Steyn who were considering applications made under a different statute. There would appear to be no good reason to leap across a division, on the one hand, between crime and preventative measures taken to restrain defendants for the benefit of the community and, on the other hand, wholly different considerations of child protection and child welfare nor to apply the reasoning in *McCann's case* [2003] 1 AC 787 to public, or indeed to private, law cases concerning children. The strict rules of evidence applicable in a criminal trial which is adversarial in nature is to be contrasted with the partly inquisitorial approach of the court dealing with children cases in which the rules of evidence are considerably relaxed. In our judgment therefore the principles set out by Lord Nicholls should continue to be followed by the judiciary trying family cases and by magistrates sitting in the family proceedings courts."

25. Neither the seriousness of the allegation nor its consequences should make any difference to the standard of proof when determining the facts. The approach to matters such as allegations of a criminal nature were to be dealt with by common sense. Lord Hoffman explained this at paragraph 15, as follows:

"Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to

have occurred. In many cases, the other evidence will show that it was all too likely. If, for example, it is clear that a child was assaulted by one or other of two people, it would make no sense to start one's reasoning by saying that assaulting children is a serious matter and therefore neither of them is likely to have done so. The fact is that one of them did and the question for the tribunal is simply whether it is more probable that one rather than the other was the perpetrator."

26. Baroness Hale at paragraph 72 said the following:

"As to the seriousness of the allegation, there is no logical or necessary connection between seriousness and probability. Some seriously harmful behaviour, such as murder, is sufficiently rare to be inherently improbable in most circumstances. Even then there are circumstances, such as a body with its throat cut and no weapon to hand, where it is not at all improbable. Other seriously harmful behaviour, such as alcohol or drug abuse, is regrettably all too common and not at all improbable. Nor are serious allegations made in a vacuum. Consider the famous example of the animal seen in Regent's Park. If it is seen outside the zoo on a stretch of greensward regularly used for walking dogs, then of course it is more likely to be a dog than a lion. If it is seen in the zoo next to the lions' enclosure when the door is open, then it may well be more likely to be a lion than a dog."

27. However, whilst in civil proceedings the standard of proof required is on the balance of probabilities, it is submitted that, where the issues under consideration are in the realms of criminal accountability or otherwise significant, it would be necessary to look carefully at the weight and compellability of the evidence on those particular matters. This does not alter

the standard but means, as per Lord Morison in *Mullan*, that it *may* take more evidence to prove a more serious allegation to the requisite standard.

28. The assessment of whether proceedings are civil or in fact *quasi* criminal can be determined by reference to the outcome of those proceedings in terms of punishment, see for example the recent decision in *Iain Livingstone QPM, Chief Constable of Police Service of Scotland v X* ¹⁶ As expressed by Lord Justice Clerk Ross in *Mullan*, there may be criminal connotations but not criminal consequences.¹⁷ In the case of a public inquiry, having regard to the terms of section 2 of the 2005 Act, it is clear that the Chair has no power to impose any finding of criminal responsibility. The proceedings are unquestionably civil.
29. The speech of Lord Hoffman in (*Re B (Children)*) is, of course, predicated by a description of the context in which there requires to be a proof of a fact in issue in certain legal proceedings and there is no room for a finding that something *might* have happened.¹⁸ He described the law as operating a binary system in which the only values are zero and one and a fact either happened or it did not. A public inquiry is not an adversarial proceeding whereby a party bears a burden of proof, the failure of which to discharge means that a fact is treated as not having been established. In an Inquiry, there is a necessity to consider possibilities when recommendations are being made.
30. The Chair is therefore invited to take what has been described as the '*variable and flexible* 'approach and to make such findings to such standards as are appropriate based on the evidence before him and the purpose for which they are made. This was the approach taken in the following inquiries: The *Baha*

¹⁶ Judgement of Sheriff A.W. Noble [2023] SC EDIN

¹⁷ At paragraph 840

¹⁸ At paragraph 2

Mousa Inquiry (adapted from *the Shipman Inquiry*), the *Al Sweady Inquiry 2014*, the *Anthony Grainger Inquiry* and the *Grenfell Tower Inquiry*. Attention is drawn in particular to the *Al Sweady Inquiry* and the approach of the Rt. Hon. Sir Michael Fallon. He found assistance from the *flexible and variable* approach taken by Sir William Gage in the *Baha Mousa Inquiry* as follows:

“1.171. In my view the “flexible and variable” approach is an entirely appropriate one that allows for appropriate findings of fact to be made with varying degrees of certainty. I have therefore also decided to adopt a “flexible and variable” approach to the findings of fact made in this Report. This has enabled me to make findings, to whatever degree of certainty I have felt able, on each of the issues that I have determined. In this way I have made findings of fact to both the civil and criminal standards of proof.

1.172 When making findings to the civil standard of proof, I have borne in mind that matters of a serious nature will generally require evidence of sufficient weight to enable me properly to make a finding on the balance of probabilities. This is not to impose a higher standard of proof, or to elevate the standard in any way, but rather to reflect the principle that a matter of greater gravity than the norm is likely to require more cogent evidence for an appropriate finding of fact to be made on the balance of probabilities.

1.173 I have it very much in mind that it is important that any findings that I do make are readily and easily understood. I have also considered that it is in the interests of all witnesses open to criticism that they are aware of the nature and extent to which I have made my findings. Thus, I have sought in the Report to explain both the evidence that I have relied upon in reaching any conclusion and the standard to which I

have determined the matter to be proved by reference to the language that I have used.

1.174 I have adopted the civil standard of proof, namely the balance of probabilities, as the basic starting point for the findings that I have made. Thus, all the findings of fact in this Report are made to the civil standard of proof, unless the language I have used clearly indicates otherwise. Thus, in a significant number of instances I have been able to decide the issue in question to such a degree of certainty that I am sure that it was so. Where I have made a finding to such a level of certainty, I have either stated in the Report that *"I am sure"* or that *"I am certain"* or *"I have no doubt"* of the finding in question. In such a case, I have made the finding to the criminal standard of proof. However, expressions such as *"I am satisfied"* *"I accept"*, *"It is likely"*, *"I believe"*, *"It seems"*, *"I agree"*, *"I have come to the conclusion that"* or *"this suggests"* – whether or not qualified by an adverb such as *"completely"* or *"entirely"* – are all expressions used in connection with a finding that has been made to the civil standard of proof. Expressions such as *"I suspect"* will not be a finding of fact as such, but will indicate my state of mind about the issue being considered at the time."

2.3 Recommendations

31. It is understood that recommendations are outwith the scope of these interim submissions. The Chief Constable will wish to engage with the issue of recommendations in detail. As has been stated previously, many improvements have been implemented in Police Scotland in the ten years since its creation in 2013. The review and improvement of all aspects of the policing service delivered by Police Scotland continues and has continued

during the course of this Inquiry. This will be the subject of further evidence, position statements and final submissions.

2.4 Expert Evidence

32. The Inquiry has had the benefit of expert evidence on various matters. The clear preference has been for the Inquiry to instruct and obtain that evidence and for Senior Counsel to the Inquiry to lead that evidence as she deemed appropriate.¹⁹ Submissions will be made regarding that expert evidence, where appropriate, with the aim of providing assistance to the Chair.

33. When reviewing the expert evidence, it will be necessary to review the qualification of the expert to provide opinion evidence on the particular matter, the material provided to that expert and the accuracy of the hypotheses upon which that evidence has been based. A witness opinion on a summary of evidence or a scenario is only valid if that evidence or scenario is accurate. Otherwise, it is of negligible value.

34. It is, of course, entirely a matter for the Chair as to what expert evidence he requires or what expert evidence he accepts. The purpose of such evidence is to assist a decision maker as a factor for consideration along with the whole other evidence in the case. Expert witnesses give only evidence and cannot usurp the function of the court.²⁰

¹⁹ See the letter from Police Scotland to the Inquiry dated 5 September 2022 and the Inquiry's response dated 10 October 2022

²⁰Per Lord President in *Davie v The Lord Provost, Magistrates and Councillors of the City of Edinburgh* 1953 S.C. 34²⁰

35. The Supreme Court in *Cordia v Kennedy*²¹ provided helpful guidance on the role and considerations of the requirements of an expert witness. This includes the following:

1. whether the proposed skilled evidence will assist the court in its task;
2. whether the witness has the necessary knowledge and experience;
3. whether the witness is impartial in his or her presentation and assessment of the evidence; and
4. whether there is a reliable body of knowledge or experience to underpin the expert's evidence.

2.5 Hindsight

36. It is submitted that the decisions and actions of individuals should be looked at, in fairness, in the context of what could or should have been known to them on 3 May 2015 and hindsight is not a part of that.

37. It is therefore important to consider the actions of the officers on 3 May 2015 in the context of their individual training at the material time. There is to be a hearing on training from 14 November to 8 December 2023. Their actions should be viewed in terms of what was known to them and their perceptions at the material time.

38. However, when reviewing decisions in a different context, for the purpose of recommendations, it is accepted that, in considering what could have been done differently, '*...the use of hindsight is a powerful tool to ensure that lessons are learned.*'²²

²¹ [2016] UKSC 16

²² Manchester Arena Inquiry, Vol 1, page 189 A3.6

2.6. Previous Statements of witnesses - delay – general observations

39. In a number of instances witnesses have provided several statements, some *de recenti* and some for the purposes of the Inquiry. It will be important to consider what has been adopted and what has not, to ascertain the most reliable evidence of a particular witness.
40. Witnesses have been asked to give evidence seven or eight years after the event. The Chair will have to resolve the position as to the respective reliability of recollections as between 2015 and many years later. In some cases, witnesses have adopted or corrected their original statements, but in other cases, where there are several statements, the status of the earlier statements is less clear.
41. There has been some legal discussion of this issue of delay in the courts in England. The matter has been clarified most recently in *Martin v Kogan* ²³. This was necessary because it required to deal with what Leggatt J had stated in *Gestmin v Credit Suisse* ²⁴, a commercial case, when he commented on the fallacy of personal recollections of witnesses eight years after the event. His opinion was that a judge should place little reliance on witness recollections and should base factual findings on inferences from documentary evidence. This was addressed in *CXB v North West Anglia NHS Trust* ²⁵ by HHJ Gore QC (sitting as Deputy High Court judge) who disagreed with that proposition. In his own review of the case law, he did not find support for the opinion of Leggatt J as being a matter of legal principle. HHJ Gore QC, considered the underlying questions to be whether, when the evidence is viewed as a whole,

²³ [2020] E.C.D.R 3

²⁴ [2020] 1 C.L.C 428

²⁵ [2019] EWHC 2053 (QB)

there is material that justifies the conclusion that the [clinical] record is unreliable or incorrect or whether, when the evidence is viewed as a whole, there is material that justifies the conclusion that the witness evidence to the contrary is unreliable or incorrect. His view on those questions was expressed as follows:

“That is the issue which is for the court to decide viewing the documentary and testamentary evidence forensically and not simply by subjective criteria such as demeanour of live witnesses. “

42. The Court of Appeal in *Martin v Kogan*, described it as a serious error to see the comments by LJ Leggatt as an "admonition" against placing any reliance at all on the recollections of witnesses.²⁶ The Court of Appeal essentially approved the approach of HH Gore QC:

“First, as has very recently been noted by HH Judge Gore QC in *CXB v North West Anglia NHS Trust* [2019] EWHC 2053 (QB), *Gestmin* is not to be taken as laying down any general principle for the assessment of evidence. It is one of a line of distinguished judicial observations that emphasise the fallibility of human memory and the **need to assess witness evidence in its proper place alongside contemporaneous documentary evidence and evidence upon which undoubted or probable reliance can be placed**. Earlier statements of this kind are discussed by Lord Bingham in his well-known essay *The Judge as Juror: The Judicial Determination of Factual Issues* (from *The Business of Judging*, Oxford 2000). But a proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact

²⁶ At paragraph 88

based upon *all* of the evidence. Heuristics or mental short cuts are no substitute for this essential judicial function. In particular, where a party's sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence." [emphasis added]

43. In this Inquiry, the Chair has before him a wealth of documentary and oral evidence. In some cases, caution will undoubtedly be required and these instances will no doubt be drawn to his attention by Core Participants as relevant to them. The Chief Constable has identified in these interim submissions only such matters which arise as can appropriately be addressed by the Chief Constable having regard to his role and remit.

2.7. Privilege against self-incrimination

44. Post incident management ('PIM') has been the subject of evidential hearings. This covers matters such as conferral and the fact that officers declined to provide statements. There is much to consider in terms of the PIM procedure, and the extent of the duty to provide statements and completion of use of force forms. This is not the subject of these submissions. However, what is important, for the issues under consideration at this stage, is that it seems tolerably clear on the evidence that each of the officers involved in the restraint had received legal advice to the effect that operational statements should not be provided on the basis of the privilege against self-incrimination. Whether or not this was in fact correct at the time, given the evidence that their status was one of witnesses, the fact is that the legal advice was accepted. Leaving aside the merits of the procedure and the circumstances in which this arose, it is the position of the Chief Constable that the officers were entitled to follow that advice. A police officer is in the same position as any individual as regards the protection against self-incrimination. No adverse inference

should, in fairness, be drawn against the Core Participants for following legal advice. The officers were placed in the position they were as a result of the policies, processes and understandings of others in an unprecedented situation. The full circumstances in which the advice was given, the basis of the advice and the PIM process and systems in place then and now will all be the subject of detailed review in later submissions.

3. POLICING

45. The fundamental core principle of policing by consent (articulated by the Commissioner of Police for the Metropolis, Sir Robert Peel, in 1829), is that *'...the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect.'*

46. Effective policing is enabled and enhanced by the trust and confidence of the public. The main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland (per the policing principles at section 32 of the 2012 Act.) That is, of course, of **all** persons, localities and communities.

47. The Chief Constable, as leader of Police Scotland, has a duty under section 17 of the 2012 Act, to further all policing purposes. The police service should seek to achieve that in a way that is accessible to and engaged with local communities in a way that promotes measures to **prevent crime, harm and disorder**.

48. Each and every officer in Police Scotland holds the office of Constable and has an obligation to discharge the duties of that office. It is important for the

public to be aware that from 1 April 2013, in order for appointment as a police officer to take effect, it has been essential that a declaration is made before a Sheriff, a Summary Sheriff (from 1 April 2016) or Justice of the Peace. Their declaration, or the 'oath of office', in terms of Section 10 of the Police and Fire Reform (Scotland) Act 2012 is this:

“...[they] solemnly, sincerely and truly declare and affirm that [they] will faithfully discharge the duties of the office of constable with fairness, integrity, diligence and impartiality, and that [they] will uphold fundamental human rights and accord equal respect to all people, according to law.” [emphasis added]

49. Each of the officers on duty on 3 May 2015 and thereafter had either taken that oath or were deemed to have done so.

50. Police officers therefore have a **positive** duty to act. They are required to always act in the public interest. They require at times to arrest people even if there is not an immediate threat of risk and harm. They require to bring individuals suspected of the commission of an offence into custody for lawful processing. Police officers have a positive duty to keep the public safe.

4. POLICE SCOTLAND AS AT 3 MAY 2015

51. Before turning to review the evidence in the chapters, it is necessary to address the context in which the events of 3 May 2015 took place in terms of the creation of the national Police Service of Scotland and the transition from legacy forces to the national service of Police Scotland which was an ongoing process.

52. The Police Service of Scotland ('Police Scotland') was created by statute, namely the 2012 Act. It came into being on 1 April 2013. It has now been 10 years since its inception. The Chief Constable reported to the Scottish Police Authority ('SPA') on 23 March 2023 that following transition, Police Scotland is now an organisation with shared values and high levels of operational competence. The service improvements achieved in 10 years of transformation are unprecedented across the United Kingdom public sector. Police Scotland delivers effective, integrated, consistent and better value policing for the public.

53. However, on 3 May 2015, Police Scotland was still very much in a transitional period following the amalgamation of the eight police services, known as legacy forces, on 1 April 2013. All the legacy force systems and procedures had to be assimilated into the new complex organisation. Each of the eight forces had, not only different procedures and guidance from each other, but also internally inconsistent procedures and documentation. This was compounded by the fact that there was a considerable volatility in the availability of officers as officers either retired, resigned or changed roles at the point of unification. The action of transition itself was potentially disruptive to the continuing provision of policing in the legacy force areas. A primary focus had to be to maintain policing services and public safety in the first instance before moving to standardisation and improvement.

54. Procedures for the handling of calls to the police were already undergoing review from early 2014 to have all legacy force call handling integrated into a national model. A Contact Assessment Model ('CAM') now in place, allows Police Scotland to make a more enhanced assessment regarding the needs of the caller (public and partners) based on an assessment of **Threat, Harm, Risk, Investigative opportunity, Vulnerability, and third party Engagement**

(‘THRIVE’) to identify and direct the most appropriate and proportionate policing response at first point of contact. This enhanced assessment of the caller’s needs and any associated risks, improves decision making regarding the dispatch of officers and permits a greater resolution of non-urgent matters at the first point of contact.

55. The transition from the separate legacy force structure to a national police service is also relevant to issues such as the training of police officers and the processes to be followed. On 1 April 2013, responsibility for the Officer²⁷ Safety Training (‘OST’) programme was adopted by Leadership, Training and Development (‘LTD’). For the transition to Police Scotland, some areas of business had a reform work stream. These included Public Order and Firearms Training for compelling operational reasons. OST did not have its own reform work stream to review and standardise the programme. There had been no national review since the inception of Police Scotland.²⁸

56. It became apparent that many areas of OST required to be reviewed to mitigate risk to personnel and the organisation, to introduce an effective and standardised training programme and to maintain the organisation’s focus of *‘keeping people safe’*. Consequently, at the Operational Training Unit Tasking and Coordinating Group of 19th November 2014, authorisation was given to undertake a full national review of OST provision. The review was carried out by Inspector James Young, commencing on 1 December 2014 and concluding on 1 March 2015, with the report being produced in April 2015.²⁹

²⁷ OST now denotes **Operational** Safety Training but, when used in relation to 2015, denotes **Officer** Safety Training

²⁸ See page 5 of the National Officer Safety Training Review and Evaluation Report, April 2015 PS11533 and SBPI-00153, James Young, paragraphs 21-24

²⁹ This is the National Officer Safety Training Review and Evaluation Report, April 2015 PS11533

57. Inspector Young made 28 recommendations following his review. All were approved for implementation. This resulted in significant changes to training from 1 January 2016. Improvements continue and will be addressed at later hearings. Police Scotland runs an international training academy with delegates from enforcement services from other jurisdictions. This will be explored in further evidence on training.

58. The responsibility for the training of and deployment of the officers to the incident lies with Police Scotland. It is only proper and fair that the actions of officers are judged in the context of their training. The knowledge of an individual officer on a particular day is a culmination of all their training including, for OST, their initial training and refresher training.

59. Detailed position statements have been provided to the Inquiry on training based on information ingathered in so far as possible. Further evidence will be heard at the hearing on training. If the officers acted in accordance with their training, it is crucial to consider the adequacy of that training as against standards at the material time. This will be assessed at a later hearing and will be the subject of further submissions.

5. SUBMISSIONS ON RELEVANT MATTERS

5.1 RACE

60. The Chair's Guidance states that there will be a hearing specifically on the issue of race. The Chair encouraged Core Participants to make submissions at this stage in respect of evidence within the ambit of the current closing submissions that might have a bearing on that part of the Terms of Reference

of the Inquiry relating to the issue of race. There will be an opportunity to further develop such submissions after the hearing on race.

61. The Chief Constable welcomes the opportunity to address this issue at this time but intends to develop this further as part of the preparation for the hearing on race and in submissions after that hearing.

62. In his opening statement, on 11 May last year, the Chief Constable focussed on the issue of racism and policing in Scotland. He did this as it is vital to do so to maintain and enhance public confidence in the police. He committed Police Scotland to being anti-racist. Since that opening statement, significant work has continued and programmes have been adopted to further the anti-racist strategy and ensure that there is no place for racism in Police Scotland and that racism is addressed and challenged at every stage and at every level.

63. In making that commitment, he had thought carefully about the actions which need to be taken in order for an organisation to be anti-racist. It means developing policies, structures and systems followed by actions to deconstruct racism and address issues of power, justice and inequality.

64. Being an anti-racist organisation includes a requirement to address and challenge the existence and workings of racism at personal, cultural and institutional levels. It is an intentional approach and includes a challenge to all contributing forms of racism including historic causes and systemic failures. It requires a **collective effort** to be **permanently** proactive and **accountable** for the prevention of discrimination, the advancement of equality opportunities and fostering good relations.

65. The Chief Constable considered that it was essential that the Police Service

examined these issues to a standard which the public have a right to expect. Such an examination had to be **mature, candid, humble, reflective, relentless, robust and fearless.**

66. A public body such as the Police Service has a legal duty as well as an ethical and moral imperative to have regard to the issue of institutional racism, be on guard for it, guard against it and address it. This can only happen if there is a clear understanding of what it is, what it means for an organisation and the consequences of failure to address it openly and transparently. The meaning of Institutional Racism was given by Sir William Macpherson in the Stephen Lawrence Inquiry in 1999. It is:

"The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people."

67. The Macpherson report emphasised the particular need for police organisations to be aware of the manner in which they communicate and interact with members of communities having regard to their specific needs.
68. The Chief Constable required to address this issue in a way that the public would expect of a responsible organisation which derives its legitimacy from public trust and confidence. He regarded it as incompatible with his legal, moral and ethical responsibilities to do otherwise than recognise that institutional racism exists in policing, that members of communities report issues with their interactions with police officers and that lessons need to be

learned in this regard to improve communication and focus on individual needs of members of all communities.

69. On 25 May 2023 the Chief Constable reported the following to the Scottish Police Authority:

“...it is right for me, the right thing for me to do as Chief Constable, to clearly state that institutional racism, sexism, misogyny and discrimination exist. Police Scotland is institutionally racist and discriminatory. Publicly acknowledging these institutional issues exist is essential to our absolute commitment to championing equality and becoming an anti-racist Service. It is also critical to our determination to lead wider change in society.”

70. The Chief Constable had also reflected on the position of Police Scotland as regards this Inquiry and it is important that this is addressed in these submissions. There are two separate issues:

1. Whether or not the actions of the **individual** officers on 3 May 2015 were influenced by race or perceived race?, and
2. Whether, as at 3 May 2015, there were systemic failures at that time which could be assessed as a collective failure of **the organisation** to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin?

71. The first issue must, in fairness and having regard to the Terms of Reference of the Inquiry, be determined by the Chair. Nothing that was said in his submission to the SPA about the organisation should be taken as any comment on whether the actions of any individual officer, whose actions are

being examined by this Inquiry, was influenced by race or perceived race, particularly those who are Core Participants. **The position of any individual officer whose actions are being considered by the Chair in this Inquiry should not be adversely affected by the acknowledgement made by the Chief Constable in respect of the organisation.**

72. In his statement to the SPA, the Chief Constable made clear the distinction between individual officers and the collective responsibility of the organisation as follows:

“Does institutional discrimination mean our police officers and police staff are racist and sexist? **No. It absolutely does not.** I have great confidence in the character and values of our people. I am proud of Police Scotland and I am proud of my colleagues, proud of my officers and staff... It is an institutional issue which I take responsibility for.”
[emphasis added]

73. The second issue which is a question for the police service **as an organisation**, however, was a matter which, as part of the anti-racist strategy, needed to be addressed by the Chief Constable.

74. The Chief Constable made a commitment to listen to the experience of the families of Mr Bayoh and members of the community. Having heard the evidence to date, he was satisfied that a proper and fair assessment of the organisational learning and awareness as at 3 May 2015, in the recently formed Police Service of Scotland, was such that there was a systemic issue. This was seen in the evidence of the families of Mr Bayoh, the evidence that some diversity training did not appear to have been retained and, importantly, in the fact that there appeared to be a lack of awareness of some

officers of the importance of not treating everyone the same. That approach to equality fails to address cultural needs, sensitivities and concerns of individuals. That is an institutional matter. It means that it is a failing of the organisation and not individual officers.

75. Acknowledging institutional racism means recognising that discrimination, rooted in racism, is not to be seen as isolated individual acts because discrimination is often possible because of institutional failures. Discrimination is institutional when institutions are not doing enough or are not doing well at preventing discrimination and promoting equality.

76. For this reason, the Chief Constable acknowledged, without reservation, that Police Scotland would come within the definition of institutional racism set out by Sir William Macpherson. This acknowledgement was essential to ensure that Police Scotland adheres to its core value of anti-racism. Any omission to recognise this would wholly undermine the aims of Police Scotland to be anti-racist. Such a refusal would lack credibility. Arrogant, defensive, semantic or ill-informed denial of the existence of institutional racism only obstructs progress and serves no legitimate purpose. If a body does not acknowledge institutional racism, how can it work towards becoming anti-racist?

77. The understanding of the manifestations of racism and its impact on communities which came from the Stephen Lawrence Inquiry, conducted by Sir William Macpherson, needs to be heeded continually and acted upon. The Macpherson report has informed and improved policy processes in Scottish policing over the last 24 years. The public sector race equality duty under the Equality Act 2010 arose from the Macpherson report. The aims of that duty are described by the Equality and Human Rights Commission as being to;

eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not. The Commission also explains that having due regard for advancing equality involves:

- “Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.”

78. It is clear from the 2010 Act that meeting different needs involves tackling prejudice and promoting understanding between people from different groups. Compliance with the public sector duty may involve treating some people more favourably than others.

79. Accordingly, what was introduced was the statutory obligation to positively promote equality and not simply avoid discrimination. An emphasis was placed on the obligations of organisations. As advised by the Equality and Human Rights Commission, the general equality duty therefore requires equality considerations to be reflected in the design of policies and the delivery of services, including internal policies, and for these issues to be kept under review.

80. Post Macpherson, following the publication of Her Majesty’s Inspectorate of Constabulary in Scotland (‘HMICS’) Thematic Inspection Report ‘**Race**

Relations in Scotland-Without Prejudice' in 2000,³⁰ processes were set in place in policing in Scotland. Their purpose was to seek to overcome and mitigate discrimination which can occur consciously, unconsciously or unwittingly. It resulted in progressive measures and is embedded in all the training in Police Scotland. For example, **SEMPER Scotland**, the primary staff association which exists to support and represent all minority and ethnic officers and staff within Police Scotland was created following the Scottish discussion of the Macpherson report. Critical Incident Management guidance was created following on from the Macpherson report. Training and awareness was instituted. Police Scotland continues to strive for improvement.

81. Whilst significant positive changes were undoubtedly made within Scottish policing, racism still exists in society and in policing. The imperative to address this continues. This is particularly so around focus on the needs of individual communities to ensure they are not adversely affected by policies and procedures. Learning has to be seen in outcomes.

82. It is important to be aware of the intersectionality of all forms of discrimination. One person can suffer discrimination for more than one reason, for example, they can be exposed to racism and sexism or racism and homophobia or racism and disability discrimination. The Chief Constable's recognition of institutional discrimination is not confined to racism. There is a clear understanding that there is a need to be aware of, and to address, the intersectional effect of discrimination. The Chief Constable gave the SPA an unequivocal commitment to the recognition of intersectionality when looking

³⁰ Followed by the HMICS report '**Pride and Prejudice- A Review of Police Race Relations in Scotland'**, 2003

at the needs and sensitivities of individual members of communities served by Police Scotland.

83. To be an anti-racist organisation, there has to be a recognition that addressing the question of institutional racism is a dynamic process. Police Scotland as an organisation has become better informed about racism, the causes of racism and what an organisation needs to do to be anti-racist. Racism in our culture is as a result of slavery and colonial power. It is necessary to deconstruct this and bring about truly transformative change. Addressing institutional racism acknowledges history, power and existing privilege.
84. The term institutional racism, addressed properly, in an informed way, is therefore a guiding principle. It is a commitment to the duty not to lose sight of what is required for an organisation to work towards anti-racism in order for those who have experienced racism to begin to have experiences that are more positive - for them to feel confident that those experiences of racism, that had not previously been addressed, will not be repeated.
85. Yet, it seemed that an acknowledgement by an institution that it is institutionally racist could at times be sensational and denote only failure and shame. This appears to have resulted in organisations being reluctant to engage properly with the question of the existence of institutional racism and being fearful of it. The Chief Constable acknowledged, frankly, his own initial reluctance when he made his statement to the SPA:

“Institutional racism, sexism and institutional discrimination have become iconic terms in the vital battle to tackle injustice. Police officers and staff, including police leaders, can be conflicted both in acknowledging their existence and in using such terms, fearing it

would unfairly condemn dedicated and honourable colleagues or that it means no progress has been made since the 1990s. Truly, I recognise that conflict, I understand that conflict because I have experienced that conflict myself over a number of years. ...So I know and have shared the reservations and concerns about acknowledging that institutional discrimination exists in policing.”

86. There is, however, considerable power in accepting the existence of institutional racism, as properly understood, because only then can one assess how real change can be effected throughout the organisation for it to be truly anti-racist. The Chief Constable was acutely aware that, given the essential role policing has in society, he had and has a duty to lead, uphold and inspire change that improves the experiences and lives of the public served by the police in Scotland. Addressing the issue is a fundamental requirement of the equality duty. Not to value the meaning and importance of institutional racism is to be under-informed of the social construct and the world in which we live.

87. The acknowledgement by those informed of its purpose and intent, including people affected by discrimination, has been welcomed within policing and across society. Support for the Chief Constable’s position was articulated by SEMPER Scotland, the association which exists to support and represent all minority ethnic police employees on issues of equality in race, as follows:

“We stand with OUR Chief Constable in his courageous acknowledgement of institutional racism within Police Scotland. We recognise that work

needs to be done to create a truly equitable society and will support efforts towards that goal.”³¹

88. The Chair of the SPA, as noted, the body which holds the Chief Constable to account for the policing of Scotland, in support of the Chief Constable’s statement, said the following :

“Acknowledging that the processes, attitudes and behaviours of an organisation are discriminatory... however unconsciously that may be is the crucial next step for effective organisational development. Police Scotland have put an enormous amount of work in to the strategies and process to drive a positive and anti-discriminatory culture. The Authority is confident that this marks that moment for policing – one that moves the focus from continually describing problems within Police Scotland to ‘what and how we change’... The Authority is grateful to the Chief Constable, his senior team and Police Service of Scotland as a whole. It takes a very advanced degree of realism, self-reflection, strength, effort and courage to reach this point... There is a rock solid base for this announcement.”³²

89. The Vice Chair of the Independent Reference Group, Chris Creggan, also addressed the SPA meeting and said the following regarding the Chief Constable’s acknowledgement³³ :

“...I think that it matters because we do believe Police Scotland’s intention and commitment has integrity and substance. It’s a judgement that’s been made by the service itself and I think that’s

³¹ SEMPER Scotland tweet <https://twitter.com/SEMPERscotland/status/1661705811263905793>

³² Scottish Police Authority website <https://www.spa.police.uk/news/spa-chair-s-response-to-chief-constable-s-statement-on-culture-in-police-scotland/>

³³ Transcribed from the broadcast of the SPA meeting on 25 May 2023

hugely important and I think it's a huge strength. I think it's really important that rather than coming from outwith from any independent group or other pressure group. This is an acknowledgement that has been made by the service itself and is owned by the service itself. I think that is part of the watershed moment. I think that's part of the way in which the impediment to change has been removed.....I can be absolutely confident that, as with members of the authority this morning, the members of the independent review group will, I am sure, hugely welcome the statement that you have made this morning. I think it is a watershed moment, I think it is historic in that sense and I think critically what it does is remove unnecessary ambiguity- we have seen how that can play out elsewhere and it becomes a distraction- it becomes an impediment to change and I think the way that you set out this morning and the discussion that followed about the sense of this acknowledgement, not a condemnation but an acknowledgement being an accelerator, a catalyst potentially, a motivator for change and for acceleration in this area is critical..."

90. Leaders from across the political spectrum have also expressed support. First Minister Humza Yousaf MSP said the following:

"I welcome the chief constable's statement. As he himself has said, now that the acknowledgement has been made, it is so important that we see action to dismantle those barriers. I say once again that I take my responsibility as First Minister seriously and that I rededicate myself to doing everything that I can to dismantle the barriers of institutional racism, misogyny, bigotry and discrimination where they exist here in

the Scottish Government and to doing all that I can do right across society in that regard.”³⁴

91. Scottish Labour leader Anas Sarwar MSP said he believed the Chief Constable’s statement had progressed discussions about institutional discrimination.

“But we cannot pretend that institutional racism, sexism, misogyny and discrimination does not exist in many of our public organisations, and the first step to addressing that is to acknowledge it. That is what Sir Iain has done. Should it have happened sooner? Undoubtedly. Has a large part of his statement been lost in the firestorm that has followed? Of course. But what the outgoing chief constable has done is to start an open discussion about structural change.”³⁵

92. The firestorm described by Anas Sarwar MSP is exactly the response which has made organisations reluctant to engage properly with the definition and leaders concerned to address it with the candour required. They risk personal attacks such as have been made on the Chief Constable. It is vital that there is a shared responsibility in understanding the meaning of the definition and why there has to be acknowledgement of discrimination where it exists if there is any hope of a society which is fair for all communities.

93. The Chief Constable recognised that the acceptance of that term without discernment could lead to every individual member of the organisation

³⁴ Office Report, First Minister’s Question Time <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-25-05-2023?meeting=15330&iob=130742>

³⁵ June 2023 edition, 1919 Magazine <https://1919magazine.co.uk/june2023/>

feeling labelled as racist (by those who misunderstand or misinterpret the definition). That is categorically not what is being said or accepted. As the Chief Constable explained to the SPA, he understood that there was a risk that the acknowledgement could result in officers being accused of being racist because *'the Chief Constable told us that'*. He was aware that officers and staff would have to deal with that misrepresentation. For this reason he wanted to be clear in his message to officers. All officers have been given explanations as to what the acknowledgment of institutional discrimination means and that it is not the same as saying all officers and staff are racist. It is a candid recognition that the organisation needs to do more in respect of education, policies and practice to ensure that everyone gets the service that is their right. The Chief Constable is calling on all officers and staff to reflect on their perceptions and understanding. An extensive communications programme has been undertaken to facilitate understanding, listen to concerns and encourage engagement. This comprises a toolkit on the intranet which includes videos and information on frequently asked questions about institutional racism, the full details of the acknowledgement by the Chief Constable and what this means for Police Scotland. The communications strategy is covered in more detail from paragraphs 120. Leaders have been tasked with communicating with officers and staff to address what this means for individual officers. Changes in behaviours are already taking place with an observed confidence in challenging unacceptable behaviour in others.

94. The definition of institutional racism is a powerful tool and a standard with which to work. It shows clearly what needs to be changed in an organisation. It is the duty of the organisation to establish that this is a position of strength, maturity, forward thinking and not a failure or indictment of every member. It is not a label to be applied in a pejorative way. It is a recognition of **systemic** issues in order for them to be addressed. It is a commitment to constant regard

and review to enable the organisation to hold themselves to the standards required by the Macpherson report and the Equality Act duties as well as the Scottish specific duties under the regulations.

95. Police Scotland was the first UK police service to introduce a code of ethics. This will now be enshrined in statute.³⁶ All officers require to take a statutory oath of office which includes a pledge to discharge their duties with fairness, integrity, diligence and impartiality, to uphold fundamental human rights and to accord equal respect to all people. It is therefore right that the Police Service of Scotland continues to lead the way and has taken this essential step to being an anti-racist service.

96. The Chief Constable has been part of the leadership team since 2012, prior to the creation of the Police Service of Scotland. He is accountable for the organisation. The work which has been undertaken to address issues of racism and discrimination in Police Scotland was undertaken before the start of this Public Inquiry. The acknowledgement of institutional racism at the SPA meeting was possible because of the reflective approach taken by the organisation under his leadership which has led to more knowledge and understanding.

97. The power to address racism in policing is vested in every officer of Police Scotland. It cannot always be left to those who have suffered racism to bear the burden of trying to effect change, no matter how willingly they have carried it for so long. That burden has to be shared. It is a collective responsibility of every one of us. In accepting that institutional racism exists in the organisation in which he has served and which he has commanded,

³⁶ <https://www.parliament.scot/bills-and-laws/bills/police-ethics-conduct-and-scrutiny-scotland-bill>

the Chief Constable chose a new way – one that is more productive and effective. He chose transformative change. The acknowledgement was one which it was proper for him as Chief Constable to make – under his command, with his informed understanding and following his commitment to effect change. It will allow successors to the office of Chief Constable of Police Scotland to continue on a clear path for the organisation to achieve a new level of performance for all the communities it serves and for it to be anti-racist.

98. The public will no doubt be concerned as to what the acknowledgment means for Scottish policing in 2023 and for the future. Police Scotland has taken the Macpherson definition and used it as **a blue print for action**. The programmes of awareness regarding unchallenged conscious or unconscious bias are ongoing. The aim of these is to further the anti-racist strategy and the anti-discrimination strategy at all levels. The organisation is already addressing processes, attitudes and behaviours which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping. It does this based on expert advice from independent advisers who have lived experience.
99. The issue of racism was already being addressed through evidence-based actions – effective leadership, campaigns, empathy building, positive narratives, awareness building, legal action and peer support. The acknowledgment of the institutional nature of discrimination was part of the strategy to address racism. What has been described as the ‘rotten apple’ approach does not address the fundamental root problem of the environment in which such individuals have been permitted to act. As stated in his opening statement - each member of the organisation needs to think and act in accordance with the shared core value of being anti-racist.

100. One of the actions is the **Policing Together (Equality, Diversity and Inclusion) Strategy** which the Chief Constable introduced in September 2022 when he stated the aim of that Strategy, which is to build a society where everyone can thrive and flourish and collectively build a country where everyone knows they are safe and secure.
101. The **Policing Together Strategy** outlines the action Police Scotland is taking to champion equality and inclusion so that it tackles sexism and misogyny and becomes an anti-racist organisation. Providing everyone with a fair, just and effective policing response is the moral responsibility and legal duty of the Police Service.
102. Deputy Chief Constable Fiona Taylor QPM, has provided leadership to build and maintain a values based organisation and to drive improvements demonstrating how policing in Scotland reflects, represents and serves all communities. The Chief Constable has created a new dedicated Assistant Chief Constable role to oversee the **Policing Together Strategy** with bespoke organisational resources. Assistant Chief Constable David Duncan has been appointed to lead work in the implementation of the **Policing Together Strategy**. This is to give effect to the Chief Constable's commitment to Police Scotland being an anti-racist and anti-discriminatory service that champions equality with a culture which reflects its values of integrity, fairness, respect and commitment to upholding human rights.
103. Policing Together is a dynamic, integrated, coherent, long term programme, the purpose of which is to embed throughout every part of Police Scotland the fulfilment of that commitment and for the organisation to move towards anti-racism and anti-discrimination. It addresses what is needed in terms of ethos, commitment and action.

104. There are four pillars which will underpin the work of the Policing Together programme going forward. These do not stand alone and are used collectively and interactively on an evolving basis. They are: ³⁷

- (1) Leadership
- (2) Training
- (3) Communication
- (4) Prevention.

(1) Leadership

105. Meaningful and sustainable change will require persistent focus and leadership. Police Scotland will recruit and promote people who share Police Scotland's Values and Behaviours and give officers and the staff the tools and skills they need to lead cultural change. Cultural change is the responsibility of every member of the organisation and will be driven by leaders across the organisation.

106. The executive of Police Scotland has called upon all its leaders to live, lead, support and embed high standards, equality training and a focus on Values by taking action which includes:

- Building and maintaining professional standards and boundaries;
- Publication of anonymised details of gross misconduct outcomes;
- Equality and Diversity training; and
- Communications campaign calling on Police Scotland officers and staff to know and live our Values.

³⁷ See helpful diagram in Appendix

107. People entrusted with positions of leadership must lead the desired culture change. The public have a right to expect that any officer or member of staff employed by the Police Service in Scotland will be held to a high standard. Otherwise, the Police Service cannot rightly ask them to have confidence in the Service.

108. **Your Leadership Matters ('YLM')** is a programme designed to enhance leadership behaviours, providing the skills and tools necessary to build teams which deliver effective policing for all the communities served by Police Scotland. It is underpinned by the Police Scotland Competency and Values Framework and high levels of operational competence. It will empower leaders to lead inclusively and proactively to create a more diverse and inclusive working environment - one in which every team member knows they are valued and can thrive and reach their potential.

109. The three leadership behaviours defined as part of the programme are:

- Lead and Learn Inclusively;
- Have the Courage to do the Right Thing; and
- Collaborate for Growth.

110. The programme is in the process of being implemented across the organisation to all who hold line management responsibilities and it will continue indefinitely.

(2) Training

111. This seeks to address racism, misogyny and all forms of discrimination within policing in Scotland. Police Scotland recognises that the majority of officers and staff act in accordance with Police Scotland's Values and Standards every day. Police Scotland is aware that to continue to deliver

excellent service in an ever changing world, there is more the organisation can learn about through continuous professional development.

112. Training delivery for **Policing Together** has the depth of support available for colleagues at different stages in their career, ensuring all officers and staff have guidance on how they can role model and lead on the changes required, ultimately delivering the commitments made in the **Policing Together** strategy. All training is aligned to the **Policing Together Strategy**.

113. A programme of work is ongoing to ensure that the Probationer Training Programme, Tutor Constable training and the Staff Induction are aligned to the organisation's Values and the Policing Together strategic commitments. All Equality Diversity and Inclusion ('EDI') content will be quality assured to ensure that these key learning products remain fit for purpose.

114. In order to reach every member of an organisation such as a police service as quickly as possible, initially, from a logistical perspective, e-learning was mandated for every police officer and member of staff. The EDI e-learning module was developed and then launched in November 2022. As at 13 June this year, the compliance rate was high with 21,191 having completed and only 6% still to complete. This has been evaluated and has received a positive qualitative assessment. This module is now part of the mandatory training calendar, meaning that each year all officers and staff will have the opportunity to refresh their knowledge and re-set expectations aligned to Police Scotland's Values and Standards of Professional Behaviour. The module was developed using the real life experience of officers and staff and sets out the legal, moral and ethical considerations for everyone within

policing in Scotland. By doing so, the training is more relatable and gives the user the opportunity to consider the experiences of others.

115. In recognition of the value of face to face training, now that the e-learning package has been delivered, this can be actioned. The next phase of this training will be face to face sessions for all supervisory officers and staff. In addition, '**Empower Hours**' will be used to provide facilitated sessions providing time and space to explore privilege, bias, EDI myths as well as techniques and approaches to become positive challengers of all forms of discrimination.
116. Workshops around '**Valuing Difference and Inclusion**' have been delivered to inform colleagues and prevent discriminatory practices but also give colleagues more confidence to challenge discriminatory practices and behaviours.
117. The learning and behaviour change specialist Elev-8 continue to work with Police Scotland to deliver the '**Transforming Climate through Inclusion**' learning programme for Senior Leadership Teams. The content of this learning programme complements the key messages within the '**Your Leadership Matters**' programme.
118. Work is currently under way to establish a one day **Policing Together** training event for all officers and staff as the final phase of the CPD/EDI learning programme.
119. In addition to the aforementioned work, the '**Inclusion Moments**' (**IM**) toolkit was created by a Police Scotland officer, embraced by, and has also been adopted by the College of Policing and City of London police. The

package helps guide, promote and aid discussion around different aspects of EDI and provides a platform to have ‘challenging’ conversations that people often find difficult.

(3) **Communication** –

120. Policing Together is supported by a co-ordinated campaign of internal and external communications. This is an organisation-wide behaviour change campaign which, over time, will positively impact on organisational culture. A dedicated intranet area was activated on 21 March 2022, coinciding with the United Nations International Day for the Elimination of Racial Discrimination and with a first person article by the Chief Constable published by the Guardian³⁸, as a platform to draw together Policing Together communications and resources.

121. The Policing Together site has been built to provide officers and staff using it with a more modern experience. It is more accessible than typical intranet sites developed in the past by the service and is mobile-friendly, meaning the layout of the site changes to suit the size of screen on which it is being accessed. The site includes external Police Scotland marketing campaigns. Key strands of Policing Together communications include:

- a ‘Cultural Calendar’ to recognising significant milestones across diverse communities;
- a focus on each of the ten Standards of Professional Behaviour (which are set out in legislation) over a 12 month period;

³⁸ The Guardian <https://www.theguardian.com/commentisfree/2022/mar/21/policing-scotland-radically-reformed-all-uk-forces-learn>

- an internal marketing campaign calling on the workforce to know and live Police Scotland's Values; information about Equality, Diversity and Inclusion training;
- anonymised outcomes of gross misconduct hearings where officers were either dismissed or resigned prior to a hearing as an initiative by Police Scotland;³⁹
- relevant statements including the message from Deputy Chief Constable, Mrs Taylor's to officers and staff following Baroness Louise Casey's review into the standards of behaviour and internal culture of the Metropolitan Police Service outlining Police Scotland's proactive work in this area;
- The external and internal campaign '**Don't Feed Hate**'⁴⁰ hosted on the Policing Together platform, April-June 2023, seeks to engage with white men aged 18-30 in Scotland who form the group at the highest risk of committing hate crime, but which has the most opportunity for behaviour change;
- alignment of Policing Together with the Sex Equality and Tackling Misogyny ('SETM') messaging which is part of Police Scotland's approach to tackling violence against women and girls; and
- a communications plan developed to publicise and support a joint anti-racist event with staff association SEMPER.

122. The intent of the platform is to build an internal communication destination where officers and staff can self-serve information and resources, with some strands of work, such as Standards of Professional Behaviour and

³⁹ This action is also part of the Police (Ethics, Conduct and Scrutiny(Scotland) Bill. <https://www.parliament.scot/bills-and-laws/bills/police-ethics-conduct-and-scrutiny-scotland-bill>

⁴⁰ Don't Feed Hate Police Scotland website <https://www.scotland.police.uk/advice-and-information/hate-crime/hate-monster-campaign/>

the gross misconduct outcomes, performing well compared to other internal communications.

123. The Policing Together intranet area published the Chief Constable's public statement on institutional discrimination. This was also to support a direct email from the Chief Constable to all officers and staff and included questions and answers. The intranet area was later utilised to share responses from staff associations and the Chair of Independent Review Group. Along with an emailed toolkit with these resources, the communications around the Chief Constable's statement have had very strong engagement. As of 15 June, the emailed toolkit of information and question and answers on institutional discrimination had been downloaded on over 15,000 occasions and the institutional discrimination page on the Policing Together intranet area had been accessed on over 14,000 occasions. This is an unprecedented level of engagement.

(4) **Prevention**

124. The way police officers conduct themselves, both on and off duty, is fundamental to maintaining public confidence and essential to policing by consent.
125. At the heart of Policing Together is the organisation's code of ethics and values of integrity, fairness, respect and a commitment to upholding human rights. From this, the organisation derives a direct link to values-based policing, which reflects and represents all communities and is vital for public confidence and consent, from which policing draws its legitimacy.
126. The **Preventions & Professionalism Programme** includes a governance structure with tactical and operational leads, driving prevention

and awareness activities intended to influence positive cultures, whilst empowering officers and staff to appropriately challenge and report harmful behaviours. It also highlights the key role that leaders and bystanders play in robustly and proportionately addressing concerns at the earliest opportunity, and the support available to do this. A holistic review is ongoing into the Service's grievance policy, process and associated support tools. This deliverable is titled '**Creating a Positive Workplace**'.

127. A lived experience survey '**Raising a Workplace Issue**' was undertaken in 2022 with the findings being used to inform considerations for policy, process, training and, importantly, culture; as well as the necessary conversations that are appropriate and supportive for colleagues. Some of this work has formed the basis of the training and awareness products that will be launched shortly under the 'grievance' module for managers as part of **Your Leadership Matters**.

128. A number of training tools are currently available. The Police Scotland '**How To**' learning platform has an array of training material including those which focus on creating a positive workplace and equality, diversity and inclusion.

129. These strategies are not projects to be announced with fanfare and which will have a finish date – they require continuing commitment to further the aim for Police Scotland to be anti-discriminatory and anti-racist and an organisation which will review, reflect, learn and change as required. Since the statement of the Chief Constable to the SPA, in May 2023, action has accelerated. With further understanding has come an even more focussed drive to purposeful action.

130. In May last year the Chief Constable reinforced the very clear message that, if you hold racist or discriminatory views, you are not welcome in policing. The process for vetting at the recruitment stage has been reviewed and re-vetting is being carried out on a systematic basis.
131. The recognition by him of the existence of institutional racism is intended to be a message of confidence in an organisation that is determined to be **an anti-racist service** and which is not afraid to face difficult questions. It is right that this comes from a body with responsibilities for the safety and wellbeing of all communities.
132. To the communities most affected, it is one of reassurance that this is not an empty statement to be made and then forgotten. It is not said just for today or for political expediency. It was not imposed on the Police Service. It is the organisation's reflective purposeful statement and commitment. There will be no final point in the organisation's own assessment of itself against the Macpherson definition and nor should there be. Racism is as a result of power imbalance. As history has shown, this can re-emerge. It is therefore continuing robust, rigorous commitment which is required. This is an integral part of the core value of being anti -racist.
133. To members of Police Scotland, it is also a message from their Chief Constable of confidence in all those who adhere to the core values daily including that of anti-racism and who are proud to do so – those who embody, individually and collectively, the respect for the human rights of others and fulfil their statutory obligation of protecting communities and keeping them safe. He is aware that police officers and staff do incredible things to keep all communities safe, demonstrating professionalism and these shared values.

He encourages every officer to keep doing so and to show the true meaning of **Policing Together** for the benefit of all communities.

134. A great strength of Police Scotland is that officers and staff are drawn from different backgrounds and experiences. What unites them is a shared and non-negotiable set of values - integrity, fairness, respect and a commitment to upholding human rights. Only by working together will the organisation fulfil its aims. This recognition of the systemic issues which bring the organisation within the definition of institutional racism will undoubtedly have seemed to be a blow for all those dedicated police officers and staff who give up so much of themselves and their personal lives in their vocation to help others. It is not intended to be. This acknowledgment demonstrates the professional confidence of the organisation and is made with awareness and understanding of why it is necessary to make it in order to progress to be anti-racist. It is truly a sign of real progress, effective change and the Chief Constable's belief in those professional hard-working officers and staff, of whom the Chief Constable is proud to serve alongside and to command. Under continued strong leadership, they are the ones who will ensure that Police Scotland is a police service in which the public can have full trust and confidence.

135. Police Scotland will **ensure continued scrutiny** of the effectiveness of the strategies as a crucial part of the perpetual commitment to anti-racism, the **collective effort** to be **permanently** proactive and **accountable** for the prevention of discrimination and the advancement of equality opportunities and fostering of good relations. This is what is required to fulfil the equality duty and the legal and moral duty under the oath of office of every police constable in Scotland. In furtherance of this commitment, Police Scotland will be aided and informed by external independent critical groups

such as the Independent Reference Group and the Professional Reference Group.

136. Police Scotland is observing, closely, the evidence elicited by the Inquiry to inform organisational learning and to review the efficacy of equality, diversity and inclusion training. This will be addressed in further evidence and submissions.

137. The issue of language and stereotyping is a matter to which Police Scotland is paying scrupulous attention. It is only once a statement has been uploaded to the Inquiry website or a witness has given evidence that the organisation can take action without breaching the Inquiry's restriction order. In some cases, this has resulted in delay between the making of the statement and action. However, the public can be reassured that appropriate and proportionate action either has, or will, be taken as soon as permissible. The analysis of the use of language by all witnesses and the issue of racial stereotyping will be the subject of full submissions following the hearing on race. The Chief Constable welcomes the continued exploration of race by the Inquiry and in particular, at that hearing.

5.2 BACKGROUND EVENTS DURING THE NIGHT OF 02/03 MAY 2015

138. The main source of this evidence is Mr Bayoh's friend, Zahid Saeed. Whilst he seemed to have considerable difficulty giving oral evidence on 13 May 2022, he had provided previous statements. The first was provided to police officers on 3 May 2015.⁴¹ In that statement he described the events of the night. Both he and Mr Bayoh attended at Mr Bayoh's sister's house where

⁴¹ PIRC 00032

he was happy and joyful. They had arranged to go to Martyn Dick's house at 0400 to watch a boxing match. Prior to that he was fine but '*getting a bit more drunk*' and not making much sense to him.⁴² They arrived at Martyn Dick's house at 0400hours. Mr Bayoh '*had a mood change*' but '*nothing too drastic*'. However, he then described Mr Bayoh as '*jumping in to conversations*', '*making no sense*' and accusing those present of '*...taking the piss out of him*'. He was getting '*quite confrontational*' and '*...nothing seemed to level him*' and '*nothing anybody said seemed to have any effect on his mood*'. Mr Bayoh then left the house alone at 0530hrs. The movements of Mr Bayoh are unknown.

139. Mr Saeed next met him on the path of Mr Bayoh's house and was told to go away. He entered the house with him. He tried to speak to him but '*quick as a flash he would change moods again*'. He accused Mr Saeed of being CID and fake. This period was 40 minutes. Mr Bayoh then pulled a clear plastic money bag with white coloured paste and purple tables from his sock. He planned to flush them down the toilet but Mr Saeed said he would do that for him. Mr Bayoh then clenched his fists and looked at Mr Saeed quite menacingly, such that he feared for his safety. Mr Saeed then describes an assault by Mr Bayoh who punched Mr Saeed in the back of the head a few times as he tried to run away. Mr Saeed chased after him and threw a wooden washing line pole at him, which missed. Mr Bayoh got on top of Mr Saeed and punched him '*about 10-15 times to his head face and body*'. Mr Saeed 'phoned Mr Dick to collect him as he was frightened. There was a concern that Mr Bayoh would attack Collette and he texted her at 0731 hours to warn her. Mr Saeed returned to his own home changed and flushed the package which '*maybe contained drugs*' down the toilet of his own house.

⁴² This is to be seen in the context of the findings of an absence of alcohol in the blood around the time of Mr Bayoh's death

140. In his Inquiry Statement,⁴³ taken on 22 March 2022, he stated that he had in fact left Mr Bayoh's house '*for an hour and half to see a friend*'. This was about 1.30/2am and he returned after 3am. He was concerned about Mr Bayoh's behaviour at Martin Dick's house as he was '*agitated*' and '*acting a bit out of character*'. He stated that Mr Bayoh '*switched back again to himself*' after accusing Mr Saeed of being CID but later '*switched again*' and was '*physically different, his body language was different ...he had a look in his eye and 'I did not feel safe at this point.'*' He said Mr Bayoh kept '*switching back and forwards, it was like and instant, within five seconds.*' This was worse than a previous episode Mr Bayoh had earlier in 2015.

141. In his oral evidence, when asked about the signing of that Statement in terms of the truth of it, he prevaricated and indicated he had signed it in a rush.⁴⁴ His replies were mainly '*I cannot remember*' and the Chair may wish to consider this in contrast with the detail given in that Statement taken only months earlier. This is an example of a situation in which the Chair will need to determine what part(s) of Mr Saeed's written evidence is/ are reliable. The Chair also has the evidence of Martyn Dick and Kirsty McLeod to consider.

142. The fight or assault involving Mr Saeed and Mr Bayoh was witnessed by Naomi Rhodes,⁴⁵ who was living in Arran Crescent in May 2015 and knew Mr. Bayoh, who stayed about three doors down from her. As a result of the fight with or assault on Mr Saeed, he was taken to the Victoria Hospital by DCs McGregor and Telford and examined by Rachel Anderson, an A & E registrar at that time, who found he had mild head injury symptoms.⁴⁶ Dr.

⁴³ SBPI- 00071

⁴⁴ Day4:1.19 at 12 and 13

⁴⁵ Day 4:52 and statement SBPI-00070

⁴⁶ PIRC 00257

Gillian Norrie was also asked to examine Mr Saeed.⁴⁷ ⁴⁸Dr. Norrie recorded what Mr. Saeed had told her about his interaction with Mr. Bayoh and noted his injuries.⁴⁹

143. The Chair will wish to consider all the evidence of Mr Bayoh's condition and behaviour during the night. He may wish to consider this in the context of the evidence of Professor Maurice Lipsedge regarding the sudden nature of the changes in behaviour (who also said that reactions to drugs can get worse with further exposure as discussed). The Chair may wish to consider whether this is relevant when assessing how Mr Bayoh may have appeared to attending officers at the relevant stages when reviewing the actions they took or should have taken.

144. An important matter for the Chair to consider in this Chapter, is that there is an omission in terms of the review to date of the events during the night of 2 March 2015. In the STORM record disclosed by the Inquiry, PS00232 at 10.13.02 on 3 May 2015, there is an entry with reference to a witness who approached SD19, PC Gary Woods, to report that he saw a vehicle come along the rear of the property at Arran Crescent and 2 males with heavy build/bouncer type build enter the back door of Arran Crescent last night. At 5.30am he saw the back door lying ajar. The description of the males does not match that of either Mr Bayoh or Mr Saeed. This evidence is relevant to the events of 2 – 3 May 2015. It is not known what interaction these individuals had with Mr Bayoh and or Mr Saeed or what took place in Mr Bayoh's home during their time there. A statement was obtained by Police Scotland at the material time from the witness, provided to PIRC and disclosed to the Inquiry. Mr

⁴⁷ PIRC 01319

⁴⁸ Day 16:80

⁴⁹ Day 16:85

Saeed makes no reference to this in any Statement he has given. This is notwithstanding that he and Mr Bayoh are likely to have been in Arran Crescent at the time the two individuals entered the property. Albeit Mr Saeed later suggested that he was absent for one and a half hours. Interestingly, when his Inquiry Statement was taken, he was asked by the Inquiry if anyone else was there at Arran Crescent between 10pm and 1.30am. He stated that *'he was there the whole time and no one ever entered the house'*.⁵⁰ This is on the face of it inconsistent with the independent witness report as recorded on the STORM record and calls at the very least for further inquiry.

5.3 MOVEMENTS AND BEHAVIOUR OF SHEKU BAYOH IN THE MORNING OF 3 MAY, REPORTS BY MEMBERS OF THE PUBLIC

5.3.1 Preliminary comments on use of ALI

145. The Inquiry has utilised this technology to a significant extent in the leading of evidence. Caution is urged against placing too much reliance on the audio/visual digital reconstruction⁵¹ ('the reconstruction') and the associated spreadsheet at the decision stage.⁵² There are clear limitations to both and caveats were given by Mr. DeGiovanni from the outset. Importantly, the timeline is a mixture of objective and subjective evidence which the Inquiry will no doubt bear in mind when considering the evidence of witnesses.

⁵⁰ SBPI 00071 paragraph 10

⁵¹ SBPI-00149 and SBPI- 00169

⁵² SBPI-00047

146. It was highlighted that the location of people on the reconstruction can only be considered as indicative and to assist in understanding the general movement and location of people at specific times.⁵³
147. The Automatic Resource Location System ('ARLS') can only assist with showing indicative movement of vehicles from one position to another not an exact position or location. It does not have a level of accuracy that can assist with how long a person or a vehicle was in that position.⁵⁴ Several vehicles on 3 May 2015 did not have ARLS working effectively and some personal radios had no data at the start of the incident. As such, the ARLS data cannot give a complete picture of every officer. It gives the most complete picture it can provide on the evidence available to ALI.⁵⁵
148. The timeline and spreadsheet are not reflective of all the evidence given to the Inquiry in statements, transmissions and transcripts of calls.
149. The reconstruction and associated spreadsheet⁵⁶ are not accurate to the degree which was sought to be established by the questioning. There is about a second lapse in some instances. It is not accurate to a degree of a fraction of a second. In a collapsing timeframe, there is a limit as to how helpful this is to the viewer.
150. If there is an overlap on the reconstruction and spreadsheet where audio and visual overlap, a decision has to be made as to which came first. This is particularly acute when PC Walker and Ex PC Paton attend the scene as the first response officers. The Inquiry have access to the actual calls.

⁵³ SBPI-00187;12 and SBPI-00187 Answer 32 Day 33:99-100

⁵⁴ Day 3:50

⁵⁵ Day 3:52 and Day 33: 94 (13-24)

⁵⁶ SBPI-00047

151. The van driven by PC Walker and Ex PC Paton was incorrectly placed on the original timeline. This was ultimately rectified by PC Walker. However, the position of the van remained incorrect throughout the hearings. The Chair will require to consider whether or not this has affected the evidence of other witnesses.

152. In relation to the Snapchat footage, it is of note that the slowing down, as spoken to by Mr DeGiovanni,⁵⁷ will lead to the impression that actions are more deliberate than if the footage was viewed in real time.

153. The following additional observations are made to highlight areas in the spreadsheet which are incorrect or where additions could usefully be made to assist the Inquiry.

154. Where Con 2 is marked on the PIRC transcript⁵⁸ and the spreadsheet⁵⁹, it is important to note that there is evidence that this was not in fact a Controller speaking. The person speaking was the Communications officer in East Overview ('EOV'), Michelle Hutchison⁶⁰. In her Inquiry Statement, she observes that the entry at the top of page 5 of the PIRC transcript is incorrect. She did in fact say '*From Overview, we are organising an ARV. Standby*'. This also applies to the entry at 07:19:23 on the spreadsheet.⁶¹

⁵⁷ Day 33:6

⁵⁸ PIRC 01399 top of page 5

⁵⁹ SBPI-00047

⁶⁰ SPBI-00202 paragraphs 76 to 78

⁶¹ SBPI-00047 page 2 at 07:19:23

155. The timing of the broadcast regarding the estimated time of arrival for the ambulance is incorrect. It is recorded as being made at 07:32:25, whereas the transmission appears to have been made by the operator at 07:32:37.⁶²

156. The content and timings of calls made by Police Scotland to the Scottish Ambulance Service ('SAS')⁶³ are not heard in the reconstruction or recorded on the spreadsheet. One of the issues for the Inquiry to consider is post restraint care. The Inquiry have been provided with recordings of the calls made by Police Scotland to the SAS. Police Scotland has offered to provide the transcripts of those calls if these should be of assistance. That offer is renewed. It may be of assistance to the Inquiry to have a comprehensive picture of the calls that were made from Police Scotland to the SAS and the timing those calls were made. To assist the Inquiry a table has been prepared under paragraph 157 to show the times when STORM was updated to reflect calls made to the SAS.⁶⁴ It should be noted that STORM is likely to have been updated after the call to SAS was made.

157. Sergeant Steven Bisset has identified himself as SUPV-E03 in his Inquiry statement.⁶⁵ This must be incorrect as Victoria Anthony identifies herself as desk SUPV-E03 due to the fact that her collar number is identified next to the desk name.⁶⁶

⁶³ SBPI-00047

⁶⁴ PS00232 STORM log and clearer copy in PS00048

⁶⁵ SBPI-00193 paragraph 22

⁶⁶ SBPI-00207 paragraph 21

Time of entry in STORM	Name and role/rank of individual who made entry	Desk name	Detail As recorded on the STORM log
07:26:18	Victoria Anthony Police Staff supervisor	SUPV-EO3	Ambulance contacted requiring two ambulances for officer and accused ⁶⁷
07:26:37	Sergeant Bissett	SUPV-E02	4345 SAS contacted and 2 ambulances attending ⁶⁸
07:29:09	Victoria Anthony ⁶⁹	SUPV-EO3	SAS updated regarding new location
07:29:52	PC Jeff Whelan	OVIEW-E06 RAID OFFICER ⁷⁰	EOV ambulance made aware of change of new locus, now attending Hayfield Road
07:31:10		OVIEW-E06	EOV ambulance now updated with the suspects current condition, and requested to attend asap

⁶⁷ Statement of Victoria Anthony SBPI 00207 paragraph 23

⁶⁸ SBPI 00207 paragraph 23

⁶⁹ SBPI 00207 paragraph 27

⁷⁰ SBPI-00207 paragraph 30

07:31:26	Victoria Anthony	SUPV-EO3	Ambulance updated that the casualty is no longer breathing and cpr is being carried.
07:32:40	Victoria Anthony ⁷¹	SUPV-EO3	ETA for ambulance 2 minutes
07:40:05	Victoria Anthony ⁷²	SUPV-EO3	ETA for second Ambulance 5 minutes
07:41:29	Victoria Anthony ⁷³	SUPV-EO3	Second Ambulance stood down

158. There is evidence from the witnesses regarding their interaction with Mr Bayoh. The technology and placing of their positions by live adjustment was only as a tool to assist the witnesses. It is still a matter for the Chair to consider the witness evidence. It is respectfully submitted that Mr De Giovanni's position is absolutely correct. It will be for the Chair to review the evidence of witnesses and not the placement by Mr Di Giovanni. It is clear that ALI cannot help with the events during the restraint at all.

5.3.2 Mr. Bayoh's demeanour

159. In addition to the evidence of the responding officers, the Inquiry has the evidence of civilian witnesses which might provide assistance in relation

⁷¹ SBPI 00207 paragraph 33

⁷² SBPI 00207 paragraph 35

⁷³ SBPI 00207 paragraph 36

to how Mr. Bayoh appeared to the objective bystander on the morning of 3 May 2015.

160. Neil Morgan was the only person other than Zahid Saeed, who had face to face interaction with Mr. Bayoh in person before his contact with the responding police officers. He did not feel threatened by Mr. Bayoh. He described him as not being himself and '*...he was gazey...he wasn't in a rage or anything like that...but you could tell if someone's been on something*'.⁷⁴ Pauline Morgan's impression of Mr. Bayoh was that he looked very angry and also frustrated.⁷⁵ David Grey observed that Mr. Bayoh looked '*spaced out on drink or drugs*'⁷⁶; that his eyes were '*very, very wide open*'. His impression as Mr. Bayoh walked towards him was that '*it was more like a march, like he was intent on going somewhere*'⁷⁷ and '*a man marching on a mission; he was going to get somebody*'⁷⁸ Linda Limbert described Mr. Bayoh as approaching her car quickly, '*flailing his hands wildly and acting in a very frightening and scary manner.*'⁷⁹ She felt very frightened.⁸⁰ Alan Pearson observed Mr. Bayoh hitting a taxi with his fist on the roof above the driver's door.⁸¹ However in his original statement⁸² he describes seeing Mr. Bayoh jog across the road towards a silver taxi and kick it or try to kick the side of the taxi with his foot. Although he indicated in evidence that he had not been scared, Mr. Pearson was obviously concerned enough to call the police. He also warned another driver that Mr. Bayoh had a knife in his hand.

⁷⁵ PIRC-00073 page 3 paragraphs 4 and 5 and SBPI-00080 28-29 and paragraphs 31 and 32

⁷⁶ PIRC 00073 and SBPI-00013 paragraph 9

⁷⁷ Day 4: 102 lines 3-10 and SBPI-00013 paragraph 5

⁷⁸ ⁷⁸ SBPI-00013 paragraph 5

⁷⁹ SBPI-00079 paragraphs 10 and 11

⁸⁰ Day 5: 57

⁸¹ Day 5:13 lines 1-11

⁸² PIRC-00066 lines 1-17

161. Harry Kolberg described Mr. Bayoh as walking straight at his car and as the car passed, thumping it and his son, Robson, telling him that he was chasing the car and had a knife in his hand.⁸³ After his first call to the police, he drove back down Hendry Road, turning left onto Hayfield road and observed Mr. Bayoh *'facing off vans, cars and various other vehicles'*⁸⁴ by deliberately standing in front of them.⁸⁵ Joyce Joyce described Mr. Bayoh as walking like he was on a mission and walking like a zombie. She felt really scared and fearful because he was walking towards Hayfield Road where lots of nurses walk after their shifts. She assumed he was on drugs because of his mannerisms and his fixed state.⁸⁶ She developed this in her Inquiry Statement by saying he was *'as high as a kite'* and that his eyes were glazed and staring.⁸⁷ Barbara Oliphant describes Mr. Bayoh as *'looking like he was on a mission, he was really power walking'*.⁸⁸ Geoff Levy's impression was that Mr. Bayoh looked quite menacing and full of bravado.⁸⁹ Andrew O'Connor⁹⁰ describes Mr. Bayoh running towards his car and doing a flying kick towards it and shouting. He describes Mr. Bayoh's stance as aggressive.

162. The Inquiry heard evidence from a consultant psychiatrist, Dr. Lipsedge, who thought the attack by Mr. Bayoh on Mr. Saeed was a very serious attack on his best friend who felt his own life was in danger. He explained that he would have expected Mr. Bayoh's attitude to fluctuate. He referred to Mr. Saeed talking about Mr. Bayoh's behaviour switching and use

⁸³ Day 4: 76-77

⁸⁴ Day 4: 13-21

⁸⁵ The timing on CCTV PIRC 01287 as it is shown alongside dashcam is different. It is 07:04:04 and real time is 07:14:56

⁸⁶ PIRC -00065 page 2 paragraphs 5-8

⁸⁷ SBPI-00069 paragraph 5

⁸⁸ PIRC-00085 page 2 paragraph 1

⁸⁹ PIRC -00198 page 2

⁹⁰ PIRC-00063

of the word ‘switched’ and his body language becoming different.⁹¹ He distinguished the reasonable conversation with Mr. Morgan which was very different to the serious fight with his best friend and also Mr. Bayoh’s misinterpretation of what going on around him and how he understood other people’s intentions in the early hours of the morning.⁹² He talked about fluctuations in Mr. Bayoh’s degree of confusion and how that fitted in with what Mr. Saeed said in his statement which, he said, certainly happens in a drug induced state. This contrasts with the calm conversation with Neil Morgan after the fight.⁹³

5.3.3 Descriptions of the knife in calls from the public

163. There is consistent evidence before the Inquiry that members of the public had the impression of Mr. Bayoh being in possession of what has been described as a large kitchen knife ranging between 6 and 12 inches in length.

164. Members of **the Morgan family** saw Mr. Bayoh holding a knife between around 0640am and 0700 on the morning of 3 May. In his Inquiry Statement **Neil Morgan** described the knife as being about *8 inches*.⁹⁴ During the course of his evidence to the Inquiry he described a big kitchen knife of about *6-8 inches* ⁹⁵ His wife, **Pauline Morgan**, did not give evidence. She did not have a clear view of the knife although she said in her Inquiry Statement that ‘...it would have been bigger than a penknife because it had a solid, like, handle’.⁹⁶ **Tegan Morgan**, their daughter,⁹⁷ describes a knife about *ten inches long* and

⁹¹ Day 55: 81 lines 2 to 18

⁹² Day 55: 78-79

⁹³ Day 55: 73-75

⁹⁴ SBPI-00024 paragraph 29

⁹⁵ Day 4: 41 lines 11 to 21 and label of a knife PIRC 00995

⁹⁶ SBPI-00080 paragraph 33

⁹⁷ PIRC-00124 page 2 at lines 18-20 and SBPI-00013 paragraph 4 line 15

looking like the biggest knife you would get in a set of kitchen knives. Her friend, **Amy Hutchison**, saw an angry looking man with a knife hitting the top of a car with the handle of the knife.⁹⁸ **Simon Rowe** saw Mr. Bayoh at around 0700 carrying a big kitchen knife of about '*6 or 7 inches*'.⁹⁹ At around 07:10 Mr. Bayoh approached **Linda Limbert's** car. She described him as holding a '*large knife*' in his right hand¹⁰⁰ and, when she made a 999 call to the police at around 07:16 she described '*...a huge, big knife*'.¹⁰¹ **David Grey**, saw Mr. Bayoh holding what he described as a knife '*about 8 inches*' long.¹⁰² When he gave evidence in person, he described it as perhaps *6 or 7 inches* long.¹⁰³ **Alan Pearson** saw Mr. Bayoh holding a large kitchen knife.¹⁰⁴ In his second statement to the PIRC, he described it as 9 inches in length and about 2 inches thick.¹⁰⁵ When he gave evidence, he described it as being like a turkey carving knife and '*bigger than 6/7 inches*'.¹⁰⁶ He made a 999 call although he was not given the opportunity to describe the knife. The call handler was the one who suggested that the knife was *9 inches* as he was reading from another call that had come in.¹⁰⁷ **Harry Kolberg** also made two 999 calls to the police. In the first, he reports the knife that his son had seen Mr. Bayoh carrying.¹⁰⁸

165. Other witnesses who did not give evidence saw who we now know is Mr Bayoh with the knife. **Joyce Joyce** called the police and reported seeing a man with '*a 9 inch blade*' in his hand.¹⁰⁹ She described it as '*a 10 inch knife*' in

⁹⁸ PIRC-00131

⁹⁹ Day 5:36 lines 6-8 and lines 19-21 and page 39

¹⁰⁰ SBPI-00079 paragraph 9

¹⁰¹ PIRC -01387, SBPI-00079 paragraph 13; PS00006 and STORM log PS01413 and Day 5: 63 lines 1-6

¹⁰² Day 4: 43 lines 18 to 25

¹⁰³ Day 3: 104 lines 1-5

¹⁰⁴ PIRC 00066 page 2 line 21

¹⁰⁵ PIRC 00067 page 2 paragraph 10-

¹⁰⁶ Day 5:14 lines 12-25

¹⁰⁷ PIRC 01383, Day 5:18-29, PS00004

¹⁰⁸ PIRC 01385, Day 4:80 -82 PS00002 and PS00005

¹⁰⁹ PIRC-01388 pages 2-3 and PS00232

her original statement.¹¹⁰ **Robson Kolberg** described the knife as being about '6-8 inches' long.¹¹¹ **Susan Pearson** described a '*large kitchen knife*'¹¹². **Diane Howie** described it '*as 7-8 inches*'.¹¹³ **Lisa Bell**¹¹⁴ described the blade as about '7 inches'. She felt frightened and shocked at what she had seen.¹¹⁵ **Barbara Oliphant** describes the knife as being about '*12 inches long*'¹¹⁶ as does **Geoff Levy** who was travelling in the same van as David Grey. He also described it as being like '*a carving knife*'¹¹⁷ and a '*big kitchen knife*'.¹¹⁸ **Carol McCormick** also described a '*large kitchen knife*' with the blade swinging although she assessed it as being about '6 inches' long.¹¹⁹

166. The descriptions of the knife were generally consistent with the knife which was ultimately recovered from the scene examined and photographed¹²⁰.

167. The Chair may consider that there is no doubt that Mr Bayoh was in possession of a knife prior to the police engagement with him. The reports of the knife in the foregoing paragraphs are remarkably consistent.

¹¹⁰ PIRC -00065

¹¹¹ PIRC-00015 page 2 line 8

¹¹² PIRC-00068 page 2 paragraph 2 and PIRC-00069 page 2 paragraph

¹¹³ PIRC-00111 page 2 paragraph 6

¹¹⁴ PIRC-00102 p 2 paragraph 3

¹¹⁵ PIRC-00102 page 2 paragraph 4

¹¹⁶ PIRC-00085 page 2 paragraph 1

¹¹⁷ PIRC-00198 page 2 line 8

¹¹⁸ SBPI-00222 paragraph 4

¹¹⁹ PIRC-00218 page 2

¹²⁰ PS13559 image of knife at scene and PIRC 00995

5.4 COMMAND AND CONTROL - review of need for expert evidence

168. Any understanding of this incident or the operation of policing is required to be informed by a review of the procedures and systems of command and control (abbreviated to 'C3' to refer to Contact, Command and Control Division).
169. There has been much evidence about the operation of C3 from individual witnesses. Michelle Hutchison, the civilian communications officer who was working in East Overview ('EOV') on 3 May, provides useful evidence about the set up in EOV and the officers who worked with her in EOV and their respective roles.¹²¹ The Inquiry also has the evidence of Sergeant Scott Dalglish,¹²² Scott Masterton and Inspector Stewart.
170. The Chair and the Assessors have been invited to visit the Area Control Room ('ACR') at Bilston to assist in consideration of the issues. The invitation to visit was also issued to all Core Participants and is understood to have been of considerable benefit.
171. Police Scotland is a hierarchical service but there are circumstances in which the role of an officer is not rank specific. Qualifications are required for specific roles. Within the hierarchical structure there are certain commands which can only be issued by an officer who holds the specific role qualification requirement. This is particularly true for command and control of incidents and the deployment of specialist resources.

¹²¹ SBPI-00202 paragraphs 33 to 40

¹²² SBPI-00205

172. There is an issue as regards the availability of expert evidence in respect of the operation of the area control room ('ACR') in terms of the deployment of resources.

173. In the course of the hearings two expert witnesses have offered the Inquiry opinions about the operation of the area control room and the decisions taken about deployment of resources in response to the incident, in particular regarding an Armed Response Vehicle or the deployment of the PSU. These are **Joanne Caffrey** and **Martin Graves**.

174. Dealing firstly with **Joanne Caffrey**. It was abundantly clear when this witness gave evidence that her experience as an expert witness is woefully inadequate for the remit she had undertaken to cover. This is not the first time she has strayed out with her expertise.

175. In *Gemmell v The Scottish Ministers*¹²³, a personal injury case in which a prison officer was injured during the restraint of a prisoner, Joanne Caffrey gave evidence as an expert witness for the pursuer. Although the Sheriff found her¹²⁴ to be '*...a thoroughly engaging and impressive witness in her own field...*' he went on to attach very little weight to her evidence. She had a total lack of prison experience, her background and experience being in police custody settings and the Sheriff did not consider them to be comparable. In the circumstances, he found that she did not have the relevant expertise to offer reliable opinion evidence on key issues in the case. Large sections of her report were found to be entirely irrelevant and she relied upon irrelevant

¹²³ [2022] SC GLW 16

¹²⁴ at paragraph 25

factors when forming her opinions.¹²⁵ He also found that parts of her evidence did not bear critical analysis ¹²⁶and so was not accepted by him.

176. In this case in particular, having regard to her ACR expertise, the Chair may wish to consider whether she is qualified to offer a view on this aspect of the case. There is an absence of any relevant experience. From her list of qualifications and training delivery, there is only one reference to control room training which relates to delivering Casualty Bureau Incident Room training to control room staff. A Casualty Bureau is the central police controlled contact and information point for all records and data relating to casualties and fatalities. There is no reference to her having undertaken any form of armed policing training, including TASER officer training. Nor is there reference to her undertaking any firearms command training.

177. In her evidence she clarified that in 2008 (2008 to 2013) she held a newly created role called civil contingencies and emergency planning. In her CV at 3.4.8 she calls this the Constabulary Emergency Planning Unit. She said this was in light of all the new command and control processes that were being introduced ¹²⁷ but there was no development of what she meant by this. The team she was a part of was headed by a Chief Inspector. In her CV she describes her role as designing plans and exercises for major incident management and supervising counter terrorism security advisors within the team. She also delivered training to all ranks '*concerning Gold, Silver and Bronze commands for incidents.*' She noted in her CV that this was part of the command and control function for major and critical incidents and that she had been

¹²⁵ At paragraphs 21-23

¹²⁶ At paragraph 100

¹²⁷ Day 28:10 line 9

Casualty Bureau room manager for a school bus crash which was declared a major incident in 2010.

178. Her role within civil contingencies in emergency planning involved her in advising control room inspectors in relation to unusual and major incidents. It is submitted that this is not akin to the role of an Initial Tactical Firearms Commander ('ITFC') as Overview Inspector at Bilston Glen. She recognised that an ITFC had more training for command and control as compared to other inspectors.¹²⁸ Emergency planning, it is suggested, should be differentiated from the normal response officer role and indeed the role of the ITFC.

179. When being questioned about circumstances where it is reasonable for a sergeant in the control room to be absent from their position, there was no understanding by the questioner or Joanne Caffrey, that the control room is different from East Overview where the ITFC is situated.¹²⁹ When answering a question about a declared firearms incident there appeared to be a lack of understanding. This is because she said that if a firearms incident was declared, the silver command would be the ACR inspector.¹³⁰ Her failure to understand the limits of her experience when asked to expand her remit to include ACR is perhaps suggestive of her lack of insight, knowledge and training in terms of the role requirements.

180. During her evidence it became very clear that her operational experience was mostly that of a custody sergeant. Operational experience is essential. In 2015, in Police Scotland, the deployment of an ARV could only be authorised by an ITFC as articulated in paragraph 11 of the first Position

¹²⁸ Day 28:17 (8-21)

¹²⁹ Day 28: 82

¹³⁰ Day 28:93

Statement¹³¹ and paragraphs 20 to 22 of the third Position Statement¹³² submitted on behalf of the Chief Constable. An ITFC had to undergo specialised training and have current operational experience of command of incidents.¹³³

181. The Chief Constable is acutely aware of the significance of the role of command and control in this matter and the specific skills and professional judgement which need to be applied in a collapsing timeframe when considering deployment of resource such as Authorised Firearms Officers ('AFOs'). It would be wholly inappropriate, unprofessional and challengeable if Police Scotland relied on someone with the qualifications of a custody sergeant to inform the operational requirements of this aspect of policing.

182. Martin Graves, properly accepted the limits of his experience. Although he had been a firearms officer he acknowledged, properly, that there were distinctions between Scotland and England in the way firearms training was developed. ¹³⁴He also acknowledged at paragraph 8 of his Inquiry Statement ¹³⁵report, that the Metropolitan Police Service have a different ACR and firearms deployment model from that in Police Scotland. In his oral evidence he said the following:¹³⁶

183. He worked additional shifts as a receiver and dispatcher within the Scotland Yard 999 system. He said that involved taking in what we call a Grade 1 or cat 1 call, communicating with informants, deploying and assigning units, setting up containment and cordons, managing Rendezvous

¹³¹ SBPI-00173 dated 31 March 2022

¹³² SBPI-00185, dated 7 October 2022

¹³³ This remains the position as at the date of this submission.

¹³⁴ Day 26 108-109

¹³⁵ SBPI-00190 paragraph 8 and Day 26 121-122

¹³⁶ Day 26:112-116

Points ('RVP'), if necessary and escalating any calls that needed to be looked at by the supervisors possibly the Chief Inspector or Inspector within the control room.

184. This was over weekends and nightshifts when resources were reduced, he said he would **sometimes** go in and *'be srgt, sort of controller in relation to a number of desks or a number of positions.'* He would supervise and make sure relevant resources were assigned. He acted as call receiver and dispatcher in the sergeant role and would be supervising a bank of dispatchers. They could be deploying to any of 32 Boroughs of London. It was not clear how long he did this for or the amount of shifts/experience or the actual area one particular bank of dispatchers covered.¹³⁷

185. He gave evidence about the Metropolitan Police Service moving to the ACR system but he said he did not actually work in one of those. One individual control room he worked in before they moved to the ACR system covered five stations and in excess of nearly 45 square miles¹³⁸.

186. Martin Graves had not performed the inspector role in a control room set up but made those decisions in a smaller control room for a larger area of London as Supervisor of that Control room. Controllers in Metropolitan Police Service are Sergeants or senior PCs. As part of his role, he was able to assign an ARV to attend a call or accept/reject them trying to attend a call (bearing in mind it is different in England as ARVs are out and about patrolling). He would be able to assign an ARV without requiring specialised authorisation. He would have had authority to deploy based on the risk

¹³⁷ Day 26:113

¹³⁸ Day 26:118

assessment and in Scotland that would be done in accord with NDM model which is used nationally.¹³⁹

187. Whilst Martin Graves did have some experience in deployment of ARVs in a different jurisdiction with different resources, this was not the same as experience in the Bilston Glen ACR system. ARVs were not a patrolling resource. Only trained ITFCs with operational experience could deploy ARVs.

188. The only evidence the Chair has before him at present from an ITFC is that of Inspector Steven Stewart. He was the ITFC on duty at the material time. He has provided considerable assistance to the Inquiry by giving evidence on two occasions as well as detailed statements.¹⁴⁰ The decisions of an ITFC require to be made based on their training, experience and an informed judgement as the events unfold. Inspector Stewart has provided good evidence of the operation of ACR, the role of an ITFC and a rationale for his actions in the dynamic circumstances.

189. However, given that it is Inspector Stewart's response which is under scrutiny by the Inquiry, the Chair will wish to hear evidence from an independent expert. This has not been fulfilled by the evidence of Ms Caffrey, who has no relevant expertise or Mr Graves, whose expertise and experience is not comparable with that needed. The Chief Constable respectfully submits that the Chair would be greatly assisted, and the interests of the Inquiry would be better served, by the instruction of a person with the necessary skills and experience as regards the command and control of such an incident. This would preferably be an independent officer with operational ITFC experience in Police Scotland.

¹³⁹ Day 26:119

¹⁴⁰ PIRC-00395, SBPI-00084, SBPI-00197. Days 5 and 25

190. Pending such an instruction, it is not proposed to make further submissions at the stage regarding the ITFC response to this incident. These will be reserved for a later date. When reviewing this aspect it would be helpful to include the fact that at 07.21.34, East Overview transmitted to Firearms Team FM19 but it was cancelled during the call.¹⁴¹

5.5 RESPONSE IN AREA CONTROL ROOM

191. At this interim stage it is proposed to address only the journey of the calls within the system which operated on the day. It is reiterated that the operation of C3 has undergone substantial change since the 3 May 2015. These changes will be covered in detail in later submissions.

5.5.1 Telephone calls to the Police

192. Five members of the public called the police over a short period of time between around 07:10 and 17:17.

193. Simon Rowe made the first call at around 07:09 49.¹⁴² Harry Kolberg made his first of two 999 calls, which was taken by call handler, Evelyn Bain¹⁴³, at around 07:10.¹⁴⁴ Joyce Joyce called at around the same time (07:10:58).¹⁴⁵ Mr. Kolberg's second call, taken by call handler, Paul Hamilton, was made at

¹⁴¹ PS01897

¹⁴² PIRC-01441 (Transcript of call) PS00001 101 call to C3

¹⁴³ PIRC-00156

¹⁴⁴ PS00002 999 Call (C3) and PIRC-01385 (transcript of call)

¹⁴⁵ PS00414; PIRC 01388 (transcript of call)

around 07:15.¹⁴⁶ Alan Pearson also made a 999 call just after 07:15.¹⁴⁷ Linda Limbert called 999 at 07:16:36.¹⁴⁸ This call was taken by Lorna Brown.

5.5.2 The call handlers

194. The call handler, Adele McMillan, took the first call from Simon Rowe.¹⁴⁹ Mr. Rowe hung up suddenly before she could take his name. She required to speak to her supervisor due to the nature of the call. Her supervisor had to listen to the call several times before they could determine the area the male referred to as Templehall was in Kirkcaldy. This accounts for the later entry under 'Anon' which was made on STORM at 07:20:51, the call having come in at 07:09:49. Ms. McMillan became aware that an incident had already been created on STORM by Evelyn Bain (743).¹⁵⁰ Evelyn Bain had created the first incident on STORM, 743, as a result of the initial call from Harry Kolberg. Her entry on STORM starts 07:14:16 and finishes at 07:16:46 at the end of the call. She graded it as a Grade 2 call and transferred it to command and control to arrange for dispatch. She also tagged the call for overview. She was aware of other calls coming in from members of the public relating to the same incident.¹⁵¹

195. The Inquiry may wish to consider the evidence of Scott Masterton who took the view that the original call graded by Evelyn Bain should have been graded as a priority 1 call. ¹⁵² Scott Masterton decided to duplicate the 07.14

¹⁴⁶ PS00005 and PIRC-01386 (transcript of call)

¹⁴⁷ PS00004 and PIRC-01383 (transcript of call)

¹⁴⁸ PS00006, PIRC 01387 (transcript of call) spoken to on Day 5 page 62 [entry made on STORM Log PS01413 at 07:18:35]

¹⁴⁹ PIRC-00157

¹⁵⁰ STORM entry PS01413 07:20:51

¹⁵¹ PIRC 00156 page 2 paragraph 2

¹⁵² Day 25:28 lines 14-24

call and link the two incidents¹⁵³, giving primacy to incident 0745. He explained that when multiple jobs are reported which look as if they are the same incident, rather than trying to look at two or more jobs, one of them is duplicated and after that, everything from that job will be shown in the master job.¹⁵⁴

196. Brian Renton took the call from Alan Pearson. He could see from the system that the incident had already been reported to the police and he added the details to incident 745.¹⁵⁵ At around the same time, Paul Hamilton is noted as taking the second call from Harry Kolberg¹⁵⁶ which he added to incident 743. Lorna Brown took the call from Linda Limbert and added that to incident 743 at 07:18:35.¹⁵⁷ She also took the call from Collette Bell later on that morning.¹⁵⁸

197. A composite table has been created below to show the calls taken from members of the public. The table lists the time of the call, the name of the caller, details of the call (only the words of the caller have been entered in this column) and the timing and detail of the entry made by the call handler on STORM.¹⁵⁹

198. The Chief Constable submits that it could be helpful to the Inquiry to have more detail on how the calls from the members of the public are transferred from the call handler on to STORM and the mechanism and timing of that transfer.

¹⁵³ PS00231 compared to PS00232 Day 25:10-11

¹⁵⁴ Day 25:11

¹⁵⁵ PIRC-00159 page 2 paragraph 1 and 2

¹⁵⁶ PIRC-00158

¹⁵⁷ See STORM log PS01413

¹⁵⁸ PIRC-00154

¹⁵⁹ Other calls will be addressed in later submissions on the basis of further expert evidence

Name of call handler	Time of call receipt	Time of entry on STORM	The actual words spoken by the caller on the recording of the call to control	STORM entry Note:- entries are replicated exactly as they appear on the original system	Name of caller
Adele MacMillan ¹⁶⁰	07:09:49	07:20:15 ¹⁶¹ Added to incident 743	<i>...Ah Good morning. I've been just going along Templehall Avenue .and I've just spotted a black man with what looked like a huge blade walking along Templehall Avenue towards the Hub garage. ...No, like a big kitchen knife. ... he was just walking along the road with it.</i> ¹⁶²	Further call from anon male saying black male with a blade poss kitchen knife but not brandishing it about-just-visible-anon male then hung up Anon male gave address of	Simon Rowe

¹⁶⁰ PIRC-00157

¹⁶¹ STORM entry PS01413 07:20:51

¹⁶² PIRC-01441 (Transcript of call) PS00001 101 call to C3

				Templehall avenue ¹⁶³	
Evelyn Bain ¹⁶⁴	07:10	07:14:16 Incident 743 created	<i>Hi There there's about a 6 foot eh black guy eh T- hall area of ...Shell garage... The one in T- hall... ehm Kirkcaldy. It's the junction of Hendry Road and Templehall Avenue...Eh just as I passed eh him he thumped my car and it as looked as if he was actually carrying a knife and he started chasing the car... He's African origin.. Quite big build guy... Quite muscly built. White T shirt am no sure if it was like dark coloured jeans...yes...He came out...looks like he's actually ran out of Hendry Road out of Templehall Avenue. ..no</i>	African looking male was chasing comps car and he thinks he may be carrying a knife. 07:14:48 Comp states that male came out of templehall avenue and ran down Hendry Road. 07:15:27 Described as big with	Harry Kolberg (call 1) ¹⁶⁶

¹⁶³ PS00231

¹⁶⁴ PIRC -00155

¹⁶⁶ PS00002 999 Call (C3) and PIRC-01385 (transcript of call) and STORM PS01413

			<i>not at the moment it looks like he went down the way.</i> ¹⁶⁵	muscles and about 6 ft. 07:15:36 Wearing a white T shirt and dark coloured jeans.	
Andrew Ross ¹⁶⁷ SC_E020	07:10:58	07:15:42 - 07:16:42 Incident 745 becomes master incident Overview tagged	<i>Eh, there's black man, walking along, he's on the Victoria Road, Hayfield road. He's got about a 9 inch knife in his hand. He's walking towards the hospital. He's walking towards the hospital. I just came from the Hub garage to get petrol and I've just passed him. I'm actually just going to the valley to get my papers. He's wearing a White T shirt, dark trousers, he's a black man he's no jacket</i>	Male in possession of large knife, a black male wearing a white t shirt, no jacket, walking along the street with a large knife in right hand about 9 inch blade walking I the direction of the hospital	Joyce Joyce ¹⁶⁹ Grade 1 call

¹⁶⁵ Transcript of call PIRC-01385

¹⁶⁷ PIRC-00155

¹⁶⁹ PS00232 and spoken to by Scott Masterton Day 25:10

			<i>but he's carrying a knife. He had it in his right hand. Yes but he's walking quite smart. Towards the hospital way aye¹⁶⁸</i>	walking quickly more 07:16:42 Inf was on her way to shop to get her papers when she saw the male	
Paul Hamilton ¹⁷⁰	07:15:29	07:17:50 ¹⁷¹ Added to 0743 ¹⁷²	<i>I just phoned a few seconds ago, Eh there's a white, sorry a black man, white T shirt, black trousers. He's already thumped my car, he's actually on the road between Hendry Road and the hospital in Kirkcaldy, Hayfield Road I think its called. He's jumping out trying to hit other cars. He's stopping vehicles. I dinnae ken what's</i>	Further call from the informant stating that the male is jumping in front of other cars and stopping them. I asked about the knife but they didn't	Harry Kolberg (2)

¹⁶⁸ Transcript of call PIRC-01388 and call is PS00414

¹⁷⁰ Statement PIRC- 00158; call PS00005

¹⁷¹ Spoken to by Scott Masterton Day 35:32

¹⁷² PS01413 STORM log

			<i>wrong wi him. He's daen it to other cars now. He's getting a bit of a pain in the arse having to turn around now. He's jumping on cars, jumping in front of them...reverse and turn around...</i> ¹⁷³	know if he had one or not.	
Lorna Brown ¹⁷⁴ SC-E024	07:16:36	07:18:35 ¹⁷⁵	<i>Hello there's a man with a knife, a black man on Hayfield Road, in Kirkcaldy, just at the roundabout. Just at where the White Heather pub is. Oh my god, yes. It's called Gallaghers now. He's a black man, he's got a white coloured T shirt on and he's carrying a huge big big knife and he nearly. . yes in Kirkcaldy . Beside Gallaghers yeah. It is a pub yeah. I'm driving</i>	Further call from Linda Limbert advising male is in Hayfield Road, near Gallaghers pub 07:18:43 Male is black with a very large knife 07:18:56	Linda Limbert ¹⁷⁷

¹⁷³ Transcript of call PS00005 is PIRC 01386

¹⁷⁴ PIRC 00154

¹⁷⁵ STORM log PS01413

¹⁷⁷ PS01413 and PIRC 01387

			<i>away, like I've just carried out driving ehm I'm at my work. I work in the casualty at the hospital. He's just he's a black guy, that's all I can tell you, cause when I realised what he was trying to stop me and I realised what he had in his hand I just drove. Well he he was at the roundabout. He was walking along Hayfield Road at the roundabout.</i> 176	Linda can be contacted on...	
Brian Renton ¹⁷⁸ E025	07:15	07:19:30 179 Added to 0745	<i>'eh I'm not too sure what the address is. ...There's a guy in the middle of the street with a knife in his hand... eh just along from the hospital heading towards Templehall...Victoria</i>	Call from Alan Pearson. Also saw male large 6' tall, large knife, wearing white t shirt	Alan Pearson 181

¹⁷⁶ Transcript of call PS00006 is PIRC 01387

¹⁷⁸ PIRC 00159

¹⁷⁹ STORM log PS00232

¹⁸¹ PS00004 PIRC 01383

			<i>Hospital Kirkcaldy heading towards Templehall. ... It's the one that runs past the Industrial Estate. It's a big, coloured guy, quite well built, white t shirt...Yeah...Yeah Eh late thirties. Big build, large build. Eh probably about 6 foot.</i>	walking in direction of hospital, male in middle of road. ¹⁸⁰	

5.6 DEPLOYMENT OF OFFICERS and RESPONSE BY LOCAL OFFICERS

5.6.1 Resources available

199. The evidence discloses that all units were dispatched. The Chief Constable's position is that this was appropriate. It was expected that response officers would have been dispatched urgently to a Grade 1 call.¹⁸² The first response officers arrived at the locus within about 4 minutes of the controller's deployment message 7:16:22. This was consistent with the immediate response expected or a Grade 1 call and was such that they were very quickly at the locus.¹⁸³

¹⁸⁰ PS00232 STORM log

¹⁸² Day 5: 122:88-12 and 123-124:10

¹⁸³ Day 5: 193:24-194:10

200. It is not disputed that all units, an ARV and a dog unit were requested by Sergeant Maxwell at 7.17.23.¹⁸⁴ The position about the availability of resources in 2015 was as follows:

1. Response officers - immediate
2. ARV – at a location 25-30 minutes distance¹⁸⁵
3. Dog Unit – at a distance of 27 miles from Edinburgh to Kirkcaldy, which would take at least 25 minutes.¹⁸⁶ PC Gary Wood agreed a period of at least 20 minutes probably more¹⁸⁷
4. Public Support Unit- not available as not a standing resource¹⁸⁸

5.6.2 Response Officer role – expectations 2015

201. The role of a Response Officer is to work as part of a Response Policing Team providing operational service delivery to members of the public, communities and partners. They require to maximise public safety through attendance at operational incidents taking appropriate actions to support victims of crime and members of the public and bring offenders to justice. Response officers are unarmed. They are deployed to deal with incidents. Whilst all resources would be considered for Grade 1 and Grade 2 calls, it did in the main, default to Response Officers to attend.¹⁸⁹ Once deployed they have no option but to attend the incident¹⁹⁰. On arrival at an incident police officers have considerable discretion as to how to deal with what they find. This is essential as training cannot cover every possible scenario. This is the nature of policing. The behaviour of individuals is unpredictable. Police

¹⁸⁴ SBPI 00047

¹⁸⁵ Inspector Stewart, Day 5:137

¹⁸⁶ Inspector Stewart, Day 5:190-191

¹⁸⁷ PC Gary Wood Day 26: 83-86 at 86

¹⁸⁸ SBPI-00185 Position Statement on behalf of Chief Constable at paragraph 29

¹⁸⁹ PS 11007 paragraph 4.8

¹⁹⁰ PS11007 paragraph 4.3 and 4.6 ('Task not Ask')

officers are expected to determine for themselves what requires to be done. Training was not prescriptive in 2015, nor is it now. Officers are human beings who need to respond dynamically and sometimes resort to techniques/ tactics not taught on any course.¹⁹¹ If there is a perceived threat to the public then response officers are dispatched and expected to exercise their judgement as to how best to deal with the situation.

202. The Inquiry may wish to consider the evidence of Martin Graves who observed that the options open to officers at the time were numerous, everything from stay in their vehicle, get out and engage, engage at a distance or engage at close up. It was difficult to say which was the correct option but the correct option was the one that they chose at the time based on the information they had available to them.¹⁹²

5.6.3 The threat posed by knife

203. The actions of the officers should be seen in the context of the fact that they were attending a scene which involved reports of a knife. Knife injuries can be fatal or can cause life changing injuries.

204. On an objective assessment of the available evidence, the reports of the knife as detailed in the paragraphs above were such as to indicate that action was necessary and there was a risk to the public. The position of the Chief Constable is in line with that of the expert evidence of Martin Graves ¹⁹³ – *‘the fact that the knife was not seen is somewhat irrelevant.’*

¹⁹¹ SBPI-00153 dated 21 March 2022 paragraphs 70-72

¹⁹² SBPI-00190 paragraph 55

¹⁹³ COPFS-00024 13th April 2018 page 27 at b)

205. Based on the information and intelligence available to them which informed the officers' perception that he could be in possession of knife, securing the subject prior to search was prudent and appropriate. The officers' perception, tested objectively against the available evidence appears to be reasonably based. The Chief Constable is clear that it is not safe to assume that someone reported to be in possession of a knife is not armed simply because at the time of first engagement it cannot be seen. That could only be confirmed on search in controlled circumstances.

206. It is therefore important when reviewing the evidence of the assessment of the risk to members of the public – meaning everyone at the locus including Mr Bayoh - as well as the risk to the officers, to bear in mind the fact that Mr Bayoh was not seen to have a knife does not change the threat level. The fact that he did not have a knife is one established after the event. It later transpired that a knife was found which had been dropped close to the scene of his first engagement with police officers.

207. The Inquiry may wish to consider the significance of the threat caused by a knife and the evidence of Dr. Crawford who, during the course of the discussion regarding injuries, said the following regarding stabbing:

*'Stabbing is a lethal -- potentially lethal mechanism of injury and it's highly dangerous and ... minor differences in how a stabbing occurs can make all the difference between a fatal injury and a non-fatal injury.'*¹⁹⁴

208. Mr. Anderson, when describing the protection provided by the protective clothing, described as the 'stab vest' stated '...it was designed to

¹⁹⁴ Day 16:166

*prevent someone getting penetrating trauma, particularly in Scotland from a knife...*¹⁹⁵

5.6.4 Evidence of Joanne Caffrey on officer responses -absence of necessary operational experience and expertise

209. Her position as an expert witness in command and control is dealt with earlier in the submissions. As she also offered views about the options for response officers it is necessary to consider if she is qualified to do so and, if so, to what extent and what weight should be attached to her evidence.

210. Although she was a police officer with over 23 years' experience in Cumbria Constabulary, it is necessary to consider that in more detail in terms of the issues in this case.

211. When asked, quite properly, to provide examples of her operational policing experience which would qualify her to give evidence as regards the deployment of officers in this situation, she embarked on lengthy disquisitions of events in which she has been involved. It is submitted that none were in point –

(1) The circumstances of her attending a knife assault leading to arterial bleed. This was given to support her view that response officers should use a spontaneous rendezvous point. However, this whole incident took place within premises and was not relevant. On questioning by the Dean it seems that her delay in coming up with this

¹⁹⁵ Day 16:126

plan in fact led to matters being more serious. She could have been there before the stabbing.¹⁹⁶

(2) There was then a discursive description of her interaction with a person having a mental health crisis in police custody – this person was contained in a cell – again not relevant – she was managing matters through a hatch in the cell door. This included a discussion of her understanding of transactional analysis.¹⁹⁷

(3) The bail suspect - she had batoned him four times with a PR 24 baton – despite her saying she knew his behaviour was out of character and he had ‘*superhuman*’ strength.¹⁹⁸ She did not let him run away and try a containment plan despite the fact she had called for back-up. She did not call for an ambulance until she had used her baton which had caused injury to him. He was examined because the level of force used by her against him caused bruising across his chest, arms and legs from the baton strikes.¹⁹⁹

212. Her demeanour when giving evidence was unprofessional. She laughed inappropriately and referred to a serious incident as thinking it was possibly a simulated ‘*promotion opportunity*.’ An informed observer would lead to the conclusion that she was a singularly unimpressive expert witness.

213. She candidly accepted she did not know about all of the relevant training of Scottish police officers.²⁰⁰ When asked about her CV, which indicated that she specialised in safer handling of detained persons and safer custody and the use of force, Ms Caffrey referred to research from the

¹⁹⁶ Day 28: 20-32 and 28:51

¹⁹⁷ Day 28:41-49

¹⁹⁸ Day 29: 97 - 100

¹⁹⁹ Day 29: 99:7-100:4

²⁰⁰ Day 28:95:9-95:15

Independent Police Complaints Commission for England and the Safer Detention and Handling of Persons in Police Custody 2006 paper, which she accepted was written for England and Wales, not Scotland. She also accepted that her experience at the time was just in England.²⁰¹

214. The Chief Constable who is expert in such matters considered her evidence on some issues to be inconsistent and unrealistic. For example, she appeared to suggest deployment of a Police Support Unit ('PSU') as an alternative back-up or specialist resource as a control measure if the dog unit or ARV was unavailable. This is in spite of the fact that in Police Scotland the PSU is not a standing unit²⁰² and would not have happened to be '*in the policing area*'.

215. She suggested a spontaneous rendezvous point but this seemed to be because of the fact that in Cumbria, unlike Police Scotland, dispatch was not always double crewed. This is an example of where a different consideration should apply to Scottish policing.²⁰³ This also seemed to inform her position about delay and waiting for the rendezvous point.²⁰⁴

216. The idea that Police Scotland officers would only park up and observe *in the circumstances applicable* here would not be expected of them by the Chief Constable and would not engender public confidence in the police. There is a duty to protect the public which means that in reality officers do put themselves at risk. See Inspector Young's evidence.²⁰⁵

²⁰¹ Day 28: 36:10-39:4

²⁰² See SBPI-00185 Third Position Statement submitted on behalf of the Chief Constable and dated 7 October 2022 paragraphs 27 to 38

²⁰³ Day 28, 33

²⁰⁴ Day 28, 34:11-34:19

²⁰⁵ Day 23:115

Q. Are officers encouraged through this training not to put themselves and their own lives at risk?

A. There will always be occasions when a police officer has to put the safety of others before their own safety and there will always be occasions when police officers have to intervene physically and it will put them at great risk. It is up to their own perception of the incident and their own perception of their own skills, knowledge, etc, if they feel that they can deal with that incident. You will get some officers who feel they can deal with an incident, you will get some officers who feel they couldn't, but I don't know, there's no specific training that says 'You will never ever put your own safety at risk'.

217. Ms Caffrey offered views about Police Scotland SOPs but the Chair may have also had the overall impression of her Expert Witness Report²⁰⁶ being such that she has cut and pasted information obtained from Police Scotland reference manuals as well as various references and manuals that are out with Police Scotland in order to demonstrate what she considers best practice within the relevant area examined. A significant portion of these are taken from custody²⁰⁷ and health environments. These are wholly different circumstances in which there is already containment of the subject. They are not meant to apply to dynamic confrontation when the subject is in the open. In her report she fails to properly consider training proficiency and the ability

²⁰⁶ SBPI -000181

²⁰⁷ 'custody' commences from the time of arrest, however, where Ms Caffrey uses these references there is a general failure to focus sufficiently on the initial pre-arrest and arrest phase and instead focus on restraint within a controlled environment.

of an officer to execute policy and physical skills outlined within reference manuals when undergoing significant physiological stress caused by attendance and involvement in a high stress, violent incident on officer cognitive and physical abilities.

218. A good example of this is that she failed to identify that the custody Standard Operating Procedure was directed at custody centres and those officers who operate in those centres. Whilst it is true that there has to be a recognition that persons taken into police custody are technically in police custody whilst being taken to the centre, this was a wilful stretching of the custody SOP principles to place it within a response officer restraint situation in an open area. This approach was a common feature of her evidence.

219. Whilst it is appropriate for an expert witness to review relevant literature in order to inform their evidence, that of itself, does not provide the witness with the necessary operational experience to qualify them to offer expert advice.

220. These views are offered by the Chief Constable on the basis that it would not be responsible to allow this witness evidence to proceed unchallenged given his own expert knowledge on policing as a specialist matter. They are not offered with any agenda in terms of whether her evidence was helpful to any particular or not. He is concerned that it is simply not helpful to the Chair. In this regard he does not intend to draw attention to instances where her evidence is consistent or inconsistent with the views expressed by others.

221. It submitted that the Chair would be misinforming himself if he were to rely on her 'expertise'. Her evidence should be given no weight. Those

properly informed about policing matters would not respect her views. This is a specialist matter – she cannot assist the Inquiry as she is clearly not an expert in the relevant disciplines. The Chief Constable is a specialist. He would be failing to apply his own skill and knowledge and fulfil his own obligations if he allowed policing in Scotland be informed by such a witness standing the woeful inadequacy of her qualifications, experience and evidence.

222. This contrasts starkly with Martin Graves who was a very experienced police officer and was qualified to give evidence on the response officer deployment and tactical options on arrival. He approached matters in an informed, analytical manner.

5.6.5 Scottish Ambulance Service – implications for resources

223. From an organisational stand point the Chief Constable is concerned that some of the aspects of Ms Caffrey's evidence would have implications for resourcing not only resourcing of Police Scotland, but also of the Scottish Ambulance Service.

224. The ambulance service will triage calls. The Chief Constable is concerned that if police officers were to call an ambulance every time an intoxicated person (as opposed to a person suffering from properly identified Acute Behavioural Disorder ('ABD')) were to be arrested or detained, the situation could lead to an unmanageable strain on the emergency services and could become quickly unworkable. Further, on occasion, ambulance personnel will not interact with an individual until that person is controlled and restrained by the police.

225. Dr Lipsedge, who was speaking about the clinical setting, offered the view that once you have decided that restraint is needed, then you need an

ambulance straight away because the process, which is usually associated with a struggle against restraint, causes a person's physiological system to go into an abnormal state – the response he says is '*risky and perilous*'. His recommendation is that, as soon as decision is taken that restraint is necessary, an ambulance should be called straight away.²⁰⁸

226. A significant issue arises as to whether or not police officers should attend medical premises to assist with mental health patients.

227. Police Scotland has a collaborative relationship with the Scottish Ambulance Service. They are each organisations which require to deploy emergency service responses. They work together for the benefit of the communities of Scotland.

228. It is respectfully submitted that the Inquiry should seek evidence from the Scottish Ambulance Service on these issues.

5.6.6 Availability of specialist resources

229. The availability of Police Scotland resources such as ARVs and Dog units is an operational organisational matter. Responsibility for this ultimately sits exclusively, with the Chief Constable. It is something which is set out, and regularly reviewed, within the Service's Strategic Threat and Risk Assessment ('STRA'). The STRA is a dynamic document which is updated to reflect the demands – known and anticipated – that the Service will face. Views and thoughts offered by Ms Caffrey are not regarded as sufficiently well-informed to be taken into account in any review of the STRA.

²⁰⁸ Day 55: 91 (5-21)

5.7 INITIAL ENGAGEMENT OF OFFICERS WITH SHEKU BAYOH: PCS WALKER AND PATON

230. It will be a matter for the Chair to assess the facts in terms of what these officers were faced with when they arrived, the actual sequence of events and the reasonableness of their response.

5.7.1 Context

231. However, there are certain matters which it is important to bear in mind when reviewing their actions. In terms of context, the following factors are important:

1. The place in which they were operating.

As Mr Graves explains in his report²⁰⁹, the environment in which officers require to operate is important. There is a significant difference between open areas and a contained space. The same perception of risk will not apply. The environment here was an open area and, significantly in a residential area.

2. The fact that they were dealing with a subject armed with a potentially lethal weapon.

In this case this was an edged weapon, which was a large knife described as described in the calls listed above. These descriptions were broadly accurate when the knife was examined after the events.

3. A police officer's duty to protect the public.

Officers have a positive duty to respond and to keep the public safe.

²⁰⁹ COPFS- 00024 page 22

232. It is well known that in high adrenaline situations the participants are subject to autonomic responses which result in focussed attention, attentional deafness and misremembering. Martin Graves dealt with this in his report.²¹⁰

- a. "As the officers involved in this incident heart rates increased they would begin to act in a much more instinctive rather than cognitive way...their heart rates probably increased into the 120bpm plus range. Research has shown that an officers [sic] response, even in a training environment can be greatly compromised at this level.
- b. officers can lose ability to function during such incidents due to this response. They may appear to have 'lost it' as if their brain shuts down and actions become reactive and more instinctive.
- c. the application of tactics during training is very different to their use during operational deployment. The stresses on an officer are much greater in the operational environment, the risks are real and the behaviour of individuals can be more violent and unpredictable. Under these conditions an officer's ability to perform complex tasks or produce cognitive thought processes diminishes with increased heart rate. This can include recognising visual [q]cues, processing time for that they are and reacting to them.
- d. such traumatic incidents can affect officers in different ways. This can depend on a number of factors such as their experience in similar situations, their current state of mind, fitness levels, perceptions as to level of danger faced during the event. Even a very experienced officer can exhibit these symptoms even where others may believe the incident to be 'routine'.

²¹⁰ COPFS- 00024 at page 22 a-e.

233. He confirms the effects of stress on officers involved in such incidents as being the narrowing of focus, the fixation on one particular incident or situation.²¹¹ There is an increase in heart rate and their level of threat perception increases.

234. He provided evidence that the speed at which incident develops impacts any human beings ability to process rationally the information that is coming in.²¹² The individual becomes more responsive and reactive. The actions of the officers should also therefore be viewed in the collapsing time frame.

235. Inspector Young also covered this in his Inquiry statement,²¹³ as follows:

'In my experience, I find that in a crisis situation, when the adrenaline's pumping an officer's gross motor skills start to diminish, officers often go back to whatever they know. So, as long as it's within that legal framework, as long as that restraint technique was proportionate to the threat posed, the level of force used was the minimum amount necessary, et cetera, then in my view there's nothing to suggest that an officer has to stick to those prescribed techniques that are in the manual. We have to be cognisant of the fact that in that conflict situation, in a high pressure situation, it may be the case that their training is just insufficient for it to become instinctive and second nature and they may resort back to something else. There's nothing to say that they can't use something that's outwith that programme as long as it's within that legal framework.'

²¹¹ Day 27:58

²¹² Day 26:159

²¹³ SBPI-00153 paragraph 71

236. It will be matter for the Chair to assess the importance or conclusion to be reached regarding any discrepancies or contradictions as between the accounts of events given. An important factor in doing so would be to have regard to the effects that traumatic incidents can have on the provision of accounts. It will be within judicial knowledge that when a person's attention is focussed they may miss other events or messages which otherwise one might have expected them to have seen or heard. In the particular policing context, there is expert evidence from Mr Graves that it is not uncommon to find discrepancies between initial accounts and those recalled later in the investigation process. He notes that this is well documented in post incident management procedures especially when an officer is then shown CCTV footage. Discrepancies in the accounts of officers concerned are not uncommon and he suggests they are a product of the effects they suffered during the incident.^{214 215}

237. It is also within judicial knowledge that, in general, discrepancies are not necessarily an adverse reflection on credibility.

5.7.2 Use of Airwaves and the spreadsheet

238. Each witness was taken through the Airwaves in forensic detail. Caution requires to be exercised when trying to pinpoint exactly what an officer may or may not have heard en route to a call. The details of the Airwaves must be read in context. The Airwaves would have been heard by officers as they quickly made their way as safely as possible, to a knife incident which had been called in by various members of the public.

²¹⁴ See page 22e of his report

²¹⁵ This is supported by the evidence that was heard during the PIM hearing regarding the process for PIP in respect of the obtaining of officers' accounts after period of a minimum of 48 hours.

239. It is submitted that the logical, chronological manner in which matters were addressed by Martin Graves is the correct one. The Chair will wish to consider the actions of each officer by analysing them in the context of their individual experience, perception and the circumstances they each were faced with at the relevant points.

5.7.3 Preliminary overview

240. In accordance with his obligation to engage in a fair and impartial analysis of the evidence and act with absolute candour, it is only right that, if the officers acted in accordance with his expectations of them, then the Chief Constable requires to acknowledge that in so far as appropriate. If there were inadequacies in their training as at 2015 then that is the responsibility of the organisation.

241. The Chief Constable's preliminary view is that, if officers decided to exercise their judgment and seek to contain and control by seeking compliance, this would not appear to be contrary to their training as at that date.

242. See, for example, the **OST Theory PowerPoint (Agnew)** ²¹⁶ slide 8 titled '**Tactical Communications for Gaining Compliance**', which indicates that de-escalation comes once control or compliance has been obtained²¹⁷:

<u>Communicate</u> –	Speak calmly and clearly
<u>Explain</u> –	Explain what you are doing
<u>Ask</u> –	Why are they not complying?

²¹⁶ PS17208

²¹⁷ See also PS10933 Use of Force SOP section 4 which deals with the Confrontational Continuum and Module 1 sections 4, 8 and 9 of the OST Manual PS10938.

Inform – That you may need to use force
De-escalate – **When you gain control or compliance”** [Emphasis added]

243. Inspector James Young has explained that, on or before May 2015, the OST programme focused on gaining control and compliance, with the content of the training being tactical communications, control skills, the confrontational or use of force continuum, and the conflict resolution model. Subsequently, following his OST Training Review and Evaluation Report in April 2015, this training was replaced with the tactical options model and the National Decision Model (‘NDM’), which is now the basis of all police decision-making including the use of force²¹⁸. Although the NDM was in the 2013 OST Manual, he did not remember a specific input on it in OST training²¹⁹:

‘66. My opinion of OST training back in 2014/2015 was it focused heavily on gaining control and gaining compliance. I don’t know the circumstances of this incident at all because I’ve never been sighted on it. However, it wouldn’t surprise me, based on the training ethos back then, if officers moved forward to try and establish control and compliance, because that was very much, in my experience, what the training ethos was then. Prior to 2016, there was no reference in the OST manual to contain and negotiate. In 2016, I removed the confrontational continuum and replaced it with a tactical options model. One of the tactical options provided was to contain and negotiate. A description of this tactic was provided in the new manual. This training was

²¹⁸ SBPI-00153 dated 21 March 2022, paragraphs 61 to 67

²¹⁹ SBPI-00153, paragraph 62. This was in contrast to control room staff, especially the initial tactical firearms commander, who was firearms command trained, and for whom the NDM was central to everything they did. Inspector Young brought the NDM into OST in 2016 to assist officers with their decision-making.

provided to more specialist departments, public order, firearms, et cetera. As far as conventional officers were concerned, training was not provided in relation to containing and negotiate and to try and de-escalate the situation as we would expect officers to do now. So it wouldn't surprise me if officers back then, faced with an individual, would try and gain compliance and control from them. So they would end up closing that reaction gap, maybe trying put hands on, maybe deploying PAVA or CS Spray, or go in with baton strikes, et cetera...

67. Now we'd expect officers to contain that situation, contain rather than restrain. But in my view it was still an appropriate tactical option back then to create that distance, maintain that distance depending on that threat and risk assessment. It comes down to individual officer perception, what their perception of the threat and risk posed by the subject was back then. ...' [Emphasis added]

244. There is no doubt that the officers were responding to calls regarding a person with a knife. In the Chief Constable's assessment there was a risk to the public and there had in fact been an approach to members of the public causing alarm as referred to in previous paragraphs. If a member of the public came across an individual reported to be in possession of a knife, they could suffer serious or fatal injuries. The public do not have protective clothing. In a residential area it would be reasonable to expect that members of the public would be around and even specifically come out to see what was happening.²²⁰

245. The expectations by the Chief Constable of response officers in 2015 were such that he would expect them to respond and not to wait for over 20-

²²⁰ For example, Kevin Nelson came out of his house albeit at the time of police officers being at the scene.

25 minutes for additional resources, always provided that they should only engage if they felt it acceptable on their own assessment. Whilst consideration can be given to choosing a tactical option of taking safe observations, there is an expectation that where a specific threat was present that required decisive action, police officers would make a dynamic risk assessment and deploy in accordance with their training. They would make use of PPE available to maximise the safety of the public and minimise the risk to themselves and the subject.

246. The application of the National Decision Making Model by Inspector Stewart will be addressed when the evidence of command and control from an independent expert is obtained.²²¹

5.8 INVOLVEMENT OF PC SHORT AND TOMLINSON

247. In examining the actions of PC Short and PC Tomlinson, the Chair will no doubt review the situation which they faced on their arrival. This is different from that faced by PC Walker and PC Paton. The Chair will also wish to consider the facts of their initial tactics and whether they were mirroring Sheku Bayoh's. Again, their perceptions of risk and danger are important factors having regard to their own ability, skills and experience.

248. There seems to be no doubt that Ex PC Short was the subject of an assault. The Chair will require to consider whether this necessitated action and if so, what action was justified. PC Tomlinson has accepted that he used his baton. The Chair will no doubt consider whether there has been a consistent position about this.

²²¹ Day 5: 144 and 157

249. The position about the stamp has been a matter of much evidence. There has been a formidable testing of it²²², and a lot of expert evidence reviewed, the aim of which appeared, at times, to be to establish that it did not happen. The Chair will no doubt weigh this evidence carefully.

250. It will be a matter for other representatives to address the medical and scientific evidence regarding the stamp and how that assists with the determination of whether or not that took place. However, during the course of Dr. Anderson's evidence, Junior Counsel to the Inquiry advised the witness that whether Mr. Bayoh stamped on Nicole Short remained contentious and that the Chair would require to determine whether she was stamped on at all and if so, where, how many times and with what degree of force.²²³ The eyewitness, Kevin Nelson, was referred to in this context and his evidence put to the witness as evidence that the stamp could not have occurred²²⁴.

'Kevin Nelson said in his evidence that the stamp did not happen and that before he left his window to go outside Mr Bayoh had moved away from Nicole Short and had been tackled by a police officer in what he described as a bear hug'

5.8.1 Evidence of Kevin Nelson

251. For this reason the Chief Constable considers that there is a requirement for him to address the witness evidence of Kevin Nelson purely as a question of fairness, particularly as it has been used to inform the views of a medical witness. There are significant issues with Mr Nelson's evidence.

²²² In particular the evidence of Dr Crawford Day 16:121 and Day 17: 1-24 and Dr Anderson Day 16:93-140

²²³ Day 16:162

²²⁴ Day 16:164-22

It is a matter of concern that his evidence has not been consistent on such a matter.

252. Mr Nelson's account generally was rather confused, even in his earliest PIRC²²⁵ in which he said he could not remember the exact order of things as they happened, as it all seemed to happen at the same time.

253. Mr Nelson first spoke to PIRC two days after the events.²²⁶ In a detailed statement he was clear that after the assault on Ex PC Nicole Short which he saw from the window within his home, he decided to go into the front garden. It may have taken 10-20 seconds to do this. By the time he got there, Mr Bayoh was face down on the pavement and there appeared to be 5 or 6 officers trying to restrain him. On 6 October 2016 he gave a statement to investigators for the Crown²²⁷. Again, he stated that after the assault on Ex PC Nicole Short '*at this point*' he left his living room window to go outside. He said it would have taken him about 10 seconds to get from the living room window, '*unlock the door*' and get outside. Once outside he saw two officers on the ground struggling to restrain Mr Bayoh. By the time of his Inquiry Statement, taken in December 2021,²²⁸ his position has changed considerably. He now stated that after the assault on Ex PC Nicole Short he saw Mr Bayoh moving away and a police officer try to take hold of Mr Bayoh *before* he left his window viewpoint.²²⁹ His estimate of the time was now 15 seconds and there was no mention of unlocking the door. In his evidence to the Inquiry,²³⁰ he said it took him 15 seconds with no mention of unlocking the door. He makes reference to this being tested when his Statement was taken. That exercise has not been

²²⁵ PIRC 00019 at page 2

²²⁶ PIRC 00019

²²⁷ COPFS- 00055

²²⁸ SBPI-00014

²²⁹ SBPI-00014 paragraph 6

²³⁰ Day12: 41

produced by the Inquiry. The Chair will consider whether or not it is notable that Mr Nelson did not appear to be able to be clear as between the date of that reconstruction and giving evidence. He offered a time period of 15 or 12 – 15 seconds as he could not remember what time it had taken in the reconstruction²³¹. It is not clear whether the reconstruction included unlocking the door.

254. Mr Nelson was asked in para 20 of his Inquiry Statement ²³² about the fact that he did not mention in his earlier PIRC or COPFS statements that he saw Mr Bayoh move or run away from Ex PC Short. He said in that Statement that *‘...it was a moving scene I was watching. The officers were moving away, Sheku was moving towards them, it seems to me he was trying to get past them and she [sic] swung at the female officer as he was going past. So they were moving already, if that makes sense. It’s not as if he stopped to swing at her and then ran away. He was running and swinging at the same time, moving across the road. I don’t remember ever being asked by PIRC or the Crown about Sheku stamping on anyone’*.

255. Mr Nelson told the Chair that *‘it was all happening so quick’* and Mr Bayoh *‘was just swinging his arms and then by the time he went down and away, it was just like a blink of an eye’*.²³³ This is important because it might be seen to undermine his later assertion in evidence that it was impossible for the stamp to have happened when he was on the way from the window to the garden.

256. As to PIRC or the Crown not asking Mr Nelson about the stamp, Senior Counsel to the Inquiry explained that *‘In fairness to PIRC, the officers who spoke to the stamping’* did not give their statements to PIRC until 4 June 2015 and Mr Nelson gave his statement on 5 May 2015. The Chair may wish to explore this

²³¹ Day 12: 41

²³² SBPI -00014

²³³ Day 12:96-97

further in the hearings involving PIRC and Crown regarding post incident management next year. This is because, as discussed later in these submissions, Sergeant Maxwell did mention the stamp on the Airwaves and these transmissions were recovered .

257. The Chair's question on this issue was astute,²³⁴ as can be seen from the following exchange:

"Just before you read on, I wonder if I could ask a question to clarify the position here. You gave evidence earlier on that before you left the window to go into the garden, you saw the male officer tackling or giving a bear hug to Mr Bayoh.

A.Yeah.

LORD BRACADALE: And then you said you went into the garden. Now, looking at this page of your PIRC statement on 5 May, you say that you saw him lunging at the female police officer and striking her, and then you say: "At this point I decided to go into the front garden to have a closer, look." Now you didn't, in your PIRC statement, describe the intervention of the male police officer at that point, and I'm just wondering why that was.

A. Going back over seven years, I - I couldn't say, but that's how I remember it as I'm sitting here just now.

LORD BRACADALE: I'm just a little puzzled why you weren't able to describe that to the PIRC inspectors on the two days'

A. Yeah, going on -- going on all that, yeah, I can see why you would think that, but my -- my memory of it is that that is what -- what happened, what I've described today."

²³⁴ Day 12:99-100

258. The Chair has extensive experience of hearing evidence in various court settings and will be able to determine whether or not this is a classic situation of a person whose ‘memory’ has developed and become contaminated over time. The witness who has become convinced of the truth of the ultimate narrative is not deliberately trying to mislead but their evidence is simply unreliable. The Chair may wish to consider this evidence in light of the *de recenti* statement principles, the fact that Mr Nelson was so clear he left the window immediately after the punch to Ex PC Nicole Short’s head from such an early stage. The stamp is said to be immediately after the punch. The Chair will need to consider whether this may explain why in either 10 or 15 seconds it was not seen by Mr Nelson because he was away from the window immediately after the punch.

259. The Chair may also consider this in light of the evidence that Mr Nelson did not at any time²³⁵ see the baton strikes spoken to by PC Tomlinson. There has been no suggestion by anyone that PC Tomlinson did not administer these strikes, which on the evidence available about them, would have taken place immediately after the assault on PC Short. The Chair may wish to consider the original position of Mr Nelson in terms of when he left the window and whether or not that appears to be consistent with him missing the stamp and the baton strikes.

260. Attention is drawn to the transmission, ‘*officer injured*’ timed as 07:21:03. The timeline shows figures falling to the ground at about 07:21:08. Kevin Nelson appears at his gate at 07:21:21, around 18 seconds after the broadcast and 13 seconds after ‘falling to the ground’.

²³⁵ see day 12:63

261. The Chief Constable, as indicated in the Introduction, cannot ask the Chair to make any particular findings but is compelled to draw attention to this matter for consideration on such an important issue. The Chair may consider that the position of Mr Nelson appears to have varied and developed over time – even his timing from 10 to 15 seconds. The Chair may wish to consider whether or not his evidence has been influenced by facts that had been provided to him by others.

262. Mr Nelson only became aware that people (in the media or in the local area) were suggesting that Mr Bayoh had stamped on Ex PC Short a while afterwards. (He was also getting told stories that Mr Bayoh had a large knife or machete but he did not see a knife that morning). However, he could not be 100% sure if he had read it somewhere or online. He also saw another documentary, Disclosure perhaps, that referred to the stamp.²³⁶

263. The Chair will be in a position to consider whether or not the witness was providing evidence on the basis of his own assessment of what could or could not have happened during what appears to be a flexible time frame.

264. The Chair may wish to consider the reliability of Mr Nelson's evidence in light of the fact that he appears to be convinced that because he did not see something happen, that means it could not be true.

5.8.2 General Observations

265. In considering the overall position, a reasonable question may be, of what interest is it to Ex PC Short to be invested in perpetrating that she had been stamped on, if that was not the case? She is no longer a police officer. She

²³⁶ Day 12, page 90

was not involved in any aspect of the restraint. The Chair will wish to consider whether or not the stamp is material depending on the facts he finds established in relation to action which brought her to the ground.

266. For PC Tomlinson a similar question may be asked. He accepted that he had batoned Mr Bayoh to the head. The Chair will no doubt consider whether the chasing after PC Short, striking her to the head and bringing her to the ground was sufficient justification for that use of force. This would put the issue of whether or not the stamp occurred in a different context.

267. A relevant factor the Chair may wish to consider is the fact that the stomp / stamp was mentioned on the Airwaves by Sergeant Maxwell before the return to Kirkcaldy Police Station and apparently when Ex PC Short was not present. In his evidence Sergeant Maxwell was taken to his transmission on the Kirkcaldy 1 Airwave at 07:24:28 when he indicated that Ex PC Short had been stomped to the body a few times and struck to the head.²³⁷ He thought that before he made this transmission, PC Tomlinson, who had heard his earlier transmission, told him that PC Short had been stamped on. When he was asked when PC Tomlinson shared this information, he told the Inquiry that PC Tomlinson was walking about in a shocked state when he came to pass that information on.²³⁸

268. The Chair may wish to consider why PC Tomlinson would invent a complete story about a stamp immediately at the scene and then perpetuate that with PC Walker, if he finds it established that there had already been a serious assault on Ex PC Short by punching her to the head. The consistency of the maintenance of their position(s) about this will no doubt be tested

²³⁷ Day 15:13-14

²³⁸ Day 15: 15

rigorously. It is also relevant to consider matters in the context of what PC Tomlinson's perceptions were at the material time.

269. An allegation or even an inference or suggestion that the stamp was invented and maintained is a very serious one of collusion and perjury involving lying in written statements to the PIRC and lying under oath. The Chair will no doubt consider the cogency of evidence for such a serious matter as discussed in chapter 2.2 above.

5.8.3 Loss of evidence of impairment of quality of evidence

270. There was much scientific evidence regarding the marks on Ex PC Short's vest and evidence from the examination of footwear. It will be for other Core Participants to invite findings on that evidence and the conclusions, if any that can be drawn from it. From the point of view of the Chief Constable, if evidence of the stamp on the vest of Ex PC Short is lacking as a result of poor evidence gathering and lack of preservation as well as handling techniques (all to be reviewed as part of the PIM and crime scene management), then this would be a failing on the part of other officers and/or the organisation. The latter may be as result of processes or procedures or training. This will be addressed in submissions on PIM and crime scene management. The officers for whom this evidence is material should not be prejudiced by any omissions which led to either the loss of evidence or the reduction in quality of such evidence.

5.9 SHEKU BAYOH BEING BROUGHT TO THE GROUND, INITIAL RESTRAINT, CONTINUED RESTRAINT, (position of Sheku Bayoh during the restraint, the force applied to Sheku Bayoh during the restraint)

271. It will be for the representatives of other Core Participants to invite findings based on their respective assessments of the evidence as regards the position of each of the officers as to their actions on the day. It will be a matter for the Chair to come to a view about the credibility or reliability of those accounts.

272. The Chief Constable offers the following observations but does not invite any particular finding.

273. The Chair has heard evidence from the officers, he has the CCTV footage of the events leading up to this point but the footage is not particularly helpful as regards the actions at this point which is during the attempted restraint but before it is accomplished. He will require to consider all the available evidence of the eye witnesses.

274. The Chair will no doubt be aware of the guidance from the House of Lords that the elimination of one improbable theory does not automatically mean that another improbable theory is accepted. *Rhea Shipping Co. SA v Edmunds (The Popin)* ²³⁹ Sometimes the standard of proof is not satisfied. A judge is not always bound to make a finding one way or another on evidence which is not sufficient for him to be satisfied to the requisite standard. In this case the Chief Constable has of course invited the Chair to take the flexible

²³⁹ 1985] 1 W.L.R 948 at 954-958 per Lord Brandon of Oakbrook

and varied approach but this does not mean that the standard of proof should not be addressed.

5.9.1 Use of expert medical evidence to inform analysis of events and use of force

275. In relation to other available evidence, it is crucial to understand the limits of the expert evidence in terms of determining whether or not certain events occurred.

276. In general terms, there were a number of injuries which were reviewed in detail by the Consultant Forensic Pathologist, Dr KerryAnne Shearer. She provided clear evidence as to the possible causes and levels of force in the Post Mortem report²⁴⁰ and in her oral evidence. The Chair will consider the evidence as to whether or not these are, of themselves, individually or collectively, indicative of either reasonable or excessive force in a resistive arrest. This will include consideration of the baton strikes by PC Tomlinson including to the head. The latter has not been linked by any witness to the cause of death.

277. In respect of particular actions, one of the major issues in question is whether or not PC Walker's actions in lying across or on Mr Bayoh's back caused asphyxia. This is a serious matter requiring robust and cogent evidence to find it established on the balance of probabilities.

278. It is submitted that a question for the Chair to consider is whether the medical evidence based on the findings at pathology assists with the determination of whether or not PC Walker placed his weight (25 stone) on Mr Bayoh? In the witness statement of Professor Lucas it is stated that '*...the*

²⁴⁰ PIRC- 01444

*Chair will be seeking to determine whether there is evidence of asphyxia in relation to Sheku Bayoh's death. I am told this will rely predominantly on eye witness accounts of the restraint, weight and force applied to Sheku's body by the Police.'*²⁴¹ This may be a misrepresentation of the approach the Chair will take. It is submitted that the Chair will require to determine from the witness evidence the credibility and reliability of the accounts of the body positions taking together the evidence of the officers and that of the eye witnesses. This will not determine whether asphyxia was present. That will be for pathology.

279. The relevant findings in this respect are the petechial haemorrhages. These are not a specific injury but a '*response... to something*'. Dr. Shearer said that petechiae '*could*' be indicative of a degree of asphyxia.²⁴²

280. Dr Shearer explained that petechial haemorrhages can be seen for a variety of reasons – one reason is asphyxia or lack of blood supply which can cause these blood vessels to pop. If you vomit, you get these haemorrhages.²⁴³ You can see them, commonly, in people who have been resuscitated²⁴⁴ you are pushing blood at reasonably high pressure to get to the brain. They are a more worrying sign if asphyxia is a potential cause of death. There are a lot of potential reasons - positional asphyxia, mechanical asphyxia, resuscitation. She was asked if they assist with determining weight being applied. She advised that this requires looking at external and internal injuries to see if there is a support for a particular scenario. In this case there was nothing categorically indicative of weight being applied to the back and no significant injuries to confirm that weight had been applied²⁴⁵. There was one area of

²⁴¹ SBPI-00314 at paragraphs 43 to 44

²⁴² Day 54:67 (24) to Day 54:67 line 5

²⁴³ Day 53:56 lines 16-25

²⁴⁴ Day 53:56 line 25 to Day 54:57 lines 1-11

²⁴⁵ Day 53:79 from line 19 to Day 53:80 lines 1-5

subcutaneous haemorrhage on the left upper back, indicative of a degree of blunt force trauma - only internal, nothing external and nothing to indicate severe force being applied to the back from those findings²⁴⁶.

281. The Chair also has before him the evidence of Dr. Cary in relation to the potential causes of petechial haemorrhages. He agreed with Dr. Shearer that they could be indicative of a degree of asphyxia and that they implied a degree of mechanical asphyxia which would include the chest being squeezed very hard.²⁴⁷

282. The Chair will therefore require to consider whether the findings of petechial haemorrhage, which are evidence of asphyxia, which has several possible plausible causes, can properly assist him in the analysis of the position of whether or not bodyweight was applied to Mr Bayoh during the restraint.

283. Another important consideration in the assessment of the use of force is the cause of the rib fracture. This is not a cause of death but should properly be considered in the context of whether or not it informs the analysis of the level of force used in the restraint. The oral evidence of Professor Freemont as regards the rib fracture is important because he is the recognised expert and all the pathologists deferred to him on the issue of the timing of the rib fracture.²⁴⁸ He produced useful informative slides. The timing of the fracture is important because it determines whether or not it falls within the period of the police engagement.

²⁴⁶ Day 53: 132-135 and Day 54: 51 lines 5-16

²⁴⁷ Day 59:43-46

²⁴⁸ Day 57

284. Professor Freemont's original view on timing of the solitary first rib fracture was that it was definitely 12 hours and probably within 6 hours of death.²⁴⁹ During his evidence he said it was probably less than six hours and certainly less than 12 hours before death.²⁵⁰ In 2017 he had formed the view that there was osteocyte necrosis and in an adult this would put the timeframe to more than 2 hours before death.²⁵¹ ²⁵² In his Inquiry Statement ²⁵³ he said the likelihood is that the event leading to the fractured first rib occurred sometime during the first altercation (with his friend 2 hours 45 minutes before death) and his interactions with the police (1 hour 45 minutes before death).

285. In his evidence he confirmed that his original view was based on the formation of osteocytes and studies on infants. His view had changed since 2017. The Chair will no doubt pay close attention to his rationale for doing so. The Chair will wish to assess if this is based on a considerable degree of speculation and data which he had conceded would not justify a study. He had conducted an extrapolation based on the use of the steroid drug nandrolone meaning that the window of timing of the formation of the osteocytes in adults was more in line with his infant studies. He *'could not come to a conclusion'*. The Chair may wish to consider whether or not this was no more than a theory. His thinking was that if you give nandrolone it is making a young man's cells younger *'but there is no evidence for this'*. It is for this reason that he offered the view that the effects of the nandrolone *could* have moved the osteocytes back to a similar time frame for infants in terms of osteocyte apoptosis i.e. to within the 2 hour period before death.²⁵⁴

²⁴⁹ Day 57:70 and COPFS-00036 paragraph 115 (a)

²⁵⁰ Day 57:73

²⁵¹ Day 57:52-53

²⁵² He had determined that the point of death was the correct time for the stoppage of circulation due to resuscitation efforts.

²⁵³ SPBI-00310 paragraph 118

²⁵⁴ Day 57: 124-125

286. Professor Freemont qualified his adult studies, which led to the original timeframe, with statements about the variation in the circumstances and lack of information on steroid use. What is not known is whether any of the cohort of adults on which he already had data had in fact taken steroids. He himself said this was not always admitted.²⁵⁵ This will all be a matter for the Chair to consider in assessing the reliability and weight of Professor Freemont's revised evidence of the timeframe in which the injury could have occurred.

287. In the event that the Chair is persuaded that the timing of the rib fracture is such that it is within the timeframe of the police engagement then it will be a matter for him consider the competing causes and explanations as to the most likely mechanism. There was considerable evidence about the unusual incidence of the fracture given the anatomical position of that rib and the absence of any other injury.

288. In relation to the position of Mr Bayoh at various times, an issue for the Chair to consider may be whether or not Mr Bayoh was ever lying in the prone position with his chest flat to the ground because he was handcuffed to the front and not the back.

5.10 COMMAND DURING THE RESTRAINT AND WHETHER AN OFFICER MONITORED THE BREATHING OF SHEKU BAYOH

289. A question of practice and process arises here which will be covered in the training hearing. PC Smith monitored the breathing of Mr Bayoh once control had been established. If that was in line with the training at the

²⁵⁵ Day 57:124- 126

material time then consideration will require to be given as to the adequacy of the training.

290. The Chair clarified with PC Smith whether he started to monitor Mr. Bayoh's breathing *after* he realised he was unconscious and PC Smith agreed. He also asked whether, as a general proposition, in a restraint involving someone in a prone position, he would expect one of the officers to monitor the breathing of the subject to which he responded that it would be beneficial if someone is going to be in a prone position for a prolonged period of time.²⁵⁶

5.11 FIRST AID BY OFFICERS

5.11.1 Cardiopulmonary resuscitation ('CPR')

291. The evidence is that CPR was administered by officers PC Smith, PC Walker and PC Paton. All officers received Scottish Police Emergency Life Support ('SPELS') training. PC Alan Smith had additional qualifications and was a First Aid trainer. PC Walker also underwent additional first aid training 23-25 May 2012. All First Aid training issues will be covered in later hearings and submissions.

5.11.2 Presence of handcuffs

292. Mr Bayoh needed medical attention. The Chief Constable recognises that the failure to remove the handcuffs during the initial treatment interventions is, understandably, something which would be distressing for the families of Mr Bayoh. It is important to understand how this came about and to reflect on that in terms of organisational learning.

²⁵⁶ Day 11 190

293. There is a consistency in the evidence that the handcuffs were not removed during CPR. Of the officers who administered CPR, only PC Smith and PC Paton were asked why restraints were not removed. Explanations for not removing them were provided by those officers, which the Chair will require to consider. Sergeant Maxwell and PC Tomlinson were also asked and provided their views based on their knowledge and experience.

294. The evidence of the officers will be a matter for their representatives to address in detail for the Chair to consider. The Chief Constable's position is that there was nothing in the guidance available to officers as at May 2015 that mandated removal of the handcuffs. The training, and the adequacy of that training, will be addressed at the later hearing on training. In the meantime, reference is made to Position Statement 8.²⁵⁷

295. In the applicable OST Manual, Module 3 dealt with Rigid Handcuffs.²⁵⁸ There is no instruction to officers that they should remove the handcuffs in order to deliver CPR. Rather the focus was on removing the handcuffed subject from the prone position once control has been obtained in order to reduce the risk of positional asphyxia. The expectation was that handcuffs would be removed in custody or in the safety of a secure location and that officers maintain control.

296. Section 2 dealt with handcuffing theory. On page 89,²⁵⁹ under Rules for Handcuffing, rules 8 to 10 state that:

"8. The officer should not attempt to handcuff a resisting subject until they are in a position of control.

²⁵⁷Position Statement number 8, paragraph 71(a)-(b)).

²⁵⁸ PS10938

²⁵⁹ Page 95 of the PDF

9. The officer should remove handcuffs whilst maintaining a high level of awareness.

10. The officer should remove the handcuffed subject from the prone position as soon as possible to avoid the likelihood of Positional / Restraint Related Asphyxia”

297. Section 5 deals with handcuffing techniques. On page 94²⁶⁰, under the section for Handcuff Removal, it states that:

“When removing handcuffs from a subject in custody, it is advisable to do so **in the safety of a secure location**. It is **vital that the officer(s) maintain control whilst releasing handcuffs**.

Handcuffs should be removed with a high level of awareness. The officer should remain outside the subject’s fighting arc during all handcuff techniques, including application and removal.

Where possible, two officers should maintain control of a subject during handcuff removal techniques. This allows for the safe control of a subject, particularly when the first handcuff has been released.

There are three options for the safe removal of handcuffs. These three options are only applicable for compliant subjects.’ [Emphasis added]

298. On pages 104 to 105²⁶¹, under the section for Pull Down to Prone – (Top Cuff)²⁶², it is explained that this technique ‘*may be considered by officers if resistance is encountered from a subject*’ and officers are given two options to complete the handcuffing procedure (application or removal), having ‘*secured compliance*’.

²⁶⁰ Page 100 of the PDF

²⁶¹ Page 110 of the PDF

²⁶² The same principles apply to other cuffing techniques, e.g. bottom cuff wrist drag (see page 106 of the OST Manual (page 112 of the PDF))

299. On page 105, the section on Prone Search states that:

‘Once control of a subject has been obtained, it is important that they do not remain in the prone position for longer than necessary. This is due to the medical concerns surrounding positional/restraint related asphyxia.’
[Emphasis added]

300. Although the Inquiry will hear evidence at the hearing on training about the changes which have been introduced, it is important to record in this submission that the guidance to officers on this important matter has been updated. On 13 November 2022 advice to remove handcuffs to undertake CPR was included in First Aid Training and a form of words will be added to reflect this in the updated manual in 2023.

5.11.3 Was there impairment of CPR?

301. It is important to consider what impact, if any, there was on the treatment of Mr Bayoh of the failure to remove the handcuffs. There was some conflicting evidence on the issue of whether removal of handcuffs would have hindered CPR. There seems no doubt that Mr Bayoh was handcuffed to the front. Dr Pickering, Consultant in A&E (Registrar at the time) gave evidence that handcuffs would have hindered giving really good compressions.²⁶³

302. The Chair will require to balance the evidence of Dr Pickering with the evidence available from the police officers who were performing the CPR,²⁶⁴ the other police witnesses present, as well as the ambulance personnel, Alan Finlayson and David Taylor. The paramedics did not ask for them to be

²⁶³ Day 13

²⁶⁴ PC Walker was not asked about whether there was any impediment to CPR

removed. Alan Finlayson in his first statement taken on 26 May 2015 by PIRC investigators²⁶⁵ confirmed that the police were doing CPR at the scene on arrival. After David Taylor had ventilated Mr. Bayoh with a bag valve mask, he asked a police officer to continue with CPR. In his COPFS statement he said *'As far as I am concerned, we had good access to the chest and the cuffs did not stop us from doing CPR.'*²⁶⁶ This was said in the context that the removal would only be of benefit if they were going to cannulate. However, if they had asked for the cuffs to be removed they would have to stop CPR to do so and the time taken to put in a cannula would be time not doing CPR. In his Inquiry statement,²⁶⁷ he was clear that *'At the time we were happy with [sic] that the CPR we were doing was good CPR in spite of the handcuffs. They weren't affecting us in any way, and that's why we made a decision to just go to the hospital.'*

303. Mr Taylor in his first statement²⁶⁸ stated that he *'allowed the officers to carry on CPR'* and, whilst they did that, he got the bag and mask ready which he then applied to Mr Bayoh. In his statement to COPFS²⁶⁹ he stated that the *'restraints could have been removed while we were there but, to be honest, we were so close to the hospital we were preoccupied with getting him there.... The restraints didn't hamper us in any way.'* This was restated in his Inquiry Statement.²⁷⁰ *'I didn't ask for the handcuffs to be removed. It didn't impede CPR or chest compressions or any bag and mask in the back of the vehicle.'*

304. Mr. Taylor confirmed in his oral evidence that CPR was not impeded by the handcuffs.²⁷¹ He did not ask for the handcuffs to be removed. They did

²⁶⁵ PIRC-00220

²⁶⁶ COPFS-00044 page 6 paragraph 1

²⁶⁷ SBPI-00007 at paragraph 73

²⁶⁸ PIRC 00179 – 19 May 2015

²⁶⁹ COPFS -00051 25 October 2016 at page 4

²⁷⁰ SBPI-00017 at paragraph 60

²⁷¹ Day 21:95 11-14

not impede CPR or chest compressions or the bag and mask. They did not impede his ability to connect the defibrillator to the chest.²⁷²

305. As well as the evidence of the officers, there is also the evidence of DS Davidson. The witness confirmed that she is first aid trained and there was nothing about the CPR at that time that caused her concern as to its effectiveness or the way it was being performed. The CPR was *'very effective, and there was no restriction to the chest area that [she] observed'*. Senior Counsel to the Inquiry pointed out that Mr Bayoh was cuffed to the front and that position could compress the chest and interfere with CPR. The witness reiterated that her observation of the CPR gave her no concern and she *'was not drawn to the cuffs causing any issue'*.²⁷³

306. As stated above, it will be a matter for the Chair to determine what impact, if any, the failure to remove the handcuff had on the effective administration of CPR. In the meantime, Police Scotland has amended their guidance as noted herein.

5.12 LOSS OF CONSCIOUSNESS, THE POINT AT WHICH HE STOPPED BREATHING

307. The timing of this is a matter upon which there is witness evidence from the officers as well as Airwaves transmissions. There is also the evidence of Chief Inspector Robson on this issue. The Chief Constable considers these are matters for the Chair to resolve having heard the representations of other Core Participants.

²⁷² Day 21:96

²⁷³ Day 17:155

5.13 AMBULANCE CALLS TIMING AND ATTENDANCE

308. On the ALI spreadsheet, the ambulance arrived on Hayfield Road at around 7.33am. The Chair will require to address whether or not an ambulance should have been called earlier for Mr Bayoh, the nature of the communications from the officers at the scene to command and control, how that information was conveyed to the Scottish Ambulance Service and how that was then communicated to the ambulance personnel.

309. In terms of arrival of a second ambulance. Alan Finlayson, in COPFS 00044 stated as follows: *'Following a campaign by us, two ambulances come as standard to a cardiac arrest. That's because it has been shown you need two teams for a cardiac arrest to deal with it. The second ambulance didn't come thought because I told it to stand down.... Because there were umpteen police officers to help get him in the back of the ambulance and drive it to allow us to work on him on the way to the hospital and they were more than happy to help. If we hadn't done that it would have bene a case of waiting for the second ambulance which was coming from Leven so would have been another 10 minutes'*

5.14 TREATMENT AT THE HOSPITAL AND LIFE PRONOUNCED EXTINGUISHED

310. The Inquiry has oral evidence from the relevant treating physicians and has disclosed witness statements from those not called.

311. Every effort was made to save Mr Bayoh's life by the emergency physicians. There seems to be no doubt about the time of the pronouncement of life extinct being 9.04am.

5.15 CAUSE OF DEATH

312. It is not possible to embark on any discussion of the cause of Mr Bayoh's death without pausing to consider the devastating effect his death has had on his families. Any submissions on this matter are ones which will have an impact on those grieving families. The Chief Constable is acutely aware that the subject matter of legal submissions is their much loved son, partner, father, brother and cousin. It is necessary in such cases to approach matters of legal and medical causation in a formal manner but in doing so there is no intention to cause any further upset or distress to his families.

5.15.1 Law on Causation

313. The Inquiry paper²⁷⁴ is not reflective of the full extent of the law as it has evolved in this complex area. The paper appears to be largely directed at legal tests to establish civil liability. This is not the function of the Inquiry.²⁷⁵ At this stage Core Participants have not seen the Inquiry submissions and anticipate this will no doubt be covered in detail by Inquiry counsel. The Chief Constable would be happy to assist with further submissions, if it would assist the Inquiry at a future date.

314. The determination of the cause(s) of Mr Bayoh's death is a matter for the Inquiry and one which is being thoroughly investigated with the relevant experts. The Chief Constable will not be inviting the Chair to make particular findings but presents the following submissions with the intention assisting his consideration of some of the issues which arise.

²⁷⁴ SBPI- 00301

²⁷⁵ Section 2 2005 Act.

5.15.2 Cause of death - medical

315. In terms of the medical pathology and certification of death, Dr Shearer made it clear that a pathologist gives a narrative cause of death including everything that is important. This is in the context of statutory provisions regarding certification. It does not include a psychiatric diagnosis. As Dr Shearer agreed, it will be a matter for the Chair to look at all the circumstances in relation to determining the cause(s) of death.

316. There is consensus between the experts that there was no evidence of any direct traumatic cause of death and that cause of death was multifactorial.²⁷⁶ The post mortem report recorded cause of death as 1(a) sudden death in a man intoxicated by MDMA (ecstasy) and alpha-PVP, whilst being restrained.²⁷⁷ In his expert report, Dr. Cary observed that restraint could not be considered separately from struggling.²⁷⁸ He suggested that in the post mortem report he would replace the words '*whilst being restrained*' with the words '*in association with struggling and restraint*'. Dr Shearer agreed and added during the course of her evidence that the struggle during restraint was important and, that if revisiting this case, she would have added the words to that effect.

317. There appears to be a reasonable consensus that the mechanism of death was that Mr Bayoh's heart stopped due to a fatal arrhythmia. There is a question over the role of sickle cell trait but this is not a cause of death of itself. It will be for the Chair to determine the chain of events which led to the arrhythmia which resulted in the heart stopping and death.

²⁷⁶ See Inquiry statement of Dr. Shearer SBPI-00304 paragraph 81

²⁷⁷ Day 53:140 and PIRC 01445 dated 4 May 2015

²⁷⁸ COPFS-00196 page 6

5.15.3 Use of terminology

318. It is submitted that it will be essential to consider what is meant by the terminology 'restraint' when used by the Inquiry, by witnesses, by Core Participants and in findings. It is common to use the term restraint in a general sense. Most witnesses when giving evidence were asked or provided opinion about 'the restraint' or 'during the restraint'. It will be important for the Chair to consider what was happening at the various stages of each police officer's interactions with Mr Bayoh. There is a difference between police engagement, steps to seek to restrain and then achieved control by restraint. This is important because of the various hypotheses discussed as to the duration of 'the restraint'.

319. The same is true for the descriptions of Mr Bayoh's position. The term 'prone' is used, generally without definition. However, what is meant by 'prone' is important because the consideration of impairment of breathing arises most acutely in this context. The Chair will wish to consider whether the fact that Mr Bayoh was handcuffed to the front is relevant. The length of time in various positions in a dynamic situation will need to be considered and the risks of those other positions considered.

5.15.4 Chain of events leading to 'the restraint'

320. As a preliminary to any review of medical causation it necessary to consider first what it is that requires to be addressed in respect of **causation**. It is submitted that there are two aspects to this. The first is the circumstances which lead to the attempts to restrain. The second is the cause of death in the context of actions in those attempts, and the role that those actions in seeking to achieve control, may or may not have played in the cause(s) of death. The

evidence adduced by the Inquiry to date has established that the cause of death is multifactorial.

321. If the Chair finds that the steps taken in achieving control, has been a cause of death or has contributed to the cause of the death of Mr Bayoh, then it will be necessary to consider if it has been established that there was anything improper about the actual actions in achieving control, or, if the death was as a consequence of the very fact of seeking to gain control and the struggle in that context. It is therefore necessary to consider the cause of the initial actions in seeking to achieve control.

5.15.5 ARV and Dog Unit attendance

322. Evidence about command and control is not complete but it seems tolerably clear that any ARV attending would not have attended in sufficient time. Deployment or tactical relocation would not have made a difference. This was a point made by Martin Graves.²⁷⁹

323. A Dog Unit would not have attended in time. PC Woods ultimately agreed, in answer to a Rule 9 question, that he could have been at the scene at the very quickest, within 20 minutes and probably a bit later than that. His original assessment was 10-15 minutes to cover 26.7 miles.²⁸⁰ A dog is a use of force and an escalation of force.

324. PC Wood emphasised that, when attending a knife incident with his dog, he would perform a risk assessment, using the NDM, as deployment of a dog is '*a high level use of force*' that he would have to justify. He would be

²⁷⁹ Day 26:147 and SBPI 00190

²⁸⁰ SBPI-000108 para 38 and 39 and Day 26:68

looking for as much as he could gather in order to determine his deployment options and those options would depend on the exact situation and circumstances that he faced.²⁸¹ He observed that there were some situations where a dog would not be effective or beneficial.²⁸²

5.15.6 Effect of the actions of PC Walker and Ex Constable Paton

325. The actions of PC Walker and Ex PC Paton will no doubt be reviewed against the proposition that they should have taken a more conciliatory approach and de-escalated the situation to the extent that Mr Bayoh did not have to be restrained. That will include a consideration of their training and experience as at that date. It will be reviewed further at the hearing on training.

326. The Inquiry currently has evidence from Inspector Young that compliance and control was the dominant and expected tactic. The Chair will need to be satisfied to a robust degree, with cogent and compelling evidence,²⁸³ that any action or failure on the part of PC Walker and Ex Constable Paton were such that the attack on Ex PC Nicole Short would not have happened but for their action or failure.²⁸⁴ In that regard the Chair may wish to give consideration to the following:

1. The evidence of Zahid Saeed that neither he nor his friends could calm Mr Bayoh down, as discussed at paragraph 137 onwards, and that they feared he would even harm his partner, Collette;

²⁸¹ Day 26: 32-34

²⁸² Day 26: 42:5-42:13

²⁸³ As a serious matter requiring cogent and compelling evidence under reference to chapter 2.2 regarding the standard of proof.

2. That at the time when PC Tomlinson and PC Short arrived Mr Bayoh was walking away;
3. The evidence of PC Tomlinson that he was mirroring the movements of Mr Bayoh and was maintaining distance;
4. That PC Walker and PC Paton were incapacitated by their use of the CS and PAVA at the time of the assault on Ex PC Nicole Short; and
5. The evidence of Ex PC Nicole Short regarding her actions.

5.15.7 Potential issues with de-escalation and unpredictability of outcome

327. The Chair may consider another important factor is the evidence of Kevin Nelson regarding what he saw of the assault on Ex PC Short. Senior Counsel to the Inquiry took Mr Nelson to para 12 of his Inquiry Statement where he referred back to his PIRC-00019 statement page 3 (which states that Mr Bayoh lunged at PC Short with his left fist towards her face, head area. He struck at her with his closed **fists 3 times** and he heard PC Short scream out). In para 12 of his Inquiry Statement, Mr Nelson said that *'it was like a switch had just went. It was like he just woke up. It was just like an explosion just went'*. Senior Counsel to the Inquiry asked what he meant by this, to which he responded:

*'It was like two different people. You had one guy walking along the road oblivious that anything was going on at one point, and then all of a sudden, like a switch, like a click of someone's fingers, almost like a hypnotic trance type thing, just exploded'*²⁸⁵

²⁸⁵ Day 12: 47:12-47:16

328. The Chair may wish to consider this this together with the evidence of Professor Lipsedge who said, in the context of having an escalation discussion with a patient in the clinical context:

'What I should have said right at the beginning is if a person is armed with a gun or with a knife or some other weapon, what I have been describing is completely unrealistic and safety takes top priority. But if during the dialogue the situation changes and the patient tries to attack you or somebody in the room, then you've got no alternative but to use physical restraint' ²⁸⁶

329. The evidence of Dr Maurice Lipsedge regarding the effects on the drugs known to be found in Mr Bayoh's system in particular Alpha-PVP is relevant to this assessment. There are several points at which there is the 'switching' (Zahid Saeed) interspersed with calmness (Ted Morgan). The Chair will wish to consider the evidence and actions of the officers in that context.

330. If the restraint is established as being necessary, given the assault on Ex PC Short, the next issue becomes the reasonableness and proportionality of the actions and the cause of those officer responses. Such actions require, as a matter of fairness to be examined in the context of the actions of Mr Bayoh.

331. These will be the subject of detailed submissions by others in terms of the witness evidence.

²⁸⁶ Day 55:24

5.15.8 Opportunities for Treatment

332. The Chair will need to be satisfied regarding the attempts at CPR, the timing of the ambulance calls and arrival and whether or not any opportunities to save Mr Bayoh's life were lost.

333. The call to attend was allocated to David Taylor and Alan Finlayson at 07:24. They were on the Thornton bypass, the A92 when they received the updates and received the correct address at 07:30. At 07:31 as they were approaching the scene, they were told by control that the patient was in cardiac arrest. They arrived at the scene at 07:33. They left the scene at 07:42 and bag and mask ventilations continued. A police officer drove the ambulance. They arrived at hospital at 07:44 (2 mins to get there; 9 minutes on the scene so 11 minutes from scene to hospital).²⁸⁷

334. In this regard, the Chair may wish to also consider the evidence of Professor Carey on the last day of the hearing on causation, which was to the effect that the most important tipping²⁸⁸ point was the occurrence of cardiac arrest. He said that once that happened, even with good resuscitation, sadly, death was inevitable.

335. The Chief Constable wishes to make it clear that the evidence of the First Aid actions, communications with the ambulance service by command and control, the availability of equipment such as face shields and the provision of blankets are all being reviewed and lessons are being learned. This will be addressed at the hearing on training.

²⁸⁷ David Taylor SPBI-00017 paragraph 62

²⁸⁸ Professor Carey Day 59: 66

6. CONCLUSION

336. The Chief Constable has welcomed the invitation by the Chair to make submissions on an interim basis. He has made these in so far as is possible standing the limitations as to the extent to which it is proper for him to be engaged. The absence of a submission on any particular issue should not be seen as an acceptance of any findings in fact advocated for by any other as regards individual actions. These submissions regarding issues the Chair may wish to consider are not intended to convey the formation of any view about the facts as regards any the officer's actions.

337. Where there is a potential organisational issue or an organisational expectation of officers of Police Scotland, these are matters, which in fairness need to be addressed by the Chief Constable. Expectations of police officers are high. The Chief Constable is mindful that police officers do risk their lives for the safety of the public. They attend incidents such as this because they are deployed to do so to fulfil the policing duty to keep the public safe.

Submitted on behalf of the Chief Constable of Police Scotland

Maria Maguire K.C.

Lisa Henderson K.C.

Suzanne Lambert, Barrister

23 June 2023

Deputy First Minister and Cabinet Secretary for
Economy and Gaelic
Leas Phrìomh Mhinistear agus Rùnaire a' Chaibineit
airson Eaconamaidh agus Gàidhlig
Kate Forbes MSP
Ceit Fhoirbheis BPA



Scottish Government
Riaghaltas na h-Alba
gov.scot

T: [REDACTED]
E: [REDACTED]

Lord Bracadale
Chair, Sheku Bayoh Public Inquiry
5th Floor Capital House
2 Festival Square
Edinburgh
EH3 9SU
[REDACTED]

13 August 2024

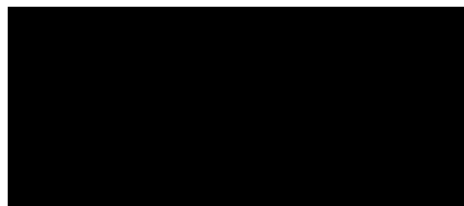
Dear Lord Bracadale,

As you may know, I recently met with members of the Bayoh family and their legal representative, Aamer Anwar. The meeting covered a wide range of issues and the family made some specific requests to me in relation to the Inquiry's Terms of Reference.

During our meeting, the family raised concerns about the current Terms of Reference which, as you are aware, explicitly exclude the prosecutorial decision of the former Lord Advocate. The family have asked me to consider amending the Terms of Reference, broadening them to address this. Scottish Ministers have powers to amend an Inquiry's Terms of Reference under the Inquiries Act 2005 but as part of my consideration of their request, I would welcome a discussion with you. I am aware that you provided your thoughts on the extent to which the role of the Crown Office should be examined by the Inquiry when the Terms of Reference were being drafted in 2020 and would be keen to hear your reflections on this, in light of the Inquiry's progress in the intervening period. I am also mindful that the Inquiry has just completed block seven of hearings, and final representations are scheduled for December. It's clear to me that any change to the Terms of Reference at this late stage would have a significant impact on the Inquiry.

If you would be open to discussing these matters with me, my Private Office can liaise with your Secretary to find a mutually convenient date for us to meet.

Yours sincerely,

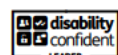


KATE FORBES

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

INVESTORS IN PEOPLE
We invest in people Silver



FAO Lord Bracadale

By email only - [REDACTED]

29th August 2024

Dear Chair

SHEKU BAYOH

Over the last several months a number of meetings have taken place with the Bayoh family and I refer to the discussions below.

The family of Sheku Bayoh ask that the terms of the Inquiry are expanded to explore the prosecutorial decision and to allow consideration of the decision taken by the Lord Advocate in discussion with Ashley Edwards KC, Crown Counsel by the Inquiry.

Reference is made to s5(3) of the Inquiries Act

(3)The Minister may at any time after setting out the terms of reference under this section amend them if he considers that the public interest so requires.

While doubtless your Lordship has all the relevant information to inform him what information the Lord Advocate had when he made his final decision, the family explain that they have now had the opportunity to consider the decision making of the police, the PIRC, and the Crown in some detail up to, but excluding the decision taken on whether to prosecute.

Kadi, on behalf of the family has stated “We want the public to know the whole truth. The way the police were scrutinised, think Crown not scrutinised in that manner. They should be as responsible as the police....”

It is not known why the prosecutorial decision was removed from the scope of the Inquiry, albeit that I was led to believe at the time in discussions with the Scottish Government, there was strong resistance from the Lord Advocate James Wolfe KC in including the decision in the terms of reference.

Crown Office has a history of being closely guarded with its decisions and excluding families from understanding the process and decision making in relation to prosecutions. This 20th Century approach does not sit well with the duties on the Crown in the 21st century as a public body that ought to be transparent about and accountable for, its decisions.

The TOR in this case was set out in 2019 and since that time scrutiny of Crown Office decision-making has been the subject of high-profile cases and found wanting. The landscape has changed for the better and the Crown Office' anachronistic views on the "sanctity" of the decision-making process is not in step with the need for public bodies to be accountable to the people they serve.

The Sheku Bayoh Public Inquiry has been robust in its investigation of all other parts of the process and there seems no good reason not to complete this investigation with this final investigation.

Whilst it is clear from the evidence already elicited that the article 2 rights of Sheku Bayoh have not been properly considered and breached by the Crown, the inclusion of the prosecutorial decision would allow for access to the "whole truth" that the family not only need, but deserve.

An extension of the TOR to include this decision would require the recall of two witnesses – the then Lord Advocate James Wolffe KC and Ashley Edwards KC, to be asked questions specifically focused on the decision not to prosecute. This would take approximately a half day for each witness. Given the time and care already taken in this inquiry to remain on schedule, this would be a very minor additional part of the inquiry process.

Any suggestion that consideration of the detail of the prosecutorial decision could prejudice any further prosecution should be given the utmost scrutiny and not accepted at face value.

This decision that is sought to be examined was taken on an incomplete and erroneous understanding of the evidence and failed to take into account important issues such as race. How consideration of this decision could prejudice any further, proper consideration of the evidence and properly instructed, appropriate expert witnesses is not known.

It is submitted that, whatever the view taken in 2019, viewed in 2024 it is in the public interest to complete this Inquiry by finding out exactly what decisions were taken in respect of the prosecution and why they were taken.

For too long Crown Office and its decision -making process has remained shrouded in secrecy, it is an archaic practice in breach of their claim to adhere to supporting the human rights of families such as the Bayohs.

The fact is that the Crown Office is a public body which should be transparent and accountable to those that it serves. Extending the terms of the Inquiry would fully illuminate the process and it would doubtless be in the public interest to do so.

We look forward to hearing from you.

Kind Regards,

Aamer

For the urgent attention of:

Kate Forbes MSP
Deputy First Minister

By email only: [REDACTED]@gov.scot

4th September 2024

Dear Kate,

Sheku Bayoh Inquiry – Terms of Reference

We refer to the above and thank you for your meeting with the Bayoh family earlier this year. The family were extremely grateful as they felt that their concerns were carefully listened to. Last Friday the Bayoh family met with the Chair of the Inquiry, Lord Bracadale and his legal team, at which a number of concerns as outlined below were raised, we now understand he is due to meet with you this week.

As we briefly explained at our meeting with you an Inquiry excluding a consideration of prosecutorial decision makes for an incomplete Inquiry into the death of their loved one. The family of Sheku Bayoh ask that the terms of the Inquiry are expanded to explore the prosecutorial decision and to allow consideration of the decision taken by the Lord Advocate in discussion with Ashley Edwards KC, Crown Counsel by the Inquiry. We note we raised this

issue with you previously and we were to write in detail to you but thought it best until the last chapter of evidence was completed so we had a fuller picture.

Reference is made to s5(3) of the Inquiries Act:

(3) The Minister may at any time after setting out the terms of reference under this section amend them if he considers that the public interest so requires.

While doubtless Chair of the Inquiry, Lord Bracadale, has all the relevant information to inform him what information the Lord Advocate had when he made his final decision, the family have now had the opportunity to consider the decision making of the police, the PIRC, and the Crown in extensive detail up to, but excluding the decision taken on whether to prosecute.

Kadi, on behalf of the family has stated, *“We want the public to know the whole truth. The way the police were scrutinised, yet we believe the Crown has not been scrutinised in that manner. They should be held to account as much as the police...”*

It is not known why the prosecutorial decision was removed from the scope of the Inquiry, albeit that I was led to believe at the time in discussions with ministers at the Scottish Government, there was strong resistance from the Lord Advocate James Wolfe KC in including the decision-making process in the terms of reference.

Crown Office has a history of being closely guarded with its decisions and excluding families from understanding the process and decision making in relation to prosecutions. This 20th Century approach does not sit well with the duties on the Crown in the 21st century as a public body that ought to be transparent about and accountable for, its decisions.

The Terms of Reference in this case was set out in 2019 and since that time scrutiny of Crown Office decision-making has been the subject of high-profile cases and found wanting. The landscape has changed for the better and the Crown Office' anachronistic views on the "sanctity" of the decision-making process is not in step with the need for public bodies to be accountable to the people they serve.

The most high-profile case was that involving Rangers Football Club, but in that instance the individuals had access to significant financial resources to take on the authorities and show that the Crown Office did indeed act maliciously. You will be aware that in August 2020 the Scottish Government wrote to those connected to the acquisition and administration of Rangers Football Club, admitting that the prosecution was malicious and advising that damages would be paid, and apology issued. In 2023 it was reported that the wrongful arrests could cost up to £72 million.

In the case of the Sheku Bayoh, his family had no access to significant financial resources as those in the Rangers case did, but that is the case for many other families and victims, for example the families of Katie Allan, William Lindsay, Allan Marshall, Emma Caldwell.

In all these cases the Crown Office have been accused of arrogance and acting behind a veil of secrecy to avoid any accountability whilst paying lip service to the article 2 rights of families.

The Sheku Bayoh Public Inquiry has been robust in its investigation of all other parts of the process and there seems no good reason not to complete this investigation with this final investigation into the prosecutorial decision- after all it cannot be right that the Lord Advocate and his team should be allowed to escape robust scrutiny into their decision making whilst those in Police Scotland and the PIRC are required to account for theirs.

Whilst it is clear from the evidence already elicited that the article 2 rights of Sheku Bayoh have not been properly considered and breached by the Crown, the inclusion of the prosecutorial decision would allow for access to the “whole truth” that the family not only need but deserve.

In essence an extension of the TOR to include this decision would require the recall of two witnesses – the then Lord Advocate James Wolffe KC and Ashley Edwards KC, to be asked questions specifically focused on the decision not to prosecute. Given the time and care already taken in this inquiry to remain on schedule, this would be a very minor additional part of the inquiry process.

Any suggestion that consideration of the detail of the prosecutorial decision could prejudice any further prosecution should be given the utmost scrutiny and not accepted at face value, apart from the bitter irony of such a submission, it does not bear consideration. - it is the excuse used time and time again to avoid accountability.

This Bayoh decision that is sought to be examined was taken on an incomplete and erroneous understanding of the evidence and failed to consider important issues such as race. How consideration of this decision could prejudice any further, proper consideration of the evidence and properly instructed, appropriate expert witnesses is not known.

It is submitted that, whatever the view taken in 2019, viewed in 2024 it is in the public interest to complete this Inquiry by finding out exactly what decisions were taken in respect of the prosecution and why they were taken.

For too long Crown Office and its decision -making process has remained shrouded in secrecy, it is an archaic practice in breach of their claim to adhere to supporting the human rights of families such as the Bayohs. You should be aware that we have spoken to those in the Scottish

Parliament from the leader of Scottish Labour Anas Sarwar MSP and Russell Findlay MSP of the Conservative Party, they have offered their full support and believe their party will also for our request for an extension to the terms of reference to include the prosecutorial decision making process. I will also be speaking to Alex-Cole Hamilton leader of the Scottish Liberal Democrats and very much expect for the family to have his support also, later today. We will also seek the support of the Scottish Greens.

Evidence has been given by the Crown that it did not do any further investigations / work in relation to race and the death of Sheku Bayoh as they knew there would be an Inquiry. The Crown, their officials and the former Lord Advocate have stated that they supported the Public Inquiry and it is assumed to be transparent and accountable in its decision making. Why then would it now oppose an extension of the TOR?. The Inquiry has been led by Senior Counsel to the Inquiry, Angela Graham KC “to the door” of the room in which the decisions were taken as between the Lord Advocate and Crown Counsel Ashely Edwards KC.

Inexplicably, the decision-making process was excluded, yet it is exactly this meeting that we understand how the Lord Advocate came to its decision not to prosecute those involved in the restraint of Sheku Bayoh. It is not known how or why the decision was taken to exclude the Lord Advocate from this scrutiny, but it leaves a very unfortunate situation where the only person whose final decision making is excluded from public scrutiny is a fellow Minister in the Scottish Government.

When the Crown Office is forced to admit that in a high- profile case the decision to prosecute was maliciously made, then it has no authority for claiming any sanctity to the process, to accept a blank assurance that “we’ve done it right”. There is no magic in taking a legal decision to prosecute: Was there a sufficiency of evidence to prosecute for a crime? If so, was it in the public interest to prosecute? If not, why not. These are decisions that the Bayoh family need answers to. There is no good reason in law that this not be done.

We know from other such high-profile Inquiries that issues such as this do not go away unless the disinfectant light of public scrutiny is brought to bear. This is an opportunity to conclude these hearings now rather than have it continually re-appear. To date the evidence is such that Sheku Bayoh, his family and wider society have been seriously failed by the public bodies that ought to have protected our rights.

The fact is that the Crown Office is a public body which should be transparent and accountable to those that it serves. Extending the terms of the Inquiry would fully illuminate the process and it would doubtless be in the public interest to do so. Failure to extend the terms of reference would mean that yet again another family would be forced to fight many years for another public inquiry to hold the Crown Office and Procurator Fiscal Service to account.

We look forward to hearing from you.

Kind Regards,

Aamer Anwar – Solicitor to the Bayoh families.

cc. Anas Sarwar MSP, Russell Findlay MSP, Alex-Cole Hamilton MSP, Pauline McNeill MSP, Patrick Harvie MSP, Lorna Slater MSP.

Solicitor to the Inquiry
Sadif Ashraf

E: [REDACTED]



Legal Representatives

By email only

6 September 2024

All,

TERMS OF REFERENCE

I write to advise you of a meeting between the Chair and the Deputy First Minister on 5 September.

The families of Mr Bayoh have requested the Deputy First Minister to extend the terms of reference to include consideration of the decision by the Lord Advocate not to prosecute. Section 5(3) of the Inquiries Act 2005 states:

The Minister may at any time after setting out the terms of reference under this section amend them if he considers that the public interest so requires.

The Minister invited the Chair to offer his view on the request to extend the terms of reference.

The Chair began by setting out the background to the current terms of reference. In 2020, the then Lord Advocate relied on the rule of law that the independence of the office of Lord Advocate meant he could not be required to subject his reasons not to prosecute to scrutiny. The Cabinet Secretary for Justice and the Chair considered that in the absence of agreement by the Lord Advocate to include the decision, they had to respect the constitutional position. Accordingly, a form of words was developed that would allow the Inquiry to examine the investigation by the Crown up to a point as close as possible to the prosecutorial decision.

The Chair went on to reiterate the strength of feeling felt by the families on the inability of the Inquiry to examine the reasons for the decision of the Lord Advocate not to prosecute. That this exclusion resulted in them not having access to the whole truth. Further, it was inconsistent with the general requirement of public bodies to allow

scrutiny of reasons for decisions. He advised the Minister that he saw the force in the arguments put forward.

The Chair was invited to give his view. Aside the constitutional point mentioned above, he observed that a change to the terms of reference would cause delay and increase cost. If the extension was limited to a consideration of the reasons for the decision, and did not extend to the VRR, the Chair felt that it would be manageable, although it would still require a substantial amount of work.

On the substantive point, the Chair gave a frank assessment. The evidence amassed by the Inquiry will allow the Chair to form a view as to whether the investigation by the Crown complied with the requirements of article 2 and 14 of the European Convention on Human Rights. However, he does have a concern. While he is yet to hear closing submissions and analyse the totality of the Crown evidence, the evidence raises certain questions about the Crown investigation in relation to

- the understanding of the factual evidence;
- the instructions given to expert witnesses; and
- the absence of an examination of the issue of race.

The Chair noted that these are important aspects of the investigation and, it could be reasonably be inferred, would have been integral in the decision not to prosecute. If the evidence is raising questions about these elements, that in turn raises questions about the decision itself. The only way of ascertaining whether the decision was flawed, would be for the Inquiry to examine it.

The Inquiry does not know when the Minister will reach a decision on the matter. In the meantime, we are proceeding on the basis of the current timetable with the final hearing in October and final closing submissions in December. No further submissions in relation to the evidence led up to, and including, the October hearing will be permitted after closing oral submissions.

Yours sincerely

Sadif Ashraf

From: [REDACTED]
To: COPFS email address [REDACTED]
Cc: [Sheku Bayoh Inquiry – legal enquiries](#); [REDACTED]
Subject: RE: Upcoming Hearing - List of Issues
Date: 16 September 2024 09:35:00
Attachments: [image001.png](#)

Dear [REDACTED]

Thank you for your email.

The upcoming hearing is a 'mop up' hearing covering witnesses relevant to earlier hearings that were not able to be fully accommodated.

The List of Issues for the Training hearing is relevant to Martin Graves (SBPI-00396)

The List of Issues for the hearing on Race is relevant to Prof. Gus John (SBPI-00571)

Both Aamer Anwar and John Sallens have been called to allow them the opportunity to respond to criticisms made of them in earlier evidence. The questions that will be put to them by Inquiry counsel will be limited to the evidence that has mentioned them to date. The points identified in relation to Mr Aamer Anwar relate in particular to Mr Alastair Lewis's evidence on Day 87 of evidence (1 March 2024). I am not able to point directly to the evidence relevant to John Sallens at present but expect we will contact Core Participants in advance of the deadline for written Rule 9s if there is anything to specify in relation to Rule 9s.

I hope this is of assistance

Kind regards

[REDACTED]



[REDACTED]
Deputy Solicitor to the Sheku Bayoh Public Inquiry
[REDACTED]

My usual working pattern is [REDACTED]

[REDACTED]. *Please don't feel you need to respond to this email outside your working hours*

From: [REDACTED] <[REDACTED]>
Sent: Tuesday, September 10, 2024 12:59 PM
To: [REDACTED] <Deputy Solicitor to the Inquiry email address>
Cc: Sheku Bayoh Inquiry – legal enquiries <[REDACTED]>; [REDACTED]
[REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: Upcoming Hearing - List of Issues

Dear [REDACTED],

I was just wondering if you could confirm whether or not we are to receive a List of

Issues for the upcoming hearing? I think I'm correct in saying that we haven't received one yet.

Many thanks for your assistance.

Best wishes,

[REDACTED]

[REDACTED]

**Principal Procurator Fiscal Depute
Litigation and Inquiry Team**

Tel: [REDACTED]

(Please note that [REDACTED])

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For the attention of:

Kate Forbes MSP Deputy First Minister

By email only: [REDACTED]@gov.scot

16th September 2024

Dear Kate,

Sheku Bayoh Inquiry – Terms of Reference

We refer to our meeting on 13th June 2024 and letter dated 4th September 2024.

We understand that at the meeting with yourself, the Chair reiterated the strength of feeling felt by the families on the inability of the Inquiry to examine the reasons for the decision of the Lord Advocate not to prosecute. That this exclusion resulted in them not having access to the whole truth.

Further, it was inconsistent with the general requirement of public bodies to allow scrutiny of reasons for decisions. We are advised by the Chair that he advised you that he saw the force in the arguments put forward.

The Chair was invited by you to give his view. On the substantive point, the Chair gave a frank assessment. The evidence amassed by the Inquiry will allow the Chair to form a view as to whether the investigation by the Crown complied with

the requirements of article 2 and 14 of the European Convention on Human Rights.

However, he does have a concern. While he is yet to hear closing submissions and analyse the totality of the Crown evidence, the evidence raises certain questions about the Crown investigation in relation to:

- the understanding of the factual evidence;
- the instructions given to expert witnesses; and
- the absence of an examination of the issue of race.

The Chair noted that these are important aspects of the investigation and, it could be reasonably be inferred, would have been integral in the decision not to prosecute.

If the evidence is raising questions about these elements, that in turn raises questions about the decision itself. The only way of ascertaining whether the decision was flawed, would be for the Inquiry to examine it.

We appreciate that you require time to consider matters, we also suspect that you will wish to ask the Lord Advocate – but as you will be aware the present Lord Advocate Dorothy Bain KC helped prepare the VRR as our Counsel and was of the strong opinion that there should be a prosecution.

She will have to pass responsibility to the Solicitor General because of her previous role as senior counsel for the Bayoh family, however I am sure you will be aware of the public perception if the Crown were to oppose extension or even to be asked in their ministerial role whether they should be investigated.

Furthermore, you will be aware that Scottish Labour, the Scottish Conservatives, and the Scottish Liberal Democrats are in support of the family's demand for an extension to the terms of reference.

We would be grateful if you could clarify when you expect to make a decision. With the support of the Chair, it would be inconceivable that the Scottish Government chooses not to amend the terms of reference as requested.

We look forward to hearing from you.

Kind Regards,

Aamer Anwar

For the urgent attention of:

Kate Forbes MSP Deputy First Minister

By email only: [REDACTED]@gov.scot ; Kate.Forbes.msp@parliament.scot

3rd October 2024

Dear Kate,

Sheku Bayoh Inquiry – Terms of Reference

We refer to our meeting on 13th June 2024 and letters dated 4th and 16th September 2024. I am instructed to write to you on behalf of the Sheku Bayoh family to express their deep disappointment at receiving no response one month later and having only received a systematic auto-response to our most recent letter, which can mean up to an additional 20 days of waiting.

Having previously advised of the issues relating to a lack of response, it seems to the family that promises you made to them at their meeting have not been kept.

In relation to the request to expand the Terms of Reference, time is of the essence. There is still no response, despite input from the Chair, as well as the family.

In his meeting with you the Chair reiterated the strength of feeling felt by the families on the inability of the Inquiry to examine the reasons for the decision of the Lord Advocate not to prosecute, resulting in them not having access to the whole truth.

Further, it was inconsistent with the general requirement of public bodies to allow scrutiny of reasons for decisions. We are advised by the Chair that he advised you that he saw the force in their arguments put forward.

The Chair raised significant concerns with you that the evidence raises certain questions about the Crown investigation in relation to:

- the understanding of the factual evidence;
- the instructions given to expert witnesses; and
- the absence of an examination of the issue of race.

The Chair noted that these are important aspects of the investigation and, it could be reasonably be inferred, would have been integral in the decision not to prosecute. If the evidence is raising questions about these elements, that in turn raises questions about the decision itself. The only way of ascertaining whether the decision was flawed, would be for the Inquiry to examine it.

It is clear to the family, through extensive evidence led at the Inquiry, that the former Lord Advocate James Wolfe KC was more than aware that had the Inquiry been able to investigate their decision not to prosecute, it would have exposed total incompetence and an abject failure to fulfil their public duty to prosecute in the public interest. To maintain that veil of secrecy in 2024 would further encourage an atmosphere of incompetence, arrogance and corruption to persist.

We note you will wish to ask the Lord Advocate for advice on this matter – but as you will be aware the present Lord Advocate Dorothy Bain KC helped prepare the Victims Right to Review (as our Counsel) and was of the strong opinion that there should have been a prosecution. She will have to pass responsibility to the Solicitor General, because of the Lord Advocate's previous role as counsel for the

Bayoh family, however I am sure you will be aware of the public perception if the Crown were to oppose extension or even to be asked by you for advice in their ministerial role, on whether they should be investigated.

Furthermore, you will be aware that Scottish Labour, the Scottish Conservatives, and the Scottish Liberal Democrats are in support of the family's demand for an extension to the terms of reference. We are copying this letter to them due to your failure to respond. We would be grateful if you could clarify when exactly you will make a decision. With the support of the Chair, the Sheku Bayoh family as well as the political support of all those in the opposition parties we find it inconceivable that the Scottish Government would choose not to amend the terms of reference as requested.

Failure to expand the terms of reference, can only be seen as a deliberate attempt of the Crown Office to once again escape total scrutiny and accountability, but yet again with support from the Scottish Government. Any further delays on advising on your decision will be seen by the family to obstruct the search for the whole truth and accountability.

We will be copying this letter to the party leaders- Anas Sarwar, Russell Findlay and Alex-Cole Hamilton to keep them fully informed. We look forward to hearing from you as a matter of urgency.

We look forward to hearing from you.

Kind regards,

Aamer Anwar – Principal Solicitor

cc. Anas Sawar MSP; Russell Findlay MSP; Alex Cole-Hamilton

Lord Advocate Dorothy Bain KC.



Lord Bracadale
Chair, Sheku Bayoh Public Inquiry
[REDACTED]

14 October 2024

Dear Lord Bracadale,

SHEKU BAYOH PUBLIC INQUIRY – TERMS OF REFERENCE

Thank you for meeting with me on 5th September and for sharing your thinking at that stage on the request to amend the Terms of Reference for the Sheku Bayoh Public Inquiry.

As you will be aware, any request to amend the Terms of Reference (ToR) for a Public Inquiry requires careful and thoughtful consideration, and it is essential that this is done through a fair and robust process. When the family of Mr Bayoh raised this matter with me in June, I commissioned advice from officials, who confirmed the legislative requirement to consult you on potential changes to the ToR. Our meeting took place the day after I received the written request from the family's solicitor to extend the ToR and I am now in the process of gathering the views of all key parties.

I fully recognise the importance of considering the issues raised with me by various parties, both for and against the requested change, and it is for that reason that my decision cannot - and should not - be rushed. I want to be absolutely clear that no decision has been made by the Scottish Government yet. To help inform my decision and ensure I consider the full range of perspectives, I am now writing to the representatives of core participants in the Inquiry to invite written representations on the Inquiry's Terms of Reference and whether they should be amended.

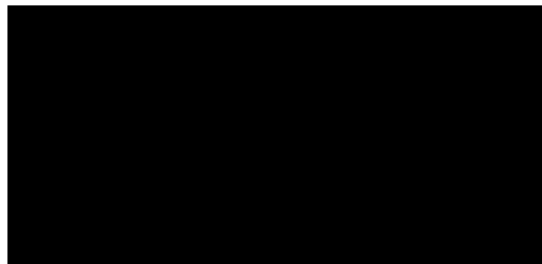
Given the statutory role of the Chair, it is right that I seek written clarification of your current position on whether, and if so the extent to which, you believe the Terms of Reference should be extended - and whether this extension should cover only the first prosecutorial decision or also include the decision flowing from the Victims' Right to Review (VRR).

I have seen the Note which you wrote in March 2020 about the (at that stage draft) ToR, including the passage on the role of the Lord Advocate. In drawing your conclusions on the issue of whether prosecution decision should be included in the ToR, you said *"In the light of the constitutional position outlined above I am of the view that the terms of reference should not extend to the prosecutorial decision of the Lord Advocate not to prosecute in this case"*. I am very keen to understand whether you think that the constitutional position has changed since March 2020 or – if you think that it has not – why it would nevertheless be appropriate to extend the ToR in the way now being sought on behalf of the families of Mr Bayoh.

Additionally, I would be grateful for your views on the potential consequences of altering the Terms of Reference at this stage in the Inquiry's progress – or indeed of retaining the ToR in their current form. I am aware that until scoping of the evidence required for any extension of the ToR is undertaken, it will be difficult for you to accurately assess the likely costs and timescales involved. However, I understand that your team has provided some indicative projections to my officials which have been helpful. If it is possible to be firmer on these estimates, that would be beneficial in understanding the potential impacts, as one of the many factors I will need to take into consideration. I expect core participants will also comment on cost and resource impacts for them.

I appreciate that all involved will be keen to see a decision made swiftly but given the Inquiry has been underway since November 2020 and was approaching the culmination of its hearings phase, the decision to amend its remit at this late stage is one requiring detailed consideration. I am sure you will understand my determination to weigh all relevant matters carefully in order to reach a sound conclusion. I respectfully request your patience while I complete this process as quickly as is possible. To support that, I would welcome your views in writing by Friday 25 October.

Yours sincerely,



KATE FORBES

Chair of the Inquiry
The Rt. Hon. Lord Bracadale

E: [REDACTED]

**SHEKU
BAYOH
INQUIRY**

By email only

22 October 2024

Dear Deputy First Minister,

Thank you for your correspondence. I fully understand that you will need to give this matter thoughtful consideration and carefully weigh up the options that are open to you.

You wrote to me in August starting a consultation on possible changes to the Terms of Reference (ToR). I thought that our meeting in September was useful, and we agreed to meet again as soon as was practicable. I have not had sight of the written request from the family's solicitor to amend the ToR that you received on 4 September 2024. In order to inform further comment I would find it helpful to understand exactly what was sought in that application.

Once I have received further clarification, I will also write to Core Participants and ask them to make representations to me on possible changes to the ToR. I will revert to you with my views once that process is complete.

Your Sincerely

[REDACTED]

Lord Bracadale

Note by Chair

Provisional view of chair on requested extension of terms of reference

I understand that earlier on this year, the solicitor for the families of Sheku Bayoh met with the Deputy First Minister (DFM) and asked her to extend the terms of reference of the Inquiry to include the making by the Lord Advocate of the prosecutorial decision communicated to the family of Sheku Bayoh on 3 October 2018. On 29 August 2024 the solicitor for the families wrote to me explaining the basis of the request. The families wished to know the whole truth and to see the Crown scrutinised in a manner similar to the other bodies. The families consider that the position of the Crown in preventing scrutiny of the decision was not in step with the need for public bodies to be accountable to the people they served. In addition, they believe that the decision sought to be examined was taken on an incomplete and erroneous understanding of the evidence and failed to take into account important issues such as race.

I should make it clear that I did not request an extension of the terms of reference. In August 2024, in accordance with section 5(4) of the Inquiries Act 2005, the DFM began a consultation process with me. On 5 September 2024 I had a meeting with her. In her letter to core participants dated 6 September the solicitor to the Inquiry set out a summary of the position I took at that meeting.

We have now completed the hearings of oral evidence and heard additional evidence regarding the Crown investigation. The DFM has contacted me again asking for my current view. I understand that she has also written to core participants seeking the views on the requested extension. I have indicated to the DFM that before responding I wish to give core participants an opportunity to make submissions to me. On the basis of the information available to me, I consider that I

have sufficient material to allow me to express a provisional view and invite comment by core participants on that view.

The request on behalf of the families to extend the terms of reference was limited to include only the October 2018 prosecutorial decision. The families have not requested that the terms of reference should extend to include the victim's right of review process (VRR). The DFM has asked for my view as to whether, in the event that she was minded to extend the terms of reference, that should include the VRR.

My current thinking is as follows. Evidence heard by the Inquiry raised certain questions about the Crown investigation in relation to: the understanding of the factual evidence; the instructions given to expert witnesses; and the absence of an examination of the issue of race. Since my meeting with the DFM the Inquiry has heard further evidence from Martin Graves which only reinforces these concerns. These concerns relate to important aspects of the investigation and, I think I could reasonably infer, would have been integral in the decision not to prosecute. If the evidence raises questions about these elements, that in turn raises questions about the decision itself. I consider that this is rather troubling and perhaps ought not to be left hanging in the air. The only way of ascertaining whether the decision was flawed would be for the Inquiry to examine it. It may be in the public interest for the Inquiry to do so.

As to whether any extension should include the VRR process, I consider that, in order to understand the complete picture in respect of the prosecutorial decision, it would be necessary to include the VRR process. I consider that fairness would require such an approach. In my present state of knowledge I do not know what procedure was adopted in the VRR. I do not know what approach the reviewer took to the evidence, or on what basis the reviewer arrived at the conclusion of the review. It is possible that the VRR process included considerations different from, or

additional to, those informing the October 2018 decision. Without an understanding of these issues, any examination of the prosecutorial decision would be incomplete. Overall, I consider that any extension of the terms of reference should include the VRR process.

While, on balance, I am minded to support the request on the basis that an extension should include the October 2018 prosecutorial decision and the VRR, I do have concern about the impact of an extension on the length and cost of the Inquiry. While the Inquiry has some understanding of what would be involved in examining the October 2018 prosecutorial decision, it has very little information about the conduct of the VRR.

As the solicitor for the families alluded to in his letter to me, there is a constitutional issue to be considered in relation to the independence of the Lord Advocate. The current terms of reference are framed in such a way as to recognise the independence of the Lord Advocate in relation to scrutiny of a prosecutorial decision. The independence of the Lord Advocate has been for many years enshrined in common law¹. The common law position is continued in the Scotland Act 1998: section 48(5) provides that any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person. Under section 29(2)(e) a provision is outside the competence of the Scottish Parliament if it would remove the Lord Advocate from his position as head of the systems of criminal prosecution and investigation of death in Scotland. The relationship between the Lord Advocate and the Scottish Parliament is established in section 27. My provisional view is that while I do not consider the independence of the Lord Advocate to be a reserved matter, and that, therefore, the prosecutorial

¹ Hume Commentaries on Crimes ii 133; *McBain v Crichton* 1961 JC 25; *Stewart v Clarke* 2017 JC 155.

decision and VRR are proper matters for examination by a Scottish inquiry under the 2005 Act, I consider that the common law position raises an issue as to whether the consent of the Lord Advocate is necessary before the Inquiry could examine the prosecutorial decision and the VRR.

I would welcome submissions on behalf of core participants on the provisional views expressed in this Note. Submissions should be made in writing by 5pm on 1 November.

The Rt Hon Lord Bracadale

25 October 2024

Dear Deputy First Minister

SHEKU BAYOH PUBLIC INQUIRY: TERMS OF REFERENCE

You wrote to me on 14 October 2024 seeking my current view on the request by the family of Sheku Bayoh to extend the terms of reference of the Inquiry. Before responding, I gave the core participants an opportunity to make submissions to assist me and a number of them did so by the deadline of 1 November 2024. As I explained in my letter dated 7 November 2024, I continued to await a response from the Solicitor General who anticipated being in a position to provide one by 15 November 2024. In the event, the Solicitor General has now declined to provide a submission.

I intend to copy this letter to all core participants.

I wish to make two points at the outset. First, as you know, I did not request an extension. Second, I recognise that, while the statute requires the Scottish Ministers to consult the chair, the decision is one for the Scottish Ministers.

Although I have not seen any written application made to the Scottish Ministers on behalf of the family of Sheku Bayoh requesting an extension of the terms of reference, the solicitor for the families wrote to me explaining the scope and grounds of the application.

Scope and grounds of the application

As to the scope of the application, the family requested that the terms of reference should be expanded to explore the prosecutorial decision and to allow consideration

by the Inquiry of the decision taken by the Lord Advocate in discussion with Crown Counsel (the October 2018 decision). The application did not extend to the victim's right of review process (VRR).

As to whether any extension of the terms of reference should include the VRR process. I consider that, in order to understand the complete picture in respect of the prosecutorial decision, it would be necessary to include the VRR process. I consider that fairness would require such an approach. In my present state of knowledge I do not know what procedure was adopted in the VRR. I do not know what approach the reviewer took to the evidence, or on what basis the reviewer arrived at the conclusion of the review. It is possible that the VRR process included considerations different from, or additional to, those informing the October 2018 decision. Without an understanding of these issues, any examination of the prosecutorial decision would be incomplete. Overall, I consider that any extension of the terms of reference should include the VRR process.

The first ground of the application was founded in the wish of the family to know the whole truth and to see the Crown scrutinised in a manner similar to the other bodies. Second, the family considered that the position of the Crown in preventing scrutiny of the decision was not in step with the need for public bodies to be accountable to the people they served. Third, they believed that the decision sought to be examined was taken on an incomplete and erroneous understanding of the evidence and failed to take into account important issues such as race.

Public interest in examining a flawed prosecutorial decision

I consider that general issues of accountability by public bodies in Scotland are outwith the scope of this Inquiry. While I consider that the Inquiry has conducted a thorough examination of the Crown's investigation up to the prosecutorial decision, I can understand the desire of the family to see the scrutiny of the Crown extended

to that decision. It is, however, on the third ground that I focus. As part of its thorough examination the Inquiry followed appropriate leads.¹ Pursuing these within the bounds of the current terms of reference allowed the Inquiry to examine the investigation by the Crown to a point very close to the October 2018 decision. As I have not heard submissions on behalf of the Crown and have not yet conducted a full analysis of the evidence, I have not formed a concluded view in relation to the investigation by the Crown. That said, some of the evidence raised concerns about the Crown investigation in relation to: the understanding of the factual evidence; the instructions given to expert witnesses; and the absence of an examination of the issue of race. Since my meeting with you in September the Inquiry has heard further evidence from an expert instructed by the Crown which only reinforces these concerns. It is, I think, a reasonable inference that the matters giving rise to concern would have been integral to the decision not to prosecute. That raises a question as to whether the October 2018 decision was flawed on the basis of that it proceeded on a misunderstanding of the factual evidence; the instructions given to expert witnesses were misconceived; and there was a failure properly to examine the issue of race. These are not issues which could have been foreseen in 2020 when the terms of reference were formulated. They have emerged as a result of the Inquiry conducting a thorough examination of the evidence.

If a public inquiry set up to examine the conduct of the investigation by the Crown into a death in custody finds evidence pointing to a flawed prosecutorial decision in respect of that death, the question arises whether that is a matter causing public concern to such an extent that the public interest requires the terms of reference to be extended to allow the inquiry to examine the decision. It seems to me that there are indications that the October 2018 decision was flawed in a number of fundamental respects. There is therefore a case that the Inquiry, which has already examined the

¹ *R (Cabinet Office) v Chair of the UK Covid-19 Inquiry* [2024] K.B. 319 para 52

investigation by the Crown up to but not including that decision, should examine the October 2018 decision and the ensuing VRR. I consider that it may be in the public interest for the Inquiry to do so.

Independence of the Lord Advocate

The independence of the Lord Advocate in the exercise of the prosecutorial function has since time immemorial been enshrined in common law². Generally, the courts will refuse to examine a prosecutorial decision. I consider that it is competent to examine the prosecutorial decision in a public inquiry. In my view a prosecutorial decision is “a matter that relates to Scotland” and is not a reserved matter.

Accordingly, it is a proper matter for consideration by an inquiry in terms of Section 28 of the 2005 Act. It seems to me that in the light of the court’s position, if, in a particular case, it does become necessary in the public interest to examine a prosecutorial decision, a public inquiry is precisely the appropriate forum in which to do so. This was the approach taken in the Chhokar Inquiry in which the terms of reference given to Sir Anthony Campbell specifically included the prosecutorial decisions of “the Procurator Fiscal’s Office in Hamilton, Crown Office staff, Advocate Deputes and Law Officers”.

I do, of course, recognise that the public interest in the maintenance of the independence of the Lord Advocate will be an aspect of the public interest for you to take into account in considering whether in this Inquiry the terms of reference should be extended to include the October 2018 decision and VRR.

You remind me that in 2020 I expressed the view that, having regard to the constitutional position of the independence of the Lord Advocate, the terms of reference should not extend to the October 2018 decision. This was the position of

² Hume Commentaries on Crimes ii 133; *McBain v Crichton* 1961 JC 25; *Stewart v Payne* 2017 JC 155; *HMA v Cooney* 2022 JC 108; *Bill for Criminal Letters by AB v Paul Cooney* [2024] HCJAC 40.

the Scottish Ministers at the time, with which I agreed. It was based on a consideration of the public interest in the maintenance of the independence of the Lord Advocate. What has changed is the evidence which has emerged in the course of the Inquiry pointing to a potentially flawed prosecutorial decision. That has brought into play the competing public interest which I have identified above.

Delay, cost and impact of delay

Another consideration is the public interest in the need for the Inquiry to complete its work effectively and efficiently, avoiding unnecessary additional delay, cost and the inevitable impact of delay on all concerned. This was a matter that exercised many of the core participants in their submissions to me. The Inquiry is at an advanced stage. It has effectively completed the evidence under the current terms of reference. While, as indicated above, I consider that there may be a public interest in the Inquiry examining the October 2018 decision and the VRR, I am increasingly concerned about the issue of delay and additional expense. My concerns relate, first, to the immediate impact on the timetable of the Inquiry of the journey to making the decision, second, to the additional work involved in fulfilling extended terms of reference, and, third, to the impact, which is already being experienced, on issues of staffing and accommodation.

While I recognise the need for a process of consultation and the requirement to address complex issues in order to reach a decision, the time already taken on that journey has had an impact on the Inquiry's timetable. The Inquiry had put in place a timetable for closing submissions on the current terms of reference, culminating in a hearing on oral submissions in early December 2024. In response to a unanimous approach by the core participants, I have required to suspend the current timetable for closing submissions until the decision on extension is made.

In relation to the issue of additional work arising from any extension of the terms of reference, as noted above, the scope of the extension requested by the family is limited to the October 2018 decision. I consider that, even if the extension was limited in this way, the Inquiry would require to obtain additional written statements from the Advocate Depute and the then Lord Advocate as well as from each of the members of the procurator fiscal service who participated in the precognition process and made recommendations to Crown Counsel. In addition, the Inquiry would require to ingather and review all relevant documents. The Inquiry would require to explore the principles of prosecutorial decisions in Scotland and the possible offences that might have been available to the Crown. The Inquiry would require to take oral evidence from witnesses on all these matters.

The necessary addition of the entirely new chapter relating to the VRR would, on any view, involve a considerable amount of further work by the Inquiry, including identification of, and taking statements from, additional witnesses, ingathering and reviewing relevant documents and taking oral evidence. The extent of that exercise is simply unknown to the Inquiry at present.

In relation to staffing, the period of uncertainty has had a profound effect on the ability of the Inquiry to retain staff. Due to the temporary nature of public inquiries, staff often do not have security of tenure and in the face of uncertainty they naturally seek to protect their own interests by securing other work, whether in another public inquiry or elsewhere. As a result, the Inquiry has experienced, and continues to experience, a depletion of skilled, knowledgeable staff with extensive institutional memory. This is a matter for concern. If the terms of reference are extended, the Inquiry would be likely to have to recruit more staff: the process of recruitment would be time consuming and it would take time for new staff to build the skills and knowledge of those who are leaving.

In relation to accommodation, the future of the current office and hearing accommodation occupied by the Inquiry is uncertain. On the basis that the evidence and closing submissions would have been completed in December 2024, the Inquiry had expected to leave Capital House by the end of January 2025 and move to cheaper office accommodation. While I am grateful to the Scottish Government sponsor team for confirming that the Inquiry is able to remain in Capital House beyond the end of January 2025, the building is currently for sale and there is a break clause in the lease which may mean having to leave by September 2025 or September 2026. In the event that the terms of reference were extended and the Inquiry had to leave the premises by September 2025, the Inquiry could be in the position where it was necessary to find new premises, including a hearing suite. This would be a time consuming, complex and costly undertaking.

The investigative and evidential work required to fulfil extended terms of reference, the depletion of the pool of skilled and knowledgeable staff and the unknown outcomes relating to accommodation make it very difficult to predict the additional time and cost involved in any extension. This situation becomes more acute as time passes and would be exacerbated in the event of a challenge to the decision on the extension of the terms of reference.

Conclusion

As I indicated to you when we met, I shall continue to endeavour to exhaust whatever terms of reference the Scottish Ministers set. As I have outlined above, I consider that from the point of view of the Inquiry there are three competing public interests to be taken into account: first, the public interest that a potentially flawed prosecutorial decision is a matter for public concern such that an inquiry set up to examine the investigation by the Crown should be permitted to take the additional steps to examine the decision; second, the public interest in maintaining, under the current state of the law, the independence of the Lord Advocate; and, third, the

public interest in bringing the Inquiry to an end without additional delay, cost and impact on all those involved. While I limit myself to these aspects of the public interest because they arise directly within the Inquiry, I am conscious that in coming to a decision you will have regard to all aspects of the public interest.

Yours sincerely

Alastair P Campbell KC

The Rt Hon Lord Bracadale

SHEKU BAYOH INQUIRY – TERMS OF REFERENCE

1. You are currently considering a request by the family of Sheku Bayoh to extend the Terms of Reference (“TOR”) relative to the statutory Inquiry set up to examine the events surrounding the death of Sheku Bayoh, the subsequent investigation and whether race was a factor. The family have requested that the TOR be expanded to allow consideration by the Inquiry of the decision communicated to the family in October 2018 not to prosecute any individual or organisation in relation to the death of Mr Bayoh. In addition to the views of the family, you have been provided with the views of the Chair of the Inquiry, Lord Bracadale, together with submissions from Core Participants.
2. The examination of prosecutorial decision-making by an inquiry has significant implications for the independence of the Lord Advocate in her capacity as head of the system of criminal prosecution in Scotland. There is some doubt as to the legal competency and constitutional propriety of such a step and whether the consent of the Lord Advocate is a prerequisite. That is all the more so where, as here, an inquiry is ongoing, and a commitment has been made to keep the decision not to prosecute under review.
3. I have sought below to summarise the relevant factual and legal context and explain my position as to the issues highlighted by the Chair as relevant to consideration of the request of the family. I have also set out some additional factors from the Crown’s perspective which you may wish to consider when approaching your evaluation of the public interest in extending the TOR.

Prosecutorial background

4. Sheku Bayoh died following contact with police officers in Kirkcaldy on 3 May 2015. On that date the Police Investigations and Review Commissioner (“PIRC”) was instructed by the then Lord Advocate in terms of section 33A of the Police Public Order and Criminal Justice (Scotland) Act 2006 to investigate the matter. The PIRC subsequently reported its findings to the Crown. Following further enquiries, a report was submitted to Crown Counsel, who concluded that there should be no criminal proceedings. The decision not to prosecute any individual or organisation in relation to the death of Mr Bayoh was communicated to the family at a meeting on 3 October 2018.
5. The family exercised their right to request a review of this decision. A review of the decision not to prosecute was carried out and concluded that there was insufficient evidence to bring criminal proceedings against the police officers or Police Scotland and that the original decision not to prosecute was reasonable. The family were advised of this decision on 11 November 2019.
6. On 11 November 2019, following the conclusion of the VRR process, the Crown wrote to the officers involved in the restraint of Sheku Bayoh, reminding them that there was an obligation on the prosecutor to keep cases under review and advising that the Crown reserved the right to prosecute at a future date.

7. I have been exercising the Lord Advocate's functions in relation to this matter as the Lord Advocate has recused herself in consequence of earlier involvement in the case. In March 2022 the Chair requested that I provide an undertaking that in any future prosecution of a police officer or former officer, arising out of the events on 3 May 2015 and the post-incident management, the Crown would not use against that officer evidence which that officer has provided to the Inquiry. I declined to provide the undertaking sought. In my response to the Chair, I explained:

"In carrying out my assessment of this request for undertakings I must act fairly and in the public interest. I must ensure that the security and confidence of the people of Scotland is maintained by providing just and effective means by which crimes may be investigated, prosecuted and offenders brought to justice. Accordingly, any decision which has a direct impact upon the ability of prosecutors to carry out their obligations must be made independently after careful consideration of the individual facts and circumstances."

8. My consistent position before the Inquiry has been that I will keep all the evidence emerging from the Inquiry's work and the Chair's findings under review and will consider their impact upon the original decision not to prosecute. This includes not only direct evidence as to what happened on 3 May 2015 but also any evidence relating to concerns about the way in which the Crown originally approached the investigation.

The inquiry and its terms of reference

9. Prior to the conclusion of the criminal investigation the then Lord Advocate made it clear that in his view the issues arising from Mr Bayoh's death should be fully aired in an appropriate forum and that a public inquiry would be the most appropriate mechanism for investigating the circumstances of Mr Bayoh's death. He considered however that it did not seem to him to be desirable or appropriate for the remit of any public inquiry to cover the criminal investigation beyond the examination of structural and systemic issues which arose in relation to the immediate post-incident management.
10. On 12 November 2019 the then Cabinet Secretary for Justice, Mr Humza Yousaf, confirmed that he was establishing a statutory public inquiry under the Inquiries Act 2005. Following this announcement a consultation took place in relation to the Terms of Reference, involving the Cabinet Secretary for Justice, Lord Bracadale, the Bayoh family, the Lord Advocate, the Chief Constable and the PIRC.
11. In March 2020 Lord Bracadale prepared a note on the draft TOR. He stated that,

"In light of the constitutional position outlined above [in relation to the independence of the Lord Advocate as head of the prosecution system in Scotland] I am of the view that the terms of reference should not extend to the prosecutorial decision of the Lord Advocate not to prosecute in this case. But that does not mean that the public inquiry should not examine how the Crown

conducted the investigation, both at the stage of directing PIRC and thereafter. In my view the public inquiry ought to be able to carry out that examination and any more restricted approach would prevent the inquiry from properly fulfilling its function...

As I indicated to the Cabinet Secretary for Justice, I consider that it would be possible to carry out a full and searching examination of the investigation by the PIRC and the Crown without expressing a view on the ultimate prosecutorial decision not to prosecute."

12. On 21 May 2020 the Cabinet Secretary for Justice formally announced the Inquiry's TOR. These specifically state that they do not include "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...)".
13. Throughout the course of the Inquiry the breadth of this exclusion has been the subject of some debate and a hearing on this issue took place on 12 April 2024. The Chair issued a written decision dated 15 April 2024 in which he clarified the scope of the exclusion, specifically adopting an approach which would enable the Inquiry to (paragraph 11):
 - (i) meaningfully examine the investigations carried out by the Crown in order to ascertain whether it complied with articles 2 and 14 ECHR;
 - (ii) identify deficiencies that might render the process incapable of leading to the establishment of the facts;
 - (iii) examine the steps taken by the Crown to explore the cause of death and the issue of causation;
 - (iv) explore whether there had been a failure to follow particular lines of inquiry;
 - (v) properly examine the extent to which the Crown took steps to establish whether or not racial prejudice may have played a role in the events.
14. The Chair indicated that his approach to the scope of the TOR was influenced by the process which brought them to fruition. He noted (paragraph 10):

"It was clear to me that what the cabinet secretary required was a full and frank examination of the events after the death of Mr Bayoh, of which the investigation conducted by the Crown should be part. I think that it is reasonable to conclude from the way in which the terms of reference developed that the cabinet secretary wanted a wide-ranging public inquiry, able to follow the evidence, with wide discretion to the chair, limited by the exclusion of the prosecutorial decision".
15. The Chair went on to make clear that it was open to the Inquiry to examine the procurator fiscal's analysis of the evidence as to what happened on 3 May 2015, including issues of credibility and reliability; that would also include identification of available sources of evidence. It would be open to the Inquiry to examine the analysis of the evidence as to the actions of individual officers; cause of death and causation; and the analysis of the use of force and whether that was justified. It

would be open to the Inquiry to examine the extent of the investigation by the Crown of the issue of race. In short, the Chair concluded that the examination of the procurator fiscal's analysis of the evidence was "the key to a meaningful examination of the investigation by the Crown" (paragraph 15).

16. Therefore, as of 15 April 2024, the Chair believed that the Inquiry was able to carry out all the investigations referred to above and expressed no concerns that the current TOR would prevent 'a full and frank examination of the events after the death of Mr Bayoh' as desired by the Cabinet Secretary.

Proposal to change the current TOR

17. The family of Sheku Bayoh have requested that the TOR of the Inquiry be expanded to allow consideration by the Inquiry of the decision communicated to the family in October 2018 not to prosecute any individual or organisation in relation to the death of Mr Bayoh.
18. In a note dated 24 October 2024 the Chair set out certain provisional views and indicated that he was minded to support the request of the family on the basis that any extension should also include the VRR process. After inviting submissions from the other Core Participants, the Chair wrote to the Deputy First Minister in November 2024 setting out his views. He identified, from the point of view of the Inquiry, three competing public interests to be taken into account in considering the request of the family. These were; (i) the public interest that a potentially flawed prosecutorial decision is a matter for public concern such that an inquiry set up to examine the investigation by the Crown should be permitted to take the additional steps to examine the decision; (ii) the public interest in maintaining, under the current state of the law, the independence of the Lord Advocate; and, (iii) the public interest in bringing the Inquiry to an end without additional delay, cost and impact on all those involved.
19. The Chair also confirmed his view that any extension of the TOR should include the VRR process.

The independence of the Lord Advocate

20. The Chair rightly recognised the public interest in the maintenance of the independence of the Lord Advocate in the exercise of the prosecutorial function, a principle which he recognised has "since time immemorial been enshrined in common law". In his note dated 25 October 2024, the Chair queried whether the consent of the Lord Advocate was necessary before the Inquiry could consider the October 2018 decision and the VRR.
21. The maintenance of the independence of the Lord Advocate is clearly a matter of considerable concern to me and this concern is particularly acute given that I have committed to keeping the evidence at the Inquiry under review and reserved the right to bring future proceedings.

22. It is unnecessary for me to set out the common law position in any detail. Suffice to say that the Lord Advocate is the “master of the instance” and no court or individual can “control or superintend” the Lord Advocate in the exercise of her functions as independent head of the system of criminal prosecution in Scotland. The decision whether to prosecute is exclusively within her jurisdiction and no one can compel her to give her reasons. Far from being a historic relic, recent Appeal Court decisions continue to emphasise the unique role of the Lord Advocate and her power to act independently as master of the instance.
23. It is nevertheless open to the Lord Advocate herself to consent to the examination of prosecutorial decision-making by an inquiry. This has been done in previous inquiries, for example the Chhokar Inquiry. The requirement for the consent of the Lord Advocate serves as an important protection against the politicisation of prosecutorial decision-making and is a significant reassurance to prosecutors.
24. While the position at common law is clear, what is more difficult is its interplay with the terms of the Inquiries Act 2005. Regardless of the effect of the 2005 Act, I remain sceptical as to the constitutional propriety of reviewing the decisions of independent prosecutors without the consent of the Lord Advocate. However, for the reasons explained in the following section, it is unnecessary for current purposes to resolve this issue.

The nature of the allegation

25. When providing his views in November the Chair focussed on the allegation of the family that the prosecutorial decision was taken on an incomplete and erroneous understanding of the evidence and failed to take into account important issues of race. The Chair stated that, although he had not formed a concluded view, some of the evidence heard by the Inquiry raised a question as to whether the October 2018 decision was flawed on the basis that it proceeded on a misunderstanding of the factual evidence; the instructions given to expert witnesses were misconceived; and there was a failure properly to examine the issue of race. He concluded that it may be in the public interest for the Inquiry to examine the October 2018 decision and the ensuing VRR.
26. The Chair does not detail his concerns or explain how he considers that they might impinge upon the October 2018 decision or the VRR. Moreover, his letter does not explain why he believes that he cannot adequately address those concerns in his final report without the Terms of Reference being extended.
27. Notwithstanding, I take the views of the Chair extremely seriously. I consider that his concern that there was a failure on the part of the Crown to properly examine the issue of race is particularly grave. Without making any concession as to the validity of the Chair’s concerns as to the potentially flawed nature of the prosecutorial decision, I consider that it would not be in the public interest for me to stand in the way of an examination of the prosecutorial decision-making. I am therefore content to agree that it is open to you to assess the competing factors identified by the Chair and the Core Participants and, if you consider that it is in the public interest to do so, to decide to extend the TOR to cover both the October

2018 decision not to prosecute and the VRR. I consider that it is imperative that any extension should not only examine the October 2018 decision but also the VRR, since any other approach would fail to examine or understand the prosecution decision-making process as a whole.

28. Given my particular interest in safeguarding the prosecutorial independence of the Lord Advocate, should you decide to extend the TOR, it would be essential for me to be consulted in relation to the terms of any proposed extension and how consideration of the prosecutorial decision-making, including the VRR, will be approached. There may also be additional practical safeguards in relation to statement taking, sharing documents and the involvement of counsel for the Crown at the Inquiry which might usefully be discussed and agreed with the Chair.

Other considerations

29. I consider that the Chair's concern that proper consideration was not given by the Crown to the issue of race is a weighty factor in your assessment of the public interest. However, I have also set out below certain additional considerations from the Crown perspective which you will wish to weigh in the balance when making your decision.

(i) The timing of the request

30. As noted above, at the outset the Chair believed that he could carry out a full and searching examination of the investigation by the Crown without expressing a view on the ultimate prosecutorial decision not to prosecute. This remained his position in April 2024. In the weeks that followed, during the Crown hearing, witnesses were repeatedly reminded of the scope of the TOR and warned that there were certain matters that could not be discussed during their evidence.
31. The Inquiry has now effectively concluded its investigations. From the Crown's perspective, had the TOR originally included the prosecutorial decision, a different approach may have been taken in relation to the examination of witnesses led at the Inquiry. Challenges may have been made to rulings from the Inquiry regarding the prohibition in taking statements from witnesses, or with sharing material with them in advance of them providing statements to the Inquiry. Questions currently prohibited by the current TOR may have been asked of a number of Crown witnesses. The Crown may have asked for additional witnesses to be called.
32. If the TOR are now extended, it is a realistic possibility that the evidence from previous hearings may require to be examined again by the Crown. It is assumed that this will also be the case for other Core Participants. A potential consequence is that several witnesses – not just those from the Crown – may require to be recalled. The impact that this may have on their wellbeing should not be underestimated. It is also likely that some key Crown witnesses will apply for Core Participant status.

(ii) Potential for future proceedings

33. As explained above, I have committed to keeping the evidence at the Inquiry under review and the right to prosecute has been expressly reserved. This commitment includes any direct evidence relating to what happened on 3 May 2015 but also includes any evidence relating to concerns about the way in which the Crown originally approached the investigation. In this way, questions in relation to the integrity of the decision not to prosecute will be examined. The Chair does not indicate why he considers that the aspect of the public interest identified under (i) in paragraph 18 above would appropriately be addressed by the Inquiry when the prosecution process, which is the generally recognised means of resolving such matters, is not yet complete.

(iii) Liaison with the family

34. Following the original decision not to prosecute, a meeting took place with the Bayoh family, along with the family's solicitor. This meeting was attended by the then Lord Advocate and the Crown Counsel who had issued the instructions in the case. Minutes from this meeting show that the family were advised that there was insufficient admissible evidence to take criminal proceedings against individual police officers and there was insufficient evidence for criminal proceedings against the Chief Constable of Police Service of Scotland. A letter was issued to the family at the same time, setting out the basis of the prosecutorial decision.
35. Thereafter an extensive VRR process took place by the Crown. The fact this review was conducted by the Crown is in line with the constitutional position in Scotland and with the underlying European Directive on Victims' Rights. The Bayoh family were legally represented in the VRR process and made extensive submissions about the correctness of the original decision.
36. On 11 November 2019, at the conclusion of the VRR process, a further meeting was held with the family and the family's solicitor. Both the then Lord Advocate and the then Solicitor General were present at this meeting, as was the Crown Counsel who had undertaken the review of the decision not to prosecute. The family were informed that there was insufficient evidence to establish that the actions of the police, individually or collectively, amounted to criminality and that the original decision not to prosecute any of the police officers or Police Scotland in relation to events of 3 May 2015 was reasonable and was upheld.
37. A 17-page letter was then sent to the family, detailing the reasons for the decision and fully explaining the responses to issues raised by the family during the VRR process.

(iv) Views on a "flawed" decision

38. Although other inquiries have looked at prosecutorial decisions, these examinations were not carried out in situations where a decision not to prosecute had been reached and an undertaking to keep that decision under review had

been given. It is imperative that the integrity of any future prosecutorial decision-making, as well as of any future proceedings, is protected.

39. In his November letter the Chair makes reference to the possibility of a “flawed” decision in October 2018. It is not clear in what way the decision might be flawed. If the Chair means that the decision not to prosecute was the wrong decision, and therefore that there should have been a prosecution of an individual or an organisation, then any determination in those terms may be regarded as a ruling on or a determination of criminal liability, contrary to section 2(1) of the Inquiries Act 2005.
40. It is of course open to the Chair, in terms of section 2(2) of the 2005 Act, to make a determination even though this might lead to an inference of criminal liability. In the present circumstances, however, this carries an obvious risk that the Inquiry’s assessment of the prosecutorial decision-making, and any conclusions it forms, will condition and influence the approach of those considering the case in the future. This calls into question the fundamental principle that decisions of the Crown in individual cases should be taken independently and be immune from political influence or other pressure.
41. Moreover, should the Inquiry examine the prosecutorial decision and reach conclusions as to whether or not the decision was flawed, there is a risk that it will do so in the light of evidence which it has heard at the Inquiry which was not available to Crown decision-makers at the time. Aside from issues of fairness to the original decision-makers, it is precisely this evidence which I have committed to review and will fully consider its impact upon the decision not to prosecute.

Conclusion

42. There is no doubt that the consequences of any extension to the TOR will be significant and far reaching. The assessment of the public interest involves complex issues which will doubtless receive your careful consideration. I trust that the above information will be helpful.

Solicitor General
13 December 2024

SHEKU BAYOH INQUIRY – TERMS OF REFERENCE

Deputy First Minister and Cabinet Secretary for Economy & Gaelic,

1. I provided you with a minute on 13 December 2024 in relation to the request by the family of Sheku Bayoh to extend the Terms of Reference (“TOR”) relative to the statutory Inquiry set up to examine the events surrounding the death of Sheku Bayoh, the subsequent investigation and whether race was a factor.
2. In that minute I sought to summarise the relevant factual and legal context and explain my position as to the issues highlighted by the Chair as relevant to consideration of the request of the family. I also set out some additional factors from the Crown’s perspective which you might wish to consider when approaching your evaluation of the public interest in extending the TOR.
3. In paragraph 28 of my minute I stated:

28. Given my particular interest in safeguarding the prosecutorial independence of the Lord Advocate, should you decide to extend the TOR, it would be essential for me to be consulted in relation to the terms of any proposed extension and how consideration of the prosecutorial decision-making, including the VRR, will be approached. There may also be additional practical safeguards in relation to statement taking, sharing documents and the involvement of counsel for the Crown at the Inquiry which might usefully be discussed and agreed with the Chair.
4. Two points might usefully be amplified in relation to that paragraph.
5. The first is that, as I thought was clear, I was not proposing any adjustment to the terms of the proposed amendment to the TOR. As I previously confirmed, I am content to agree that it is open to you to assess the competing factors identified by the Chair and the Core Participants and to exercise the functions of the Scottish Ministers in deciding whether or not it is in the public interest to extend the TOR, and I do not seek to advocate for any outcome. Rather, my thinking was that, while everyone is clear that the purpose and effect of the extension sought would be to allow examination of the prosecutorial decision and the VRR, the specific language of the amendment has not been canvassed. The wording of bullet 3 of the current Terms of Reference would require to be revised but no formulation of any revised wording has been provided yet. I considered that, although I was not raising any constitutional objection to the extension of the TOR to permit examination of prosecutorial decision-making by the Inquiry, it would be appropriate for me to provide input on the wording of revised TOR. As I observed in my earlier minute, it would be important to ensure that consideration of what is characterised as “a potentially flawed” prosecutorial decision did not result in a determination of criminal liability. My contribution to this discussion would mirror the approach taken to consultation with Lord Advocate Wolffe when the original Terms of Reference were being drafted.
6. The second point to make is that I recognise that decisions on any additional practical safeguards, as part of the conduct of the Inquiry, are obviously entirely for the Chair. The matters which I thought I might usefully raise with the Chair were in relation to such matters as statement taking, sharing documents and the

involvement of counsel for the Crown at the Inquiry. These matters relate to the fact that, even although I was taking no constitutional objection to the examination of prosecutorial decision-making, if the TOR were to be extended the task for the Inquiry would nevertheless remain a sensitive one and there may be ways in which the Crown might assist the Inquiry in carrying out its newly expanded remit with all due expediency. Clearly the Chair may consider that no such assistance is required.

Solicitor General for Scotland

22 January 2025



Lord Bracadale
Chair, Sheku Bayoh Public Inquiry
[REDACTED]

14 January 2025

Dear Lord Bracadale

I refer to previous correspondence.

I have today written to the representatives of the core participants, drawing their attention to two significant developments.

The first significant development is that Mr Anwar, on behalf of the Bayoh family, has confirmed to me that the family now also want the VRR decision in 2019 included in the terms of reference. I have explained that to the representatives of the other core participants.

Having carefully considered the matter, I have concluded that in order to ensure fairness, the nature of Mr Anwar's request and the factors relied upon by the family require to be disclosed in order to provide a proper basis for an informed response by the other core participants. I have therefore set out to core participants the information that I believe they require in this regard. I have done this partly by reference to your letter to me of 18 November, which was copied to core participants, as I believe it contains a useful and accurate summary of the basis of the request. I have also communicated to core participants that Mr Anwar now seeks to include the second prosecutorial decision in 2019 in the terms of reference and relies on Article 2 ECHR in support of his argument that an extension is necessary.

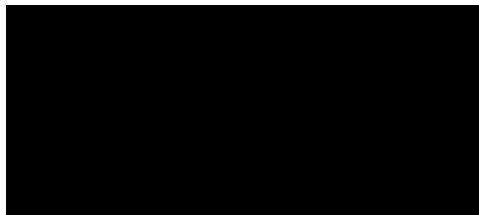
The second significant development relates to comments which have been made in correspondence about the constitutional position of the Lord Advocate. It is open to the Lord Advocate herself to consent to the examination of prosecutorial decision-making by an inquiry. This has been done in previous inquiries, for example the Chhokar Inquiry. I can confirm that, should the Government consider that it is in the public interest to extend the terms of reference, the Crown, without making any concession as to the validity of any concerns as to the potentially flawed nature of the prosecutorial decisions, has confirmed

that it would not stand in the way of an examination of the prosecutorial decision-making by the Inquiry. My letters to core participants set out this position, and I trust this will also be of interest to you.

As I said previously, I fully recognise the importance of properly considering the issues raised, and again confirm that no decision has been made by the Scottish Government. I am, however, very mindful of the need to make progress and of the impact on the Inquiry of any further delay.

Accordingly, I have requested that any further representations on the proposed extension to the Terms of Reference be provided to me in writing by 5pm on Tuesday 21 January 2025. I would welcome the opportunity to have a further discussion with you next week on this matter once final responses from core participants have been received. My office will be in touch to make the necessary arrangements. I then intend to carefully consider all relevant information available to me and to make a decision shortly thereafter.

Yours sincerely

A large black rectangular box redacting the signature of Kate Forbes.

KATE FORBES

Chair of the Inquiry
The Rt. Hon. Lord Bracadale

E: [REDACTED]



Private and Confidential

Kate Forbes, Deputy First Minister for Economy and
Gaelic

Via email only: [REDACTED]

16 January 2025

Dear Deputy First Minister,

You wrote to me on 14 January 2025 explaining a number of developments in relation to the application by the families of Sheku Bayoh for extension of the terms of reference. You refer to my letter dated 18 November 2024 in which I set out my views at that time, including my understanding of the grounds of the application. I am pleased to note that my understanding of the grounds is accurate. As you know it was based on representations on behalf of the families to the Inquiry, as opposed to the application made to you, which I have not seen. I note that the Bayoh families have now consented to their application to you being disclosed to the core participants.

The second development set out in your letter in relation to the constitutional position of the Lord Advocate is significant. Confirmation by the Crown that it will not stand in the way of an examination by the Inquiry of prosecutorial decision-making removes a substantial barrier to extension of the terms of reference. It is a rare event that the historical hurdle of the independence of the Lord Advocate is removed and that changes the dynamic dramatically. My letter of 18 November was predicated on balancing three aspects of the public interest in competition; the Lord Advocate's independence formed the second of these. With this aspect removed the balance of considerations in that letter has shifted.

The difficulties I outlined in relation to the impact and cost of delay should not in themselves prevent you from making the decision to extend the terms of reference if you otherwise consider that it is in the public interest to do so. These impacts are surmountable for the Inquiry and I and my team are ready to get on with the job. As previously discussed, and noted in my letter of 18 November, I am committed and will endeavour to exhaust whatever terms of reference are set for this Inquiry.

Ahead of any meeting, I would welcome an indication of what areas you would like to discuss and if you intend to share with me the responses to your letter to core participants of 14 January 2025.

I intend to copy this letter to all core participants.

Yours sincerely,



Alastair P Campbell KC
The Rt Hon Lord Bracadale

From: Deputy Solicitor to the Inquiry
To: [REDACTED]
Cc: [REDACTED]
Bcc: [REDACTED]
Subject: All agents: documents related to Judicial Review case - 29 January 2025
Date: 29 January 2025 11:07:00
Attachments: [image001.png](#)
[Interlocutor - Basic - 28 January 2025.pdf](#)
[Adjusted Petition.pdf](#)
[Third IOP with productions \(003\).pdf](#)
[COS-P65-25 - Answers Fourth to Sixth Interested Parties.pdf](#)
[1st IOP 6.1-6.6 \(4th-6th IP\).pdf](#)
[COS-P65-25 - Answers Eighth and Ninth Interested Parties.pdf](#)
[COS-P65-25 - Inventory of Productions Eighth and Ninth interested Parties.pdf](#)
[COS-P65-25 - Answers Seventeenth Interested Party.pdf](#)
[P65-25 - Productions for Seventeenth Interested Party.pdf](#)

Dear all,

The Inquiry has had a number of documents relating to the current judicial review case intimated to us directly by other parties.

The Inquiry wishes to keep all Core Participants updated on the proceedings and for that purpose, we are sharing documents lodged in process which all Core Participants may not have seen.

The Inquiry would also like at this early stage to clarify a specific point from a letter shared by Mr Anwar yesterday. The letter dated 4 September 2024 from Mr Anwar to the Deputy First Minister in the first paragraph states *"Last Friday the Bayoh family met with the Chair of the Inquiry, Lord Bracadale and his legal team, at which a number of concerns as outlined below were raised, we now understand he is due to meet with you this week"*.

This is erroneous. The Bayoh family and their legal team did meet with members of the Inquiry team (including Inquiry Counsel and the Solicitor) on 30 August 2024 but Lord Bracadale did not attend.

Documents shared:

Interlocutor 28 January Interlocutor - Basic - 28 January 2025 details - Objective

Petitioner

Adjusted petition [Adjusted Petition details – Objective]

Third IOP [Third IOP with productions (003) details – Objective]

Fourth to sixth interested parties:

Answers [COS-P65-25 - Answers Fourth to Sixth Interested Parties details – Objective]

IOP [1st IOP 6.1-6.6 (4th-6th IP) details – Objective]

Eighth and Ninth interested parties

Answers [COS-P65-25 - Answers Eighth and Ninth Interested Parties details – Objective]

IOP [COS-P65-25 - Inventory of Productions Eighth and Ninth interested Parties

details – Objective]

Seventeenth Interested party

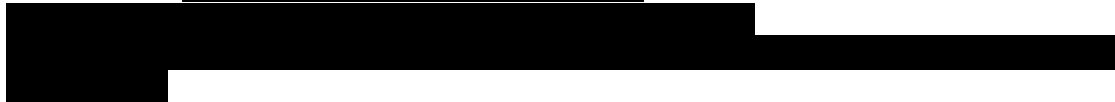
Answers [COS-P65-25 - Answers Seventeenth Interested Party details – Objective]

IOP [P65-25 - Productions for Seventeenth Interested Party details – Objective]

Kind regards



[Redacted]
Deputy Solicitor to the Sheku Bayoh Public Inquiry
[Redacted]



Solicitor to the Inquiry
Sadif Ashraf

E: [REDACTED]



Legal Representatives

By email only

25 February 2025

All,

TERMS OF REFERENCE

Introduction

I refer to previous correspondence and write to advise you of a meeting via video call between the Chair and the Deputy First Minister on 17 February 2025. This meeting was at the invitation of the Deputy First Minister. What follows are the views offered by the Chair at the meeting.

The Chair noted that the Chief Constable and the Bayoh families had provided the Inquiry with copies of the submissions they made to the Deputy First Minister on 7 February. The Chair also had sight of the memos from the Solicitor General to the Deputy First Minister and submissions made by some core participants to the Chair (in response to his invitation last year).

The Chair stated that throughout this process he has been absolutely clear that the decision is for the Deputy First Minister. He has been very properly consulted, as required by section 5 of the Inquiries Act, but the decision is for the Deputy First Minister.

The Chair recognised the challenges in making this decision. Without implying any criticism, the delay in reaching it has had a profoundly adverse impact on the Inquiry. The schedule for oral closing submissions has been revised on two occasions; the Inquiry continues to lose staff because of the uncertainty; and no plans can be made in relation to accommodation. There has been a significant impact on the core work of the Inquiry.

Issues arising from previous correspondence

The Chair went on to refer to his letter of 18 November 2024 which identified certain aspects of the public interest which were immediately relevant to the Inquiry.

The first was the public interest in the examination of a potentially flawed prosecutorial decision. The Chair explained that he remained of the view that there are strong indications that the prosecutorial decision was flawed on the basis that:

- it proceeded on a misunderstanding of the factual evidence;
- the instructions given to expert witnesses were misconceived; and
- there was a failure properly to examine the issue of race.

The Chair went on to clarify an aspect of his letter of 18 November. In that letter, he referred to certain evidence which was led in the Inquiry in October 2024 which he considered reinforced his concerns. In relation to this, he addressed the matter raised in the Chief Constable's submissions to the Deputy First Minister at paragraph 74 onwards. The Chair stated that the Chief Constable has misunderstood the point that he made. The point did not relate to police training at all, it related to the way in which the Crown presented factual issues to their expert witness.

The second aspect addressed in the letter was the public interest in the independence of the Lord Advocate. The position now adopted by the Solicitor General constituted a significant development. It was clear from her memo that the Solicitor General considered that the independence of the Lord Advocate was effectively taken out of the equation. The Chair observed that the Chief Constable and others contend that it is not competent for a public inquiry to examine a prosecutorial decision. The Chair noted his expressed view is that it is competent and the Deputy First Minister will have her own legal advice.

The third aspect of the public interest which dealt with the November letter was the issue of the impact on the Inquiry of delay and cost which would inevitably arise as a result of an extension of the terms of reference. He did not repeat those points but did add that the chapter on race might require revisiting.

The Chair maintained his position that if the terms of reference are extended, VRR should be examined. It made no sense to do otherwise. He explained that all that was known to him about that was that the review was carried out over a period between February and November 2019 by Alex Prentice KC.

Given the unknown aspects of the VRR process, it was impossible to give any accurate estimate of the amount of additional time that fulfilling extended terms of reference would take. On any view it would add a number of months to the length of the inquiry.

Before the meeting the Chair had been invited by the Deputy First Minister to comment on an issue raised in a letter dated 7 February 2025 from Mr Williams to the Deputy First Minister. As the letter was only shared with the Chair a couple of hours before the meeting with the Deputy First Minister, he did not have sufficient time to consider the issue and take the advice of counsel to the Inquiry. The Chair noted that the Deputy First Minister might wish to take advice on whether that issue needed to be determined before a decision was taken or whether, if the extension is granted, it should be included as part of the consideration of the scope and terms of any extension.

The Chair noted that the decision on the terms of reference might lead to a judicial review. That would add further delay which would be difficult to quantify.

The Chair was clear that, despite the challenges, if the Deputy First Minister decided to extend the terms of reference, the Inquiry team was ready and willing to ingather the evidence and hold hearings.

The Inquiry has a good record of getting through work: senior and junior counsel are lined up to identify and present the relevant evidence; solicitors will recover and analyse documents and obtain written statements from witnesses; and additional staff would be recruited. The Inquiry would need to take stock of the position in relation to accommodation. The Chair considered the issues resolvable and would welcome assistance and support from Scottish Government officials in achieving that.

Final thoughts and views

In setting his final thoughts and views, the Chair addressed some of the considerations which have emerged in the course of the developments leading to this decision. Some of these seemed to the Chair to support an extension while others pointed in the opposite direction.

He started with the issues identified in the letter of 18 November. There was a serious issue meriting examination by the Inquiry. The public interest in independence of the Lord Advocate was effectively taken out of the equation by the current position of the Solicitor General. And the Chair was satisfied that the Inquiry would be able to carry out the work.

He noted there is also a consideration as to the impact on the confidence in the Inquiry of the families and members of the public if the issues relating to the prosecutorial decision were left hanging in the air.

These considerations, without reference to other aspects of the public interest, might tilt the balance in favour of granting an extension.

The Chair recognised the Deputy First Minister's decision will be informed by a consideration of all aspects of the public interest, many of which will have been raised with her by core participants.

An important consideration to take into account would be the impact of any delay on all core participants, including in particular, the welfare of individual police officers and retired police officers.

Another consideration was the advanced stage which the Inquiry has reached. All the evidence under the current terms of reference has been led and the Inquiry is ready to proceed to submissions followed by preparation of the report.

Some core participants made the point that they might have approached the hearings and other aspects of the inquiry differently had the prosecutorial decision and the VRR been included earlier. While, in the absence of specification, the Chair said it was

difficult to judge the strength of that submission, it was a matter that the Deputy First Minister might take into account.

In the memo dated 22 January 2025, the Solicitor General made the point that she has committed to keeping the evidence at the Inquiry under review and this commitment includes any evidence relating to concerns about the way in which the Crown originally approached the investigation. In that way questions in relation to the integrity of the decision not to prosecute will be examined.

The Chair noted this was something to be taken into account and might go some way to answering the “hanging in the air” point. In weighing that consideration, it might be noted that the Crown itself would be carrying out the review of its conduct, as opposed to an examination being carried out by an independent public inquiry which had already examined the way in which the Crown originally approached the investigation up to the prosecutorial decision.

As to whether, within the current terms of reference, the Chair could make recommendations that the Crown carry out such a review, the Chair noted that he was bound by the terms of reference. He would have to be very careful about going outwith them, which such a recommendation might do. Certain inferences might be able to be drawn, but he would have to be very careful.

Other considerations the Chair noted that the Deputy First Minister could take into account included the practical impact on policing identified by the Chief Constable; the wider financial considerations; and the public interest in the Inquiry being able to conclude and report as soon as possible.

The Chair stated he would endeavour to exhaust whatever terms of reference were set by the Scottish Ministers.

As to whether, if the terms of reference were extended, he would release an interim report, the Chair explained that his intention had always been to issue one report because he took a view that the issue of race runs like a thread through the whole Inquiry. It would be difficult to release an interim report. But, in light of an extension he could revisit that. He had not explored the ramifications.

As always, please note that this letter is not for dissemination beyond your clients.

Yours sincerely

Sadif Ashraf



CROWN OFFICE
& PROCURATOR
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

Deputy Crown Agent Specialist Casework
Crown Office and Procurator Fiscal Service
Crown Office
25 Chambers Street
Edinburgh
EH1 1LA

DX: [REDACTED]

Tel: [REDACTED]

Email: [REDACTED]

Date: 6 March 2025

Dear Ms Ashraf,

Following the Deputy First Minister's decision not to extend the Terms of Reference, I wish to write to you in relation to the Inquiry's next steps.

On the question of the issuing of a new timetable for closing submissions, the Solicitor General and the Crown Office and Procurator Fiscal Service (COPFS) would wish to associate themselves with the suggestion made on behalf of the Chief Constable that a further timetable for closing submissions ought to be issued only after consultation with Core Participants (CPs). As well as the question of identifying an appropriate timescale for providing submissions, the Solicitor General and COPFS would wish to see canvassed the question of whether the submissions of Counsel to the Inquiry ought to be issued in advance of CPs producing their own submissions, a process understood to have established precedent in other inquiries. There is a particular context in which that suggestion is made.

On 25 February 2025, a letter to CPs was issued by the Solicitor to the Inquiry. Although the concluding paragraph of the letter advised that it was not for dissemination beyond CPs, the Inquiry disclosed the letter in the News Section of its website shortly after it was issued. Within the letter the following statement is made (emphasis added):

*The Chair explained that he remained of the view that **there are strong indications that the prosecutorial decision was flawed** on the basis that:*

- it proceeded on a misunderstanding of the factual evidence;*
- the instructions given to expert witnesses were misconceived; and*
- there was a failure properly to examine the issue of race.*

The Chair went on to clarify an aspect of his letter of 18 November. In that letter, he referred to certain evidence which was led in the Inquiry in October 2024 which he considered reinforced his concerns. In relation to this, he addressed the matter raised in the Chief Constable's submissions to the Deputy First Minister at paragraph 74 onwards. The Chair stated that the Chief Constable has misunderstood the point that he made. The point did not relate to police training at all, it related to the way in which the Crown presented factual issues to their expert witness.

The emphasised part speaks for itself: the Chair considers that the evidence strongly indicates that the prosecutorial decision was flawed. It is not unreasonable to think that this statement could give rise to a concern on the part of CPs that the Chair has formed a view on this matter. As the letter has been published, the same risk arises in relation to any member of the media or of the public reading it.

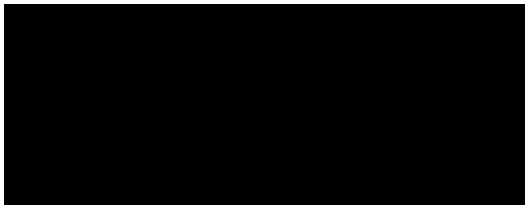
It is also notable that, other than to a very limited extent, the explanation of the Chair's concern adds no specification to the three very generally-stated bases for a concern about the prosecutorial decision. It remains the position, in other words, that the detail of the concern has never been disclosed. In this situation, it would seem appropriate that the Crown and other CPs have the opportunity of seeing that detail set out in counsel's closing submissions in order that their responses can be appropriately tailored. That is likely to be of benefit to the Inquiry too, which accords with the Solicitor General's desire to provide every assistance she can to enable the Inquiry to complete its work.

There is, however, a further point to make that arises from publication of the letter of 25 February 2025. The extract quoted above records a statement apparently made to the Deputy First Minister at a point that the application to extend the Terms of Reference had not been determined. The issuing of the letter and its subsequent publication took place at a point when a decision had been taken by the Deputy First Minister not to extend the Terms of Reference. That decision has the consequence that the correctness of the prosecutorial decision – the question of whether it was flawed – is not within the Inquiry's remit. In other words, the position remains as it was at the time of the Chair's decision issued shortly before the Crown PIM evidence began last year.

Against this background, it is of some concern that the Inquiry has published a letter which records the Chair as being of the view that the evidence strongly indicates that the prosecutorial decision was flawed. It is also to be kept in mind that the Chair has not actually heard or seen any evidence relative to the taking of the prosecutorial decision, and that he has not seen or heard any evidence in relation to the VRR. The Chair himself recognised the importance of that latter evidence in his letter of 18 November 2024 as regards understanding the totality of the analysis and investigation undertaken by the Crown overall.

In the circumstances, I would respectfully suggest that the said letter dated 25 February 2025 be removed from the Inquiry website. I look forward to hearing from you on that point and on the suggestion that there be a process of consultation on the timetable for closing submissions.

Yours sincerely,

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Deputy Crown Agent, Specialist Casework

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION

PETITION

of

THE SCOTTISH POLICE FEDERATION, c/o PBW Law, [REDACTED]
[REDACTED]

PETITIONERS

for

Judicial review of the continued involvement of Lord Bracadale in
the Sheku Bayoh Public Inquiry

HUMBLY SHEWETH: —

1. That the petitioner is designed in the instance. It is the representative body for non-senior police officers in Scotland. It is a Core Participant at the ongoing Sheku Bayoh Public Inquiry (“the inquiry”). The inquiry is domiciled in Scotland. This application to the supervisory jurisdiction concerns the ongoing involvement in the inquiry of its present Chair, Lord Bracadale (“the Chair”). This court has jurisdiction to determine this application. The respondent is the Chair, and designed in Part 1 of the Schedule for Service. The persons specified in Part 2 of the Schedule for Service may have an interest in these proceedings.
2. The petitioner is a Core Participant in the inquiry. As a Core Participant, the petitioner has an interest in the fairness (and apparent fairness) of the inquiry. The petitioner has sufficient interest therein to constitute standing to bring these proceedings.

3. That the date on which the grounds giving rise to the petition first arose was 4 February 2025.
4. That the petitioner seeks:
 - a. Declarator that the Chair is tainted by apparent bias.
 - b. Interdict prohibiting the Chair from continuing his involvement in the inquiry; and such interdict *ad interim*.
 - c. Such further orders (including an order for expenses) as may seem to the court to be just and reasonable in all the circumstances of the case.
5. That the petitioner seeks the said orders on grounds that, for the reasons more fully condescended upon hereinafter, the Chair is tainted by apparent bias such that any further involvement by him therein, and in particular any involvement on his part in determining the Terms of Reference applicable to the inquiry, would be a breach of the requirements of fairness and natural justice.

Factual Background

6. The inquiry is a public inquiry governed by the Inquiries Act 2005. The inquiry was announced by the Scottish Ministers on 12 November 2019 to examine the circumstances of the death of Sheku Bayoh, who died following his arrest by officers of Police Scotland on 3 May 2015. The existing terms of reference for the inquiry, which were agreed after detailed consultation, are:
 - 6.1. to establish the circumstances of the death of Sheku Bayoh, including the cause or causes of the death, any precautions which could reasonably have been taken and, had they been taken might realistically have resulted in the death being avoided, any defects in any operating models, procedures and training or other system of working which contributed to the death and any other factors which are relevant to the circumstances of the death;

- 6.2. to make recommendations, if any, covering the taking of reasonable precautions, improvements to or introduction of any operating models, procedures and training, or other system of working, and the taking of any other steps which might realistically prevent other deaths in similar circumstances;
- 6.3. 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;
- 6.4. 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; and
- 6.5. to report to the Scottish Ministers on the above matters and to make recommendations, as soon as reasonably practicable.
7. That as can be seen from the foregoing, from its inception the Terms of Reference of the inquiry have excluded any examination of the prosecutorial decisions taken by Crown Office referable to the death of Mr Bayoh.
8. That the Chair is subject to a statutory requirement to act with fairness (2005 Act, s.17(3)), and to the common law requirements of natural justice (*Greater Glasgow Health Board v Chairman of the Scottish Hospitals Inquiry* 2025 S.L.T. 205).

9. That the Petitioner and several of its members (being police officers, past and present, of Police Scotland) are Core Participants in the inquiry. Standing the Terms of Reference, there is a material possibility of the report of the inquiry impacting materially on the interests of the Petitioner and its members. In particular, the position of the family of Mr Bayoh is that he was unlawfully killed, as a result of racist motivations on the part of the arresting officers; and that the investigation of his death thereafter was tainted by racism. Any finding to such effect would have manifest and serious repercussions for any officer the subject thereof.
10. That the inquiry began hearing evidence on or around 10 May 2022. The Inquiry has now finished hearing evidence and is at the stage of submissions.
11. That in autumn of 2024, as the evidence came to a conclusion, the family of Mr Bayoh applied to the Deputy First Minister for an extension of the Terms of Reference. The proposed extension would, if granted, have brought within the Terms of Reference scrutiny of the decision of Crown Office not to bring criminal proceedings against any of the officers involved in the arrest of Mr Bayoh.
12. That in January 2025, as a result of the request to extend the Terms of Reference and in the face of refusal by the Deputy First Minister to disclose the submissions made in support of such an extension, the Chief Constable of Police Scotland brought a Petition for Judicial Review.
13. That the result of said Petition was disclosure of various documents, as a result of which disclosure that Petition did not require to proceed. However, the disclosures made therein necessitate the bringing of these proceedings.
14. That as a result of the combination of the events narrated below, the Petitioner submits that there is now an appearance of bias on the part of the Chair, such that any ongoing involvement on his part in the inquiry would be incompatible with the requirements of fairness and natural justice.

15. That the events founded upon include the following. They are presented in chronological order, under explanation that (as is explained below) some have only recently become known to the Petitioner (and other Core Participants) as a result of disclosures made in the course of, and following, the Judicial Review initiated by the Chief Constable.

15.1. The first day of the inquiry began with the showing of a professionally shot video, depicting the life of Mr Bayoh and involving drone footage over his home village in Sierra Leone. This was arranged, and paid for, by the inquiry. In and of itself, this did not create the appearance of bias; but it set the scene for what has since followed.

15.2. The second day of the inquiry heard the evidence of an individual who had become involved in a fight with Mr Bayoh shortly before his arrest. The individual was uncooperative. Rather than compelling that individual to obey his oath, the Chair adjourned the inquiry, and has since decided that the inquiry should proceed without his being recalled. This is in stark contradistinction to witnesses from Police Scotland and Crown Office, who have been subjected to robust questioning. In and of itself, this did not create the appearance of bias; but it is relevant to the assessment of what has since followed.

15.3. Throughout the inquiry, counsel to the inquiry have had regular meetings with the family of Mr Bayoh and their legal team. No other Core Participant has been invited to, or participated in, such meetings. The Petitioner has asked for details of the frequency of and reasons for such meetings, but has received no response thereto. In and of itself, this does not create the appearance of bias; but it is relevant to the assessment of what has since followed.

15.4. Throughout the inquiry, the Chair has said, on multiple occasions and publicly, that the family of Mr Bayoh are at the heart of the inquiry. He has

said no such thing of any other Core Participant, despite the fact that some of them have clearly suffered as a result of the events of 3 May 2015. In particular, former PC Nicole Short (another Core Participant) was, on any view of the facts, assaulted by Mr Bayoh on 3 May 2015, and as a result was medically retired from service with Police Scotland. At no point has the Chair suggested that she might be “at the heart of the inquiry”. In and of itself, this does not create the appearance of bias; but it is relevant to the assessment of what has since followed.

- 15.5. On 4 September 2024, the solicitor to the Bayoh family, Mr Aamer Anwar (“AA”) wrote to the Deputy First Minister seeking the said extension to the Terms of Reference, and saying *inter alia*:

“Last Friday the Bayoh family met with the Chair of the Inquiry, Lord Bracadale and his legal team, at which a number of concerns as outlined below were raised, we now understand he is due to meet with you this week...

This ... decision that is sought to be examined [viz: the decision by Crown Office not to bring criminal proceedings against any police officer involved in the arrest of Mr Bayoh] was taken on an incomplete and erroneous understanding of the evidence and failed to consider important issues such as race.”

This letter was not shared with the other Core Participants, and only became known to the Petitioner when it was disclosed in January 2025.

- 15.6. By letter of 6 September 2024, the Chair indicated that he had met with the Deputy First Minister, and said:

“While he is yet to hear closing submissions and analyse the totality of the Crown evidence, the evidence raises *certain questions* about the Crown investigation in relation to

- the understanding of the factual evidence;
- the instructions given to expert witnesses; and
- the absence of an examination of the issue of race.”

15.7. On 16 September 2024, AA wrote to the Deputy First Minister repeating the request for said extension to the Terms of Reference, and saying *inter alia*

“However, [the Chair] does have a concern. While he is yet to hear closing submissions and analyse the totality of the Crown evidence, the evidence raises *certain questions* about the Crown investigation in relation to:

- the understanding of the factual evidence;
- the instructions given to expert witnesses; and
- the absence of an examination of the issue of race.”

This letter was not shared with the other Core Participants, and only became known to the Petitioner when it was disclosed in January 2025.

15.8. On 3 October 2024, AA wrote again to the Deputy First Minister seeking the said extension to the Terms of Reference, and saying *inter alia*

“The Chair raised *significant concerns* with you that the evidence raises certain questions about the Crown investigation in relation to:

- the understanding of the factual evidence;
- the instructions given to expert witnesses; and
- the absence of an examination of the issue of race.”

This letter was not shared with the other Core Participants, and only became known to the Petitioner when it was disclosed in January 2025.

15.9. On 25 October 2024, the Chair wrote to the Deputy First Minister, saying *inter alia*:

“My current thinking is as follows. Evidence heard by the Inquiry raised *certain questions* about the Crown investigation in relation to: the understanding of the factual evidence; the instructions given to expert witnesses; and the absence of an examination of the issue of race.”

15.10. The Chair then wrote a further letter to the Deputy First Minister on 18 November 2024, saying:

“As I have not heard submissions on behalf of the Crown and have not yet conducted a full analysis of the evidence, I have not formed a concluded view in relation to the investigation by the Crown. That said, some of the evidence raised *concerns* about the Crown investigation in relation to: the understanding of the factual evidence; the instructions given to expert witnesses; and the absence of an examination of the issue of race. Since my meeting with you in September the Inquiry has heard further evidence from an expert instructed by the Crown which only *reinforces these concerns*. It is, I think, *a reasonable inference that the matters giving rise to concern would have been integral to the decision not to prosecute*. That *raises a question* as to whether the October 2018

decision was flawed on the basis of that it proceeded on a misunderstanding of the factual evidence; the instructions given to expert witnesses were misconceived; and there was a failure properly to examine the issue of race.”

There was no reference in that letter (which was sent to all Core Participants) to the earlier correspondence from AA. There was no mention of the fact that, in his letter of 4 September 2024 referred to above at §15.5, AA had said that he and the family had met with the Chair and the legal team to the inquiry.

15.11. On 28 January 2025, in the course of the Judicial Review by the Chief Constable, the correspondence referred to above at §§15.5, 15.7 and 15.8 was disclosed to the other Core Participants (including the Petitioner).

15.12. On 29 January 2025, the inquiry emailed Core Participants as follows:

“The Inquiry would also like at this early stage to clarify a specific point from a letter shared by Mr Anwar yesterday. The letter dated 4 September 2024 from Mr Anwar to the Deputy First Minister in the first paragraph states “Last Friday the Bayoh family met with the Chair of the Inquiry, Lord Bracadale and his legal team, at which a number of concerns as outlined below were raised, we now understand he is due to meet with you this week”.

This is erroneous. The Bayoh family and their legal team did meet with members of the Inquiry team (including Inquiry Counsel and the Solicitor) on 30 August 2024 but Lord Bracadale did not attend.”

This was the first indication of a dispute as to whether the Chair had been at the meeting of 30 August. No such point was made in the earlier communications from the Chair to the Deputy First Minister referred to

above. The Petitioner is unaware whether the position advanced by AA in his letter of 4 September (that the Chair was in attendance at that meeting) or that advanced by the inquiry in said email (that the Chair was not in attendance) is correct. One explanation may be that the Chair was in attendance at the beginning of such meeting and then left as discussions progressed.

- 15.13. On 4 February 2025, following the conclusion of said Petition for Judicial Review, the Chair wrote a letter to the Chief Constable of Police Scotland, and copied this into other Core Participants. Therein, for the first time, the Chair disclosed *inter alia*:

“Since the setting up of the inquiry I have from time to time met with members of the families as part of my commitment to keep them at the heart of the Inquiry.”

It is now understood that there were at least five such meetings. The Chair had not previously disclosed such meetings. Such meetings happened in private, without notification (before or after) to other Core Participants. No other Core Participant was invited thereto. No other Core Participant has had the benefit of private meetings with the Chair. As is more fully narrated hereinafter, such meetings give rise (in and of themselves, and *a fortiori* given the background set out herein) to the appearance of bias.

- 15.14. On 25 February 2025, at a point in time when the Deputy First Minister had not yet decided whether or not to extend the Terms of Reference, the Chair wrote to the legal representatives of all Core Participants, recording that he had met with the Deputy First Minister and saying *inter alia*:

“The Chair went on to refer to his letter of 18 November 2024 which identified certain aspects of the public interest which were immediately relevant to the Inquiry.

The first was the public interest in the examination of a potentially flawed prosecutorial decision. The Chair explained that he remained of the view that there are *strong indications that the prosecutorial decision was flawed* on the basis that:

- it proceeded on a misunderstanding of the factual evidence;
- the instructions given to expert witnesses were misconceived; and
- there was a failure properly to examine the issue of race.”

16. Later on 25 February 2025, the Deputy First Minister declined to extend the Terms of Reference.
17. That the Petitioner has – by letter to the Chair dated 5 February 2025 – requested the following details:
 - 17.1. What, if any, consideration was given to [natural justice] in arranging meetings with the family of Mr Bayoh?
 - 17.2. Has [the Chair] met, during the currency of the Inquiry, with any of the other Core Participants? If so, with whom, when, and with what purpose?
 - 17.3. From the Answers to the Petition, it would seem that at least five meetings have taken place with the family. When did they occur? What was the purpose and content of these meetings?
 - 17.4. Were minutes or notes of any such meetings taken? If not, why not?
 - 17.5. If notes or minutes were taken, can they be disclosed? If not, why not?
 - 17.6. In said letter, [the Chair] explains his dedication to the requirement of transparency. Having regard to that requirement, why was disclosure of the

fact that he has met with the family of Mr Bayoh on various occasions not made previously, and only made in response to the Chief Constable's Petition?

18. That the said letter of 5 February 2025 has gone largely unanswered (although cf §22 below). In particular, the questions recorded at §§17.1, 17.2, 17.4, 17.5 and 17.6 have not been responded to.
19. That on 6 March 2025, the Deputy Crown Agent wrote to the Chair, referring to the said letter of 25 February 2025 and expressing "concern that the Inquiry has published a letter which records the Chair as being of the view that the evidence strongly indicates that the prosecutorial decision was flawed"; and saying "it is not unreasonable to think that this statement could give rise to a concern on the part of CPs that the Chair has formed a view on this matter. As the letter has been published, the same risk arises in relation to any member of the media or of the public reading it". Following receipt of said letter, the inquiry removed the 25 February 2025 from the inquiry website.

Grounds of Challenge

20. That the foregoing gives rise to the appearance of bias on the part of the Chair on either or both of the following bases:

- 20.1. First, it is settled that where a decision maker demonstrates that he has pre-judged, or evinced a closed mind to, a material issue, then there is apparent bias such that natural justice precludes his further involvement: *Stubbs v The Queen* [2019] AC 868. That is the case here. The Chair has adopted the language of the family of Mr Bayoh and advocated their cause, as referred to in the correspondence set out above. What started out as "certain questions" (cf the letters quoted at §§15.6 and 15.9 above) by November 2024 moved to "concerns" (cf the letter quoted at §15.10), and had by February 2025 become (*per* the letter quoted at §15.14, but without any further evidence being

led) “strong indications that the prosecutorial decision was flawed”. The Chair was plainly urging the Deputy First Minister to extend the Terms of Reference, and to include therein the prosecutorial decisions and also the Victims Right Review.

- 20.2. Second, it is settled that any decision maker tasked with arriving at a decision fairly and in compliance with the tenets of natural justice should not meet privately or secretly with a party with an interest therein: *Errington v Minister of Health* [1935] 1 KB 239; *Kanda v Malaya* [1962] AC 322; *Hibernian Property Company Limited v Secretary of State for the Environment* [1974] 27 P & CR 197; *Kane v. Bd. of Governors of U.B.C.*, [1980] 1 S.C.R. 1105; *Furmston v Secretary of State for the Environment* [1982] JPL 49; *Bradford v McLeod* 1986 SLT 244; *Simmons v Secretary of State for the Environment* [1985] JPL 253; *British Muslims Association v Secretary of State for the Environment* (1987) 55 P & CR 205; *Doherty v McGlennan* 1997 SLT 444; *Georgiou v Enfield London Borough Council* [2004] LGR 497; *The Queen on the Application of Tait v Secretary of State for Communities and Local Government* [2012] EWHC 643 (Admin).
21. That the foregoing objections apply individually, and also cumulatively. A fair-minded and informed observer, looking at the foregoing and understanding that the Chair had, following various secret meetings with the family of Mr Bayoh, supported their attempt to extend the Terms of Reference on the basis that he considered that there were “strong indications that the prosecutorial decision [sc. the decision by Crown Office not to prosecute any of the officers involved in the arrest of Mr Bayoh] was flawed”, would conclude that there was a real possibility that the Chair was biased: *Porter v Magill* [2002] 2 AC 357 at [103]. As at the date of presentation hereof, the reasons for the Chair proceeding as aforesaid are unknown to the Petitioner, since the letter of 5 February 2024 referred to at §17 above remains (as discussed below) largely unanswered. However, protestations on his behalf that he is unbiased do not meet the concerns: *Porter, cit.sup* at [104]; *Millar v Dickson* 2002 SC (P.C) 30 at [65]. Moreover, the fact that the Chair might

ordinarily be expected to obey his judicial oath does not cure the appearance of bias: “the interest of justice required not merely that he should not display bias but that the circumstances should not be such as to create in the mind of a reasonable man a suspicion of [his] impartiality” (*Bradford v McLeod*, *cit.sup* at p.247; *Millar*, *cit.sup*).

22. That on 5 March 2025, the inquiry (and not the Chair) purported to respond to the letter of 5 February 2025 outlined at §17 above. That response does not address the questions posed in said letter. It amounts to an *ex post facto* justification of the meetings between the Chair and the family of Mr Bayoh. It does not indicate the content of those meetings. It does not indicate that nothing was said at such meetings that might bear on the inquiry. On the contrary, the inquiry has said that at such meetings the “Chair made it clear that anything of an evidential nature would require to be examined in evidence in the Inquiry”. There would have been no need for the Chair to have said so if nothing of consequence was mentioned at such meetings. The plain conviction of the family of Mr Bayoh that he was unlawfully killed makes it highly unlikely that nothing of consequence was said at such meetings. In any event, the point of the prohibition of secret meetings is that they are simply not permitted, since otherwise it is impossible accurately to discern thereafter what transpired thereat, and what the impact (conscious or subconscious) thereof might have been. As to the contention in the letter that it was necessary to meet with the family to maintain their confidence in the Inquiry and encourage them to continue to participate fully in it, that does not warrant a departure from the rules of natural justice. The family could have been (indeed, were) assured by statements made publicly, in the course of the inquiry, that it would be independent and robust. As to the Chair’s reference to Article 2 ECHR, the procedural obligation arising therefrom requires the state to initiate an investigation that is (a) independent, (b) effective, (c) prompt and proceeds with reasonable expedition, (d) subject to a sufficient degree of public scrutiny to ensure accountability and (e) such as to involve the next of kin to an appropriate

extent: *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653 at [25]. The necessary involvement of the next-of-kin is met without private meetings with the Chair. Such meetings risk the inquiry no longer appearing to be independent, or compliant with the requirements of Art 6 ECHR (independent and impartial tribunal). The usual manner of the state meeting its Art2 obligations is by way of Fatal Accident Inquiry. Indeed, part of the function of the present inquiry is to operate as a Fatal Accident Inquiry. A judge conducting a Fatal Accident Inquiry is exercising a judicial function: *Black v Scott Lithgow Ltd* 1990 SC 322 at 328. Anyone exercising a judicial function has the duty to comply with the requirements of natural justice, and in particular to be free from apparent bias: *TransCo Plc v Her Majesty's Advocate* 2005 1 JC 194 at [20]. There would be no question, in any normal Fatal Accident Inquiry, of the presiding Sheriff meeting privately with the family of the deceased, for the simple reason that this would create the appearance of bias. For these reasons, the letter of 5 March 2025 does not address the Petitioner's concerns.

23. That the Petitioner stresses that the present challenge is based on apparent, and not actual, bias. The Petitioner has the greatest respect for the integrity of the Chair, and does not seek to impugn same. Nevertheless, objectively, the actions of the Chair in meeting secretly with the family of Mr Bayoh *et separatim* in thereafter promoting, with increasing stridency, their application for the extension of the Terms of Reference, are such as to give rise to apparent bias.
24. That as already noted, the Petitioner's request for further detail *per* the letter of 5 February 2024 remain largely unanswered. Nevertheless, procedure at the inquiry is about to resume and the risk of the Petitioner being taken to have acquiesced in what is now apparent is such that it is necessary now to present this Petition. The Petitioner calls upon the Chair, in accordance with the duty of candour, to disclose the whole course of dealings between the Chair and the family of Mr Bayoh, and between counsel to the inquiry and the family.

Remedies sought

25. For the foregoing reasons, the ongoing involvement of the Chair in the inquiry is incompatible with natural justice, and the orders sought should be granted.

PERMISSION TO PROCEED

26. The petitioner satisfies section 27B(2) (requirement for permission) of the Court of Session Act 1988. It enjoys sufficient interest to present this Petition. The grounds of review set out in detail above are more than sufficient to pass the low threshold required for permission to proceed to a substantive hearing: cf *Wightman v Advocate General* 2018 SC 388 at §9. The petitioner's arguments have a real prospect of success. Permission to proceed should be granted.
27. The following documents are necessary for the determination of permission:

➤ Correspondence referred to herein.

TRANSFERS TO THE UPPER TRIBUNAL

28. The petition is not subject to a mandatory or discretionary transfer to the Upper Tribunal.

PLEAS IN LAW

1. The continued involvement of the Chair being incompatible with the requirements of fairness and natural justice, the orders sought should be granted.

According to Justice etc.

SCHEDULE FOR SERVICE

PART 1: RESPONDENT

The Right Hon. Lord Bracadale, Chair of the Sheku Bayoh Public Inquiry, [REDACTED]
[REDACTED]

PART 2: INTERESTED PERSONS

1. The Scottish Ministers, [REDACTED]
2. Solicitor General, Crown Office and Procurator Fiscal Service, [REDACTED]
[REDACTED]
3. Jo Farrell, The Chief Constable of Police Scotland, [REDACTED]
[REDACTED]
4. The Families of Sheku Bayoh, c/o Aamer Anwar & Co, [REDACTED]
[REDACTED]
5. PC Alan Smith, c/o R.S. Vaughan & Co, [REDACTED]
[REDACTED]
6. PC Ashley Tomlinson, c/o R.S. Vaughan & Co, [REDACTED]
[REDACTED]
7. PC Kayleigh Good, c/o R.S. Vaughan & Co, [REDACTED]
[REDACTED]
8. PC Daniel Gibson, c/o Gordon Williams Ltd, [REDACTED]
[REDACTED]
9. Sgt Scott Maxwell, c/o Gordon Williams Ltd, [REDACTED]
[REDACTED]
10. PC James McDonough, c/o Gordon Williams Ltd, [REDACTED]
[REDACTED]
11. Retired PC Nicole Short, c/o PBW Law, [REDACTED]
12. PC Craig Walker, c/o PBW Law, [REDACTED]
13. Chief Superintendent Patrick Campbell, c/o Levy & McRae Solicitors LLP,
[REDACTED]
14. Chief Superintendent Garry McEwan, c/o Levy & McRae, [REDACTED]
[REDACTED]
15. Chief Superintendent Conrad Trickett, c/o Levy & McRae, [REDACTED]
[REDACTED]
16. Retired PC Alan Paton, c/o KM Law, [REDACTED]
17. The Police Investigations and Review Commissioner, [REDACTED]
[REDACTED]
18. Coalition for Racial Equality and Rights (CRER), [REDACTED]
[REDACTED]

Solicitor to the Inquiry
Sadif Ashraf

E: [REDACTED]



Legal Representatives

By email only

29 April 2025

All,

**PROCEDURAL HEARING
CONDUCT AND PROCEDURE OF THE INQUIRY BY THE CHAIR**

I write to advise that the Inquiry is holding a public hearing on 12 and 13 June 2025 on the fairness of the conduct and procedure adopted by the Chair in meeting with the families of Mr Bayoh.

Background

In her petition for judicial review, the Chief Constable made the following averment:

“the meetings (i) between the Chair and Ms Forbes, and (ii) between the Chair and the family of Mr Bayoh without any detail of those meetings and what was discussed at them being made available are apt to give rise to suggestions of apparent bias.”

On 4 February 2025 the Chair wrote to the Chief Constable expressing concern about the nature of the averments in relation to apparent bias.¹ This letter was copied to all core participants.

On 6 February 2025 Mr Watson wrote to the Inquiry on behalf of the Scottish Police Federation setting out a series of questions regarding the meetings the Chair had with the families of Mr Bayoh:

“1. It is a fundamental aspect of the law of apparent bias that a decision maker should, in general, not have private meetings with one party: Kanda v Malaya (1962] AC 322 at 337-8. What, if any, consideration was given to this principle in arranging meetings with the family of Mr Bayoh?

2. Has Your Lordship met, during the currency of the Inquiry, with any of the other

¹ PH-00011

Core Participants? If so, with whom, when, and with what purpose?

3. From the Answers to the Petition, it would that at least five meetings have taken place with the family. When did they occur? What was the purpose and content of these meetings?

4. Were minutes or notes of any such meetings taken? If not, why not?

5. If notes or minutes were taken, can they be disclosed? If not, why not?

6. In said letter, Your Lordship explains his dedication to the requirement of transparency. Having regard to that requirement, why was disclosure of the fact that he met with the family of Mr Bayoh on various occasions not made previously, and only made in response to the Chief Constable's Petition?"²

My letter of 5 March 2025 responded to the concerns and was published on the Inquiry website. The letter set out the dates of the five meetings with the families and the purpose of those meetings.³

On 12 March 2025 Mr Watson wrote to the Inquiry including a draft petition which seeks declarator that the Chair is tainted by apparent bias and to interdict the Chair from continuing his involvement in the Inquiry.

Section 17(1) of the Inquiries Act 2005 provides "*the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.*" Section 17(3) qualifies this discretion of the Chair as follows. "*In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).*"

The loss of confidence by a core participant in the fairness of the conduct and procedure of the Inquiry by the Chair is a matter of concern.

The Inquiry has completed all evidential hearings and is yet to hear closing submissions. As the Inquiry is ongoing, the appropriate forum for public submissions on these concerns in the first instance is the Inquiry. Accordingly, the Chair has directed a public hearing on the fairness of the conduct and procedure adopted by the Chair in meeting with the families be set down for 12 and 13 June 2025.

The Chair's meetings with the families of Mr Bayoh

On 26 November 2020, ahead of the Inquiry setting-up date of 30 November 2020, I wrote to all parties that the Inquiry anticipated would be core participants. I stated:

"A public inquiry is an inquisitorial process. It is for the Inquiry to undertake the investigative work and to do so impartially and thoroughly. The Inquiry is independent of any person or organisation.

² PH-00012

³ PH-00013

*To fulfil the Inquiry's terms of reference, the full co-operation of all parties, particularly core participants, will be important. Core participants will also have the opportunity to contribute to the investigation."*⁴

In his pre-recorded update of 30 April 2021, the Chair said the following:

"In addition, my legal team has held constructive meetings with legal representatives of all the core participants. The meetings are used to advise on progress, outline the approach the legal team is taking to retrieval and analysis of evidence and, importantly, take into consideration the views of core participants on that approach.

*I am confident that working in this collaborative way will ensure that everyone involved will have the opportunity fully to engage with the work of the Inquiry."*⁵

The first meeting between the Chair and Mr Bayoh's families took place on 4 November 2021. No minutes were made of the meeting. The Inquiry is disclosing my email agreeing the agenda,⁶ the Chair's speaking note of what he planned to address⁷ and the letters sent by the Chair to the families that attended the meeting.⁸ From the latter two documents, it is clear that the attendees were Ade Johnson, Kadi Johnson, Kosna Bayoh and Adama Jalloh. From the Inquiry team, the Chair, Angela Grahame KC and I attended. We don't have a record of the legal representatives for the families that attended.

At the preliminary hearing on 18 November 2021, the Chair made reference to meeting with the families:

*"I want them to be at the heart of this Inquiry and, in due course, before the evidence begins, I will give an opportunity for members of the family to speak publicly about the person that Sheku Bayoh was, what he meant to them and the impact of his death on them. I have already begun discussion with family members about what form that might take."*⁹

Ahead of what would have been the second meeting in February 2022, the Deputy Solicitor wrote to the legal representatives advising: *"The Chair is due to meet with the family on Thursday this week. Given that he is currently considering the issue of the undertakings¹⁰ we think it is best to reschedule to after he has issued his ruling. You will appreciate that we need to guard against any possible perception of partiality. Although the meeting is not to discuss the undertakings sought the Chair thinks it would be more appropriate to have the meeting next week."*¹¹

⁴ PH-00014 (NB these letters were sent to parties separately but with very similar terms. A copy sent to Prof. Peter Watson is shared for completeness).

⁵ PH-00015 [Lord Bracadale's update 30 April 2021 - transcription.pdf](#)

⁶ PH-00001

⁷ PH-00002

⁸ PH-00003, PH-00004, PH-00005

⁹ PH-00018 and [Preliminary hearing 1 | Sheku Bayoh Inquiry](#)

¹⁰ Undertakings were sought by the Chief Constable and the Solicitor General regarding the evidence to the Inquiry by the 9 responding officers.

¹¹ PH-00010

The second meeting took place on 13 April 2022. The Inquiry is disclosing the record of this meeting.¹² Evidential hearings began on 10 May 2022.

The third meeting took place on 21 November 2022 ahead of the start of the second block of evidential hearings on 22 November. The Inquiry is disclosing the record of this meeting.¹³

On 22 November 2022, the Chair referred to the racial abuse suffered by the family at the [start of the second block of hearings](#):

“I want now to turn to another matter. It has come to my attention that core participants in this Inquiry have been subject to abuse on social media or in writing. I abhor such abuse, whatever its source and against whomever it is directed. Recently it has been reported to me that the family of Sheku Bayoh and their solicitor have been subjected to racist abuse. I am sure that everyone associated with this Inquiry will agree with me that such behaviour is despicable and entirely unacceptable. In some instances it may amount to hate crime. In every instance it causes the recipients and members of their family, some of whom maybe quite young, pain, distress and harm.

The families of Sheku Bayoh remain at the heart of this Inquiry. The Inquiry strongly condemns such treatment of them and calls for it to cease.”¹⁴

The meeting with the Chair of 21 November 2022 was referenced by Mr Bayoh’s sister, Kadi Johnson, on 22 November 2022 in a public statement and reported in the [press](#):

“But we welcome a meeting with Lord Bracadale yesterday and his condemnation of the racist abuse to our family and threats made to our lawyer.”¹⁵

The fourth meeting took place on 18 January 2024. The Inquiry is disclosing the record of this meeting.¹⁶ There were no hearings ongoing. Hearings resumed on 6 February 2024.

The fifth meeting took place on 5 December 2024. The Inquiry is disclosing the record of this meeting.¹⁷ At this stage, all scheduled hearings were completed. However, the consultation regarding the extension of the terms of reference was ongoing.

On 5 December 2024, the date of the 5th meeting, the media manager for the Inquiry was [quoted in the BBC](#) as follows:

¹² PH-00006

¹³ PH-00007

¹⁴ PH-00019 and [Day 23: Evidence from Sergeant James Young 22/11/2022 \(pm\) | Sheku Bayoh Inquiry](#)

¹⁵ PH-00016

¹⁶ PH-00008

¹⁷ PH-00009

“A spokeswoman for the Sheku Bayoh Inquiry said Lord Bracadale had stated throughout that the families of Sheku Bayoh were “at the heart of” the inquiry.

“An important part of this commitment is providing opportunities for them to meet the chair from time to time. Lord Bracadale held a private meeting with members of the family today,” she said.”¹⁸

The records of meetings disclosed contain redactions of details that the Chair considers are not necessary to disclose for the purposes of a hearing on apparent bias and procedural fairness. The types of information redacted include names of those attending the meetings that are not otherwise in the public domain e.g. the name of the Deputy Solicitor at the time and any discussion that references to the children of the Bayoh families.

Submissions on apparent bias

The Chair invites written submissions on behalf of the Scottish Police Federation by **1pm on 8 May 2025** together with a list of authorities.

The submissions will be circulated to all core participants no later than 14 May. Thereafter, core participants will be invited to provide written submissions by **1pm on 22 May 2025** together with a list of authorities.

As Inquiry Counsel attended the meetings with the Chair, the Chair does not consider it is appropriate for Inquiry Counsel to make written or oral submissions. The Inquiry will instruct external counsel to provide a written submission on the substantive points raised in the written submissions. This will be circulated together with all written submissions and a Note by the Chair no later than **2 June 2025**.

The Chair will hear oral submissions on **12 and 13 June 2025** including submissions from counsel instructed on behalf of the Inquiry. Details of the order of submissions and time allotted per Counsel be provided nearer the date.

In summary, the timetable is as follows.

Written submissions on behalf of the SPF	1pm on 8 May
Inquiry circulates written submissions	No later than 14 May
Written submission by core participants	1pm on 22 May
Inquiry circulates written submissions	No later than 2 June
Oral submissions	12 June and 13 June

Please advise the Inquiry as soon as possible, and no later than **1pm on Wednesday 30 April 2025**, if neither of your Counsel are able to attend to make submissions on 12 and 13 June in person or remotely and why.

The Inquiry will issue a short media release advising of the hearing. It will not disclose the details set out in this letter or the documents referred to herein. Accordingly, they remain subject to the [Restriction Order](#) dated 15 September 2021.

¹⁸ PH-00017

It is intended that the documents and written submissions will be disclosed shortly after the oral hearing.

Yours sincerely

Sadif Ashraf