

Decision summary

13 August 2025

Application for recusal of the Chair and the Assessors in the Sheku Bayoh Inquiry

Decision by The Rt. Hon. Lord Bracadale, Chair of the Inquiry (*references in square brackets are to paragraphs in the Decision.*)

Background to the Decision

The Sheku Bayoh Inquiry was set up on 30 November 2020. The Chair is Lord Bracadale. He is assisted by two assessors who were appointed by the Scottish Ministers, Raju Bhatt and Michael Fuller. They are not part of the Inquiry panel. The Inquiry panel is comprised of only the Chair.

The Inquiry held evidential hearings between May 2022 and October 2024. The hearing of evidence is complete. The remaining work of the Inquiry is for core participants to make closing submissions and for the Chair to write the Inquiry report.

The Chair met with the families of Sheku Bayoh on five occasions between 30 November 2020 and 5 December 2024. These meetings were attended by the Chair and members of the Inquiry team. The families were accompanied at the meetings by their legal team. The assessors Raju Bhatt and Michael Fuller attended one of the meetings, in November 2022.

The Scottish Police Federation, PC Craig Walker and Nicole Short (the applicants) lodged a written application (the recusal application) asking the Chair to recuse himself as Chair of the Inquiry. This was on the basis that the Chair met with the families of Sheku Bayoh. The applicants submit that these meetings created an appearance of bias. It was also submitted that the meetings gave rise to procedural unfairness arising from a breach of natural justice. It was not submitted that the fact of these meetings created any actual bias on the part of the Chair.

The applicants also sought to have the Chair terminate the appointment of an assessor Raju Bhatt.

A number of core participants supported the recusal application. A number of core participants did not make submissions either way or did not support the recusal application [10-16].

Alan Paton supported the recusal application and, in addition, sought to have the Chair terminate the appointment of the assessor Michael Fuller.

The families of Sheku Bayoh submitted that, while s. 12(2) of the Inquiries Act 2005 allows for any member of an inquiry panel to resign his appointment, this should not be done in circumstances where bias, actual or perceived, is the issue (unless the chair believed he satisfied one of the grounds in s. 12(3)(c) of the 2005 Act). The families submitted that to allow a resignation in this circumstance would usurp the statutory function set out in s. 9 of the 2005 Act. The effect of this submission is that the families contend the correct legal test is not the common law test of apparent bias but the statutory test that would have been applied by a minister before removing a chair from their position **[17-18]**.

A hearing was held on 12 June 2025 to allow core participants and counsel to the inquiry to make submissions to the Chair. The Chair produced a Note ahead of this hearing setting out his position.

Decision

The Chair has decided not to recuse himself. The Chair has decided not to terminate the appointment of the assessors Raju Bhatt and Michael Fuller.

Reasons for the Decision

Appearance of bias – the test to be applied

The correct legal test for apparent bias is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the chair was biased. This test is a two-stage process. Firstly, to ascertain the relevant facts which have a bearing on the suggestion that the decision-maker has the appearance of bias. Secondly, to ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the decision-maker was biased. The application of the second stage is objective.

Bias means a prejudice against one party or its case for reasons unconnected with the legal or factual merits of the case. It is extremely fact sensitive. In deciding if the test is met, considerations of inconvenience, cost and delay cannot be considered. Similarly, any objections to the decision-maker remaining in position cannot be considered. If the legal test is not satisfied, then an objection to the decision-maker cannot be a factor, even if that leaves a person dissatisfied. A decision-maker may properly set out information relevant to a recusal application – hence the Note provided by the Chair. Additionally, it is necessary to consider the judge's conduct across the proceedings as a whole and not just in relation to the conduct that may be the basis of an application **[24-32]**.

In relation to the families' submission, s.12(2) of the 2005 Act permits a member of an inquiry panel to resign for a broad range of reasons, including because the chair was satisfied that he should recuse himself on the ground of apparent bias. The powers given to the minister by s.12(3)-(7) of the 2005 Act set out the grounds on which they can be exercised by the minister, not by members of the inquiry panel.

Further, there is no connection between the exercise of the power of resignation under s.12(2) of the 2005 Act and the exercise of the powers by the minister in s.12(3)-(7) of the 2005 Act. The correct test was the common law test set out above and, if the chair was satisfied that apparent bias was demonstrated, it would be possible for him to recuse himself [17-20].

Appearance of bias – the fair-minded informed observer

The fair-minded and informed observer would consider the meetings in the light of all the circumstances, aware of the intensely fact specific nature of the test and the need to look at the chair's conduct of the Inquiry as a whole. The observer would have regard to the inquisitorial and investigative nature of a public inquiry. The chair controls the Inquiry process; this involves communications with core participants outwith the presence of other core participants. The observer would note other examples of this in the course of the Sheku Bayoh Inquiry [135-149].

The observer would be aware of the well-established practice in numerous other public inquiries of the chair holding private meetings with the families of deceased persons at which matters of substance were discussed including: taking accounts of the events under examination by the Inquiry; taking views on the terms of reference; identifying issues which the inquiry should explore; and the impact on individuals. Additionally, the observer would take account of the evidence heard and the recommendation made by the select committee of the House of Lords conducting post-legislative scrutiny of the 2005 Act. Chairs of public inquiries are encouraged to meet bereaved families [58-61].

The observer would examine the contents of the meetings in the context of the importance of the families having confidence in the Inquiry and participating in it. The observer would note the Chair's obligations in relation to fulfilling the Inquiry terms of reference in that regard. The observer considering the Chair's conduct as a whole would be aware that in seeking undertakings from the Solicitor General and the Deputy Chief Constable the Chair was endeavouring to ensure that the police officers concerned were also able fully to participate in the Inquiry [62].

The observer would note the fragility of the confidence of the families in the Inquiry and that the purpose of the meetings was to obtain and retain their confidence and participation [63]. The observer would note that the meetings were on a more or less annual basis and whilst they were held in private, they were not kept secret [69-74].

The observer would understand the importance of evidence in the Inquiry, and that the Chair has yet to make a substantive decision on the evidence. As a result of the current process all core participants are now aware of the existence and contents of the meetings [75-92].

The observer would consider individual comments in their full context, for example, in relation to the meeting on 18 January 2024 it would be clear that the Chair's reference was to the Chief Constable being affected by the evidence of Kadi Johnson rather than to the Chair's own reaction [90-113].

In relation to the way in which the Chair dealt with inappropriate comments made at the meetings, the observer would take the view that the record of the meetings demonstrates the strength of feeling at the meeting. The observer would view the decision not to engage with these comments but to ignore them and move on as a reasonable exercise of discretion by the Chair. In addition, the observer would recognise that an experienced judge is well able to disregard material not forming part of the evidence, including inappropriate statements whether made in public or in a meeting [114-126].

Having reviewed the facts the fair-minded and informed observer would conclude that there was no real possibility that the Chair was biased, therefore the legal test for a recusal of the Chair is not met [135-149].

Assessors

The assessors were appointed by the Scottish Ministers under s.11 of the 2005 Act to assist the Chair. Both assessors attended one meeting on 21 November 2022. The record of the meeting records that Raju Bhatt said, "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". This comment was a reference to a comment made earlier by a family member, "All asking for is to get the truth". In his contribution later in the meeting Michael Fuller stressed the importance of a thorough examination adding, "Support you in getting to the truth". There is no basis on which the Chair should terminate the appointment of Raju Bhatt or Michael Fuller [150-156].

Procedural unfairness arising from a breach of natural justice

A chair of an Inquiry is required to act fairly (s.17 of the 2005 Act). As a matter of high-level principle, the rules of natural justice apply to a public inquiry under the 2005 Act. However, the application of the rules of natural justice is highly specific to the facts and context of a specific situation. As a public inquiry under the 2005 Act, this includes considering the terms of reference.

The Chair is granted a wide margin of appreciation by the 2005 Act in fulfilling his obligation to investigate the terms of reference. The Chair required to exercise discretion to ensure the participation and engagement in the Inquiry of core participants, seeking undertakings at the request of certain officers and meeting with members of the families of Sheku Bayoh. The holding of such meetings was within the wide margin of appreciation allowed to the chair of a public inquiry under the 2005 Act when assessing the fairness of the procedure adopted.

Having regard to the statutory framework under which an Inquiry operates and the inquisitorial nature and character of an inquiry, having meetings with the families was not in itself unfair. Taking into account the content and context of the meetings at which the Chair did not receive evidence or submissions; the centrality and focus of the importance of evidence; the structural and procedural protections of the right to be heard established in the Inquiry; and the current process which ensures core participants are aware of the context and contents of the meetings and will have an opportunity to make submissions, the meetings with the families did not constitute a breach of the right to be heard [157-192].

NOTE: This summary is provided to assist in understanding the Decision. It does not form part of the reasons for the Decision. The full Decision is the only authoritative document.