

Thursday, 18 November 2021

(10.30 am)

Lord Bracadale Opening Remarks and Assessor Introductions

LORD BRACADE: 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.

1 I have already begun discussion with family members
2 about what form that might take.

3 I pause at this stage to mention two practical
4 matters in relation to today's hearing.

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

7 Second, the proceedings are being broadcast on the
8 inquiry's YouTube channel and again will be available
9 later on the website.

10 Now, let me introduce the assessors. I have the
11 assistance of two assessors appointed under section 11
12 of the Inquiries Act 2005. Assessors are persons who
13 have a particular expertise which will be of assistance
14 to the inquiry.

15 Raju Bhatt is a solicitor and a partner in the
16 London-based solicitors firm Bhatt Murphy. He has
17 a particular history of work with families who have lost
18 members through death in custody. He has regularly
19 represented such families at inquests. Over a long
20 period, he has been responsible for many significant
21 developments in this and related areas. His expertise
22 and experience has regularly been drawn on by various

1 organisations. In 2009, he was appointed special
2 adviser to the Parliamentary Joint Committee on Human
3 Rights, in relation to its scrutiny of the Coroners and
4 Justice Bill. He is one of the founding members of the
5 Police Action Lawyers Group and INQUEST Lawyers Group.

6 He was appointed to the Hillsborough independent
7 inquiry panel, which reported to the Home Secretary in
8 September 2012.

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

18 Michael Fuller had a long and distinguished career
19 in the Police Service. He rose to the rank of
20 Deputy Assistant Commissioner in the
21 Metropolitan Police, and in 2004 he was appointed
22 Chief Constable of Kent Police Force.

1 During 26 years in the Metropolitan Police, he was
2 instrumental in setting up the Racial and Violent Crime
3 Taskforce. He drew up the Metropolitan Police action
4 plan in response to criticism arising from the
5 Stephen Lawrence Inquiry. This included recommendations
6 as to how the Metropolitan Police should investigate
7 racial hate crime and respond to critical incidents,
8 along with race awareness training. All of Mr Fuller's
9 recommendations were accepted and implemented.

10 He was the founding chairman of the Black and Asian
11 Police Association and set up a support network in the
12 Metropolitan Police to provide support to many black and
13 Asian police officers who were victims of racism within
14 the police.

15 Throughout his service as a chief officer, Mr Fuller
16 chaired disciplinary panels and determined disciplinary
17 sanctions in relation to charges brought against police
18 officers. On retirement, he was appointed as
19 Her Majesty's Chief Inspector of the Crown Prosecution
20 Service and Serious Fraud Office. He currently runs his
21 own criminal justice consultancy.

22 It will be clear that the combined expertise and

1 experience of the assessors has the potential to provide
2 a formidable degree of assistance to my inquiry. While
3 I recognise that ultimately I must take responsibility
4 for the decisions in the inquiry, each of the assessors
5 has already given valuable assistance and I expect that
6 support only to increase as the inquiry progresses.

7 The purpose of this preliminary hearing is to allow
8 me, with the assistance of senior counsel to the
9 inquiry, to make some general points in relation to the
10 inquiry, to identify the core participants and their
11 legal representation, to update the core participants,
12 members of the public and the media about the progress
13 of the inquiry to date, and to outline the approach the
14 inquiry intends to take as it moves towards public
15 hearings on evidence. In addition, the preliminary
16 hearing provides an opportunity for the legal
17 representatives of core participants to raise issues of
18 a preliminary nature.

19 I shall begin with a few general points about the
20 inquiry.

21 The purpose of the inquiry is spelled out in the
22 terms of reference. The full terms of reference are

1 available on the inquiry's website. They are stated in
2 broad terms, which will allow the inquiry to follow the
3 evidence and thoroughly explore the issues.

4 In summary, they allow the investigation of the
5 immediate circumstances leading to the death of
6 Mr Bayoh, how the police dealt with the aftermath of the
7 incident, the conduct of the Lord Advocate and the
8 Police Investigations and Review Commissioner of the
9 investigation into the death, and whether the issue of
10 race was a factor at any stage.

11 The terms of reference include a requirement to
12 examine the post-incident management process and the
13 investigation, in terms of compliance with any relevant
14 convention rights.

15 Article 2 of the European Convention on Human Rights
16 provides that everyone's right to life shall be
17 protected by law, and has been held by the European
18 Court of Human Rights to impose a procedural requirement
19 on the state to carry out an independent, adequate and
20 effective investigation when a person dies in police
21 custody, and that includes a requirement that the family
22 of the person must be involved in that process, in order

1 to protect their legitimate interests. I am also
2 conscious that these Article 2 requirements apply to the
3 inquiry itself. So I am required to report to the
4 Scottish Ministers on these matters and make
5 recommendations.

6 The next general point is that in terms of section 2
7 of the Inquiries Act, the inquiry cannot make any
8 determination as to criminal or civil liability. Its
9 purpose is to seek to ascertain the truth, and to that
10 purpose, I am fully committed. I am independent of
11 government and have a responsibility to ensure that the
12 inquiry is carried out in an independent, impartial,
13 fair and effective manner. Again, I am fully committed
14 to fulfil that responsibility.

15 In that endeavour, I am supported by an inquiry
16 team, the members of which have already demonstrated
17 commitment, dedication and efficiency in implementing
18 the work of the inquiry.

19 Next, I turn to the issue of core participants.
20 I have designated a number of individuals and
21 organisations as core participants. In general, having
22 regard to Rule 4 of the Inquiries (Scotland) Rules 2007,

1 core participants are likely to be individuals or
2 organisations who played, or may have played, a direct
3 and significant role in relation to the matters to which
4 the inquiry relates, or who may have a significant
5 interest in an important aspect of these matters, or who
6 may be subject to significant or explicit criticism
7 during the proceedings of the inquiry or in its report.

8 The full list of core participants is on the website
9 and in a moment I shall ask senior counsel to the
10 inquiry to identify the core participants and their
11 legal representatives. Before I do that, I wish to say
12 something about the role of a core participant.

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

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

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

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

22 Ms Grahame.

Inquiry Counsel Introductions

MS GRAHAME: Thank you, sir.

My name is Angela Grahame. I am a Queen's Counsel and my role is senior counsel to the inquiry.

In carrying out this function, I will be assisted by Laura Thomson, junior counsel to the inquiry, who is joining us remotely this morning, due to Covid restrictions; but she will be in person for the hearings and will normally sit to my left.

Sitting to my left today is the solicitor to the inquiry, Sadif Ashraf. On occasion her deputy, Ciara Pang, may be sitting in on the inquiry.

We are supported by the secretary to the inquiry, Chris Crowther, who is sitting directly opposite me. His deputy is Pamela Beer, who may substitute for Mr Crowther on occasion. To his right is Gillian Wildgoose, evidence manager and head of our evidence team, who will assist by displaying, via the screens in front of everyone, each document to which refer during hearings. In addition, we will be supported behind the scenes by our wider legal team, evidence team and other administrative staff.

1 Appearing on behalf of family members of Sheku Bayoh
2 are Claire Mitchell QC and her junior, Clare Connolly,
3 advocate. They are instructed by Aamer Anwar and
4 April Meechan, solicitors. And Mr Anwar is sitting with
5 Mr and Mrs Johnson, the sister and brother-in-law of
6 Sheku Bayoh. They are sitting in the public gallery
7 today.

8 Other relatives and family members of Sheku Bayoh
9 are joining us remotely this morning.

10 Appearing on behalf of the Chief Constable of the
11 Police Service of Scotland is Maria Maguire QC. The
12 Chief Constable will also be represented by
13 Lisa Henderson QC and assisted by a junior, Vincent
14 Williams, barrister. They are instructed by
15 Erica Watson, solicitor, and also representing the
16 Chief Constable and present today is Assistant
17 Chief Constable Alan Spears.

18 Representing the Lord Advocate are Alistair Duncan
19 QC and Leigh Lawrie, advocate. They are instructed by
20 Karen Aitken, who is a solicitor with the Crown Office
21 and Procurator Fiscal Service.

22 On behalf of the Police and Information Review

1 Commissioner are John Scott QC and Simon Crabb,
2 advocate. They are instructed by Michelle MacLeod,
3 solicitor.

4 On behalf of the Scottish Police Federation, retired
5 Constable Nicole Short and Constable Craig Walker are
6 the dean of faculty, Roddy Dunlop QC and his junior,
7 Euan Scott, advocate, and they are instructed by
8 Peter Watson, solicitor.

9 Brian McConnachie QC and Laura Anne Radcliffe,
10 advocate are representing retired constable Alan Paton
11 and they are instructed by Paul Kavanagh, solicitor.

12 Representing Constable Ashley Tomlinson, Constable
13 Kayleigh Good and Constable Alan Smith are
14 Gordon Jackson QC and Carla Fraser, advocate, and they
15 are both instructed by Robert Vaughan, solicitor.

16 Representing Sergeant Scott Maxwell, Constable
17 Daniel Gibson and Constable James McDonough are
18 Shelagh McCall QC and David Adams, advocate. They are
19 instructed by Gordon McWilliams, solicitor.

20 Representing Chief Constable Garry McEwan,
21 Chief Superintendent Conrad Trickett and
22 Temporary Assistant Chief Constable Patrick Campbell is

1 Duncan Hamilton QC. He is instructed by
2 Callum Anderson, solicitor.

3 Finally, representing the Coalition for Racial
4 Equality and Rights is Mark Moir QC. He is instructed
5 by Ian Moir, solicitor, and present today from CRER is
6 Jatin Haria, executive director of CRER.

7 These comprise the legal representatives of all the
8 designated core participants and those attending in the
9 hearing room this morning, sir.

10 LORD BRACADE: Thank you, Ms Grahame.

11 May I ask you now to deal with the next two items
12 that I mentioned earlier, namely to update the core
13 participants, members of the public and the media about
14 the progress of the inquiry to date and outline the
15 approach the inquiry intends to take in the future as it
16 moves towards public hearings and evidence?

17 MS GRAHAME: Thank you, sir.

18 In order to provide information to the public, on
19 30 April this year, you gave an update of the work of
20 the inquiry, which is available online via the inquiry's
21 website. Both prior to and since that date,
22 a considerable amount of preparatory work has been

1 undertaken by the inquiry team. My comments will add to
2 the information given by you on 30 April.

3 In covering both an update on progress and the
4 approach we will take in the future, I would like to
5 address eight areas.

6 Number 1, gathering in documentation. On
7 30 November last year, immediately upon the inquiry
8 commencing, the solicitor to the inquiry issued
9 section 21 notices to Police Scotland, PIRC and the
10 Lord Advocate, seeking retrieval of documents related to
11 the terms of reference. Further, section 21 notices
12 have been issued since then seeking additional
13 information.

14 This year, the evidence team have gathered in over
15 21,000 items, as a result of this process, and we are
16 continuing to do so. The evidence team are in the
17 process of meticulously cataloguing every item and
18 ascribing an individual identification number to each
19 document. Much of this is done digitally and they are
20 identifying duplicate items and items which cannot, for
21 one reason or another, be opened and require engagement
22 with the provider, to ensure that a working and

1 accessible version is available, and this is
2 a labour-intensive task.

3 At the same time, the legal team are examining the
4 items retrieved to identify those that are material to
5 the inquiry's terms of reference.

6 Number 2, disclosure. There is no statutory
7 obligation of disclosure on the inquiry, but in order to
8 further your aims that, first of all, this inquiry act
9 with transparency and openness and, secondly, to
10 encourage core participants to engage with us and assist
11 with the work of the inquiry, we have started to
12 disclose relevant and material documentation to the core
13 participants at this very early stage.

14 Prior to commencing disclosure, it was clear that
15 considerable work would be required to ensure that we
16 have complied with our legal obligations, in terms of
17 GDPR and data protection.

18 A protocol for redactions was prepared, together
19 with a restriction order, and these are available on our
20 website. This restriction order prevents items which
21 are shared by the inquiry with core participants and
22 their legal representatives from being shared,

1 published, revealed or communicated further. Every
2 document which is disclosed must be checked and
3 appropriate redactions made to ensure that data is not
4 disclosed to others, unless necessary. That includes
5 personal data and sensitive personal data. It also
6 requires us to cross-reference multiple documents to
7 ensure that jigsaw identification is not possible.

8 Complying with all of these obligations is
9 an extremely complex and time-consuming task and
10 involves careful consideration of thousands of pages.

11 In addition to GDPR and data protection, it has been
12 necessary to seek the consent of the Lord Advocate to
13 allow disclosure of certain documents. Much progress
14 has been made as a result of the inquiry team working
15 together, and the process of disclosure has now started.
16 This began on 7 October this year and is being rolled
17 out on an ongoing basis as more and more documents
18 become available.

19 In due course, we understand that it is your
20 intention to make documentation available to the public
21 via the website and for this to be done at the time of
22 the evidential hearings when witness evidence is being

1 given. However, all of the documentation currently
2 available to the inquiry will not necessarily be led in
3 evidence or disclosed to the public. This will be
4 reviewed in due course.

5 Number 3, Article 2 and the framework document. As
6 you have said, we understand that Article 2 of the
7 European Convention on Human Rights is engaged, and from
8 the outset of this inquiry, we have taken practical
9 steps to comply with those obligations. We have taken
10 steps to ensure that the investigation carried out by
11 the inquiry is effective and steps have been taken to
12 secure the evidence concerning the incident. This work
13 has been ongoing since the date the inquiry officially
14 commenced, 30 November last year, and continues to date,
15 and we have gathered in and considered substantial
16 numbers of documents. We are now looking forward to
17 taking witness statements, and I will come to that in
18 a moment.

19 We have sought to ensure that those working in and
20 engaged with the inquiry are independent of the state
21 bodies who are subject to investigation by the terms of
22 reference.

1 As you have said, we also wish to ensure that the
2 investigation is public and accessible, particularly to
3 the core participants. It is not necessary for anyone
4 who is involved, or who wishes to view proceedings, to
5 travel to Edinburgh and be present within the hearing
6 room, due to the technology and facilities.

7 We have also made arrangements to accommodate the
8 family members of Sheku Bayoh.

9 You have made clear from the outset that there must
10 be a sufficient element of public scrutiny to secure
11 accountability and family members should be involved and
12 placed at the very centre of our work.

13 Another obligation, in terms of Article 2, is that
14 the inquiry must be reasonably prompt. With this in
15 mind, I would like to provide a further update on the
16 framework document which was discussed by you in your
17 video statement in April. During the video, you spoke
18 of the intention to prepare a framework document. At
19 that time, our plan was to gather in all the documents,
20 read everything and then provide core participants with
21 a document which set out a summary of all events that we
22 had identified from the terms of reference as requiring

1 investigation.

2 For the six months of the inquiry, we were gathering
3 in documentation and followed the approach I have just
4 outlined. As we gathered in more documentation and
5 assessed the rate at which our team was able to collate,
6 identify and read each item, it became clear that,
7 despite our best efforts, progress was too slow.

8 Following a review, we calculated that we would not be
9 able to complete our reading before the end of 2022. On
10 that basis, disclosure would not begin until well into
11 2023, and hearings would not start until after that.
12 This was not considered an acceptable rate of progress
13 for anyone involved. As a result, and with your
14 guidance, we embarked on a review. We reviewed our
15 methodology and we have adapted our approach.

16 Number 4, the current approach and planned hearings.
17 Rather than one framework document, we decided to
18 refocus our preparation into a series of hearings. Each
19 hearing will group parts of the original framework
20 together to allow us to present the evidence in
21 a chronological, cohesive and logical manner, and there
22 will be no more than six hearings.

1 The first hearing will cover the events leading up
2 to the death of Sheku Bayoh and will include events at
3 Kirkcaldy police office on 3 May 2015. It will also
4 touch on issues regarding the actual training received
5 by individual officers, their use of equipment and use
6 of force.

7 The second hearing will cover the cause of death and
8 will include expert medical evidence.

9 The third hearing will cover post-incident
10 management, and this will cover post-incident management
11 not just by Police Scotland but also the investigations
12 of the PIRC and Crown Office, and will cover
13 a considerable period of time. This will also cover
14 liaison with the family, and it may be that this hearing
15 will have to be split into two phases.

16 The later hearings will cover media engagement,
17 investigations carried out in parallel to those carried
18 out by Police Scotland, PIRC or the Crown Office.

19 And the final hearing will cover race.

20 Scoping documents were prepared, sketching out what
21 topics would be covered and in which order. We then
22 identified and prioritised the documentation required

1 for hearing 1, and we prioritised redaction and
2 disclosure of the documentation for this hearing.

3 Disclosing documents to core participants in stages,
4 whilst prioritising the documents for hearing 1, has
5 allowed us to make more progress at an earlier stage
6 than would otherwise have been the case. By
7 prioritising these measures for individual hearings, we
8 are ensuring that the procedural requirements of
9 Article 2 are complied with expeditiously.

10 Throughout each of these stages, we have had
11 discussions amongst the team, sought the advice and
12 guidance of both yourself and the assessors, and we have
13 had meetings and communicated with the core participants
14 and kept them up to date. We are taking a collaborative
15 approach and intend to continue doing so as we approach
16 the evidential hearings.

17 Instead of the framework document, in preparation
18 for hearing 1, we have now prepared some specific
19 documents, and these are a chronology of events, a paper
20 covering the relevant law and practice, details of key
21 individuals, including Sheku Bayoh and the police
22 officers who attended the scene. This includes personal

1 and medical information, but only insofar as is
2 necessary for the work of the inquiry, a document
3 outlining key issues for consideration during the
4 hearings, a list of the witnesses from whom we intend to
5 take statements and who may be called to give evidence
6 at hearing 1.

7 These documents will shortly be available for
8 consideration by the core participants. They provide
9 core participants with notice of the issues, which we
10 expect will arise in evidence and in law, and which we
11 shall be exploring in hearing 1. It is hoped that the
12 core participants will assist us by considering these
13 documents, identifying any further issues that they
14 consider significant and suggesting additional witnesses
15 or other important documents we should cover. They will
16 then have ample opportunity to comment on these matters
17 in advance of the first hearing. We have placed no
18 deadlines on their opportunities to engage with this
19 inquiry work.

20 At the conclusion of certain hearings, the core
21 participants will be given an opportunity to make
22 closing submissions to you on evidential and legal

1 issues. These submissions will be made public on the
2 website at the appropriate time.

3 This approach will be adopted in advance of each
4 hearing. The exception to this will be the final
5 hearing, which will focus on race.

6 The terms of reference require the inquiry to
7 consider the extent of any to which the events leading
8 up to, and following, Sheku Bayoh's death, in particular
9 the actions of the officers involved were affected by
10 his actual or perceived race. At each evidential
11 hearing, the inquiry will consider the extent, if any,
12 to which the events and actions of the officers involved
13 were affected by his actual or perceived race.

14 Evidence will be sought at each hearing about this
15 matter. In carrying out this task, particular regard
16 will be had to any actions, steps, instructions,
17 behaviours or omissions that fell below, or were
18 contrary to, any applicable guidance, practice, training
19 or legislation.

20 Any and all evidence obtained from the hearings will
21 then be collated and marshalled prior to the final
22 hearing. In the final hearing, we will seek to draw

1 together all the evidence heard at each hearing
2 regarding race. For this reason, I do not anticipate
3 that a traditional chronology or timeline will assist.
4 We will instead identify any evidence of overt racism,
5 any failures or inadequacies and evidence of any aspect
6 of events which could potentially give rise to
7 an inference that decisions and outcomes were based on
8 race. This evidence will be put before you in the final
9 hearing, together with evidence about the findings of
10 previous reviews, other inquiries, expert opinion and
11 statistical evidence. This will be done to allow you to
12 consider whether an inference may be drawn that race was
13 a factor in the death of Sheku Bayoh, the post-incident
14 management or the subsequent investigations. These
15 categories will be drawn from all the evidence and
16 brought together in the final hearing, and evidence from
17 experts and statistical evidence is likely to be heard
18 at that time.

19 The inquiry team are working at a careful and steady
20 pace that allows us to make progress towards the
21 hearings and we will continue to liaise regularly with
22 the assessors and the legal representatives of the core

1 participants prior to the hearings. Our approach is
2 always flexible and may be adapted, subject to comments
3 or concerns raised by the core participants. Any future
4 alteration to this plan of action will be brought to
5 your attention and your guidance sought.

6 Number 5, witness statements. No evidence has ever
7 been led about the events of 3 May 2015 in any forum.
8 So hearing 1 will be the first opportunity to hear that
9 evidence. With this in mind, the inquiry are now moving
10 to the stage of seeking witness statements. While
11 letters to the doctors and nurses from Victoria Hospital
12 have already been sent out, most letters will be sent
13 out shortly. They will be to the other witnesses that
14 we are prioritising for hearing 1. We would invite and
15 encourage those who received letters to contact the
16 inquiry team, to make arrangements, so that statements
17 may be taken as soon as possible.

18 Number 6, experts. We have also started the process
19 of considering what expert evidence will be required for
20 hearings 1 and 2. Steps will be taken to secure experts
21 who are independent and impartial. It is for the
22 inquiry to select appropriate experts and to instruct

1 them to give opinions on the issues identified by us.
2 For that reason, we ask core participants to resist any
3 temptation to obtain their own expert reports.

4 Within the past few months, we have identified
5 digital reconstruction experts, advanced laser imaging.
6 The contract to secure their services has been agreed
7 and they are currently working with a view to preparing
8 a digital reconstruction of the events at Hayfield Road,
9 Kirkcaldy, and the nature of the restraint of
10 Sheku Bayoh which we wish to be available for hearing 1.

11 We have provided them with the relevant
12 documentation and other information we have, including
13 photographs, CCTV footage, airwaves recordings, a Leica
14 scan of the scene, mobile footage, maps and sketches.
15 In turn, they have identified other information they
16 would wish to have, and the evidence team are gathering
17 in these items. They will prepare a 3D image of the
18 scene, which we understand will provide aerial views,
19 show different perspectives, lines of sight and
20 viewpoints from different locations and angles around
21 the scene. They will also create images which
22 demonstrate the height of key individuals within the

1 scene. They will not be creating one version of events,
2 but will provide the inquiry with the ability to view
3 the scene as it existed at the time. This will allow
4 the inquiry to hear evidence from individual witnesses
5 who may in turn be helped to explain their actions or
6 their position through the use of these 3D images.

7 Work is ongoing, but details of the reconstruction
8 will be shared with core participants, once it is
9 available and in advance of hearing 1.

10 Number 7, Capital House. Today is our first hearing
11 in Capital House. You mentioned Capital House in your
12 statement in April, but it was in August of this year
13 that the inquiry team were able to take control of the
14 premises. Since then, the team, led by the secretary to
15 the inquiry, Mr Crowther, has worked to ensure
16 sufficient facilities are available for the smooth
17 running of inquiry hearings.

18 The office comprises private spaces for
19 Sheku Bayoh's family, a waiting area for witnesses and
20 consultation rooms to allow private discussion between
21 legal teams and their clients. There are also two rooms
22 for legal representatives with locker facilities, Wi-Fi

1 and power points for laptop charging. Certain rooms
2 have television monitors which permit live-streaming for
3 those within the room.

4 The inquiry has offered tours to all legal
5 participants -- representatives, I should say, and core
6 participants ahead of the evidential hearings. The same
7 will shortly be offered to witnesses with a view to
8 ensuring that everyone is as prepared and as comfortable
9 as they can be with these facilities before the
10 evidential hearings begin. If any legal representatives
11 or core participants have not yet had a tour and would
12 like to take up the offer, would they please contact the
13 inquiry secretary, Mr Crowther.

14 Similarly, any feedback in relation to the premises
15 and services available should be directed to
16 Mr Crowther.

17 The same applies to the legal representatives who
18 are seated here today. This is the first time that they
19 have had the opportunity to test the facilities, and any
20 suggestions or comments they wish to make about their
21 experience here today are welcome and again should be
22 directed towards Mr Crowther.

1 Finally, if I may, I would like to turn to the use
2 of language.

3 We are aware of the sensitivities of the use of
4 certain language and we wish to avoid causing any
5 offence. Equally, it is vital, if we are to get to the
6 truth, that we use language that is basic, simple and
7 understood by all witnesses when we are asking questions
8 of them.

9 We have determined that Sheku Bayoh will be referred
10 to as a black man. We have discussed this matter with
11 the legal representatives of the relatives and family of
12 Sheku Bayoh and they have agreed that they are happy
13 with that description for the purposes of the work of
14 this inquiry. For that reason, we will use the words
15 and expressions "black" or "white" during questioning.

16 We do not want those engaged with the work of the
17 inquiry to shy away from asking probing questions or
18 raising issues for fear of offending where particular
19 terms may be used. So those engaging with the inquiry
20 should feel free to use the same terms during any
21 discussions or questioning.

22 In this inquiry, we will be carefully examining

1 every choice made, every action and omission, and asking
2 whether the fact that Mr Bayoh was a black man made
3 a difference. We will be asking: had Mr Bayoh been
4 white, would he and his family have been treated in the
5 same way? Had Mr Bayoh been white, would the
6 investigations have proceeded in the same way? Had
7 Mr Bayoh been white, would different choices have been
8 made about the appropriate course of action? At every
9 stage, we will be making this comparison and asking
10 ourselves that question.

11 Those complete my comments, sir.

12 LORD BRACADEL: Thank you very much, Ms Grahame.

13 I shall now deal with some of the practical
14 arrangements for future public hearings on evidence.

15 I intend that during the evidential hearings, the
16 inquiry should sit on Tuesday to Friday each week,
17 between 10.00 am and 4.00 pm.

18 I have already mentioned that realtime transcription
19 will be available and the transcripts will be posted on
20 the website.

21 Also that the hearings will be broadcast live on the
22 inquiry's YouTube channel and will be available for

1 subsequent viewing on the website. And I shall, in due
2 course, give guidance in relation to the broadcasting of
3 evidential hearings.

4 The inquiry will be working with electronic
5 evidence. We do not plan to display evidence on paper.
6 Evidence will be displayed on monitors on the desk of
7 the witness who will sit in the seat opposite me in the
8 U-shaped table. It will also be displayed on the desks
9 of the legal representatives and the inquiry team, and
10 documents will also be displayed on the large screens
11 which you can see placed around the room.

12 I intend to permit opening statements, together with
13 written and oral closing statements.

14 In respect of hearings 1 and 2, I intend that there
15 will be one set of closing statements covering both
16 hearings to be heard at the end of hearing 2. I shall
17 take a flexible approach to later hearings.

18 Proposed witnesses, and the order in which they will
19 give evidence, will be published on the website and any
20 changes will be intimated with as much notice as
21 possible.

22 Evidence will be given on oath or affirmation.

1 While, where possible, I intend that witnesses should be
2 called only once, the nature of the evidence is such
3 that it may be necessary to recall witnesses.

4 There is provision for taking evidence and making
5 submissions remotely.

6 The standard of proof that I intend to adopt, when
7 considering evidence, with a view to making a factual
8 determination, will be the civil standard of balance of
9 probabilities.

10 Moving on now to the final purpose of the
11 preliminary hearing which I mentioned earlier, which was
12 to allow legal representatives of core participants
13 an opportunity to raise any issues of a preliminary
14 nature. When the preliminary hearing was announced, the
15 solicitor to the inquiry wrote to the legal
16 representatives of the core participants, indicating
17 that it would be open to them to give notice of any
18 preliminary issue which they considered could usefully
19 be raised at this preliminary hearing.

20 A preliminary issue has been raised on behalf of the
21 family. The solicitor for the family has lodged the
22 following motion. On behalf of the family, it is

1 submitted that the chair of the Sheku Bayoh public
2 inquiry should exercise his power to request core
3 participants to produce position statements as part of
4 the inquiry process. The motion was accompanied by
5 brief supporting submissions.

6 I consider that this is a matter worth exploring
7 further and, accordingly, I shall allow time for fuller
8 written submissions in support of the motion to be
9 lodged, and thereafter give other core participants
10 an opportunity to respond.

11 So written submissions in support of the motion
12 should be lodged by the solicitor representing the
13 family by 8 December 2021. These submissions will then
14 be circulated by the inquiry, and other core
15 participants who wish to make submissions should lodge
16 their written submissions by 12 January 2022.

17 Ms Grahame?

18 MS GRAHAME: I apologise, sir. Despite my best endeavours,
19 I forgot to mention something.

20 LORD BRACADE: Yes, certainly.

21 MS GRAHAME: If I may, the first hearing is scheduled to
22 commence on 10 May next year. I apologise for my

1 omission.

2 LORD BRACADALE: Thank you very much. That is clearly
3 an important matter which will be of interest to
4 everyone. So the first hearing will begin on Tuesday,
5 10 May.

6 Well, that completes the preliminary hearing and
7 I am grateful to you all for attending today, and that
8 includes those who attended remotely, and I bid you good
9 day. The inquiry will now adjourn.

10 (11.23 am)

11 (The inquiry adjourned until Tuesday, 10 May 2022)

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6	Lord Bracadale Opening Remarks and1
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