

SHEKU BAYOH PUBLIC INQUIRY

OPENING STATEMENT ON BEHALF OF THE FAMILIES OF SHEKU BAYOH

HEARING ONE MAY 2022

1. I am instructed by Aamer Anwar and Company, and I am assisted by learned junior counsel Clare Connelly.
2. This opening statement is made on behalf of the families of Sheku Bayoh.
3. SHEKU BAYOH died on 3rd May 2015. He was 31 years of age. He was the father of two sons, he was a loving partner to Collette, he was a son, a brother, a brother-in-law and an uncle. Sheku was a man loved by his family and friends and was a respected member of his community in Kirkcaldy. The Inquiry will see the very moving pen portrait made by those who loved Sheku Bayoh, and later in this Inquiry will hear from some of them who will give evidence. Sheku's families have endured distress and anxiety in contemplation of his suffering before his death and grief and sorrow caused by his death that continues to be experienced daily. Two young boys will grow up without their father, a mother will live the remainder of her life without her only son, Sheku's partner and siblings suffer his loss. The family have fought a hard battle and endured a long wait for this Public Inquiry. The families of Sheku Bayoh have experienced 7 years of institutional failure which began with a failure to preserve the life of Sheku and thereafter to properly investigate his death. Following his death, Sheku's families endured the media smearing and stereotyping Sheku and the use of racist stereotypes in connection with the circumstances of his death.
4. The Inquiry will hear evidence that about 0714 hours on 3 May 2015, Police Scotland responded to reports of a man with a knife behaving erratically, that had been received from members of the public, and were called to attend in the area of Hendry Road and Hayfield Road, Kirkcaldy. Nine officers employed by Police Scotland attended in five

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marked police vehicles and two police vans within minutes of receiving the reports. The attending police officers were Scott Maxwell, Alan Paton, Ashley Tomlinson, Nicole Short, Craig Walker, Daniel Gibson, James McDonough, Kayleigh Good and Alan Smith.

5. Within a period of about 40 to 50 seconds officers Maxwell, Paton, Tomlinson and Short all had used force against Sheku in circumstances that the family believes were not necessary, legitimate, or proportionate.
6. About 07.21.37, approximately 46 seconds after the first engagement with police, Sheku was on the ground and at 07.23.41 was reported to Inspector Stuart as “secure on the ground”.
7. Whilst he was on the ground Sheku was restrained and forced face-down on to the ground where he was hand-cuffed and leg restraints were applied to both his knees and ankles. Six officers were involved in restraining Sheku and, during the time he was face down on the ground, six officers lay on top of Sheku, crossing over him from both sides and covering the whole of his body. One officer was seen to use a baton to hold Sheku down by pushing it on his body, and other officers were also seen to be using their body weight in order to restrain Sheku by placing themselves on his upper back, shoulders and neck area and by using their knees to hold him down. Sheku Bayoh whilst described as being extremely large, was actually 5ft 10 inches weighing 12 stones 10lbs (81KG), whilst the combined weight of the restraint officers was 100 stones 2lbs (636KG). Sheku was positioned lying on the ground face - downwards and a high degree of pressure was applied to his trunk prior to his breathing becoming restricted and stopping.
8. Sheku Bayoh lost consciousness at or about 07.25.41, approximately 2 minutes after Inspector Stuart was advised by radio that Sheku was secure on the ground. At or about 07.29.59 he stopped breathing. His heart stopped. An ambulance arrived and at 07.42. He was officially pronounced dead at Accident and Emergency Department of Kirkcaldy Hospital hospital at 9.04 am.
9. For seven long years the families of Sheku Bayoh have waited to have their questions answered about what happened on 3rd May 2015. Their suffering has been compounded when the public bodies who should

have protected Sheku Bayoh, who should have properly investigated what happened and who should have sought justice for Sheku Bayoh, did not do their job. The police officers, Police Scotland, the PIRC, The Scottish Police Federation and the Crown Office all have difficult questions to answer.

10. Now is the time for the truth about Sheku Bayoh's death to emerge. Nothing that this Inquiry can do will return Sheku Bayoh to his family, but what it can do is be relentless getting to the truth about his death, because without truth there can be no justice. In relation to hearing 1 – here is a small sample of questions that the families want answers to.

INITIAL ENGAGEMENT

1. Why did attending officers not make an initial assessment and feedback straight away, via radio, to Inspector Stuart as they had been instructed?
2. Why was no attempt made to communicate, contain, preclude or use any other reasonable options prior to deploying use of force?
3. Why was no risk assessment that considered the impact factors *-the availability of police officer support, the location, the risk posed to members of the public, the physical mental and sensory condition of the assailant, the seriousness of the imminent risk of attack and the presence of weapons* - affecting the situation carried out by the attending officers prior to any form of engagement with Sheku?
4. What should /could have been done to establish whether Sheku was carrying a weapon at that time and why, if it was believed that Sheku Bayoh was carrying a knife, was edged weapons awareness training, not to approach and maintain a safe reactionary gap of minimum of 21 feet, not followed?

THE USE OF FORCE

5. Why did the officers proceed to use force in the form of discharge of incapacitant sprays when Hayfield Road was quiet, there were no

members of the public on the road and Sheku was walking along Hayfield Road with his arms at his sides and his palms facing forwards and had made no physical or verbal threats of violence?

6. Following the use of incapacitant spray why did the officers fail to take steps to ensure the health and safety of Sheku?

INTERACTION WITH PC SHORT

7. What is the explanation for the conflicting accounts given in police statements of the assault of Nicole Short and the contemporaneous communication that took place with the Control room and the footage obtained via CCTV and mobile phone recording?

RESTRAINT

8. What consideration should have been given prior to the use of physical restraint in this case?
9. Was the method of restraint in accordance with training?
10. Did the method of restraint used in this case carry with it a foreseeable risk of death?
11. Was the method of restraint appropriately managed at the locus in accordance with training? In particular, was an officer identified and positioned at Sheku's head to monitor his breathing?

POST EVENT MANAGEMENT

12. Why was appropriate crime scene management not employed at the scene of Sheku's restraint to allow full and proper investigation and the recovery of evidence to take place?
13. Why were police officers allowed to remain together in the police canteen for up to 8 hours?
14. Why were police officers not separated and statements taken from them?
15. Why were the relevant forms not completed in respect of Use of Force?
16. What role did the Police Federation have in advising the police officers around giving statements?
17. What clothing and other items of evidence, for example CS Gas and Pava Spray, were seized from the attending officers at the police station? If none, why not?
18. What action, disciplinary or otherwise has been taken against individual attending police officers for their failure to follow instructions given on arrival at the scene; failure to complete Use of Force forms and any other breaches of duty?
19. Were any of the attending officers known to have racist sympathies or alleged to have acted in a racially discriminatory manner prior to this incident?
20. Were any of the attending officers previously investigated in respect of suspected racist sympathies or racial discrimination prior to this incident?

21. What language was used to describe Sheku Bayoh by police and civilian witnesses and to what extent is this language informed by racist stereotypes, for example, a 'man deranged with superhuman strength'; 'he was massive and is the biggest male that I have seen', 'could be part of a terrorist plot'.

WHAT THE FAMILIES WANT FROM THE INQUIRY

11. The families want the whole truth from this Inquiry. How and why did Sheku Bayoh die? If there was wrongdoing on the part of individuals or otherwise that wrongdoing must be identified, scrutinised, and made public. This Inquiry and the investigations that underpin it should ensure:

- that the full facts are brought to light;
- that any culpable and discreditable conduct by police officers is exposed and brought to public notice;
- that suspicion of deliberate wrongdoing by police officers (if unjustified) is allayed;
- that any shortcomings in training or execution of duty by police officers is exposed;
- that the role Sheku Bayoh's race or perceived race played in his detention and death is scrutinised;
- that the actions of Police Scotland, PIRC, the Police Federation and Crown Office are scrutinised;
- that there is scrutiny of whether institutional racism existed and informed the actions of the attending police officers, Police Scotland, PIRC, the Police Federation and Crown Office.

12. To achieve the foregoing the Inquiry must without fear or favour identify and examine all relevant evidence, be prepared to ask difficult questions of individuals and institutions who may not usually be subject to scrutiny and be tenacious to get to the truth. Sheku Bayoh and his families deserve no less.

13. This hard fought for Public Inquiry is the final port of call for these questions to be answered. For this to happen the Bayoh families wish to effectively participate in the Inquiry by having the relevant questions asked. This is not a request but a right of effective participation that is safeguarded by Article 2. The Bayoh family is concerned that racial

stereotyping may have been a contributory factor in the death of Sheku Bayoh resulting from restraint/use of force. The question of racism has from the very beginning been the 'elephant in the room'; the Inquiry must scrutinise how this forms part of the investigation process. The family wish the Inquiry to scrutinise the use of inappropriate language, unconscious racism, unwitting racism, by police officers and those from the authorities that followed in their footsteps.

14. Whilst this undoubtedly adds to the burden that the Chair and assessors carry, the legal team representing the Bayoh Families are here to assist wherever they can in supporting you to fulfil the Terms of Reference of the Inquiry.
15. The Family need the Inquiry to ensure the issue of race is central -- always posing the question -- would this have happened if Sheku Bayoh was white? The real answers to that question as seen in the Stephen Lawrence Inquiry, the Chhokar Inquiry and others since, cannot however be achieved by simply asking the question of the witnesses, "would you have acted differently if Sheku was a white man?" This Inquiry having identified the centrality of race has an opportunity to ensure that this is rigorously interrogated and to avoid the mistakes of prior Inquiries such as Stephen Lawrence and Chhokar.
16. The Inquiry will have to be live to the difficult questions in relation to racism. This is because the context of the death of Sheku Bayoh dying in his encounter with the police is far broader than what happened in Kirkcaldy on the 3rd of May 2015. The circumstances of his death are a reflection of a global issue.

When the Inquiry was set up, after years of campaigning by the family of SB, Humza Yousef, the then Cabinet Secretary for Justice Minister stated;

"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 November of 2020 the final report of Dame Elish Angiolini into her review of Complaints Handling and Investigations and Misconduct issues in relation to policing was published. She found evidence of racism within Police Scotland and

reflecting upon that she quoted Sir William Macpherson of The Stephen Lawrence Inquiry

“Unwitting racism can arise because of lack of understanding, ignorance or mistaken beliefs. It can arise from well-intentioned but patronising words or actions. It can arise from unfamiliarity with the behaviour or cultural traditions of people or families from minority ethnic communities. It can arise from racist stereotyping of black people as potential criminals or troublemakers. Often this arises out of uncritical self-understanding born out of an inflexible police ethos of the “traditional” way of doing things. Furthermore, such attitudes can thrive in a tightly knit community, so that there can be a collective failure to detect and to outlaw this breed of racism. The police canteen can too easily be the breeding ground.”

She went on to say in relation to Police Scotland - “Much of the evidence presented to me was a chastening reminder that in the police service and in the wider community attitudes have not changed as much as they should have since those words were written, or as much as we may like to believe that they have.”

After the murder of George Floyd in 2020, the Human Rights Council requested a report from United Nations High Commissioner for Human Rights. The report, published in June 2021, stated

“The murder of George Floyd on 25 May 2020 and the ensuing mass protests worldwide have marked a watershed in the fight against racism. In some countries, there is now broader acknowledgment of the systemic nature of the racism that affects the lives of Africans and people of African descent and of the need to address the past in order to secure future conditions of life that uphold the dignity and rights of all. It is our collective duty to address these issues – immediately and everywhere.”

We invite the Inquiry to consider the terms of both the 2020 and 2021 reports referred to above, in the context of the death of Sheku Bayoh.

17. The Sheku Bayoh Inquiry will properly attract international interest. Against the background of the disproportionate numbers of deaths in custody of black people across the world, inquiries such as this are instrumental in exposing failures in individual incidents and the institutional racism that underpins, informs and empowers such incidents to occur again and again. This Inquiry is an opportunity to expose institutional racism and hold those responsible to account. This Inquiry must be fearless in

investigating the lack of accountability of our guardians of law and order.

18. Following Sheku's death the Bayoh family tried desperately to keep an open mind on what happened on Hayfield Road, Kirkcaldy on 3rd May 2015. They have remained dignified but full of rage- because they are not asking for anything special 'just the truth because without truth there can be no justice'.

The slogan that the family raised at the start of their campaign was "The dead cannot cry out for justice, it is the duty of the living to do so for them." To fulfil that duty this Inquiry must ensure that nobody is allowed to evade accountability or frustrate the inquisitorial process. Sheku Bayoh's family will never rest until they have the truth.