

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