

# PUBLIC INQUIRY INTO THE DEATH OF SHEKU BAYOH

---

## Opening Statement on behalf of the Police Investigations and Review Commissioner ('the PIRC')

---

### Introduction

The Police Investigations and Review Commissioner ('the PIRC') is grateful for the opportunity to make an opening statement at the outset of Phase 1 of the public hearings in this Inquiry. Before I say anything else I wish, on behalf of the PIRC and those representing her, to express my sincere condolences to the Bayoh family and to acknowledge the dignity and resilience they have shown whilst waiting for these proceedings to commence.

The PIRC is committed to assisting your Lordship in the Chair and the Inquiry team in achieving its twofold aim of:

- establishing the circumstances surrounding the death of Sheku Bayoh in police custody on 3 May 2015 and making recommendations to prevent deaths in similar circumstances;
- examining the post-incident management processes and subsequent investigation; and considering the extent (if any) to which the events leading up to and following the death of Sheku Bayoh - in particular the actions of the officers involved - were affected by his actual or perceived race and to make recommendations.

The PIRC welcomes this important public Inquiry and is committed to implementing the lessons or learning that may arise from its findings.

As you are aware, the PIRC involvement in the investigation of the death of Sheku Bayoh began with the instruction from the Crown on 3 May 2015 to investigate the interaction between the police and Sheku Bayoh at the time of his arrest and the events thereafter. As a consequence, the PIRC holds relevant material. It is important that the material is placed before this Inquiry. It is for this reason that the PIRC has been designated as a Core Participant to the Inquiry. The PIRC has been actively engaged in the preparation, presentation and disclosure of relevant material to the Inquiry since its inception and has co-operated fully with all requests from the Inquiry team, including the provision of a significant number of documentary and physical productions. The PIRC acknowledges that this work – which has been carried out since the Inquiry was announced and continues as required - was important and necessary. It is worth pointing out that the work undertaken in preparation for the Inquiry has been considerable and has involved the input of several members of the PIRC team as well as the Commissioner herself.

I wish to record my appreciation of the hard work and helpful approach of Senior Counsel to the Inquiry, the Solicitor to the Inquiry and the whole Inquiry Team. Regular discussions between counsel and different members of staff within the PIRC and the Inquiry Team have been key to ensuring good progress in addressing the many complex issues, including those relating to the sheer quantity of evidence.

## **Legislative Framework**

The Police and Fire Reform (Scotland) Act 2012 created *inter alia* a single Police Service for Scotland (the Police Service of Scotland, or, to use its corporate name, 'Police Scotland').

Prior to 2012, there existed reciprocal arrangements among the eight legacy forces to allow for the independent investigation of the conduct of officers. The introduction of a single service removed this opportunity. In accordance with the European Convention on Human Rights - with particular regard to Article 2: Right to Life and Article 3: Freedom from torture or inhumane treatment - there exists a requirement for an investigatory body with no "hierarchical or institutional connection" to those police officers under investigation. To this end, the 2012 Act also established the independent office of the Police Investigations and Review Commissioner ('the PIRC').

The PIRC came into existence on 1 April 2013<sup>1</sup>.

## **Role and Responsibilities of the PIRC.**

Section 33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006 ('the 2006 Act'), as amended, sets out the general functions of the PIRC.

One of those functions<sup>2</sup> is, where directed to do so by the appropriate prosecutor,:-

"to investigate, on behalf of the relevant procurator fiscal, the circumstances of any death involving a person serving with the police which that procurator fiscal is required to investigate under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016".<sup>3</sup>

Sections 1 and 2(4) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, includes all deaths in legal custody<sup>4</sup>.

A further function is, where directed to do so by the appropriate prosecutor, to investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence.

---

<sup>1</sup> [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>2</sup> Section 33A(b)(ii),

<sup>3</sup> In 2015, the equivalent provision was contained in the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

<sup>4</sup> [Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Act 2016 \(legislation.gov.uk\)](http://legislation.gov.uk)

In carrying out an investigation on behalf of the Crown Office and Procurator Fiscal Service ('COPFS'), the PIRC requires to comply with:–

“(a) any lawful instruction given by the appropriate prosecutor who issued the direction; and

(b) in the case of an investigation in which there is an indication that a person serving with the police may have committed an offence, any instruction issued by the Lord Advocate in relation to reporting, for consideration of the question of prosecution, of alleged offences”.<sup>5</sup>

### **Referral by COPFS**

Following the death of Sheku Bayoh on 3 May 2015, the PIRC was instructed by the Lord Advocate, in terms of Section 33A(b)(ii) of the 2006 Act, to investigate the interaction between the police and the Sheku Bayoh at the time of his arrest and the events thereafter.

The terms of reference of the Crown instruction to the PIRC were expanded on three occasions.

Firstly, on 5 May, the terms of reference were expanded to include investigation of:-

- (1) the circumstances leading up to the incident, namely the movements of Sheku Bayoh late on Saturday 2 May and during the early hours of Sunday 3 May, prior to contact with police, including his attendance at a house at Craigmount, Kirkcaldy, and events following his attendance there; and,
- (2) the incident in which the police became involved with Sheku Bayoh shortly after 7am on 3 May.

On 12 June, the PIRC was further directed by the Lord Advocate to investigate concerns expressed by Sheku Bayoh's family, namely:-

- (3) allegations by the family that they were provided with misleading and erroneous information concerning the death of Sheku Bayoh by police and a concern as to why they were provided with that information;
- (4) concerns that the initial police investigations and attempts to secure evidence were not thorough, meaning that crucial evidence was lost to the inquiry; and,
- (5) that there was inappropriate conferring between police officers.

Finally, on 2 July 2015, the PIRC was further directed by the Lord Advocate to:-

- (6) to investigate the allegation of criminal conduct made by Zahid Saeed;
- (7) (a) investigate issues of race and conduct;

---

<sup>5</sup> Section 41A of the 2006 Act

- (b) investigate allegations of potential contraventions of the Data Protection Act 1998;
- (c) investigate miscellaneous other matters.

## **Investigation**

The PIRC undertook an extensive investigation. This included obtaining some several hundred witness statements (a total of 512 statements were obtained, some taken by officers of Police Scotland; 10 were obtained by the PIRC from expert witnesses); examined seven separate incident scenes; and recovered in excess of 903 productions. Between May 2015 and the announcement of the public inquiry in late 2019, it is assessed that in excess of 10,954 hours were worked by PIRC staff in relation to the investigation of the death of Sheku Bayoh.

## **Findings**

The PIRC provided two reports to the Crown in relation to the investigation of the death of Sheku Bayoh; the first on 10 August 2015 and the second on 9 August 2016. The two reports considered the original Crown directed investigation and the additional terms of reference provided by the Crown. In addition to this, the PIRC provided three interim situational reports to the Crown to provide updates on the progress of investigations at 11 and 21 May 2015 and 30 October 2015.

## **PIRC**

In May 2015, the PIRC was still a fairly new organisation, having been in existence for only two years. At that time, institutional learning within the PIRC was still at an early stage.

It is fair to say that, in the seven years since then, there have been many changes. The organisation has grown in response to increasing demands. Considerable experience has been gained as a consequence of undertaking its statutory roles in that period. Many opportunities have been taken to learn and develop processes, policies and practice. The current Commissioner, the third to hold the position, has been in post since June 2019.

To assist with some context, between 2014 and 2015, the PIRC undertook 31 investigations; in 2021/22, the number of investigations undertaken was 124. In May 2015, the PIRC annual operating budget was £2,971,000; today it is £5,824,000. Prior to the investigation into the death of Sheku Bayoh, the PIRC had investigated a total of 10 deaths in custody; today the total number of deaths in custody investigated is 31.

While I do not plan to explore in detail - at this stage – the lessons and changes already learned since 2015, I consider it appropriate to highlight key areas that will fall to be considered in the first hearing where there has already been considerable change. These include:-

- the Post Incident Process (PIP) process;
- the manner and timescales of referrals from Police Scotland;
- the provision of witnesses statements;
- the investigative processes;
- reporting procedures; and,
- how the PIRC deals with allegations of discrimination in Investigations and Complaint Handling Reviews (CHRs).

I highlight these key developments in recognition of the fact that the PIRC is an evolving and learning organisation that has seen significant increase in demand and infrastructure since 2015. It is on this basis that, as I stated at the outset of my Opening Statement, the PIRC welcomes this public Inquiry and the opportunity for further critical learning which is necessary to continue to provide an independent investigation and review function vital to securing public trust and confidence in policing in Scotland.

John Scullion QC  
Senior Counsel for the PIRC  
10/05/22