

Opening Statement

Senior Counsel to the Sheku Bayoh Public Inquiry

Introduction

On 3 May 2015, a 31 year old man, Sheku Bayoh, died having been restrained by police officers at Hayfield Road, Kirkcaldy.

Sheku Bayoh was a cherished son, beloved father to his two young sons; loved by his partner, his sisters and his friends.

Since his death, no evidence has ever been led about what happened to him, before a criminal trial, a fatal accident inquiry or a civil proof but his relatives, family and friends have tirelessly campaigned to find out the truth about what happened on that day.

As a result of their efforts, on 12 November 2019 the then Cabinet Secretary for Justice, Humza Yousaf MSP, announced that a public inquiry would be held to examine (i) the events surrounding the death of Sheku Bayoh; (ii) the subsequent investigation; and (iii) whether race was a factor; and he appointed you as Chair of this Inquiry.

On 21 May 2020 after consultation with key parties, the terms of reference were announced.

After further consultation, two Assessors were appointed, Raju Bhatt and Michael Fuller QPM. Their expertise and experience will be available to assist you in this Inquiry.

1. The Inquiry

The Inquiry formally commenced on 30 November 2020 and work began to recruit a team of staff to assist you and to secure suitable premises and fit them out. These premises include not only this Hearing room, but rooms for the family and relatives of Sheku Bayoh, the legal representatives of Core Participants and members of the press, and offices for the extended inquiry team.

Throughout 2020 and 2021, despite the challenges faced by the Inquiry team, due to the pandemic and lockdown, 29,765 documents were gathered in and collated by the Inquiry team. These documents span material that covers our full Terms of Reference. In preparation of this, the first of a number of planned hearings, around 617 relevant documents have been identified, considered and disclosed to the Core Participants, to assist them in their preparations.

The public continued to be updated by way of video messages from you; along with public announcements, press releases and rulings; all of which remain available on the website.

At your invitation, a number of organisations and individuals applied to be Core Participants. Some are represented in groups; others are separately represented. Each application was considered and 11 Core Participants were granted that status. They are all represented here today.

As noted by you in the first Preliminary Hearing on 18 November 2021, Core participants have a key role in the inquiry. They may attend all, or some, of the sessions of the inquiry; either within the hearing room itself or remotely in the building or elsewhere via the live links provided; they may make opening and closing statements; they may suggest possible lines of inquiry and questioning to counsel to the inquiry; and they may, where appropriate and with your permission, ask questions of witnesses through their legal representative. Detailed guidance has been issued to legal representatives on making an application to ask questions, a copy of which is available on the website.

In addition, throughout this entire period, regular engagement: meetings and contact, has taken place between Core Participants' legal representatives and the inquiry team, to address questions; to share information; and to allow the inquiry team to consider any issues brought to our attention for investigation.

There have been two Preliminary Hearings: 18 November 2021 and 22 February 2022. These were recorded and footage of both remains available on the Sheku Bayoh Public Inquiry YouTube channel, accessible through the website.

All Core Participants are aware that you wish this Inquiry to be transparent, thorough and comprehensive and welcome any comments being drawn to our attention. That remains the position.

The Inquiry's Terms of Reference are broad; this is the first of several evidential hearings and the focus of this hearing will be on the events of 3 May 2015. A detailed chronology of those events was sent to Core Participants on 19 January 2022. The chronology was accompanied by a note on law and practice, and a list of the issues setting out the key events and questions to be explored and in respect of which evidence will be led at this hearing. Discrepancies, inconsistencies and conflicts in the evidence were highlighted. Core Participants were invited to draw to our attention any matters they considered had been overlooked by the Inquiry team. This gave Core Participants an opportunity, should they wish, to contribute to our work in advance of this hearing.

I am happy to say that useful discussions have and continue to take place and we remain open to any matters being intimated to us at any stage now and in the future. Unlike a trial or civil litigation, we have the option of returning to matters at a later stage, in the event something unexpected comes to light during the course of a hearing.

2. Approach to Witnesses

Since December 2021 the inquiry team has been engaged in securing witness statements for the inquiry from key witnesses.

We have carried out careful consideration of the paperwork. The inquiry team has been interviewing the principal witnesses to the events and has been taking detailed witness statements from them. These statements have been obtained having regard to the Chronology, the List of Issues, relevant documents and any prior statements recovered. These inquiry statements, once complete, are signed by the witnesses. Statements taken by the inquiry are evidence before you, available for your consideration and may be relied on by Core Participants in their closing submissions.

Conscious that the key events took place more than 7 years ago and that memories are bound to have faded to some extent, the Inquiry team has been particularly careful to tie in witnesses present recollections with the contemporaneous documents and any statements taken at the time.

The statements referred to in evidence will be made available on the website, during the hearing, so that anyone with an interest in the detail will be able to access these.

3. Request for Undertakings

As part of our work, the inquiry also sought statements from the attending officers. None of the attending officers confirmed their willingness to waive their right to exercise the privilege against self-incrimination. This led to a detailed discussion about whether some form of undertaking would be required for the officers.

A Hearing was fixed on 22 April 2022 and after considering detailed written submissions and hearing further oral submissions, you sought undertakings on behalf of the 9 attending officers and 3 senior officers.

At the end of March 2022, this request was refused by both the Solicitor General and the Deputy Chief Constable. Copies of their letters, explaining the reasons for their decisions, remain on the website.

The Inquiry remained fully committed to ascertaining the truth of how Sheku Bayoh died on 03 May 2015 and wished to retrieve the fullest possible evidence in relation to events that day.

Detailed questions were then prepared and statements in the form of answers to those questions were sought from each of the officers, to ascertain how much information they were willing to provide to the Inquiry in the absence of undertakings.

As a result, the Inquiry has been able to secure written statements of varying detail, from all of the attending officers. These statements, made in response to a Rule 8 Request, are signed by the witnesses. Again, these are evidence before you, available for your consideration and may be relied on by Core Participants in their closing submissions.

The statements that have been secured from the officers will be referred to in evidence and published on the website in due course.

In addition, it remains the intention of the Inquiry to seek oral evidence from all the attending officers.

4. Evidence at this Hearing

This hearing will be the first opportunity for the public, friends, relatives and family members of Sheku Bayoh to hear what happened to him on 3 May 2015 and they will hear this from individuals who witnessed the events first hand.

The inquiry has secured a substantial volume of material and it is not the intention to rehearse all the evidence at the public hearings, let alone to read out the contents of all the relevant documents.

Witnesses called to give evidence at the public hearing will do so under oath. These witnesses have provided signed statements and for those witnesses it is not my intention to rehearse in full each witnesses' evidence, as set out in their statement. The contents will be taken as read and on that basis, the examination in public may be restricted to certain passages, but the whole contents of the statement will be available to you and Core Participants whether or not the witness is asked about any particular passages. There are some witnesses, who will be asked more detailed questions in the hearings and primarily these will be eye witnesses to the events at Hayfield Road.

There are also some witnesses who may be called back at a later hearing to give evidence about subsequent events, such as the post incident investigation, after the death of Sheku Bayoh. This is to allow you to hear other relevant aspects of their evidence in the proper context. We are grateful for the co-operation of those witnesses, which includes a civilian witness and senior officers, and we appreciate the personal inconvenience this may cause. They have agreed to that arrangement at my request and for the benefit of the inquiry. For the purposes of Hearing 1 insofar as we are able, we will be focusing on the circumstances surrounding the events in Hayfield Road leading up to the death of Sheku Bayoh only. I would simply add at this stage that you may wish to defer consideration of certain issues until you have all of their evidence before you and I will remind you of the position regarding these particular witnesses when I come to make my concluding remarks at the end of Hearing 2.

Not all witnesses will be called to give oral evidence. Many have provided written statements to the Inquiry which will be made available to the public, via our website at the appropriate time. These statements constitute evidence to the Inquiry in terms of the Inquiries Act 2005 and may be relied on by you when considering matters and preparing your report. We may also take the opportunity to read some statements including some taken by Police Scotland and PIRC, into the transcript of evidence for your consideration.

For the purposes of this hearing, I have selected the available witnesses I consider best placed to tell the story of what happened on that day; those who will assist you

by providing key evidence; to allow you to consider credibility and reliability of key witnesses; and to allow you to consider the issues identified as relevant to our Terms of Reference.

5. Website

Public trust in the Inquiry is vital, and we hope to enhance this through increased openness.

With this in mind, our digital platforms are helping us ensure this Inquiry is accessible to as many people as possible in Scotland and beyond.

Every public hearing session will be live streamed via our website and YouTube channel, with all recordings of the sessions and transcripts published on the site as soon as possible.

Barring any unforeseen complications, evidence, such as documents, statements, maps and photographs, led in public hearings will also be published on the website, by 10 am the following morning. This evidence library, which will expand in the days and weeks to come, will be easy to use and fully searchable.

In due course we will also publish on the website an evidence timeline. This innovative approach to the digitisation of evidence will allow those visiting the website to access a minute-by-minute record of how the incident unfolded, using witness statements and media evidence.

We will continue to use the website and the timeline during hearings to help maximise the availability and public understanding of evidence.

6. Digital Evidence

The inquiry team intends to lead evidence relating to the journey taken by Sheku Bayoh to the events at Hayfield Road.

In order to do so, we have gathered in footage taken from dashcams, CCTV, mobile phone and snapchat footage, along with photographs and stills from mobile phones. This has been collated along with audio recordings from 999 calls, 101 calls and airwaves messages between police officers and the control room at the relevant time.

This footage has been collated by **Advanced Laser Imaging (ALI)**. ALI have created and developed different tools for the assistance of the inquiry during the oral hearings. These tools will be used when we take evidence from the witnesses.

(1) Excel Spreadsheet: Combined Audio & Visual Timeline: this has been cross referenced with the real time; it will be a quick ready reckoner when listening to evidence and working out who said what when on the airwaves.

I will be using this during the hearings and all Core Participants will have access. A hard copy will be provided to you and the Assessors for your use during the

hearings. I would invite you to open this document when listening to evidence.
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(2) Interactive 3D Scene.

The Interactive 3D scene has been built up from 2 laser scans from 2015 and 2021, Snapchat footage and other evidence. This has formed the base of an interactive scene at Hayfield Road.

There is (i) a 3D reconstruction of the scene at Hayfield Road and (ii) the 3D digital reconstruction of the snapchat footage. You will hear more about this from ALI in their evidence tomorrow.

The 'blank canvas' shows the location at Hayfield Road and provides the ability to see birds eye views; different angles; perspectives; accurately places cars into the scene and certain people.

This will assist as we listen to the eye-witness evidence of witnesses. It may allow us to explore the versions given and identify where differences arise and why; it should allow us to explore what a witness was at least capable of seeing.

During the hearing, certain witnesses will be asked to identify their location, and those of other individuals within the interactive 3D scene. ALI will attend these sessions and place the relevant persons within the interactive 3D scene, based on a witness's evidence. The positions of the individuals placed within the scene by each witness will allow us to assess distances and lines of sight. The witness will be asked to confirm that the placement of individuals within the scene accords with their best recollection of where those present at the time were positioned, the recording of their confirmation will be used to capture a screen shot of the agreed position. The screen shots of the visual representations of this aspect of the witnesses' evidence will be made available to Core Participants and will be available to you when you come to consider each witness' evidence.

(3) Evidence Video Timeline:

This is a complementation of video and audio evidence set against a real time clock. This will be a tool that will be used during the hearings and brings together all the original video and audio footage (airwaves; 999 calls; 101 calls; CCTV; snapchat and mobile phone footage that is available to us)

In addition, the screen will also show a reconstruction tile that gives a bird's eye view of the location of movement of vehicles or persons and shows a blue dot (or cylinder) where a person is located.

(4) Scene Overview

This is a short overview of the scene beginning with maps and moving into the 3D representation of the scene. This will allow witnesses to identify the area in Kirkcaldy they saw Sheku Bayoh.

(5) Stills from 3D Scene

In addition to the above, ALI have also worked on another tool for use during the evidence of certain witnesses.

ALI have created a number of stills from the 3D scene that will be used during evidence. These will show Mr Bayoh's orientation on Hayfield Road, after he had been brought to the ground. This position has been identified using the Gallagher's Public House CCTV and the Snapchat footage from Ashley Wyse's mobile phone.

This information will be used to place Mr Bayoh within the 3D scene, and the stills will show different perspectives, including from Ms Wyse's window. Some of the stills will contain measurements from certain key vantage points within the scene, to allow distances to be more accurately assessed during the evidence.

Witnesses will be asked to identify their locations, and those of other individuals, within the stills from the 3D scene. A number of versions of each still may be marked up by the witnesses to show locations at different times.

Certain witnesses arrived later during the course of the events and will only give evidence about the restraint. The stills of the restraint are simply to be marked up by the witnesses, and individuals are not to be placed into the scene (unlike the position with the interactive 3D scene), ALI will not require to be involved in this aspect of the digital reconstruction and will not be present on the days those witnesses give their evidence.

We also have bespoke Software available to the Inquiry which will allow individual witnesses to mark locations on the screen on which they are viewing the image. Again, their evidence will be captured by screen shot and made available.

ALI will provide a detailed explanation and demonstration of this work in their evidence tomorrow.

Although ALI will be the first witnesses at this hearing, they have also agreed to make themselves available to return later for the purposes of clarification, should that be required.

7. November

After the current hearing ends in June, a further, short, evidential hearing will take place in November 2022. This will include evidence in relation to officer safety training, use of force, and the forensic analysis of certain items of evidence recovered on 3 May 2015.

Deferring this evidence until November will permit any expert to consider in detail the factual evidence led during this hearing, prior to finalising forensic tests and concluding their views.

Later hearings will be fixed to focus on the cause of death; post incident management and race.

8. Race

In this hearing, we will begin the process of exploring the extent to which the actions of the officers involved, were affected by the actual or perceived race of Sheku Bayoh. Race is a thread that will run through all of the public hearings. The final hearing will draw the evidence bearing on race together and place it in context.

Although questions in relation to the impact of race will be asked during each hearing, including this, it is my intention that the answers will be collated and retained for use during the final hearing on race. We will not at this stage explore the full context. The context will not be fully addressed until the final hearing, at which time I will invite you to consider the factual evidence, and compare this with statistical evidence, previous reports and the findings of previous inquiries and inquests. No submissions on the issue of race will be required until after the evidence in the final hearing has been considered and the full context can be addressed.

In Conclusion

Debate continues about what happened and whether the actions of the officers were lawful.

This Inquiry presents an opportunity to allow the factual evidence to be aired and considered by everyone with an interest. Relevant expert evidence will be led in November.

Any final determination regarding that evidence; including whether any use of force was lawful, will be yours and yours alone and, as I understand it, will be presented in your final Report.

Over the next few weeks and in the coming months, myself, Ms Thomson and the entire inquiry team will do our best to present the evidence you need, to allow you to make those important determinations, and to find the truth about what happened to Sheku Bayoh on 3 May 2015.

That concludes my opening statement.