

Public Inquiry into the death of Sheku Bayoh

Hearing 1 Opening Statement

on behalf of

The Solicitor General

1. As has previously been explained, the present Lord Advocate, prior to her appointment, acted as senior counsel on behalf of the family of Sheku Bayoh. In consequence of this, the Lord Advocate has recused herself from any involvement in the conduct of the Inquiry. Therefore, although the Lord Advocate was designated a core participant by the Chair, the Crown's engagement with the Inquiry is directed by the Solicitor General. This opening statement is made on her behalf.
2. The Solicitor General welcomes the commencement of the Inquiry's oral hearings. She is committed to participating and assisting the Inquiry team where that is appropriate and likely to be useful. But, as has also been emphasised before, anything the Solicitor General does to assist the Inquiry must be capable of being reconciled with the obligations she has in relation to the administration of criminal justice in Scotland. It may be worth saying a little more about that just now in order to understand how it informs the Solicitor General's engagement with the important work of the Inquiry.
3. On 3 May 2015, the Police Investigations and Review Commissioner (PIRC) was instructed by the then Lord Advocate, in terms of s33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006, to investigate the interaction between police

officers and Sheku Bayoh and events thereafter. Those terms of reference were subsequently expanded on 5 May and again on 12 June and on 2 July 2015. PIRC submitted an initial report to the Crown in August 2015 before submission of a voluminous final report in August 2016. Further significant inquiry was undertaken by the Crown including the instruction and analysis of multiple expert reports covering a broad range of medical and technical matters.

4. Against the foregoing background, the circumstances surrounding the death of Sheku Bayoh on 3 May 2015 were carefully considered by Crown lawyers including senior Crown Counsel for the purposes of considering the instigation of criminal proceedings against individual police officers and against the Police Service of Scotland.
5. Senior Crown Counsel came to the view that there was insufficient evidence to bring criminal proceedings. That determination was the subject of an application for review in accordance with rules made under s.4 of the Victims and Witnesses (Scotland) Act 2014. A review was undertaken by Principal Crown Counsel, whose analysis and conclusions were reviewed by the then Solicitor General.
6. The outcome of the review was intimated by letter to solicitors acting for the family of Sheku Bayoh on 11 November 2019. The letter advised that the Crown considered there to be insufficient evidence to establish criminality on the part of police officers, whether individually or collectively; and that there was insufficient evidence to bring proceedings in respect of suggested wrongful acts and omissions by the Police Service of Scotland.

7. On the same date, the Crown wrote to solicitors acting for police officers involved in the restraint of Sheku Bayoh. The letters said that Crown Counsel had instructed that no criminal proceedings should be instituted against any police officer in relation to the death of Sheku Bayoh on 3 May 2015 based on “current available information”.

The letter added the following:

“You will be aware that there is an obligation on the prosecutor to keep cases under review. This includes cases in which the prosecutor has decided to take no action. The Crown therefore reserves the right to prosecute any of the officers at a future date.”

8. These comments underline the dual role that the Solicitor General requires to fulfil in relation to the Inquiry. She must do what she can to assist the Inquiry where that is appropriate. But she must also keep all evidence emerging from the Inquiry’s work under review from the point of view of her role in our system of criminal justice; and she must be seen to act fairly in that regard.
9. This may mean that, in relation to Hearing 1, although seeking to assist the Inquiry team where they can, the principal role of the Solicitor General’s legal team will simply be in listening to and analysing the evidence that emerges. Co-senior counsel and COPFS solicitors will be in attendance for that purpose. They will listen to all of the evidence with care, and that will begin with what is said by or on behalf of the relatives and family of Sheku Bayoh.

10. Later phases of the Inquiry, and Hearing 3 in particular, will look at post incident management. The Solicitor General and her team look forward to providing whatever assistance they can in relation to that phase of the Inquiry's work. But in emphasising that aspect of the Inquiry's Terms of Reference, the Solicitor General does not lose sight of another aspect.

11. In particular, the Solicitor General keeps in mind that, at the Preliminary Hearing of 18 November 2021, Counsel to the Inquiry emphasised the centrality of the issue of race to the questions before the Inquiry; and that, at all times, the Inquiry will ask whether race or perceived race made a difference. The Solicitor General and her team will take the same approach.

Alastair Duncan QC

Jennifer Bain QC

3 May 2022