

# **IN THE MATTER OF THE SHEKU BAYOH INQUIRY**

## **OPENING STATEMENT**

### **ON BEHALF OF: (1) NICOLE SHORT; AND (2) PC CRAIG WALKER**

#### **Introduction**

1. This is the opening statement on behalf of the retired PC Nicole Short and PC Craig Walker.
2. The statement is designed to address the matters to be dealt with during Hearing 1 of the Inquiry. To place those matters into context, this statement will necessarily touch upon matters relevant to the whole scope of the Inquiry.
3. This statement does not propose findings in fact. Both Ms. Short and PC Walker are content to allow the evidence to be led and to speak for itself. Any comment on the evidence ought to be addressed by way of closing submissions once the Inquiry has heard all the relevant evidence for that particular hearing. To predict or speculate on the nature of that evidence would be premature and, in our view, inappropriate.

#### **Background**

4. On 3 May 2015, Mr. Sheku Bayoh died after an incident in Kirkcaldy which involved several Police Officers, including those we represent. Following Mr. Bayoh's death, an investigation was undertaken by the Police Investigations & Review Commissioner (PIRC). The investigation involved obtaining more than 500 witness statements, reviewing of CCTV and video footage from mobile phones, and included obtaining evidence from a wide range of expert witnesses. PIRC submitted a report to the Lord Advocate in or around August 2015. Further information was provided by PIRC to the Lord Advocate in or around August 2016. On or around 3 October 2018, the Lord Advocate confirmed that no criminal prosecutions would be brought against any of the officers involved.
5. Mr. Bayoh's family initiated the Victims' Right to Review process under s.4 of the Victims and Witnesses (Scotland) Act 2014.
6. In or around November 2019, following a review by Crown Counsel, based on the evidence ingathered, it was confirmed that there would be no criminal proceedings against Police Scotland or the individual police officers in connection with Mr. Bayoh's death. At the

time, the Cabinet Secretary for Justice described the investigation and review as both ‘complex and thorough’.

7. On 19 November 2019, it was announced that a Public Inquiry under the Inquiries Act 2005 (“2005 Act”) would consider the circumstances leading up to and following the death of SB on 3 May 2015.

8. The Terms of Reference confirm that the Inquiry’s purpose will seek to establish the circumstances surrounding the death of Mr Bayoh in police custody on 3 May 2015 and to make recommendations to prevent deaths in similar circumstances, as would have been required under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. In general terms, the Inquiry will examine: (1) the immediate circumstances leading to the death of Mr Bayoh; (2) how Police Scotland dealt with the aftermath; (3) the subsequent investigation into the death; and (4) whether the actions of the officers involved were affected by Mr Bayoh’s actual or perceived race.

9. The Inquiry has determined that there will be no more than six hearings to address the matters within the Terms of Reference. Hearing 1 is set to address the immediate circumstances leading to the death of Mr. Bayoh and the immediate aftermath. In particular, the Inquiry will consider:

- a. What was done (or not done); and why?
- b. What standards applied as at 3 May 2015?
- c. Whether and to what extent there was any departure from the standards;
- d. What difference did any departure(s) from the standards make to the outcome?
- e. Would it have made a difference if Sheku Bayoh had been white?

## **The Inquiry**

10. This Inquiry will be a demanding undertaking for those involved, particularly for Mr. Bayoh’s family and for the officers who attended the scene.

11. The officers that we represent, PC Walker and Ms. Short, welcome the opportunity to present their evidence to Inquiry. In the absence of undertakings from the Solicitor General, they have been advised to consider responding to requests of information and questions from the Inquiry with “no comment”. They do not, however, wish to proceed in that manner. They have chosen to forego what would be in their best interests by choosing to provide full and

frank evidence to the inquiry. This is a decision that they have not taken lightly. It is a decision they have taken because they are determined to assist the Inquiry in every way that they can. In the ruling by the Chair on applications for undertakings on 1 March 2022, it was acknowledged that without the evidence from the officers and former officers who attended the scene, the Chair's ability to fulfil his terms of reference would be severely limited. The evidence of Ms. Short and PC Walker will be key. They are determined to provide their evidence assist the Inquiry but also to dispel any suggestion of wrongdoing. They are content for their evidence to speak for itself.

12. As noted during the preliminary hearing on 18 November 2021, the Chair wants the family to be at the heart of this Inquiry. That is clearly correct and appropriate given what the Inquiry will consider and the likely emotional toll on the family. It would, however, be naïve to think that the events on 3 May 2015 have not had a material impact on lives and families of the officers who attended the scene that day.

13. Since 3 May 2015, there has been intense media speculation as to the circumstances surrounding the death of Mr. Bayoh. There has been an active campaign to have the police officers who attended criminally prosecuted. There were allegations of criminality from the outset. This suggestion has persisted notwithstanding a complex and thorough investigation, and subsequent review, determining that the officers would not face criminal prosecution. At every stage, the decision not to prosecute any of the officers involved has been subject to significant media attention and adverse comment. There have been accusations of racism directed against those officers notwithstanding the lack of any evidential foundation for such an accusation. They have been individually targeted on social media. They have been subject to considerable criticism before all relevant facts were known. Vilification can have a lasting impact, particularly when no criminal offence has been committed.

14. The human interest and welfare of those officers has largely been ignored since May 2015. Their reputations have been tarnished. They will forever be associated with the death of Mr. Bayoh, the accusations of racism, and the accusations of police brutality levelled against them. These accusations are often levelled by those who are either not aware of the relevant evidence or those who have chosen to ignore it.

15. It will become clear from the evidence that the events on 3 May 2015, together with its aftermath, has had a significant impact on both the physical and mental health of the some of the officers. None more so than Ms. Short. Ms Short lost her career as a police officer following the injuries sustained on 3 May 2015. She suffered both physical and psychological injuries and has been diagnosed as suffering from post-traumatic stress disorder. This rendered her permanently disabled from undertaking the ordinary duties of a police officer.

16. Ms. Short applied to retire from the Police on ill-health grounds in 2017. Despite the knowledge that she was medical unfit, the Scottish Police Authority did not approve her application. They cited ongoing investigations and the high-profile death of Mr. Bayoh. They were not, however, able to identify any wrongdoing on behalf of Ms. Short. There was no suggestion that she was culpable to any degree in respect of Mr. Bayoh's death, and they relied entirely on unspecified involvement. Ms. Short was a witness and a victim and had at no stage been considered a suspect. The decision of the Scottish Police Authority was made even though the inability of her to retire from the Police was having an adverse impact on her health. The decision was successfully challenged by way of Judicial Review in April 2019 allowing Ms. Short to retire and begin her recovery. Again, notwithstanding there being no suggestion of wrongdoing on behalf of Ms. Short, the decision of the Lord Ordinary to overturn the decision of the Scottish Police Authority was criticised in the media.

17. It is clear from the Terms of Reference, and the comments from the Chair, that this Inquiry will take some time. Six hearings are envisaged with the expectation that only two hearings at most will be completed by the end of the year. Neither PC Walker nor Ms Short can move on with their lives until the conclusion of this Inquiry. Until its conclusion, the Inquiry will no doubt take its toll on their health and mental well-being. They will continue to be under intense media scrutiny. This should not be viewed as a criticism of the Inquiry. Both PC Walker and Ms. Short are pragmatists and acknowledge that the issues that this Inquiry will explore are important and that proper exploration of such issues will take time. The reason for highlighting the impact is to stress that the human interest and welfare of the officers involved should not be forgotten as this Inquiry progresses.

18. For the reasons above, both PC Walker and Ms. Nicole Short welcome the opportunity to provide their evidence to this Inquiry.

## **Conclusion**

19. It is hoped that the evidence that the Inquiry hears during Hearing 1 will address the questions that both the family of Mr. Bayoh and members of the public may have as to what occurred on 2 and 3 May 2015. It should be stressed that the death of Mr. Bayoh has not only impacted upon his family and members of the public, but also the lives of the officers involved. They have been vilified and subject of considerable criticism before all relevant facts were known. Their conduct has been examined twice by the Crown and no criminal prosecutions have been brought. Notwithstanding this, they have continued to be subject to prolonged campaigns to have them criminally prosecuted. Two of the officers involved have been forced to retire from Police Scotland on grounds of ill-health.

20. Promoting a narrative of ‘us against them’ and making false equivalencies with the deaths of other black men at the hands of the authorities in other countries is unhelpful. Ms. Short and PC Walker did not join Police Scotland with a desire to be involved in the death of an individual. They joined Police Scotland to serve their local community and to protect members of the public. In doing so, they voluntarily put themselves in harm’s way. Presenting this Inquiry as a fight for justice against a malign faceless police force does not do the circumstances justice. It ignores the individual circumstances of Mr. Bayoh. It ignores his personal relationships, and it ignores who he was. It further ignores the bravery of the individuals who responded to the call of a man carrying a knife, acting erratically, and attacking cars in the street.

21. For the reasons above, both PC Walker and Ms. Nicole Short welcome the opportunity to provide their evidence to this Inquiry.