

1 **Transcript of the Inquiry**

2 Wednesday, 11 May 2022

3 (10.01 am)

4 LORD BRACADALE: Good morning. Today we have opening
5 statements. It would be helpful if counsel, when
6 they're called, could identify themselves and the core
7 participants whom they represent. We will begin with
8 Counsel to the Inquiry, Ms Grahame.

9 Opening statement by MS GRAHAME

10 MS GRAHAME: Thank you very much.

11 On 3 May 2015, a 31-year-old man, Sheku Bayoh, died,
12 having been restrained by police officers at Hayfield
13 Road in Kirkcaldy. Sheku Bayoh was a cherished son,
14 a beloved father to his two young sons, and loved by his
15 partner, his sisters and his friends.

16 Since his death, no evidence has ever been led about
17 what happened to him before a criminal trial, a fatal
18 accident inquiry or a civil proof, but his relatives,

1 family and friends have tirelessly campaigned to find
2 out the truth about what happened on that day.

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

9 On 21 May 2020, after consultation with key parties,
10 the Terms of Reference were announced. After further
11 consultation, two Assessors were appointed, Raju Bhatt
12 and Michael Fuller, and their expertise and experience
13 will be available to assist you and support you in this
14 Inquiry.

15 1. The Inquiry.

16 The Inquiry formally commenced on 30 November 2020
17 and work began to recruit a team of staff to assist you
18 and to secure suitable premises and to fit them out and
19 these premises include not only this hearing room, but
20 rooms for the family and the relatives of Sheku Bayoh,
21 the legal representatives of core participants and
22 members of the press and offices for the extended

1 Inquiry team.

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

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

15 At your invitation, a number of organisations and
16 individuals applied to be core participants, some are
17 represented in groups, others are separately
18 represented. Each application was considered and 11
19 core participants were granted that status and they are
20 all represented here today.

21 As noted by you in the first preliminary hearing on
22 18 November 2021, core participants have a key role in

1 the Inquiry. They may attend all or some of the
2 sessions of the Inquiry, either within the hearing room
3 itself or remotely in the building, or elsewhere via the
4 live links provided. They may make opening and closing
5 statements. They may suggest possible lines of enquiry
6 and questioning to Counsel to the Inquiry and they may,
7 where appropriate, and with your permission, ask
8 questions of witnesses through their legal
9 representative. Detailed guidance has been issued to
10 legal representatives on making an application to ask
11 questions, and a copy of that is available on the
12 website.

13 In addition, throughout this entire period, regular
14 engagement, meetings and contact has taken place between
15 the core participants' legal representatives and the
16 Inquiry team to address questions, to share information
17 and to allow the Inquiry team to consider any issues
18 brought to our attention for investigation.

19 There have been two preliminary hearings:
20 18 November last year and 22 February this year. These
21 were recorded and footage of both remains available on
22 the website and on the YouTube channel, which is

1 accessible through the website.

2 All core participants are aware that you wish this
3 Inquiry to be transparent, thorough and comprehensive
4 and you welcome any comments being drawn to our
5 attention and that remains the position.

6 The Inquiry's Terms of Reference are broad. This is
7 only the first of several evidential hearings and the
8 focus of this hearing will be the events of 3 May 2015.

9 A detailed chronology of those events was sent to
10 core participants on 19 January this year. The
11 chronology was accompanied by a note on law and practice
12 and a list of the issues, setting out the key events and
13 the questions to be explored, and in respect of which
14 evidence will be led at this hearing. Discrepancies,
15 inconsistencies and conflicts in the evidence were
16 highlighted. Core participants were invited to draw our
17 attention to any matters they considered had been
18 overlooked by the Inquiry team and this gave core
19 participants an opportunity, should they wish, to
20 contribute to our work in advance of this hearing. I am
21 happy to say that useful discussions have and continue
22 to take place and we remain open to any matters being

1 intimated to us at any stage, now and in the future.

2 Unlike a trial or a civil litigation, we have the
3 option of returning to matters at a later stage, in the
4 event that something unexpected comes to light during
5 the course of any of the hearings.

6 2. The approach to witnesses.

7 Since December last year the Inquiry team have been
8 engaged in securing witness statements for the Inquiry
9 from key witnesses. We have carried out careful
10 consideration of the paperwork. The Inquiry team has
11 been interviewing the principal witnesses to the events
12 and has been taking detailed witness statements. These
13 statements have been obtained having regard to the
14 chronology, the list of issues, relevant documents and
15 any prior statements recovered. These Inquiry
16 statements, once complete, are signed by the witnesses.

17 Statements taken by the Inquiry are evidence before
18 you, available for your consideration, and may be relied
19 on by core participants in their closing submissions.

20 Conscious that the key events took place more than
21 seven years ago, and that memories are bound to have
22 faded to some extent, the Inquiry team has been

1 particularly careful to tie in witnesses present
2 recollections with the contemporaneous documents and any
3 statements taken at the time.

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

8 3. The request for undertakings.

9 As part of our work, the Inquiry also sought
10 statements from the attending officers. None of the
11 attending officers confirmed their willingness to waive
12 their right to exercise the privilege against
13 self-incrimination and this led to a detailed discussion
14 about whether some form of undertaking would be required
15 for the officers.

16 A hearing was fixed on 22 April and after
17 considering detailed written submissions and hearing
18 further oral submissions, you sought undertakings on
19 behalf of the nine attending officers and three senior
20 officers. At the end of March this request was refused
21 by both the Solicitor General and the Deputy
22 Chief Constable, and copies of their letters explaining

1 the reasons for their decisions remain on the website.

2 The Inquiry remained fully committed to ascertaining
3 the truth of how Sheku Bayoh died on 3 May 2015 and
4 wished to retrieve the fullest possible evidence in
5 relation to the events of that day.

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

11 As a result, the Inquiry has been able to secure
12 written statements of varying detail from all of the
13 attending officers. These statements made in response
14 to a Rule 8 request are signed by the witnesses. Again,
15 these are evidence before you, available for your
16 consideration and may be relied on by core participants
17 in their closing submissions.

18 The statements that have been secured from the
19 officers will be referred to in evidence and published
20 on the website in due course. In addition, it remains
21 the intention of the Inquiry to seek oral evidence from
22 all the attending officers.

1 4. Evidence at this hearing.

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

7 The Inquiry has secured a substantial volume of
8 material and it is not the intention to rehearse all the
9 evidence at the public hearings, let alone read out the
10 contents of all the relevant documents; that would not
11 be an efficient use of the Inquiry's time.

12 Witnesses called to give evidence at the public
13 hearing will do so under oath. These witnesses have
14 provided signed statements and for those witnesses it is
15 not my intention to rehearse in full each witness's
16 evidence, as set out in their statement.

17 The contents of the statements will be taken as read
18 and on that basis, the examination in public may be
19 restricted to certain passages, but the whole contents
20 of the statement will be available to you and to core
21 participants, whether or not the witness is asked about
22 any particular passages.

1 There are some witnesses who will be asked more
2 detailed questions in the hearings, and primarily these
3 will be eye-witnesses to the events in Hayfield Road.

4 There are also some witnesses who may be called back
5 at a later date to a later hearing and that's to give
6 evidence about subsequent events such as the
7 post-incident investigation after the death of
8 Sheku Bayoh, and this is to allow you to hear other
9 relevant aspects of their evidence in the proper
10 context.

11 We are grateful for the cooperation of those
12 witnesses, which includes a civilian witness and senior
13 officers, and we do appreciate the personal
14 inconvenience that this may cause. I have endeavoured
15 to keep those witnesses to the minimum possible. They
16 have agreed to this arrangement at my personal request
17 and for the benefit of the Inquiry.

18 For the purposes of hearing 1, insofar as we are
19 able, we will be focusing on the circumstances
20 surrounding the events in Hayfield Road leading up to
21 the death of Sheku Bayoh. I would simply add at this
22 stage that you may wish to defer consideration of

1 certain issues until you have all the evidence before
2 you, and I will remind you of the position regarding
3 these particular witnesses when I come to make my
4 concluding remarks at the end of hearing 2.

5 Not all witnesses will be called to give oral
6 evidence. Many have provided these written statements
7 to the Inquiry and they will be made available to the
8 public via our website at the appropriate time. These
9 statements will constitute evidence to the Inquiry in
10 terms of the Inquiries Act, and may be relied on by you
11 when considering matters and preparing your report.

12 We may also take the opportunity to read some
13 selected statements, including some taken by
14 Police Scotland and PIRC, into the transcript of
15 evidence for your consideration.

16 For the purposes of this hearing, I have selected
17 the available witnesses I consider best placed to tell
18 the story of what happened on that day: those who will
19 assist you in providing key evidence, those who will
20 assist you to allow you to consider the credibility and
21 reliability of key witnesses, and those who allow you to
22 consider the issues identified as relevant to our Terms

1 of Reference.

2 5. The website.

3 Public trust in the Inquiry is vital and we hope to
4 enhance this through increased openness. With this in
5 mind, our digital platforms are helping us to ensure
6 this Inquiry is accessible to as many people as possible
7 in Scotland and beyond.

8 Every public hearing session will be live-streamed
9 via our website and the YouTube channel, with all
10 recordings of the sessions and transcripts published on
11 the site as soon as possible. Barring any unforeseen
12 complications, evidence such as documents, statements,
13 maps and photographs led in public hearings will also be
14 published on the website by 10.00 am the following
15 morning. This evidence library will expand in the days
16 and weeks to come and will be easy to use and fully
17 searchable.

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

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

4 6. Digital evidence.

5 The Inquiry team intends to lead evidence relating
6 to the journey taken by Sheku Bayoh to Hayfield Road.
7 In order to do so, we have gathered in footage from
8 dash cams, CCTV, mobile phones, Snapchat footage, along
9 with photographs and stills from mobile phones. This
10 has been collated, along with audio recordings from 999
11 calls, 101 calls and Airwaves messages between
12 police officers and the control room at the relevant
13 time.

14 This footage has been collated by Advanced Laser
15 Imaging, or ALI. ALI have created and developed
16 different tools for the assistance of the Inquiry during
17 the oral hearings, and these tools will be used when
18 I take evidence from the witnesses.

19 The first is an Excel spreadsheet. It is a combined
20 audio and visual timeline and this has been
21 cross-referenced with the real time. It will be
22 a quick, ready reckoner when listening to evidence and

1 working out who said what on the Airwaves. I will be
2 using this during hearings and all core participants
3 will have access to this. A hard copy will be provided
4 to you and the Assessors for your use during the
5 hearings and I would invite you to have regard to this
6 document when we're listening to evidence.

7 Secondly, the interactive 3D scene. The interactive
8 3D scene has been built up from two laser scans, one
9 from 2015 and one from late 2021, Snapchat footage and
10 other evidence. This has formed the base of an
11 interactive scene at Hayfield Road. There is a 3D
12 reconstruction of the scene at Hayfield Road and the 3D
13 digital reconstruction of Snapchat footage which was
14 recovered from a mobile phone. You will hear much more
15 about this from ALI in their evidence tomorrow.

16 The 3D scene shows Hayfield Road and provides the
17 ability to see bird's eye views, different angles,
18 perspectives, and accurately places cars into the scene
19 and allows us to place people into the scene. This will
20 assist as we listen to the eye-witness evidence of
21 witnesses and it may allow us to explore the versions
22 given and identify where differences arise and why. It

1 should allow us to explore what a witness was at least
2 capable of seeing.

3 During the hearing certain witnesses will be asked
4 to identify their location and those of other
5 individuals within the 3D interactive scene. ALI will
6 attend these sessions and place the relevant persons
7 within the interactive 3D scene based on the evidence
8 they give.

9 The positions of the individuals placed within the
10 scene by each witness will allow us to assess distances
11 and lines of sight. The witness will be asked to
12 confirm the placement of individuals within the scene
13 and whether that accords with their best recollection of
14 where those present at the time were positioned. The
15 recording of their confirmation will be used to capture
16 a screenshot of the agreed position.

17 The screenshots of the visual representation of this
18 aspect of the witnesses' evidence will be made available
19 to core participants and will be available to you when
20 you come to consider each witness's evidence.

21 3. They have prepared an evidence video timeline.
22 This is a complementation of video and audio evidence,

1 set against a real-time clock. This will be a tool that
2 will be used during the hearings and brings together all
3 of the original video and audio footage, that is the
4 Airwaves, the 999 calls, the 101 calls, CCTV, Snapchat
5 and mobile phone footage that is available to us; all of
6 that.

7 In addition, the screen will also show
8 a reconstruction tile or window that gives a bird's eye
9 view of the location of movement of vehicles or persons
10 and that will show a blue dot or a cylinder where
11 a person is located.

12 4. There will be a scene overview. This is a short
13 overview of the scene, beginning with maps of the area
14 and moving into the 3D representation of the scene.
15 This will allow witnesses to identify the area in
16 Kirkcaldy where they saw Sheku Bayoh.

17 5. There will be stills from the 3D scene. In
18 addition to the above, ALI have also worked on another
19 tool for use during the evidence of certain witnesses.
20 They have created a number of stills from the 3D scene
21 that will be used during evidence. These will show
22 Mr Bayoh's orientation on Hayfield Road after he had

1 been brought to the ground.

2 This position has been identified using the
3 Gallaghers public house CCTV and the Snapchat footage
4 from Ashley Wise's(?) mobile phone. This information
5 will be used to place Mr Bayoh within the 3D scene and
6 the stills will show us different perspectives,
7 including that from Ms Wise's window.

8 Some of the stills will contain measurements from
9 certain key vantage points within the scene to allow
10 distances to be more accurately assessed during the
11 evidence.

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

17 Certain witnesses only arrived later during the
18 course of the events and will only give evidence about
19 the restraint. The stills of the restraint are simply
20 to be marked up by the individual witnesses and the
21 individuals are not to be placed into the scene by ALI,
22 unlike the position with the interactive 3D scene. ALI

1 will not require to be involved in this aspect of the
2 digital reconstruction and will not be present on those
3 days where such witnesses give their evidence.

4 We also have bespoke software available to the
5 Inquiry which will allow individual witnesses to mark
6 locations on the screen on which they are viewing the
7 image, that is the screen in front of everyone. Again,
8 their evidence will be captured by a screenshot and
9 later made available.

10 ALI will provide a detailed explanation and
11 demonstration of their work in their evidence tomorrow
12 and although ALI will be the first witnesses at this
13 hearing, they have also agreed to make themselves
14 available to return later for the purposes of
15 clarification should that be required.

16 7. November.

17 After the current hearing ends in June, a further
18 short evidential hearing will take place in November and
19 this will include evidence in relation to officer safety
20 training, use of force and forensic analysis of certain
21 items of evidence that were recovered on 3 May.
22 Deferring this evidence until November will permit any

1 expert to consider in detail the factual evidence led
2 during this hearing, prior to finalising forensic tests
3 and concluding their views. Further later hearings will
4 be fixed to focus on the cause of death, post-incident
5 management and race, amongst other things.

6 8. Race.

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

14 Although questions in relation to the impact of race
15 will be asked by me during each hearing, including this
16 hearing, it is my intention that the answers will be
17 collated and retained for use during the final hearing
18 on race. We will not at this stage explore the full
19 context. The context will not be fully addressed until
20 the final hearing, at which time I will invite you to
21 consider the factual evidence and to compare this with
22 evidence such as statistical evidence, evidence about

1 previous reports and findings of previous inquiries and
2 inquests. No submissions on the issue of race will be
3 required until after the evidence in the final hearing
4 has been considered and the full context can be
5 addressed.

6 In conclusion, debate continues about what happened
7 and whether the actions of the officers were lawful.

8 This Inquiry presents an opportunity to allow the
9 factual evidence to be aired and considered by everyone
10 with an interest. Relevant expert evidence will be led
11 in November. Any final determination regarding that
12 evidence, including whether any use of force was lawful,
13 will be yours and yours alone and, as I understand it,
14 will be presented in your final report.

15 Over the next few weeks and in the coming months,
16 myself and Ms Thomson and the entire Inquiry team will
17 do our best to present the evidence you need to allow
18 you to make those important determinations and to find
19 the truth about what happened to Sheku Bayoh on
20 3 May 2015.

21 That concludes my opening statement.

22 LORD BRACADALE: Thank you, Ms Grahame.

1 Ms Mitchell.

2 Opening statement by MS MITCHELL

3 MS MITCHELL: I am Claire Mitchell, I'm instructed by Amer
4 Anwar and Co and assisted by learned junior counsel
5 Clare Connelly. This opening statement is made on
6 behalf of the family of Sheku Bayoh.

7 Sheku Bayoh died on 3 May 2015. He was 31 years of
8 age. He was the father of two sons. He was a loving
9 partner to Collette. He was a son, a brother,
10 a brother-in-law and an uncle. Sheku was a man loved by
11 his family and friends and was a respected member of his
12 local community in Kirkcaldy.

13 The Inquiry has seen the very moving pen portrait
14 made by those who loved Shek, and later in this Inquiry
15 we will hear from some of those who will give evidence.

16 Sheku's family have endured distress and anxiety in
17 contemplation of his suffering before his death and
18 grief and sorrow caused by his death that continues to
19 be experienced daily.

20 Two young boys will grow up without their father.
21 A mother will live the remainder of her life without her
22 only son. Sheku's partner and siblings suffer his loss.

1 The family have fought a hard battle and endured
2 a long wait for this Public Inquiry. The families of
3 Sheku Bayoh have experienced institutional failure which
4 began with a failure to preserve the life of Sheku and
5 thereafter properly to investigate his death. Following
6 his death, Sheku's families endured the media smearing
7 and stereotyping of Sheku and the use of racist
8 stereotypes in connection with the circumstances of his
9 death.

10 The Inquiry will hear evidence that about 7.14 in
11 the morning on 3 May 2015, Police Scotland responded to
12 reports of a man with a knife behaving erratically that
13 had been received from members of the public and were
14 called to attend in the area of Hendry Road and Hayfield
15 Road, Kirkcaldy.

16 Nine officers employed by Police Scotland attended
17 in five marked police vehicles and two police vans
18 within minutes of receiving the reports. The attending
19 police officers were Scott Maxwell, Alan Paton, Ashley
20 Tomlinson, Nicole Short, Craig Walker, Daniel Gibson,
21 James McDonough, Kayleigh Good and Alan Smith.

22 Within a period of about 40 to 50 seconds, officers

1 [Walker], Paton, Tomlinson and Short had all used force
2 against Sheku in circumstances the family believes were
3 not necessary, legitimate or proportionate.

4 About 7.21 minutes, approximately 46 seconds after
5 the first engagement with police, Sheku was on the
6 ground and at 7.23 was reported to Inspector Stewart
7 as "secured on the ground".

8 Whilst he was on the ground, Sheku was restrained
9 and forced face-down onto the ground where he was
10 handcuffed and leg restraints were applied to both his
11 knees and ankles. Six officers were involved in
12 restraining Sheku and during the time he was face-down
13 on the ground, six officers lay on top of Sheku,
14 crossing over him from both sides and covering the whole
15 of his body.

16 One officer was seen to use a baton to hold Sheku
17 down by pushing it on his body and other officers were
18 also seen to be using their body weight in order to
19 restrain Sheku by placing themselves on his upper back,
20 shoulders and neck area, and by using their knees to
21 hold him down.

22 Sheku Bayoh, whilst described as being extremely

1 large, was actually 5 foot 10 inches, weighing 12 stone
2 10lbs, that being 81 kilograms; whilst the combined
3 weight of the restraining officers was 100 stone 2lbs,
4 that being 636 kilograms. Sheku was positioned lying on
5 the ground, face downwards and a high degree of pressure
6 was applied to his trunk prior to his breathing becoming
7 restricted and stopping.

8 Sheku Bayoh lost consciousness at or about 7.25,
9 approximately two minutes after Inspector Stewart was
10 advised by radio that Sheku was secure on the ground.
11 At or about 7.29, he stopped breathing. His heart
12 stopped. An ambulance arrived at 7.42. He was
13 officially pronounced dead at the Accident and Emergency
14 Department of Kirkcaldy Hospital at 9.04 am.

15 For seven long years, the families of Sheku Bayoh
16 have waited for their questions to be answered about
17 what happened on 3 May 2015. Their suffering has been
18 compounded when the public bodies who should have
19 protected Sheku Bayoh, who should have properly
20 investigated what happened and who should have sought
21 justice for Sheku Bayoh did not do their job.

22 Police officers, Police Scotland, the PIRC, the

1 Scottish Police Federation and Crown Office all have
2 difficult questions to answer. Now is the time for the
3 truth about Sheku Bayoh's death to emerge. Nothing that
4 this Inquiry can do will return Sheku Bayoh to his
5 family, but what it can do is be relentless in getting
6 to the truth about his death because without truth,
7 there can be no justice.

8 In relation to hearing 1, here is a small sample of
9 the questions the families want answers to.

10 Initial engagement. Why did attending officers not
11 make an initial assessment and feedback straight away
12 via radio to Inspector Stuart as they had been
13 instructed? Why was no attempt made to communicate,
14 contain, preclude or use any other reasonable option
15 prior to deploying the use of force? Why was there no
16 risk assessment that considered impact factors such as
17 the availability of police officer support, the
18 location, the risk posed to members of the public, the
19 physical and mental and sensory condition of
20 Sheku Bayoh, the seriousness of the imminent risk of
21 attack and the presence of weapons, the impact factors
22 affecting the situation? Why was no risk assessment

1 carried out by those attending officers prior to any
2 form of engagement with Sheku?

3 What could or should have been done to establish
4 whether Sheku was carrying a weapon at that time and
5 why, if it was believed that Sheku was carrying a knife,
6 was edged weapons training awareness not to approach and
7 to maintain a safe reactionary gap of a minimum of
8 21 feet not followed?

9 The use of force. Why did police officers proceed
10 to use force in the form of discharge of incapacitant
11 sprays when Hayfield Road was quiet, when there were no
12 members of the public on the road, and Sheku was walking
13 along Hayfield Road with his arms at his side and his
14 palms facing forward and had made no physical or verbal
15 threats?

16 Following the use of incapacitant spray why did the
17 officers fail to take steps to ensure the health and the
18 safety of Sheku?

19 Interaction with PC Short. What is the explanation
20 for the conflicting accounts given in police statements
21 of the assault of Nicole Short and the contemporaneous
22 communication that took place with the control room and

1 the footage obtained viz the CCTV and the mobile phone
2 recordings?

3 Restraint. What consideration should have been
4 given prior to the use of physical restraint in this
5 case? Was the method of restraint in accordance with
6 training? Did the method of restraint used in this case
7 carry with it a foreseeable risk of death? Was the
8 method of restraint appropriately managed at the locus
9 and in accordance with training? In particular, was
10 an officer identified and positioned at Sheku's head to
11 monitor his breathing?

12 Post-event management. Why was the appropriate
13 crime scene management not employed at the scene of
14 Sheku's restraint to allow full and proper investigation
15 and recovery of evidence to take place? Why were
16 police officers allowed to remain together in the police
17 canteen for hours? Why were police officers not
18 separated and statements taken from them? Why were the
19 relevant forms not completed in respect of use of force?
20 What role did the Police Federation have in advising
21 police officers in giving statements? What clothing and
22 other items of evidence, for example, CS gas and PAVA

1 spray, were seized from the attending officers at the
2 station? If none, why not?

3 What action, disciplinary or otherwise, has been
4 taken against individual police officers for their
5 failure to follow instructions given on arrival at the
6 scene, their failure to complete the use of force forms
7 and any other breaches of duty? Were any of the
8 attending officers known to have racist sympathies or
9 alleged to have acted in a racially discriminatory
10 manner prior to this incident. Were any of the
11 attending officers previously investigated in respect of
12 suspected racist sympathies or racial discrimination
13 prior to this incident?

14 What language was used to describe Sheku Bayoh by
15 police and civilian witnesses and to what extent is this
16 language informed by racist stereotypes, for example
17 "a man deranged with super-human strength", "he was
18 massive and is the biggest male that I have seen" and
19 "could be part of a terrorist plot".

20 What the family want from the Inquiry. The family
21 want the whole truth from this Inquiry: how and why did
22 Sheku die? If there was wrongdoing on the part of

1 individuals or otherwise, that wrongdoing must be
2 identified, scrutinised and made public.

3 The Inquiry and the investigations that underpin it
4 should ensure that the full facts are brought to light.

5 That any culpable and discreditable conduct by
6 police officers is exposed and brought to public notice,
7 that suspicion of deliberate wrongdoing by
8 police officers if unjustified is allayed. That any
9 shortcomings in training or execution of duty by
10 police officers is exposed, that the role Sheku Bayoh's
11 race or perceived race played in his detention and death
12 is scrutinised. That the actions of Police Scotland,
13 PIRC, the Police Federation and Crown Office are
14 scrutinised. That there is scrutiny of whether
15 institutional racism existed and informed the actions of
16 the attending officers, Police Scotland, PIRC, Police
17 Federation and Crown.

18 To achieve the foregoing, the Inquiry must without
19 fear or favour identify and examine all the relevant
20 evidence and be prepared to ask difficult questions of
21 individuals and institutions who may not usually be the
22 subject of scrutiny and to be tenacious to get to the

1 truth. Sheku Bayoh and his family deserve no less.

2 This hard fought Public Inquiry is the final port of
3 call for these questions to be answered. For this to
4 happen, the Bayoh family wish to effectively participate
5 in the Inquiry by having the relevant questions asked.

6 This is not a request, but a right safeguarded by
7 Article 2.

8 The Bayoh family is concerned that racial
9 stereotyping may have been a contributory factor in the
10 death of Sheku Bayoh resulting from restraint and use of
11 force. The question of racism has from the very
12 beginning been the elephant in the room. The Inquiry
13 must scrutinise how this forms part of the investigation
14 process.

15 The family wish the Inquiry to scrutinise the use of
16 inappropriate language, unconscious racism, unwitting
17 racism by police officers and those from the authorities
18 that followed in their footsteps. Whilst this
19 undoubtedly adds to the burden the Chair and Assessors
20 carry, the legal team representing the Bayoh families
21 are here to assist wherever they can in supporting you
22 to fulfil the Terms of Reference of the Inquiry.

1 The family need to ensure the issue of race is
2 central, always posing the question: would this have
3 happened if Sheku Bayoh was white? The real answer to
4 that question is seen in the Stephen Lawrence Inquiry,
5 the Chhokar Inquiry and others since, cannot however be
6 achieved by simply asking questions of the witnesses
7 "Would you have acted differently if Sheku was a white
8 man?"

9 This Inquiry, having identified the centrality of
10 race, has an opportunity to ensure that this
11 is rigorously interrogated and to avoid the mistakes of
12 prior inquiries such as the Stephen Lawrence Inquiry and
13 that of the Chhokar Inquiry.

14 This Inquiry will have to be live to the difficult
15 questions in relation to racism. This is because the
16 context of the death of Sheku Bayoh dying in his
17 encounter with the police is far broader than what
18 happened in Kirkcaldy on 3 May 2015. The circumstances
19 of his death are a reflection of a global issue.

20 When the Inquiry was set up after years of
21 campaigning by the family, Humza Yousaf, the then
22 Cabinet Secretary for Justice stated:

1 "For any independent scrutiny of this case to be
2 rigorous and credible it must address the question of
3 whether or not Mr Bayoh's race played a part in how the
4 incident was approached and dealt with by the police."

5 In November 2020, the final report of Dame Elish
6 Angiolini into a review on complaints handling and
7 investigations on misconduct issues in relation to
8 policing was published. She found evidence of racism
9 within Police Scotland and reflecting upon that she
10 quoted Sir William Macpherson of the Stephen Lawrence
11 Inquiry and she said:

12 "Unwitting racism can arise because of a lack of
13 understanding, ignorance or mistaken beliefs. It can
14 arise from well intentioned but patronising words or
15 actions. It can arise from unfamiliarity with behaviour
16 or cultural traditions of people or families from
17 minority ethnic communities. It can arise from racist
18 stereotyping of black people as potential criminals or
19 troublemakers. Often this arises out of uncritical
20 self-understanding born out of an inflexible ethos of
21 the traditional way of doing things. Furthermore, such
22 attitudes can thrive in a tight-knit community so that

1 there can be a collective failure to detect and outlaw
2 this breed of racism. The police canteen can too easily
3 be the breeding ground."

4 She went on to say in relation to Police Scotland:

5 "Much of the evidence presented to me was
6 a chastening reminder that in the Police Service and in
7 the wider community, attitudes have not changed as much
8 as they should have since these words were written, or
9 as much as we would like to believe they have."

10 After the murder of George Floyd in 2020, the
11 Human Rights Council requested a report from the United
12 Nations High Commissioner For Human Rights. That
13 report, published in June 2021, stated:

14 "The murder of George Floyd on 25 May 2020 and the
15 ensuing mass protests worldwide have marked a watershed
16 in the fight against racism. In some countries there is
17 now broader acknowledgement of the systemic nature of
18 the racism that affects the lives of African people and
19 people of African descent and of the need to address the
20 past in order to secure future conditions of life that
21 uphold the dignity and the rights of all. It is our
22 collective duty to address these issues immediately and

1 everywhere."

2 We invite the Inquiry to consider the terms both of
3 this 2020 and 2021 report referred to above in the
4 context of the death of Sheku Bayoh.

5 The Sheku Bayoh Inquiry will properly attract
6 international interest. Against the background of the
7 disproportionate numbers of deaths in custody of black
8 people across the world, inquiries such as this are
9 instrumental in exposing failures in individual
10 incidents and the institutional racism that underpins,
11 informs and empowers such incidents to occur again and
12 again.

13 This Inquiry is an opportunity to expose
14 institutional racism and hold those responsible to
15 account. The Inquiry must be fearless in investigating
16 the lack of accountability of our guardians of law and
17 order.

18 Following Sheku's death, the Bayoh family tried
19 desperately to keep an open mind on what happened on
20 Hayfield Road, Kirkcaldy, on 3 May 2015. They have
21 remained dignified but full of rage because they are not
22 asking for anything special, just the truth, because

1 without the truth there of course can be no justice.

2 The slogan that the family raised at the start of
3 their campaign was "The dead cannot cry out for justice,
4 it is the duty of the living to do so for them." To
5 fulfil that duty, this Inquiry must ensure that nobody
6 is allowed to evade accountability or frustrate the
7 inquisitorial process.

8 Sheku Bayoh's family will never rest until they have
9 truth.

10 LORD BRACADALE: Thank you, Ms Mitchell.

11 Ms McGuire.

12 Opening statement by MS MAGUIRE

13 MS MAGUIRE: Yes, my name is Maria Maguire, I represent the
14 Chief Constable Iain Livingstone who is head of the
15 Police Service of Scotland. I am assisted by Lisa
16 Henderson and Suzanne Lambert.

17 I thank you, sir, for allowing me the opportunity to
18 make this opening statement on behalf of the
19 Chief Constable.

20 Yesterday we were privileged to hear from Mr Bayoh's
21 families who shared their memories of him. No one could
22 fail to be moved by the eloquence, courage and dignity

1 shown in that presentation, or fail to understand the
2 devastating loss they have suffered. The death of
3 a young person causes unimaginable grief and no mother
4 should have to suffer the loss of her son.

5 The presentation was a poignant reminder of what
6 this Inquiry is about. It is about the death of
7 Sheku Bayoh, a much loved son, father, brother, uncle,
8 cousin, nephew, partner and a good friend; a young black
9 man who was a member of the Scottish community, the
10 Kirkcaldy community, a fellow citizen, who died
11 following an interaction with officers of
12 Police Scotland.

13 The Chief Constable who is present here today has
14 asked that I address my first remarks to you, his
15 family. You are at the heart of this Inquiry. The
16 Chief Constable wishes to express his support for this
17 Inquiry to you in person and publicly. Today he offers
18 his condolences to you for the loss of your loved one.

19 The Chief Constable was powerfully affected by
20 Kadi's statement yesterday that she does not feel safe
21 in Scotland, that she fears for her children and for her
22 nieces and nephews. As Chief Constable, he leads

1 a police service whose purpose is to improve safety and
2 wellbeing of the people and communities of Scotland.

3 That mission is and must be for the benefit of all
4 citizens and, as Chief Constable, he is clear that
5 Police Scotland has a major role in ensuring that
6 Scotland is a safe, secure and welcoming place.

7 The Chief Constable has committed Police Scotland to
8 support the Inquiry's aims and objectives with absolute
9 candour. At his direction, extensive resources have
10 been applied and continue to be applied to assist in the
11 provision of material to the Inquiry and ensure the
12 fullest possible engagement with the Inquiry.

13 He agrees that it is essential to understand all
14 that happened in Kirkcaldy on 3 May 2015 and whether or
15 not race or perceived race played any part in the tragic
16 outcome or the subsequent events.

17 You can be reassured that any omissions or failures
18 on the part of the Police Service will be acknowledged,
19 that lessons have been learned and will continue to be
20 learned and that there will be a constant striving for
21 continuous improvement.

22 There is no doubt about the importance of this

1 Inquiry to you and your families, to the communities of
2 Scotland, the black community and other minority
3 communities.

4 The Chief Constable knows how vital it is to
5 maintain and build the confidence of all communities
6 served by the police. It is for that reason that what
7 he wishes the focus of this, his opening statement, to
8 be is on the issue of racism and policing in Scotland.
9 Whilst it is not a specific question for the first
10 hearing, it will be relevant to all aspects under
11 consideration as the Inquiry progresses. It therefore
12 has its place properly now, at the beginning of the
13 first hearing.

14 Sir, I turn now to address the Inquiry on that
15 chapter of the written statement: policing in Scotland
16 and the issue of racism.

17 Policing in Scotland is done with and by the consent
18 of the public. The Chief Constable has consistently
19 underlined that Police Scotland draws its legitimacy
20 from the consent of and bond of trust it has with its
21 fellow citizens. Effective policing is enabled and
22 enhanced by the trust and confidence of the public. The

1 main purpose of policing in Scotland is to improve the
2 safety and wellbeing of people and communities and that
3 purpose is of course to serve all people and all
4 communities.

5 The Chief Constable regards this Inquiry as one of
6 the most important opportunities to address the issue of
7 racism and policing publicly. It is critical for the
8 future of policing in Scotland. Without question, it is
9 fundamental to furthering the aims of Police Scotland to
10 serve all communities. The scope of the issue must be
11 properly understood, acknowledged where it exists and
12 zero tolerance of racism actively upheld and enforced.

13 The question of whether or not race or perceived
14 race played any part in what happened on 3 May 2015 to
15 Mr Bayoh and thereafter is a serious and grave matter
16 for policing in Scotland and its relationship with the
17 public.

18 The Chief Constable reaffirms his public position
19 that racism or discrimination of any kind is utterly
20 deplorable, completely unacceptable and should have no
21 place in society and no place in policing.

22 Police officers and staff are drawn from the

1 different experiences and backgrounds of the public they
2 serve. What unites them are Police Scotland's values of
3 integrity, fairness, respect, a commitment to upholding
4 human rights and a shared mission to keep people safe.
5 He is clear that improving how policing reflects,
6 represents and serves all communities is an operational
7 necessity; it is a moral imperative.

8 The communities of Scotland can be reassured that
9 the Chief Constable, as leader of Police Scotland, will
10 continue to implement necessary change to build and
11 maintain the bond of trust with all communities and
12 provide everyone with fair, just and effective policing.

13 Police officers have substantial powers.
14 Accordingly, the onus is on the Police Service to
15 reassure the public that such responsibilities will be
16 exercised fairly, without malice or ill will based on
17 race or perceived race.

18 The Chief Constable is aware that it is not enough
19 to be alert to racism and deal with it on a case-by-case
20 basis when it comes to light, nor is it enough simply to
21 be non-racist. Police Scotland needs to be anti-racist.
22 He has thought carefully about the actions which need to

1 be taken in order for an organisation to be anti-racist.
2 He uses that term to mean that the organisation should
3 seek to address and challenge the existence and workings
4 of racism at all levels: personal, cultural and
5 institutional. This goes beyond simply delivering
6 training in equality, diversity and inclusion, but
7 includes following that training up with a determination
8 to seek out and combat racism in any form. It means
9 developing policies, structures and systems, followed by
10 actions to deconstruct racism and address issues of
11 power, justice and inequality.

12 His message will be made clear at all levels of the
13 organisation to ensure that the whole culture is
14 anti-racist. Each individual needs to ask these
15 questions of themselves: how can I be anti-racist? How
16 can I combat racism? And how can I counter racism?

17 The Chief Constable has a duty and an opportunity to
18 strive for a change now which is unquestionably and
19 absolutely morally and ethically right. There is still
20 work to be done to strengthen public confidence in
21 the police. Recent events nationally across the
22 United Kingdom and internationally have demonstrated

1 that. The Chief Constable is listening to all
2 communities, is committed to understanding their issues
3 and is taking positive and effective action.

4 Disadvantage and injustice persist in society.
5 Discrimination by individuals through cultural norms and
6 in the structures of institutions remain.

7 Police Scotland is not immune from these challenges and
8 that was underlined by Dame Elish Angiolini's review of
9 police complaints in 2020.

10 The Chief Constable is acutely aware that given the
11 essential role policing has in society, he has a duty to
12 lead, uphold and inspire change that improves the
13 experiences and lives of the public served by the police
14 in Scotland.

15 In discharge of that duty he has determined that
16 under his command and leadership, the Police Service of
17 Scotland will become an actively anti-racist service.

18 Police officers take an oath of office, adhere to
19 a code of ethics and must adhere to the standards of
20 professional behaviour. Police officers are not simply
21 employees: they are the holders of the public office of
22 constable, subject to a strict regulatory framework

1 which is essential for the preservation of public
2 confidence and the proper discharge of their duties as
3 police officers. The standards of behaviour include the
4 obligation to report, challenge or take action against
5 the conduct of other officers which has fallen below the
6 standards of professional behaviour.

7 Accordingly, there is a clear obligation on officers
8 to challenge colleagues who breach the standard of
9 equality and diversity and exhibit racist behaviour.

10 The Chief Constable has personally ensured that
11 there is renewed action on inclusion and diversity
12 within Police Scotland which is subject to external,
13 independent oversight, challenge and scrutiny.

14 Police Scotland has the benefit of an equality,
15 diversity, inclusion and human rights independent review
16 group with an independent chair. Diversity action plans
17 have been introduced after consultation with diversity
18 staff associations and working groups established to
19 deliver on these plans. In addition, leadership
20 development programmes have been reviewed to ensure
21 equality, diversity and inclusion sit at the heart of
22 them and there's a commitment to increase development

1 opportunities for underrepresented groups.

2 The Chief Constable and the Deputy Chief Constable,
3 Mrs Fiona Taylor, have led steps to direct and deliver
4 real change. They recognise that training and espoused
5 values are one thing, but to be really effective, what
6 is essential is that the necessary core values are an
7 integral part of the culture of the organisation at
8 every level.

9 There is an awareness that culture can be defined in
10 many ways and that there will be more than one level of
11 culture operating in any organisation. They understand
12 that it is a complex matter. It requires the
13 re-examination of the interrelationship between the
14 basic assumptions of individuals and the core values of
15 Police Scotland. It requires the embedding of core
16 standards of behaviour to ensure that the culture of
17 every division and department in Police Scotland is
18 anti-racist and that all behaviours and attitudes are in
19 line with that culture.

20 This will be achieved through action, leadership,
21 campaigns, empathy-building, positive narratives and
22 peer support, with a rigorous adherence to legal duties,

1 all of which will be continually assessed and evaluated
2 for effect. Each member of the organisation of
3 Police Scotland needs to think and act in accordance
4 with the shared core values in order to be anti-racist.

5 The Chief Constable is absolutely determined that
6 processes set in train under his command will lead to
7 progressive change, a trajectory that will one day lead
8 to there being no question but that the Police Service
9 of Scotland is an anti-racist service.

10 The Chief Constable is sending a very clear and
11 strong message that if you hold racist, misogynist or
12 discriminatory views, you are unwelcome in policing. It
13 is imperative that progress is made. Words and good
14 intent are not enough. There will be action, practical,
15 firm, progressive, visible action.

16 The Chief Constable declares that upholding the core
17 values of the Police Service of Scotland demands that it
18 be anti-racist, that Police Scotland will aim to become
19 a truly anti-racist service and that Police Scotland
20 will aim to act at all times in accordance with that
21 declaration.

22 Sir, I formally adopt the fuller written statement

1 on behalf of the Chief Constable which will be submitted
2 to the Inquiry today and I conclude by reaffirming that
3 this Public Inquiry has the full support of the
4 Chief Constable and Police Scotland. There is a shared
5 aim to understand the events and the causes and to
6 address matters as they arise. There will be absolute
7 candour from Police Scotland. The organisation will
8 continue to support the Inquiry in all its
9 investigations and aims.

10 Thank you, sir.

11 LORD BRACADALE: Thank you, Ms Maguire.

12 Mr Scullion.

13 Opening statement by MR SCULLION

14 MR SCULLION: My name is John Scullion and I represent the
15 Police Investigations and Review Commissioner, the PIRC.

16 Opening statement on behalf of the PIRC. The PIRC
17 is grateful for the opportunity to make an opening
18 statement at the outset of phase 1 of the public
19 hearings in this Inquiry. Before I say anything else,
20 I wish on behalf of the PIRC and those representing her
21 to express my sincere condolences to the Bayoh family
22 and to acknowledge the dignity and resilience they have

1 shown whilst waiting for these proceedings to commence.

2 The PIRC is committed to assisting your Lordship in
3 the chair and the Inquiry team in achieving its twofold
4 aim of establishing the circumstances surrounding the
5 death of Sheku Bayoh in police custody on 3 May 2015 and
6 making recommendations to prevent deaths in similar
7 circumstances and, secondly, examining the post-incident
8 management processes and subsequent investigation, and
9 considering the extent, if any, to which the events
10 leading up to and following the death of Sheku Bayoh, in
11 particular the actions of the officers involved, were
12 affected by his actual or perceived race and to make
13 recommendations. The PIRC welcomes the important
14 Public Inquiry and is committed to implementing the
15 lessons or learning that may arise from its findings.

16 As you are aware, the PIRC involvement in the
17 investigation of the death of Sheku Bayoh began with the
18 instruction from the Crown on 3 May 2015 to investigate
19 the interaction between the police and Sheku Bayoh at
20 the time of his arrest and the events thereafter.

21 As a consequence, the PIRC holds relevant material.
22 It is important that the material is placed before this

1 Inquiry. It is for this reason that the PIRC has been
2 designated as a core participant to the Inquiry. The
3 PIRC has been actively engaged in the preparation,
4 presentation and disclosure of relevant material to the
5 Inquiry since its inception and has cooperated fully
6 with all requests from the Inquiry team, including the
7 provision of a significant number of documentary and
8 physical productions.

9 The PIRC acknowledges that this work, which has been
10 carried out since the Inquiry was announced and
11 continues as required, was important and necessary. It
12 is worth pointing out that the work undertaken in
13 preparation for the Inquiry has been considerable and
14 has involved the input of several members of the PIRC
15 team, as well as the Commissioner herself.

16 On behalf of the PIRC, I wish to record my
17 appreciation of the hard work and helpful approach of
18 Senior Counsel to the Inquiry, the Solicitor to the
19 Inquiry and the whole Inquiry team.

20 Regular discussions between counsel and different
21 members of staff within the PIRC and the Inquiry team
22 have been key to ensuring good progress in addressing

1 the many complex issues, including those relating to the
2 sheer quantity of evidence.

3 Legislative framework. The Police and Fire Reform
4 (Scotland) Act 2012 created inter alia a single
5 Police Service for Scotland, the Police Service of
6 Scotland, or to use its corporate name, Police Scotland.

7 Prior to 2012, there existed reciprocal arrangements
8 among the eight legacy forces to allow for the
9 independent investigation of the conduct of officers.

10 The introduction of a single service removed this
11 opportunity. In accordance with the European Convention
12 on Human Rights, with particular regard to Article 2,
13 right to life, and Article 3, freedom from torture or
14 inhumane treatment, there exists a requirement for an
15 investigatory body with no hierarchical or institutional
16 connection to those police officers under investigation.

17 To this end, the 2012 Act also established the
18 Independent Office for the Police Investigations and
19 Review Commissioner. The PIRC came into existence on
20 1 April 2013.

21 Role and responsibilities of the PIRC. Section 33A
22 of the Police, Public Order and Criminal Justice

1 (Scotland) Act 2006, as amended, sets out the general
2 functions of the PIRC. One of those functions is where
3 directed to do so by the appropriate prosecutor, to
4 investigate on behalf of the relevant procurator fiscal
5 the circumstances of any death involving a person
6 serving with the police which that procurator fiscal is
7 required to investigate under section 1 of the Inquiries
8 into Fatal Accidents and Sudden Deaths etc (Scotland)
9 Act 2016.

10 Sections 1 and 2, subsection 4 of the Inquiries Into
11 Fatal Accidents and Sudden Deaths Etc (Scotland) Act
12 2016 includes all deaths in legal custody.

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

17 In carrying out an investigation on behalf of
18 the Crown Office and Procurator Fiscal Service, the PIRC
19 complies to comply with (a) any lawful instruction given
20 by the appropriate prosecutor who issued the direction
21 and (b) in the case of an investigation in which there
22 is an indication that a person serving with the police

1 may have committed an offence, any instruction issued by
2 the Lord Advocate in relation to reporting for
3 consideration of the question of prosecution of alleged
4 offences.

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

11 Terms of Reference of the Crown instruction to the
12 PIRC were expanded on three occasions. Firstly, on
13 5 May 2015, the Terms of Reference were expanded to
14 include investigation of: 1, the circumstances leading
15 up to the incident, namely the movements of Sheku Bayoh
16 late on Saturday 2 May 2015 and during the early hours
17 of Sunday 3 May prior to contact with the police,
18 including his attendance at a house at Craigmount
19 Kirkcaldy, and events following his attendance there;
20 and 2, the incident in which the police became involved
21 with Sheku Bayoh shortly after 7.00 am on 3 May 2015.

22 On 12 June 2015, the PIRC was further directed by

1 the Lord Advocate to investigate concerns expressed by
2 Sheku Bayoh's family, namely 3, allegations by the
3 family that they were provided with misleading and
4 erroneous information concerning the death of
5 Sheku Bayoh by police and a concern as to why they were
6 provided with that information; 4, concerns that the
7 initial police investigations and attempts to secure
8 evidence were not thorough, meaning that crucial
9 evidence was lost to the Inquiry; and 5, that there was
10 inappropriate conferring between police officers.

11 Finally, on 2 July 2015 the PIRC was further
12 directed by the Lord Advocate to: 6, to investigate the
13 allegation of criminal conduct made by Zahid Saeed.
14 7(a) investigate issues of race and conduct, 7(b)
15 investigate allegations of potential contraventions of
16 the Data Protection Act 1998 and 7(c), investigate
17 miscellaneous other matters.

18 Investigation. The PIRC undertook an extensive
19 investigation. This included obtaining several hundred
20 witness statements, a total of 512 statements were
21 obtained, some taken by officers of Police Scotland, ten
22 were obtained by the PIRC from expert witnesses, the

1 investigation examined seven separate incident scenes
2 and recovered in excess of 903 productions.

3 Between May 2015 and the announcement of the
4 Public Inquiry in late 2019, it has assessed that in
5 excess of 10,954 hours were worked by PIRC staff in
6 relation to the investigation of the death of
7 Sheku Bayoh.

8 Findings. The PIRC provided two reports to
9 the Crown in relation to the investigation into the
10 death of Sheku Bayoh: the first on 10 August 2015 and
11 the second on 9 August 2016. The two reports considered
12 the original Crown-directed investigation and the
13 additional Terms of Reference provided by the Crown. In
14 addition to this, the PIRC provided three interim
15 situational reports to the Crown to provide updates on
16 the progress of investigations at 11 and 21 May 2015 and
17 30 October 2015.

18 PIRC. In May 2015, the PIRC was still a fairly new
19 organisation, having been in existence for only two
20 years. At that time, institutional learning within the
21 PIRC was still at an early stage. It is fair to say
22 that in the seven years since then there have been many

1 changes. The organisation has grown in response to
2 increasing demands, considerable experience has been
3 gained as a consequence of undertaking its statutory
4 roles in that period. Many opportunities have been
5 taken to learn and develop processes, policies and
6 practice. The current Commissioner, the third to hold
7 the position, has been in post since June 2019.

8 To assist with some context, between 2014 and 2015
9 the PIRC undertook 31 investigations; in 2021 and 2022
10 the number of investigations undertaken was 124.

11 In May 2015, the PIRC's annual operating budget was
12 £2,971,000; today it is £5,824,000. Prior to the
13 investigation into the death of Sheku Bayoh, the PIRC
14 had investigated a total of ten deaths in custody; today
15 the number of deaths in custody investigated is 31.

16 While I do not plan to explore in detail at this
17 stage the lessons and changes already learned since
18 2015, I consider it appropriate to highlight key areas
19 that will fall to be considered in the first hearing
20 where there has already been considerable change. These
21 include the post-incident process, the manner and
22 timescales of referrals from Police Scotland, the

1 provision of witness statements, the investigative
2 processes, reporting procedures and how the PIRC deals
3 with allegations of discrimination in investigations and
4 complaint handling reviews.

5 I highlight these key developments in recognition of
6 the fact that the PIRC is an evolving and learning
7 organisation that has seen significant increase in
8 demand and infrastructure since 2015. It is on this
9 basis that, as I stated at the outset of my opening
10 statement, the PIRC welcomes the Public Inquiry and the
11 opportunity for further critical learning which is
12 necessary to continue to provide an independent
13 investigation and review function vital to securing
14 public trust and confidence in policing in Scotland.

15 Thank you.

16 LORD BRACADALE: Thank you, Mr Scullion. We will take
17 a break now and I will aim to sit again at 11.45.

18 (11.20 am)

19 (Short Break)

20 (11.47 am)

21 LORD BRACADALE: Now, Mr Duncan.

22 Opening statement by MR DUNCAN

1 MR DUNCAN: Good morning. I'm Alasdair Duncan and
2 I represent the Lord Advocate who you will be aware
3 represents the Crown. I'm assisted by Ms Bain who is at
4 the back of the room and Ms Aitken from the Procurator
5 Fiscal Service who is a few rows behind you.

6 There was an indication yesterday that condolences
7 were not particularly welcome or helpful from
8 organisations like the one I represent, and I have to
9 say I find that position entirely understandable, but
10 please be aware you do have those condolences.

11 Sir, proceeding with my opening statement on behalf
12 of the Lord Advocate, as has previously been explained,
13 the present Lord Advocate, prior to her appointment,
14 acted as senior counsel on behalf of the Sheku Bayoh
15 family. In consequence of this, the Lord Advocate has
16 recused herself from any involvement in the conduct of
17 the Inquiry, therefore, although the Lord Advocate was
18 designated a core participant by you, sir, the Crown's
19 engagement with the Inquiry is directed by the
20 Solicitor General and this opening statement is made on
21 her behalf and it focuses on hearing 1.

22 The Solicitor General welcomes the commencement of

1 the Inquiry's oral hearings. She is committed to
2 participating and assisting the Inquiry team where that
3 is appropriate and likely to be useful, but anything the
4 solicitor does to assist the Inquiry requires to be
5 capable of being reconciled with the obligations she has
6 in relation to the administration of criminal justice in
7 Scotland.

8 It may be worth saying a little more about that just
9 now in order to understand how it informs the
10 Solicitor General's engagement with the important work
11 of the Inquiry.

12 As Mr Scullion has already explained for the PIRC,
13 on 3 May 2015, the then Lord Advocate instructed the
14 PIRC to carry out an investigation in terms of
15 section 33A of the 2006 Act and that was to investigate
16 the interaction between police officers and Sheku Bayoh
17 and the events thereafter and also, as Mr Scullion has
18 explained, those Terms of Reference were expanded on
19 three separate occasions up to July 2015. The PIRC
20 submitted an initial report in August 2015 before
21 submission of a voluminous final report in August 2016.

22 Further significant Inquiry was undertaken by

1 the Crown, including the instruction and analysis of
2 multiple expert reports covering a broad range of
3 medical and technical matters.

4 Against that background, the circumstances
5 surrounding the death of Sheku Bayoh were carefully
6 considered by Crown lawyers, including senior Crown
7 counsel, for the purposes of considering criminal
8 proceedings against individual police officers and
9 against the Police Service of Scotland.

10 Senior crown counsel came to the view that there was
11 insufficient evidence to bring criminal proceedings.

12 That determination was the subject of an application for
13 review in accordance with rules made under section 4 of
14 the Victims and Witnesses (Scotland) Act 2014. A review
15 was undertaken by principal Crown counsel whose analysis
16 and conclusions were reviewed by the then
17 Solicitor General.

18 The outcome of the review was intimated by letter to
19 solicitors acting for the families of Sheku Bayoh on
20 11 November 2019. The letter advised that the Crown
21 considered there to be insufficient evidence to
22 establish criminality on the part of police officers,

1 whether individually or collectively, and that there was
2 insufficient evidence to bring proceedings in respect of
3 suggested wrongful acts and omissions by the Police
4 Service of Scotland.

5 On the same date, the Crown wrote to solicitors
6 acting for police officers involved in the restraint of
7 Sheku Bayoh. The letter said that Crown counsel had
8 instructed that no criminal proceedings should be
9 instituted against any police officers in relation to
10 the death of Sheku Bayoh based on "Current available
11 information". The letter added the following and once
12 again I quote:

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

18 These comments underline the dual role that the
19 Solicitor General requires to fulfil in relation to this
20 Inquiry. She must do what she can to assist the Inquiry
21 where that is appropriate, but she must also keep all
22 evidence emerging from the Inquiry's work under review

1 in terms of her role in the criminal justice system and
2 she must be seen to act fairly as regards that.

3 Now, this may mean that in hearing 1, although
4 seeking to assist the Inquiry team where we can, the
5 principal role of the Solicitor General's legal team
6 will be in listening to and analysing the evidence that
7 emerges. Co-counsel and Crown solicitors will be in
8 attendance for that purpose and I should add that none
9 of us was involved in the investigation into the death
10 of Sheku Bayoh or the subsequent review.

11 We will listen to all of the evidence with care and
12 that began yesterday with the moving accounts by and on
13 behalf of the relatives and families and friends of
14 Sheku.

15 Later phases of the Inquiry, hearing 3 in
16 particular, will look at post-incident management. The
17 Solicitor General and her team look forward to providing
18 whatever assistance they can in relation to that phase
19 of the Inquiry's work, but in emphasising that aspect of
20 the Inquiry's Terms of Reference, the
21 Solicitor General does not lose sight of another
22 important aspect, in particular the

1 Solicitor General keeps in mind that at the preliminary
2 hearing on 18 November 2021, and emphasised again this
3 morning, Counsel to the Inquiry emphasised the
4 importance of race to the questions before the Inquiry,
5 that at all times the Inquiry will ask whether race or
6 perceived race made a difference.

7 The Solicitor General and her team will proceed in
8 the same way.

9 Thank you, sir.

10 LORD BRACADALE: Thank you, Mr Duncan.

11 Mr McConnachie.

12 Opening statement by MR MCCONNACHIE

13 MR MCCONNACHIE: Thank you, sir.

14 This is an opening statement on behalf of Police
15 Constable Alan Paton, now retired. My name is
16 Brian McConnachie and I appear alongside Ms Radcliffe,
17 advocate on behalf of Alan Paton. We are instructed by
18 Paul Kavanagh of KM Law.

19 This opening statement is made on behalf of Alan
20 Paton. He has been granted core participant status in
21 the Sheku Bayoh Inquiry. This statement will explain
22 who he is and outlines what he is seeking from the

1 Inquiry.

2 Firstly, on behalf of Mr Paton we thank the Chair
3 for affording us the opportunity to make this opening
4 statement.

5 Alan Paton was a police constable with
6 Police Scotland based at Kirkcaldy police office. He
7 was on duty on 3 May 2015. At approximately 07.20 he,
8 along with a colleague, attended a call relating to
9 several reports of a black male in possession of a knife
10 on Hendry Road, Kirkcaldy.

11 They were the first officers to attend the scene.
12 On arrival he saw Mr Bayoh in the street directly in
13 front of the police vehicle. He was involved in the
14 subsequent restraint of Mr Bayoh. Thereafter, he
15 assisted in administering CPR until the paramedics
16 arrived.

17 We would, in common with others, wish to express our
18 sympathy to the family and friends of Sheku Bayoh and
19 our thoughts and condolences remain with them.

20 Alan Paton understands that Mr Bayoh's death has had
21 a dramatic effect on the family. He also understands
22 that the family hope to obtain answers to the many

1 questions which they have surrounding the circumstances
2 of Mr Bayoh's death and the aftermath, questions which
3 remain despite the fact more than seven years have now
4 passed.

5 The aim of this Inquiry is twofold. First to
6 establish the circumstances surrounding the death of
7 Sheku Bayoh and make recommendations to prevent deaths
8 in similar circumstances. Secondly, the Inquiry will
9 assess the post-incident management process and
10 subsequent investigation, making recommendations, if
11 appropriate, and consider the extent, if any, to which
12 the events leading up to and following his death, in
13 particular the actions of the officers involved, were
14 affected by his actual or perceived race and make
15 recommendations to address any findings in that regard.

16 In this initial part of the hearing, the issues to
17 be addressed are set out in the document SBPI00003.
18 Primarily in relation to Mr Paton these would appear to
19 be (a) risk assessment, (b) initial contact with
20 Mr Bayoh, (c) the restraint, (d) the calling of the
21 ambulance, and (e) the completion of paperwork.

22 It is hoped that with the assistance and cooperation

1 of all core participants that the Inquiry will discover
2 the truth of what happened and offer the family closure,
3 that furthermore if there are lessons to be learned from
4 any part of the Inquiry's remit, that these are
5 highlighted and taken on board.

6 The Chair of the Inquiry has already stated that the
7 family of Sheku Bayoh and their interests will be at the
8 heart of the Inquiry and it is acknowledged that this is
9 entirely appropriate. However, they are not the only
10 people to have been affected adversely by the events of
11 the early morning of 3 May 2015. The death of
12 Sheku Bayoh has also impacted significantly upon the
13 life of Alan Paton and his family. After a lengthy
14 period of illness, he retired from Police Scotland due
15 to ill health. He has not worked since. He has been
16 diagnosed with post-traumatic stress disorder. He has
17 been subjected to unjustified vilification on social
18 media and in both written and broadcast media. He has
19 been made the focus of attention from the
20 representatives of Mr Bayoh's family and his involvement
21 in matters has been singled out falsely as being
22 motivated by race. There has been extensive media

1 coverage naming him as being involved in the incident
2 and alleging racism and violence on his part. Mr Paton
3 denies all these various accusations.

4 Members of his own immediate family, whilst
5 accompanied by the representative of Mr Bayoh's family,
6 have gone public with various allegations against
7 Mr Paton. These allegations were it is believed
8 motivated by a family feud and were false. In addition,
9 they relate to matters which have no bearing whatsoever
10 on the issues which this Inquiry has to deal with
11 arising from the events of 3 May 2015.

12 Statements have been disclosed relating to
13 historical complaints against Mr Paton arising from his
14 time as a serving police officer with no attempt to
15 balance these complaints with the many positive
16 appraisals arising from that same service.

17 Alan Paton carried out his responsibilities as
18 a police officer without fear or favour for many years.
19 He carried out his duties diligently and properly. Alan
20 Paton has confidence that the Inquiry can, and hopes
21 that it will, deliver on its Terms of Reference and meet
22 its objectives by exploring the evidence and discovering

1 the truth.

2 Alan Paton believes that the Inquiry will be able to
3 establish on the evidence that there was no wrongdoing
4 on his part and that none of the decisions he made, nor
5 actions he took were affected in any way by Mr Bayoh's
6 race or perceived race.

7 Alan Paton was faced with a dynamic set of
8 circumstances where decisions had to be taken as
9 a matter of urgency. The Inquiry may find mistakes were
10 made and that with the benefit of hindsight, other
11 decisions could have been taken. However, mistakes
12 made, if any, were honest ones in the context of the
13 circumstances which faced Mr Paton and his colleagues.

14 It is hoped that the Inquiry will deliver on its
15 Terms of Reference and meet its objectives. Mr Paton
16 and his representatives look forward to continuing to
17 work with the Inquiry team in this and subsequent
18 hearings in an effort to establish the facts and learn
19 any lessons arising from them.

20 Thank you.

21 LORD BRACADALE: Thank you.

22 Dean of Faculty.

1 Opening statement by the DEAN OF FACULTY

2 DEAN OF FACULTY: Thank you, sir.

3 My name is Roddy Dunlop and I represent the Scottish
4 Police Federation, retired PC Nicole Short and PC
5 Craig Walker and in that regard, I am assisted by Euan
6 Scott, advocate, and by PBW Law.

7 The death of Mr Bayoh was a tragedy for all
8 concerned, but in particular for his family. Those
9 I represent consider it appropriate to recognise that at
10 the outset.

11 Ms Short and PC Walker welcome the opportunity to
12 present their evidence to the Inquiry. In the absence
13 of undertakings from the Solicitor General they have
14 been advised to consider responding to requests for
15 information and questions from the Inquiry with no
16 comment. However, they have declined to follow that
17 advice by choosing to provide full and frank evidence to
18 the Inquiry. This is a decision that they have not
19 taken lightly. It is a decision they have taken because
20 they are determined to assist this Inquiry in every way
21 that they can. They are determined to provide their
22 evidence to assist the Inquiry, but also to dispel any

1 suggestion of wrongdoing on their part. They are
2 content for their evidence to speak for itself.

3 The Federation likewise welcomes the Inquiry. It is
4 a statutory body whose purpose is to represent members
5 of the Police Force in Scotland in all matters affecting
6 their welfare and efficiency. It has a direct role in
7 representing members' interests, in the policies adopted
8 by Police Scotland, their members' training and the
9 resources available to them. It provides
10 representations on behalf of its members to the
11 government, Police Scotland and other related agencies
12 to ensure that the best interests of its members are
13 properly represented.

14 The Federation is wholly separate from
15 Police Scotland and is neither a training body, nor an
16 investigative body. In essence it is akin to a trade
17 union for the members of the Police Force in Scotland.
18 It is the representative body of the majority of
19 police officers in this country, including those that
20 were involved in the restraint of Mr Bayoh on
21 3 May 2015.

22 The Chair has indicated that he wants the family to

1 be at the heart of the Inquiry. That is clearly correct
2 and appropriate given what the Inquiry will consider and
3 the likely emotional toll on the family. It would,
4 however, be naive to think that the events of that day
5 have not had a material impact on the lives and families
6 of the officers who attended the scene that day.

7 As a representative body, the Federation did not
8 play a role in the restraint of Mr Bayoh; it
9 nevertheless has an interest in ensuring that lessons
10 can be learned from the matters to be addressed, for
11 example, in relation to the resources provided to
12 police officers or any changes to training. The
13 Federation is aware that changes have since been made to
14 training provided to police officers by Police Scotland,
15 particularly surrounding how to recognise and approach
16 individuals suffering from an acute behavioural
17 disturbance. The Federation is keen to explore what
18 further changes, if any, can be made. The Federation is
19 keen to explore the resourcing that was made available
20 to the officers who attended the scene that day and, in
21 particular, whether the provision of additional officer
22 safety equipment might have avoided the fatal outcome.

1 A representative of the Federation was involved in
2 the immediate aftermath when they provided welfare
3 advice to the officers involved upon request. As
4 a result of providing that advice and by making
5 arrangements for the officers to have the benefit of
6 legal advice, the Federation has been vilified in the
7 media. The Federation defended and will continue to
8 defend their members' interests in order to fulfil its
9 statutory obligation to represent its members on all
10 matters concerning their welfare. This includes the
11 provision of welfare advice, ensuring that its members'
12 fundamental legal rights are respected.

13 Since 3 May 2015 there has been intense media
14 speculation as to the circumstances surrounding the
15 death of Mr Bayoh. There has been an active campaign to
16 have the officers who attended criminally prosecuted.
17 There have been allegations of criminality from the
18 outset. This suggestion has persisted, notwithstanding
19 a complex and thorough investigation and subsequent
20 review determining that the officers would not face
21 criminal prosecution.

22 At every stage the decision not to prosecute has

1 been the subject of significant media attention and
2 adverse comment. There have been accusations of racism
3 directed against those officers, notwithstanding the
4 lack of any evidential foundation for such an
5 accusation. The officers have been individually
6 targeted on social media. Such vilification has
7 a lasting impact.

8 The human interest and the welfare of those officers
9 has largely been ignored since May 2015. Their
10 reputations have been tarnished. They will forever be
11 associated with the death of Mr Bayoh, the accusations
12 of racism, the accusations of brutality leveled against
13 them. Ms Short and PC Walker are confident that these
14 accusations are not fairly directed at them. They were
15 simply doing their duty in trying and traumatic
16 circumstances.

17 It will become clear from the evidence that the
18 events of that day and the aftermath have had
19 a significant impact on both the physical and mental
20 health of some of the officers, none more so perhaps
21 than Ms Short.

22 Ms Short lost her career as a police officer

1 following the injuries she sustained that day. She
2 suffered both physical and psychological injury and has
3 been diagnosed as suffering from post-traumatic stress.
4 This rendered her permanently disabled from undertaking
5 the ordinary duties of a police officer. She applied to
6 retire from the police on ill health grounds in 2017 but
7 it required a judicial review before she would be
8 allowed to retire and begin a recovery. Even then,
9 notwithstanding there being no suggestion of wrongdoing
10 on her part, the decision of the Lord Ordinary to
11 overturn the decision of the police authority regarding
12 the retirement has been criticised in the media.

13 It is clear that this Inquiry will take some time.
14 Neither PC Walker nor Ms Short can move on with their
15 lives until the conclusion of this Inquiry. Until its
16 conclusion, the Inquiry will no doubt take its toll on
17 their health and mental wellbeing. They will continue
18 to be under intense media scrutiny. This should not be
19 viewed as a criticism of the Inquiry. Both are
20 pragmatists and acknowledge that the issues that this
21 Inquiry will explore are important and complex and that
22 a proper exploration of such issues will take time.

1 The reason for highlighting the impact is to stress
2 that the human interest and welfare of the officers
3 involved should not be forgotten as this Inquiry
4 progresses.

5 A narrative of division is neither fair nor accurate
6 so far as Ms Short and PC Walker are concerned. They
7 did not join Police Scotland with a desire to be
8 involved in the death of an individual; they joined
9 Police Scotland to serve their local community and to
10 protect the public, all members of the public, without
11 fear or favour, without bias or preference. In doing
12 so, they voluntarily put themselves in harm's way on
13 a regular basis. This essential point is consistent
14 with the experience of the Scottish Police Federation
15 regarding the vast majority of its officers whom it
16 represents.

17 Presenting this Inquiry as a fight for justice
18 against a malign police force does not do the
19 circumstances justice. The unutterable tragedy of this
20 case should not cause us to ignore the bravery of the
21 individuals who responded to a rapidly unfolding
22 situation on the morning of 3 May.

1 It is the sincere wish of the Federation, of
2 Ms Short and of PC Walker that this Inquiry will bring
3 closure to all concerned. The family of Mr Bayoh
4 deserve no less; so too do these officers. That being
5 so, the Federation, PC Walker and Ms Short welcome the
6 opportunity to provide their evidence and to assist this
7 Inquiry in any way that they can.

8 I am obliged.

9 LORD BRACADALE: Thank you, Dean.

10 Mr Jackson.

11 Opening statement by MR JACKSON

12 MR JACKSON: Thank you, sir.

13 I'm Gordon Jackson. I represent core participants
14 Officers Smith, Good and Tomlinson. I'm assisted by
15 Carla Fraser, advocate, and instructed by RS Vaughan
16 & Co solicitors.

17 So I make this opening statement on behalf of those
18 core participants. In short, it is submitted they did
19 nothing wrong on 3 May 2015 and that race did not
20 influence their actions in any way. They are three
21 officers with good records who reported for duty that
22 day and found themselves responding to an evolving and

1 significant event. There had, we know, been several
2 reports by members of the public of a well built male,
3 around 6 feet, of muscular build, wielding a knife in
4 public, walking in the middle of the road and acting
5 aggressively towards passing cars.

6 The officers had no information regarding the
7 identity of the man. They weren't privy to his motives
8 or his intentions, they didn't know what kind of person
9 he was, where he normally lived, how he normally
10 behaved, or what he might have taken in terms of alcohol
11 or other substances.

12 The only information they had was what had been
13 received from the members of the public who had called
14 Police Scotland and were clearly alarmed by what they
15 saw of this man and his behaviour.

16 When the officers attended the scene they were faced
17 with someone who they understood, on the basis of
18 reports from the public, to be armed with a large knife.
19 The knife was recovered approximately 20 metres from
20 where the officers confronted Mr Bayoh, the blade about
21 6-inch in length, it was a kitchen knife.

22 PC Tomlinson arrived along with Nicole Short after

1 PCs Walker and Paton. PCs Smith and Good arrived
2 together thereafter. PC Tomlinson had about 17 months'
3 service.

4 From the moment of their arrival at the scene
5 everything those officers did was in line with the
6 standard operating procedure in place at the time, their
7 training and the law.

8 More than one member of the public had reported
9 a knife. The officers were not able to disregard that
10 simply because the knife was not visible to them upon
11 arrival. It could, for all they knew, have been
12 concealed on the person. At the very least they could
13 not discount the possibility that it was being
14 concealed. They had to act as if there was possession
15 of a knife and that was in accordance with their
16 training.

17 PC Tomlinson, when he arrived, was unable to see
18 PC Paton. He saw Mr Bayoh and PC Walker facing one
19 another, PC Walker had his hands covering his face.
20 PC Walker had in fact been contaminated by his own
21 incapacitant spray, but PC Tomlinson thought he had been
22 injured. His inability to see PC Paton gave him cause

1 to believe that too might be the case.

2 Officer Tomlinson tried verbal commands. Mr Bayoh
3 refused to follow them or engage with him and PC Short
4 and PC Tomlinson then tried incapacitant sprays but they
5 too had no effect.

6 Sheku Bayoh then chased and in fact attacked
7 Nicole Short. PC Tomlinson believed that there was real
8 danger to Nicole Short and in defence of her and himself
9 he used his baton and was then involved in the restraint
10 of Mr Bayoh on the ground. The force used was
11 reasonable, proportionate and necessary in the
12 circumstances. This was a high risk incident. Nothing
13 else could have been done in that situation.

14 Mr Bayoh displayed serious and aggravated resistance
15 and the officers were entitled to use the force they did
16 in the circumstances. It was, I repeat, proportionate
17 and reasonable.

18 Tragic the outcome undoubtedly was, and those
19 I represent acknowledge that, and would add to what
20 others have said, but the final position is that tragic
21 as the outcome was, the officers themselves did nothing
22 wrong.

1 PC Smith was at that time a qualified officer safety
2 trainer. He was delivering courses on that several
3 times a year and he went there with PC Good who was
4 a probationer. She completed her first shift on
5 6 April 2015 and had very little Police Service. She
6 was under the supervision of PC Smith who was her helper
7 in her training.

8 En route they heard the emergency Airwave button and
9 Nicole Short's voice. That's rare that button being
10 used, and they heard a further activation and a voice
11 say "Officer injured". PC Good was initially concerned
12 that Nicole Short had been stabbed. She was shaking,
13 injured. By that time, Mr Bayoh was on the ground.
14 PC Smith assisted with the restraint. PC Good assisted
15 Nicole Short at first and then too assisted with the
16 restraint.

17 At that stage PC Smith noted Mr Bayoh was
18 unresponsive and thereafter administered CPR. He was
19 unable to continue with breaths, but chest compressions
20 were continued and he then drove the ambulance to the
21 hospital, allowing paramedics to continue administering
22 medical treatment to Sheku Bayoh in the rear.

1 Mention has been made about what happened thereafter
2 at Kirkcaldy police office. When the officers got back
3 to Kirkcaldy police station they were in a state of
4 shock. PC Tomlinson arrived first; Good remained longer
5 at the scene to secure the locus and Smith had to make
6 his way back from the hospital after driving the
7 ambulance. They were directed into the canteen and
8 separated from others in the station, all of them
9 shocked and distressed and indeed visibly upset.

10 Any suggestion that there was collusion between the
11 officers at that stage is absolutely refuted, not only
12 by the officers themselves, but by all the other
13 evidence in the case. That evidence will confirm that
14 these officers told the truth.

15 Race. The officers have been asked by the Inquiry
16 about the extent to which Sheku Bayoh's race influenced
17 their actions. It did not influence their actions at
18 all and there is no evidence whatsoever to the contrary.

19 PC Good in particular was asked about a comment in
20 a statement about a thought she had en route to Hayfield
21 Road upon hearing the emergency button. The thought was
22 that this might be an act of terrorism. She explained

1 that was merely a fleeting thought she had at the point
2 she heard the button and thought perhaps Nicole Short
3 had been stabbed. It was prompted by a previous
4 briefing on the level of the terrorist threat and
5 rumours circulating about intelligence and the
6 possibility of such attacks. It is clear what was
7 actually foremost in PC Good's mind was the fact that
8 a man was reported to be in possession of a large knife.

9 This was a very unusual call for a Sunday morning in
10 Kirkcaldy and the man was causing fear and alarm amongst
11 the public. It is only natural that the police officers
12 would have considered any number of possible scenarios
13 from the possibility it was terror-related to the
14 possibility it was just a hoax. Police officers are
15 trained to be aware, vigilant and professionally
16 curious. Policing doesn't operate in a vacuum.

17 At that time, officers were under instructions to
18 avoid wearing uniform when travelling to and from work
19 so as not to reveal that they were serving
20 police officers. Terrorism is something they are
21 trained to be aware of in the assessment of risk, an
22 ever-present danger, and they are told to be mindful of

1 that at all times. Not at all surprising that that
2 possibility -- no more -- that possibility was in
3 officers' heads when they were attending the scene.

4 In conclusion, the allegations which have been made
5 against these officers, particularly regarding the
6 import of race, are without foundation. They have
7 nevertheless had a significant impact on the officers
8 who have sought to continue in their duties in service
9 to the public.

10 On that basis these participants welcome the start
11 of this Inquiry. They are confident that this Inquiry
12 will demonstrate that the accusations which have been
13 made in the media against them are baseless and that
14 their treatment of a high-risk, evolving situation with
15 which they were presented on 3 May 2015 was appropriate,
16 proportionate and in line with their training and the
17 law.

18 Thank you, sir.

19 LORD BRACADALE: Thank you, Mr Jackson.

20 Could I ask the four senior counsel at the table to
21 return to their seats and once they have done that, if
22 Ms McCall, Mr Hamilton, Mr Macleod and Mr Moir could

1 make their way to the table, please.

2 MS GRAHAME: May I take this opportunity to mention
3 something. It has been drawn to my attention that when
4 Ms Mitchell for the Bayoh family gave her opening
5 statement, that she misnamed one of the officers and we
6 would like that to be -- that change to be recorded for
7 the purposes of the transcript.

8 When she gave the list of officers at the scene, the
9 first name that she gave was Scott Maxwell and she
10 misspoke due to a typo on her script. She should have
11 said PC Craig Walker. I have discussed that with
12 Ms Mitchell and she understands that I'm going to
13 address this so that the matter can be rectified in the
14 transcript.

15 LORD BRACADALE: Thank you, that's very helpful, Ms Grahame.

16 Ms McCall.

17 Opening statement by MS MCCALL

18 MS MCCALL: Sir, I'm Shelagh McCall and I represent the core
19 participants Sergeant Scott Maxwell, Constable Daniel
20 Gibson and Constable James McDonough. I'm assisted by
21 David Adam, advocate, and instructed by Gordon Williams,
22 solicitor.

1 Scott Maxwell, Daniel Gibson and James McDonough
2 welcome the opening of this Public Inquiry. The events
3 of 3 May 2015 have clearly had a lasting impact on the
4 family and friends of Sheku Bayoh. The loss of their
5 loved one has changed their lives forever.

6 Mr Maxwell, Mr Gibson and Mr McDonough wish to
7 extend their sympathy to Mr Bayoh's family and friends.
8 They appreciate, of course, that that may be cold
9 comfort, but nonetheless it is heartfelt on their part.

10 The past seven years have presented challenges for
11 all those affected by what happened at Hayfield Road on
12 3 May and in its aftermath. The events have had
13 a lasting impact on the police officers who attended at
14 Hayfield Road that day, as well as on their families.

15 At that time, Scott Maxwell was an acting sergeant;
16 Daniel Gibson had three years service; James McDonough
17 was only a few months into his service as a police
18 constable. Turning up for work on a Sunday morning none
19 of them could have imagined how that day would pan out.

20 The Inquiry will hear of these officers' concern for
21 Mr Bayoh, their shock at his collapse and their distress
22 at news of his death.

1 The Inquiry will rightly scrutinise the officers'
2 decisions and actions. What happened on 3 May will be
3 picked over in great detail over the coming weeks and
4 months as the Inquiry goes about its task.

5 With the benefit of hindsight of course, the Inquiry
6 has the opportunity to examine the officers' every
7 thought, every decision, every action and the reasons
8 behind them, but in that detailed examination it is
9 important to remember that from the moment the police
10 controller relayed the first call from the member of the
11 public about an ongoing disturbance involving a male
12 armed with a knife, to the moment the ambulance was
13 called for Mr Bayoh was less than nine minutes.

14 Each officer who attended that day was required by
15 their public duty as a constable to do so, no matter the
16 danger they may have faced. As well as the further
17 calls from the public corroborating the initial report
18 of a man with a large knife, once Sergeant Maxwell,
19 Constable Gibson and Constable McDonough were en route
20 they each heard a colleague's emergency button being
21 activated and the message communicated "Officer
22 injured". At that point they did not know what had

1 happened, which of their colleagues may have been
2 injured or how seriously, and on arrival they needed to
3 assess the situation and respond immediately. The
4 Inquiry should not lose sight of the fact that these men
5 were having to assess risk and make decisions in
6 real-time, in a dynamic evolving situation, often in
7 a split second.

8 That there was such a tragic outcome following the
9 restraint of Mr Bayoh is something that these three
10 officers would wish to but cannot change. However,
11 Sergeant Maxwell, Constable Gibson and Constable
12 McDonough believe that they acted that morning in
13 accordance with their duty as police officers and in
14 accordance with their training. I am grateful to Senior
15 Counsel to the Inquiry and to Ms Mitchell for correcting
16 the record of what was said this morning because as the
17 Inquiry will hear, Sergeant Maxwell did not participate
18 in the restraint of Sheku Bayoh and used no force
19 against him at any time.

20 It has taken a long time for this Inquiry to be
21 announced and to get underway and the passage of time
22 has weighed heavily on each of the three officers

1 I represent. They, along with their colleagues, have
2 been subject to much public and media comment and
3 speculation over the years, to which as serving officers
4 they cannot reply. Their hope now is that this will be
5 a thorough and transparent process. They want the
6 Inquiry to hear from all relevant witnesses to the
7 unfolding events of 3 May 2015 and for the full facts to
8 be aired.

9 All statutory public inquiries are set up because
10 there is a matter of public concern. It is therefore
11 important too that the public has the opportunity to
12 hear and see a full account of the evidence which will
13 be available to the Inquiry and upon which you, sir,
14 will ultimately reach your conclusions and
15 recommendations.

16 Everyone with an interest in this Inquiry now has to
17 place their trust in you as Chair. Sergeant Maxwell,
18 Constable Gibson and Constable McDonough are prepared to
19 accept the scrutiny. They have indicated from the
20 outset of the Inquiry that they want the Chair to get to
21 the truth of what happened and why and that they will do
22 whatever is properly asked of them to facilitate that

1 outcome.

2 Thank you.

3 LORD BRACADALE: Thank you, Ms McCall.

4 Mr Hamilton.

5 Opening statement by MR HAMILTON

6 MR HAMILTON: Thank you, sir.

7 My name is Duncan Hamilton and I appear on behalf of
8 two core participants, firstly, retired Chief
9 Superintendent Gary McEwan and secondly, Chief
10 Superintendent Conrad Trickett and I'm instructed by
11 Levy & McRae solicitors.

12 Chief Superintendent Gary McEwan retired from
13 Police Scotland in 2021 after 31 years' service. Chief
14 Superintendent Conrad Trickett has 23 years'
15 Police Service and remains a serving police officer.
16 Both men are grateful for the opportunity to contribute
17 to the work of this Inquiry today and in the months
18 ahead.

19 At the outset both retired Chief Superintendent
20 McEwan and Chief Superintendent Trickett wish to place
21 on public record their sincere condolences to the family
22 of Sheku Bayoh for their enduring loss. It is apparent

1 from the evidence already available, amplified by the
2 compelling contributions shared with the Inquiry
3 yesterday that he was a much loved man who came from
4 a close and caring family. These hearings will be
5 difficult for all involved but will be most painful for
6 the Bayoh family.

7 In the vast range of issues this Inquiry will cover,
8 the central tragedy remains that a young man lost his
9 life. That is at the core of why this Inquiry was
10 established and it is why Chief Superintendents McEwan
11 and Trickett are committed to assisting the Inquiry in
12 its vital work. Both have provided full statements and
13 answered every question put to them by the Inquiry team.

14 These officers have dedicated a significant part of
15 their lives to advocating policing which commands
16 community confidence. They share the desire of the
17 family and of the public to build the fullest picture of
18 events on 3 May 2015 in Hayfield Road. More widely,
19 there is a unity of purpose in ensuring that communities
20 across Scotland continue to trust and value their
21 Police Service.

22 It is important for those following this Inquiry to

1 understand from the outset that neither Gary McEwan nor
2 Conrad Trickett had any part in the events leading to
3 the death of Sheku Bayoh. Neither was present in
4 Hayfield Road or ever came into contact with
5 Sheku Bayoh. Rather their role involved with dealing
6 with the aftermath of the incident and the procedures
7 triggered by Sheku Bayoh's death.

8 On the morning of 3 May 2015, retired Chief
9 Superintendent McEwan was on duty in the capacity of
10 a strategic firearms commander overseeing a separate
11 operation. He was informed of the incident involving
12 Mr Bayoh and was responsible for declaring this to be
13 a critical incident.

14 At a meeting later that morning where the critical
15 incident was explained to other senior officers, the
16 decision was taken that a post-incident manager was
17 required. Conrad Trickett, who was then
18 a chief inspector and the on-call chief inspector for
19 operational support division, proactively offered to
20 assist and perform that role in light of his previous
21 training and experience. He was thereafter appointed as
22 post-incident manager by the Assistant Chief Constable.

1 His involvement was voluntary and driven by a desire to
2 help.

3 All of the subsequent actions and decisions taken
4 will be examined by this Inquiry in detail in the months
5 and years ahead. For today it is sufficient to record
6 that at every stage, both officers acted honestly, in
7 good faith, with professionalism and to the very best of
8 their ability in difficult circumstances.

9 Both retired Chief Superintendent McEwan and Chief
10 Superintendent Trickett are clear that they will attend
11 the Inquiry and will give evidence if asked to do so.

12 The desire of the family for a definitive investigation
13 and clear conclusions based on evidence is one which
14 they share.

15 This Inquiry has a vital role to play in ensuring
16 that the public continues to trust police officers and
17 the wider Police Service in Scotland. Both Gary McEwan
18 and Conrad Trickett have devoted their careers to that
19 goal. Their hope is that through full and open
20 participation in this Inquiry, not only will the Bayoh
21 family have full answers to the questions they have
22 posed, but in providing those answers, this Inquiry can

1 renew and refresh that essential bond of trust between
2 police officers and the public they serve.

3 I'm obliged.

4 LORD BRACADALE: Thank you, Mr Hamilton.

5 Mr Macleod.

6 Opening statement by MR MACLEOD

7 MR MACLEOD: Thank you.

8 My name is Murdo Macleod and I appear on behalf of
9 Chief Superintendent Patrick Campbell, instructed by
10 Mr Iain Cahill of Levy & McRae.

11 At the heart of this Inquiry is Sheku Bayoh. What
12 happened to him on 3 May 2015 was a tragedy, and
13 Mr Campbell firstly wishes to extend his condolences to
14 Mr Bayoh's family and friends for their very painful and
15 keenly felt loss.

16 Sir, Mr Campbell is grateful for the opportunity to
17 participate in this Inquiry and he is committed to
18 supporting its work in any way he can, whether by
19 providing material or by giving evidence during Inquiry
20 hearings.

21 He is also providing a full statement based on the
22 material that the Inquiry has been able to give him

1 regarding his involvement in the subsequent police
2 investigation of events in Hayfield Road.

3 As a duty detective superintendent for the east of
4 Scotland on 3 May 2015, he set-off from Livingstone
5 police station to Kirkcaldy within minutes of being
6 instructed to do so by Detective Chief Superintendent
7 Lesley Boal.

8 When he arrived in Kirkcaldy, at about 9 o'clock in
9 the morning, he was determined to carry out his role as
10 the initial senior investigating officer in good faith
11 and to the best of his ability in what were fluid,
12 fast-moving and difficult circumstances.

13 Sir, Mr Campbell is acutely aware that the consent
14 of the public is the cornerstone of modern policing in
15 Scotland. People must have confidence in the Police
16 Service and its officers. This Inquiry will hold
17 a mirror up, not only to Police Scotland and other
18 organisations in Scottish society, but also to
19 individuals whose conduct will be carefully examined.

20 Should it be established in the course of the
21 Inquiry that Mr Campbell, or indeed other officers, have
22 made mistakes or errors of judgment, then he is

1 committed to learning lessons from the process.

2 As an officer with over 25 years of experience,
3 Mr Campbell has always resolved to act with fairness,
4 integrity and respect, and he will assist this Inquiry
5 with these same values in mind. This way he can play
6 his part in ensuring that the Inquiry develops as clear
7 a picture as possible and fulfils its critically
8 important Terms of Reference.

9 Thank you, sir.

10 LORD BRACADALE: Thank you. Mr Moir.

11 Opening statement by MR MOIR

12 MR MOIR: Thank you, sir.

13 My name is Mark Moir. I represent the Coalition for
14 Racial Equality and Rights. I am assisted by Kevin
15 Henry, advocate, and instructed by Moir & Sweeney
16 Litigation, solicitors.

17 The Coalition for Racial Equality and Rights, which
18 I will herein after refer to as CRER, wishes firstly to
19 express its heartfelt condolences to the family and
20 friends of Sheku Bayoh.

21 CRER is mindful of the hurdles that this family have
22 faced from the day of his death to the opening of these

1 Inquiry hearings seven years later. As the Chair has
2 rightly stated, Mr Bayoh's family must be at the heart
3 of this Inquiry.

4 CRER welcomes the opportunity to make an opening
5 statement to the Inquiry. Before turning to the matters
6 which the Inquiry is concerned, I would like briefly to
7 set out who CRER are and what they do.

8 CRER is a Scottish strategic racial equality charity
9 and anti-racist organisation based in Glasgow. It is
10 focused on working to eliminate racial discrimination
11 and harassment and to promote racial justice across
12 Scotland.

13 Taking a rights and evidence-based approach to its
14 work, CRER aims to tackle structural racism at all
15 levels at which such racism occurs: personal, social and
16 institutional. Since its inception in 1999, CRER has
17 had a relationship of trust with key stakeholders and
18 public bodies across Scotland as a critical friend and
19 centre of expertise on race equality within
20 organisations in their roles as employers and service
21 providers, with its clear focus on tackling
22 institutional and structural racism.

1 CRER has been asked to undertake many projects
2 focused on assessing equality and performance and
3 supporting improvement in approaches. Its specialism on
4 race equality in relation to organisational practice,
5 theoretical and legal frameworks and in working
6 alongside grassroot community groups has enabled it to
7 support organisations to identify and take action on
8 these issues.

9 CRER thanks the Chair for his decision to appoint it
10 as a core participant to the Inquiry. This Inquiry will
11 be examining the circumstances leading to the death of
12 Mr Bayoh, in particular the actions of officers
13 involved, how the police dealt with the aftermath of his
14 death and the subsequent investigation into Mr Bayoh's
15 death.

16 The Inquiry team's Terms of Reference will require
17 the Chair to consider the extent, if any, to which those
18 events were affected by Mr Bayoh's actual or perceived
19 race. Put short, the Chair will require to ask himself
20 would it have made a difference if Mr Bayoh had been
21 white?

22 It is this question and the examination of the role,

1 if any, played by Mr Bayoh's race in the events
2 surrounding his death which led to CRER seeking
3 designation as core participant in the Inquiry. CRER
4 does not wish to speculate on or pre-judge the evidence
5 which may be led during the course of the Inquiry. It
6 is not CRER's intention in this opening statement to
7 make submissions on the impact, if any, of Mr Bayoh's
8 actual or perceived race. Rather, CRER intends to
9 critically and robustly examine all the evidence led
10 during the course of the Inquiry and consider whether
11 the actions of the various individuals and institutions
12 would have been different had Mr Bayoh been white.

13 CRER considers that the issue of race permeates all
14 aspects of the Inquiry's work. It welcomes the Chair's
15 decision to examine the possible role of race at each
16 hearing, culminating in a final hearing focusing on race
17 which will bring together and robustly examine the
18 evidence led in order for the Chair to reach his
19 conclusions and make any such recommendations as he sees
20 fit.

21 CRER is confident that the approach which Senior
22 Counsel to the Inquiry has proposed will allow the

1 Inquiry to understand the nuances of racism. Racism
2 does not just extend to overtly racist language and
3 behaviour. It is often indirect, and understanding it
4 requires consideration of how individuals, organisations
5 and societies behave, and the impact of that behaviour
6 on people from minority ethnic backgrounds, rather than
7 simply focusing on open expressions of prejudice.

8 In this regard, CRER will seek to provide whatever
9 assistance it can to the Inquiry in its consideration of
10 the role, if any, played by unwitting or institutional
11 racism.

12 While the Inquiry will no doubt, should such
13 evidence emerge during the course of the Inquiry, be
14 able to easily identify examples of overt racist
15 language or behaviours, examples of unwitting or
16 institutional racism may prove to be more difficult to
17 recognise. The question of both unwitting and
18 institutional racism were considered by Sir William
19 Macpherson of Cluny in his Inquiry into the death of
20 Stephen Lawrence. While these are of course matters for
21 the Chair, CRER would wish to raise at this stage
22 Sir William's definition of unwitting racism:

1 "Unwitting racism can arise because of lack of
2 understanding, ignorance or mistaken beliefs. It can
3 arise from well intentioned but patronising words or
4 actions. It can arise from unfamiliarity with the
5 behaviour or cultural traditions of people or families
6 from minority ethnic communities. It can arise from
7 racist stereotyping of black people as potential
8 criminals or troublemakers. Often this arises out of
9 uncritical self-understanding borne out of an inflexible
10 police ethos of the traditional way of doing things.
11 Furthermore, such attitudes can thrive in a tightly knit
12 community so that there can be a collective failure to
13 detect and outlaw this breed of racism. The police
14 canteen can too easily be its breeding ground."

15 Institutional racism can be seen whenever
16 institutions fail to address racial inequalities and
17 racism in their areas of work. CRER note that
18 institutional racism is not simply an accusation to be
19 leveled at any particular public service organisation,
20 rather it is an explicit danger to the lives and
21 wellbeing of Scotland's black and minority ethnic
22 communities. This issue of institutional racism was

1 also considered by Sir William Macpherson who considered
2 that institutional racism was:

3 "The collective failure of an organisation to
4 provide appropriate and professional service to people
5 because of their colour, culture or ethnic origin. It
6 can be seen or detected in processes, attitudes and
7 behaviour which amount to discrimination through
8 unwitting prejudice, ignorance, thoughtlessness and
9 racist stereotyping which disadvantage minority ethnic
10 people."

11 While there exists positive political rhetoric on
12 racial equality in Scotland, CRER's research work
13 demonstrates that the lived experience of black and
14 minority ethnic communities does not reflect these warm
15 words. Black and minority ethnic communities and
16 individuals continue to be held back by structural
17 racism resulting in ingrained inequalities in
18 employment, income, health and housing.

19 Racist hate crimes remain the most prevalent form of
20 hate crime in Scotland, and under-reporting means that
21 the true scale of this is likely to be far greater.

22 Scotland's black and minority ethnic communities

1 have high expectations of the Inquiry. This Inquiry is
2 the first such Inquiry in Scotland to consider a death
3 following an incident with police where there are
4 concerns as to the role played by the deceased's race.
5 It is not, however, the first time that matters of race
6 within the justice system in Scotland have been
7 investigated. Previous instances include those of Ahmed
8 Abukar Shekh, Simon San and Surjit Singh Chhokar. CRER
9 is aware of the problems which can arise when it is felt
10 that an inquiry such as this is not properly considering
11 the question of race. Where community confidence is
12 lacking this has a wider impact on community cohesion
13 and the overall confidence in services.

14 CRER wishes to provide any assistance it can to the
15 Chair and to the Inquiry to ensure that the expectations
16 of the black and minority ethnic communities are met and
17 that the matter of race is fully and properly
18 considered.

19 CRER will seek to bring its expertise and specific
20 Scottish experience to assist in providing a rigorous
21 and credible consideration of matters of race throughout
22 the Inquiry.

1 CRER seek to work with the Inquiry in a positive and
2 constructive manner to enable it to carry out
3 a thorough, critical and fearless examination of the
4 material available to it and to fulfil its Terms of
5 Reference. To ensure that we remain focused on this
6 task, we will not be making public comment outwith our
7 input to the Inquiry at this time.

8 Finally, CRER again acknowledges the circumstances
9 which make this Inquiry necessary. It commends
10 Mr Bayoh's family and others involved in the lengthy
11 struggle in bringing this Inquiry forward. It can only
12 be hoped that the Inquiry can fulfil its Terms of
13 Reference, both in the interests of justice and for the
14 potential future implications for racial justice in
15 Scotland.

16 Thank you, sir.

17 LORD BRACADALE: Thank you, Mr Moir, and I'm grateful to
18 counsel for the careful and succinct opening statements.

19 Ms Grahame.

20 MS GRAHAME: Yes, I have no further comments at this time,
21 thank you.

22 LORD BRACADALE: Now, the first witnesses in the Inquiry are

1 the principals of Advanced Laser Imaging, is that
2 correct?

3 MS GRAHAME: Yes, that's correct. As I mentioned in my
4 opening statement, Advanced Laser Imaging are scheduled
5 to attend tomorrow. As originally scheduled, we
6 anticipated opening statements completing tomorrow
7 morning. We have obviously made much better progress
8 today than we had expected.

9 Advanced Laser Imaging are travelling to Edinburgh
10 this afternoon and will be available tomorrow. I would
11 wish a brief opportunity, if I may, to make sure that
12 the technology will work. There are a number of items
13 that will have to be played and demonstrated during
14 their evidence and I would welcome an opportunity to do
15 that perhaps tomorrow morning before we begin.

16 LORD BRACADALE: Shall we then just stick to the arrangement
17 that they were to start at 12 noon?

18 MS GRAHAME: That would suit me very well.

19 LORD BRACADALE: Well, the Inquiry will adjourn now and sit
20 again at 12 noon tomorrow, so a later start tomorrow.

21 (12.50 pm)

22 (The Inquiry adjourned until 12.00 pm on

Thursday, 12 May 2022)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

INDEX

Opening statement by MS GRAHAME1
Opening statement by MS MITCHELL18
Opening statement by MS MCGUIRE31
Opening statement by MR SCULLION40
Opening statement by MR DUNCAN49
Opening statement by MR MCCONNACHIE54
Opening statement by the DEAN OF58

FACULTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

Opening statement by MR JACKSON65

Opening statement by MS MCCALL72

Opening statement by MR HAMILTON76

Opening statement by MR MACLEOD80

Opening statement by MR MOIR82