

## **Sheku Bayoh Inquiry**

### **Closing Submission by the Coalition for Racial Equality and Rights**

**June 2023**

1. CRER's role as a Core Participant in the Sheku Bayoh Inquiry is to assist the Chair and wider Inquiry Team to collate and understand relevant evidence in regard to race. At each evidential hearing the Inquiry will consider the extent, if any, to which the events leading up to and following Mr Bayoh's death, and in particular the actions of the officers involved, were affected by his actual or perceived race.
2. CRER welcomes the Inquiry's consideration of our analysis and views following the conclusion of the evidential hearings held over the past 13 months. These are set out in this closing submission and summarised in our closing statement.
3. CRER's opening statement to the Inquiry set out a number of overarching contextual points on the consideration of race and racism which will be of relevance for interpreting the views set out in this closing submission. These include:
  - Our strong support for the Inquiry's contention that the issues of race and racism permeate all aspects of the Inquiry's work, including its consideration of race in each individual hearing in addition to the final hearing focusing on race;

- That racism is often indirect and understanding it requires consideration of how individuals, organisations, and societies behave, and the impact of that behaviour on people from minority ethnic backgrounds, rather than simply focusing on open expressions of prejudice (including understanding the unreliability of self-reported attitudes and behaviours on race, as opposed to more reliable considerations such as direct comparison with similar instances where the subject is white);
  - That institutional racism can be seen wherever institutions fail to address racial inequalities and racism in their area of work and constitutes an explicit danger to the lives and wellbeing of Scotland's Black and minority ethnic communities.
4. CRER will, of course make submissions to the Inquiry as and when invited to do so by the Chair. It is, however, likely that some hearings will be more relevant to our role as Core Participants than others. This will be reflected in the varying scope and detail of our submissions. Where a significant matter within our area of interest requires further analysis or explanation, we may submit additional documents for the Inquiry's consideration. CRER hopes that these submissions will assist the Inquiry in fulfilling its terms of reference and in ensuring that the expectations of Scotland's Black and minority ethnic communities are met.
  5. In line with the Inquiry's approach, throughout our submissions, particular regard will be had to any actions, steps, instructions, behaviours or omissions that were contrary to, or fell below, any applicable guidance, practice or legislation. In relation to the Inquiry's consideration of the standards that applied at the time, we will have particular regard to equality law and standards that are relevant to the consideration of the role of race.

6. CRER is aware that these submissions are to be based on the evidence before the Inquiry. During the course of these submissions, however, CRER make reference to various papers which are not before the Inquiry. The papers cited are intended to provide a reference supporting the propositions made by CRER and it is hoped that these may be of assistance to the Inquiry ahead of future hearings.

### **Key theme – Racial Threat**

7. Throughout the following sections, in analysing the evidence led before the Inquiry, a specific key theme repeatedly arises. This theme is racial threat.
8. Racial threat theory describes how white majority ethnic populations, being both in the dominant position in society and surrounded by pervasive racial stereotypes, treat people from negatively racialised<sup>1</sup> groups as a threat. This was first identified in relation to people from ethnic groups of African origin.<sup>2</sup> Whilst it has relevance for other non-white minority ethnic groups, perhaps especially in the UK, Black people are still disproportionately affected by perceptions of racial threat.
9. Racial threat theory has been researched and written about extensively in the US at societal level from the late 1960s onwards. This work sets out how white populations experience a surge in fears on the arrival and growth of a Black population within their community, specifically fears that the dominant position of white people might become difficult to maintain. These fears have

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<sup>1</sup> Racialisation is the process whereby people are divided into racial groups based on stereotypes and pseudoscience. Historically, racialisation has been carried out in order to justify and maintain systems of oppression. It creates advantages for groups classed as white (white privilege) and disadvantages for those groups negatively impacted by racialisation (racism).

<sup>2</sup> In our work for the Inquiry, we refer to Mr. Bayoh as Black and also use this term when referencing racial issues facing people of African origin; however, we do appreciate that not everyone of African origin uses or indeed condones this term and we also reflect the broader use of the term Black as a political unifier for those experiencing racism in other areas of our work.

been explored from a number of angles but, most typically, are identified as relating to fear of decreasing white economic security, political power and safety (the latter point is sometimes addressed purely in terms of criminal threat, and at other times 'symbolic threat' which also takes in non-criminal but supposedly 'deviant' behaviours on the part of Black populations).

10. This sense of threat leads institutions and individuals to seek to impose control on Black populations and the individuals within them.
11. Institutionally, this may be through legislation which disadvantages these populations, punitive immigration policies, other discriminatory policies and practices and institutional racism more generally of the type described by Lord Macpherson in the Report of the Stephen Lawrence Inquiry.
12. Individually, this manifests in the behaviours that create and maintain those institutional and social levels of discrimination.
13. The impact that this has on Black people is that they are routinely treated with less empathy, more readily suspected of wrongdoing, denied the benefit of doubt, suspected of more serious wrongdoing when wrongdoing is evident, and punished more harshly (whether evidence of wrongdoing is robust or not).
14. The concept of racial threat is key to consideration of the Inquiry's central question: Would it have made a difference if Sheku Bayoh had been white?
15. An expanded version of this summary, including sources, is available at Appendix 1.

### **Handling of Calls Received by the Police**

16. A variety of calls were received by the Police relating to Sheku Bayoh's behaviour in the early morning of 3<sup>rd</sup> May 2015.

## **Call handling**

17. It is understood from witnesses that Mr. Bayoh was walking the streets of Kirkcaldy in possession of a knife, and understandably several of these witnesses called the Police to report this.
18. CRER do not consider that any racial issues arise from the conduct of the call handlers who first received reports of Mr Bayoh's behaviour on 3<sup>rd</sup> May 2015. In particular, the efforts made in several of the calls to ensure a fuller description of Mr. Bayoh than simply that he was Black is something that would be necessary for the avoidance of indirect discrimination.

## **Callers**

19. To fully understand the role, if any, played by race in the handling of calls, it is important to consider the descriptions made by the callers. Whilst it is outwith the Inquiry's remit to investigate the callers, their input will undoubtedly have had an impact on how call handlers interpreted the situation and how the situation was communicated to and understood by Police Officers. The role of race in any scenario is determined by the social context and its impact on attitudes as much, if not more, than the overtly obvious actions of individuals. Considering the calls in full will assist the Inquiry to place this incident in its wider social context.
20. Firstly, it is important to note that witnesses will inevitably have described Mr. Bayoh with reference to his skin colour or perceived ethnicity. This, in and of itself, is not racist behaviour. The use of outdated language in some instances ("*coloured*"<sup>3</sup>) does not necessarily imply racism on a personal level.
21. However, witnesses are inevitably prone to the same racial stereotypes and assumptions that everyone is within our society. It is therefore likely that a

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<sup>3</sup> PIRC-011383, page 2, "*Eh Foah!! It's a big coloured guy...*"

there will have been a degree of underlying racism in their perceptions of Mr. Bayoh, and this can be seen clearly in the transcripts of calls made to the Police regarding his behaviour.

22. This is not to downplay the fact that Mr. Bayoh's behaviour was a cause for considerable concern. The issue is not about the decision to take action (i.e., to call the Police, or to despatch officers to the scene). The issue is about the severity of the perception of threat and resulting response whereby Officers attending may have acted in a discriminatory manner due to that perception.
23. Mr. Bayoh's perceived ethnicity features heavily within the calls. His height was also routinely overestimated by a matter of inches. It may seem 'logical' to assume that perception would have been influenced by his muscular physique making him appear larger than he was, rather than any racist assumptions. However, empirical research has demonstrated conclusively that one of the key manifestations of racial threat lies in overestimating the size, strength and formidability of Black men.
24. A paper published by the American Psychological Association in 2017 demonstrated this consistently across a range of studies and concluded that this distortion in perception was so widely embedded in society that it affects not only white populations, but Black people themselves.<sup>4</sup>
25. Callers to Police Scotland on the morning of 3<sup>rd</sup> March 2015 tended to place as much, if not more, emphasis on Mr. Bayoh's Blackness than they did on the knife he was carrying.
26. In her original call to Police Scotland, the audio of which can be heard on PS00414, Joyce Joyce stated that Mr. Bayoh was Black before she stated that he

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<sup>4</sup> Wilson, J.P., Hugenburg, P. and Rule, N.O. (2017) [Racial Bias in Judgments of Physical Size and Formidability: From Size to Threat](#). American Psychological Association Journal of Personality and Social Psychology, 2017, Vol. 113, No. 1

had a knife<sup>5</sup>. When asked what Mr. Bayoh is wearing, she was able to give a description of his clothing but added once again that he was Black<sup>6</sup>.

27. Witness Linda Limbert did mention the knife first<sup>7</sup>. When asked to confirm that Mr. Bayoh was Black, she did so<sup>8</sup>. However, when then asked for a fuller description, she replied *"He's just a Black guy, that's all I can tell you."*<sup>9</sup> Audio of this call can be heard on PS00006.

28. Witness Simon Rowe's call appears to be cut short in the audio recording<sup>10</sup>, but again, he stated that Mr. Bayoh was Black before mentioning the knife<sup>11</sup>.

29. Witness Harry Kolberg, in his first 999 call<sup>12</sup>, identified Mr. Bayoh's height first (estimating this at 6ft, taller than his actual height), followed by his Blackness<sup>13</sup>. When asked what Mr Bayoh was wearing, Mr. Kolbert stated *"He's of African origin."*<sup>14</sup> When asked again what Mr Bayoh was wearing, Mr. Kolberg stated *"Quite big build"*<sup>15</sup>. When pushed for a third time to identify what Mr. Bayoh was wearing, Mr. Kolberg was able to do so<sup>16</sup>. Mr. Kolberg is the only caller to have described actively violent behaviour on the part of Mr. Bayoh, including in his second 999 call<sup>17</sup> stating that Mr Bayoh was hitting his car and jumping out towards other cars<sup>18</sup>.

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<sup>5</sup> PIRC-01388, page 2, *"Eh there's a black man...a 9 inch knife in his hand."*

<sup>6</sup> PIRC-01388, page 2, *"OK, what's he wearing...he's a black man."*

<sup>7</sup> PIRC-01387, page 2, *"Hello, there's a man with a knife, a black man..."*

<sup>8</sup> PIRC-01387, page 2, *"Right did you say it was a black man...He's a black man..."*

<sup>9</sup> PIRC-01387, page 2, *"Right have you got a description...He's just a black guy, that's all I can tell you."*

<sup>10</sup> PS-00001

<sup>11</sup> PIRC-01441, page 2, *"...I've just spotted a black man with what looked like a huge blade..."*

<sup>12</sup> PS-00002

<sup>13</sup> PIRC-01385, page 2, *"...there's about a 6 foot eh black guy..."*

<sup>14</sup> PIRC-01385, page 2, *"...can you tell me what he's wearing? He's of African origin."*

<sup>15</sup> PIRC-01385, page 2, *"Right and what's he wearing...Quite big build."*

<sup>16</sup> PIRC-01385, page 2, *"Muscly build, what is he wearing?...was like dark coloured jeans."*

<sup>17</sup> PS-00005

<sup>18</sup> PIRC-01386, page 2, *"He's already thumped my car...He's jumping out trying to hit other cars."*

30. Harry Kolberg, in his evidence given on 13 May 2022, reiterated his view that Mr. Bayoh was “*chasing*” his car<sup>19</sup> and continued throughout these hearings to be the only one of the witnesses who called the police to describe actively aggressive behaviour on the part of Mr. Bayoh.
31. This evidence suggests that Mr. Kolberg’s call was the reason for the Area Control Room (“ACR”) message containing the word “*chasing*”<sup>20</sup>. The lack of clarity in this ACR message may have contributed to the level of threat perception, however given the fact that this is followed by “...*may be carrying a knife,*” it constitutes a mixed message which does not, on its own, explain the level of threat response displayed by officers.
32. Of all of the callers to Police, only witness Alan Pearson<sup>21</sup> identified the knife first, provided a location next, and did not mention that Mr. Bayoh was Black until asked to describe him (“*A big coloured guy*”<sup>22</sup>).
33. In Scotland, it is submitted that it would be unusual for someone to open such a call with “*A white man is carrying a knife.*” Even when appropriate, this description is missing from normal practice because of the assumption that Scottish society is divided into two parts – the ‘normal’ white population, who do not need their ethnic appearance to be questioned or described, and the ‘others’, whose appearance is remarkable. The idea that Blackness is unusual, contrasted with unremarkable whiteness, and therefore meriting immediate identification and expression is a key manifestation of racism in Scotland.
34. The statements given by these callers will also merit further analysis by the Inquiry, as racial stereotyping is also evident in some of these. Signs that perceptions of Mr. Bayoh’s behaviour may have been linked to prevalent racial

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<sup>19</sup> Transcript 13 May 2022, page 77, lines 20-23, “*I looked in the mirror...headed up the hill.*”

<sup>20</sup> PIRC-01396, page 4, “*03/05/2015 06:16:31...African looking male chasing...may be carrying a knife...*”

<sup>21</sup> PS-00004

<sup>22</sup> PIRC-01383, page 2, “*Can ye ge me a description...white T shirt.*”



stereotypes can be seen in witness Joyce Joyce's statement dated 3 May 2015, which includes the line "*walking like a zombie*"<sup>23</sup>. Originating from Haiti and explicitly connected to the history of slavery and white-defined notions of Blackness, the 'zombie' is a recurring motif in the demonisation of Black people.<sup>24</sup> Zombies are generally understood to be lumbering and thoughtless in the popular imagination. Ms Joyce, however, also said that Mr. Bayoh looked "*focused and on a mission*"<sup>25</sup>. These two perspectives do not seem to align, unless understood in the context of racial stereotyping.

**i. The Chair may wish to consider whether racial stereotypes about Black men being dangerous and aggressive could have influenced the perceptions of the callers, and whether from this starting point, these stereotypes influenced the level of threat perceived by those handling the incident within Police Scotland, from ACR to the Officers on scene.**

### **ACR Response**

35. It is submitted that a number of concerns arise about the calls between the ACR and Police officers.

#### **Initial response of ACR**

36. The first airwaves call to PC Tomlinson and PC Short described "*a disturbance on-going, male armed with a knife... African looking male.... chasing... someone...*

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<sup>23</sup> PIRC-00065, page 2, paragraph 5, "*...he was a big muscley guy...just walking like a zombie.*"

<sup>24</sup> See, for instance, Pressley-Sanon, T. (2016). [Addressing the "Negro Problem": Rethinking the Coon and the Mammy in King of the Zombies and Revenge of the Zombies](#). Black Camera Journal, Vol. 8, No. 1 (Fall 2016); Rushton, C.J. and Moreman, C.M (2011) Race, Oppression and the Zombie: Essays on Cross-Cultural Appropriations of the Caribbean Tradition; Allkins, K. (2010). "[Those things](#)" and "[You people](#)": Issues of racism in zombie cinema. Oakland University Journal, issue no. 19 (Fall 2010)

<sup>25</sup> PIRC-00065, page 2, paragraph 5, "*He was walking with a purpose, like he was on a mission...*"

*Maybe carrying a knife... Described as big with muscles about 6 foot tall wearing a white T-shirt and dark coloured jeans.”<sup>26</sup>*

37. CRER notes that none of the reports from callers mentioned any behaviour that could reasonably be considered as ‘*chasing someone*’ (emphasis added).

38. Only one witness reported actively violent behaviour, or used the word “*chasing*”, but this was in relation to a man on foot pursuing a car, not a person. Harry Kolberg<sup>27</sup> described Mr. Bayoh having “*thumped*” his car and “*starting chasing the car*”<sup>28</sup> and, later<sup>29</sup>, as “*jumping out trying to hit other cars.*”<sup>30</sup> The emphasis placed on this one caller (where there was significant focus on Mr. Bayoh’s perceived racial background) at the expense of other calls which do not suggest that violent behaviour was ongoing may have influenced the views of officers.

**ii. The Chair may wish to consider whether a more nuanced description of Mr. Bayoh’s behaviour by ACR in this initial call was merited, and whether the lack of nuance may have been influenced by racial stereotypes.**

#### **Request for attendance by all units, ARV and dog unit**

39. Acting Police Sergeant (“APS”) Scott Maxwell was the shift supervisor at Kirkcaldy Police Office that morning. Having heard the incident on the radio, he contacted the ACR and instructed: “*I want all units to attend that, bearing in mind officer safety, an ARV and a dog as well please*”<sup>31</sup>. Originally one unit had been assigned to the incident but, with this instruction, APS Maxwell over-ruled that. He described in his statement, “*In my head, that was a grade one call.*”<sup>32</sup>

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<sup>26</sup> PIRC-01396, page 4, “03/05/2015 06:16:31...African looking male chasing...dark coloured jeans...”

<sup>27</sup> PS-00002

<sup>28</sup> PS-00002; PIRC-01385, page 2, “Eh just as I passed him he thumped my car...started chasing the car.”

<sup>29</sup> PS-00005

<sup>30</sup> PS-00005; PIRC-01386, page 2, “He’s already thumped my car...He’s jumping out trying to hit other cars.”

<sup>31</sup> PIRC-01396, page 5, “03/05/2015 06:17:22...Control from four one one...and a dog as well please.”

<sup>32</sup> PIRC-00266, page 3, paragraph 6, “In my head that was a grade one call.”

40. Statements from ACR Inspector Steven Stewart seem to indicate that an incident of this nature would not be the sort of situation where an ARV would usually be deployed until an assessment was made at the scene<sup>33</sup>. He gave the following instruction: *"Inspector Stewart control room to the set attending eh... I'm monitoring this obviously from a... eh... an ARV perspective. If you get sightings of the male you need to make an initial assessment yourself... em... and feedback through straight away and I will listen out on the channel."*<sup>34</sup>
41. Sergeant Scott Dalglish's statement (similarly suggests that this was not an incident requiring an ARV response<sup>35</sup>.
42. The Standard Operating Procedure on Police Dogs states that *"Police dogs should only be used in intelligence-led operations, in cases of extreme urgency or where a clear and credible threat exists."*<sup>36</sup>.
43. It is possible that Mr. Bayoh's perceived race was a motivating factor behind identifying his behaviour as a sufficiently clear and credible threat to meet this threshold. If this is the case, and white individuals in similar circumstances would not be regarded in this way, then the decision to request this additional back up could constitute direct discrimination.
44. Evidence heard during Hearing 1 continued the theme from initial statements given that officers were concerned about the lack of support from dog and ARV units. This includes the evidence of PC Nicole Short, who considered that the officers who attended Hayfield Road did not have adequate support from

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<sup>33</sup> SBPI-00197, page 4, paragraph 7, *"An incident involved a person in possession of a knife is not an automatic firearms incident...to safely resolve the incident."*;

<sup>34</sup> PIRC-01396, page 6, *"03/05/2015 06:20:12...Inspector Stewart area control room to the set...and I'll listen out on the channel."*

<sup>35</sup> SBPI-00205, pages 8-9, paragraphs 35-37, *"I've been asked to consider the Inquiry's combined video and audio timeline...avoid deploying firearms officers until he had reasonable grounds to do so."*

<sup>36</sup> PS-11344, page 20, paragraph 13.2, *"Police dogs should only be used...or where a clear and credible threat exists."*

specialist units<sup>37</sup>. PC Alan Paton stated that communication about the dog and ARV units had been unclear, and that “...without the attendance of an ARV or a dog, but more so an ARV, then somebody had to deal with it.”<sup>38</sup> Evidence given by Inspector Steven Stewart on 17 May 2022 about the threshold for deployment of specialist units, based on the national decision-making model<sup>39</sup>, indicates that the nature of this incident may not have merited such action, calling into question the level of threat response exhibited by officers.

45. PC Alan Smith, in his evidence given on 27 May 2022, confirmed that in May 2015 it was not a common occurrence for an ARV to be deployed to a knife incident<sup>40</sup>. The Inquiry may wish to review records of knife incidents in similar circumstances at that time to provide further confirmation of this, as it appears unlikely from the evidence heard that knife incidents involving white suspects routinely received assistance from dog or ARV units. In the event that white suspects in similar circumstances are not generally regarded with a level of threat meriting this type of resource request, CRER considers it likely that the heightened level of threat perception in this case was racially motivated.

**iii. APS Scott Maxwell identified that a person with a knife, who may be understood to be chasing someone, was a severe enough threat to require all units to attend, plus a dog unit and ARV, without awaiting any assessment on the scene to establish risk. The Chair may wish to consider whether this was a proportionate and justifiable response, and whether similar requests have been made in cases where the alleged perpetrator was white.**

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<sup>37</sup> Transcript of 24 May 2022, page 12, lines 22-25, page 13, lines 1-23, “Thanks. And then in paragraph 13 of your Inquiry statement...the dog unit being in Edinburgh and just thinking how far away that was to where we are.”

<sup>38</sup> Transcript of 21 June 22, page 21, lines 2-4, “A conclusion...deal with it.”

<sup>39</sup> Transcript of 17 May 2022, page 134, line 17- page 136, line 2. “Can we go back...prioritising the threats.”

<sup>40</sup> Transcript 27 May 2022, page 25, lines 5-8, “So it’s not a common occurrence...Not at that time.”

## **Police Officers' responses to ACR communications**

46. It appears likely that the instructions given by APS Scott Maxwell would have impacted officers' views on the risks that may be involved in attending at Hayfield Road. In combination with racial stereotypes<sup>41</sup>, it is submitted that this perception of risk was likely to have been magnified to an unnecessary degree in a way that would not have occurred had Mr. Bayoh been white.
47. This appears to be evident in the reaction of Police officers upon receiving communications from ACR. Their views were recorded in witness statements. It is submitted that there is ample information in these statements to infer that their responses had a racial aspect. Many of the Officers responded in a way that suggests a perception of racial threat. Examples are detailed at the appropriate points throughout this submission. For example, PC Kayleigh Good recounted that hearing the ACR messages she immediately thought that PC Nicole Short had been stabbed, She was "*...also thinking at that point of the Lee Rigby incident in London, mainly due to the fact of the coloured male and the potential terrorist connections.*"<sup>42</sup> PC Alan Paton stated that he heard Mr. Bayoh referred to as "*...a large Black male*" in the ACR messages<sup>43</sup>, a paraphrase which seems to link stereotypes about the size and strength of Black men. PC Craig Walker, on hearing the ACT communications, made such a strong link to potential terror threats that he considered hitting Mr. Bayoh with a police van if Mr. Bayoh was armed with a sword<sup>44</sup>. It is submitted that these fears of a terrorist incident do not appear to be credibly explained by factors other than racial profiling.

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<sup>41</sup> Which are set out elsewhere in these submissions.

<sup>42</sup> PIRC-00274, page 7, paragraph 5, "*At that point...my own safety.*"

<sup>43</sup> PIRC-00262, page 3, paragraph 11, "*There was...in the message*"

<sup>44</sup> PIRC-00264, page 4, paragraph 7 – page 5, paragraph 1, "*During the journey...still on the pavement.*"

48. Other officers whose comments are less clearly reflective of a racial threat perception whilst still en route may nevertheless have had such a reaction, as evidence from their stated interpretations of Mr. Bayoh's behaviour and demeanour on arrival. For example, PC Nicole Short stated that *"I saw a Black male, very muscular, his arms were very muscular arms...He was six feet tall...He was an intimidating figure. I was scared of him."*<sup>45</sup>

### **Police Personnel Threat Level**

49. Police Officers' statements have focused heavily on the perceived terror threat in the area over January to May 2015. This was raised by PC Craig Walker, PC Kayleigh Good and PC Alan Paton. This is evident both in their accounts of being called out to the incident and recollections of previous information received regarding a threat, which appears to have informed their attitudes and behaviours on the day of the incident.

50. Counter-terrorism communications in the UK are a frequent flashpoint for racial tension, with a racialised impact on the policing of minority ethnic communities. CRER note that in January 2015 the terror threat level specific to police personnel working in the UK was increased to 'severe'<sup>46</sup>.

51. PC Alan Paton stated that he was adamant that it was *"common knowledge"*<sup>47</sup> within Kirkcaldy Police Station that *"a female officer was going to get injured by a lone wolf"*<sup>48</sup>.

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<sup>45</sup> PIRC-00254, page 5, paragraph 2, *"At this point...his position."*

<sup>46</sup> PS-01314, page 1, *"The terror threat level...police service personnel is highly likely."*

<sup>47</sup> Transcript 21 June 2022, page 27, line 10, *"It was common knowledge about Kirkcaldy Police Station."*

<sup>48</sup> Transcript 21 June 2022 (am), page 27, lines 1-2

52. Inspector Stephen Kay gave evidence to the Inquiry that he could not recall former PC Paton having asked him to seek clarification on this rumour but that he would have documented such a request if it had been made<sup>49</sup>.
53. In oral evidence to the Inquiry PC Kara Ferrier confirmed that following a search of published briefings on the Police Scotland database and the Scottish Intelligence Database on 28 July 2015 she could not find any specific threat to officers of Police Scotland<sup>50</sup> (which would, of course, include threats to female officers in particular.)
54. Within their statements, some officers expressed a clear perception that Mr. Bayoh's actions might have been motivated by terrorism, with former PC Alan Paton<sup>51</sup> and PC Kayleigh Good<sup>52</sup> even referencing the 'Lee Rigby incident'. PC Kayleigh Good in her statement dated 4 June 2015 stated that she thought about that incident "*...mainly because of the coloured male and the potential terrorist connotations*"<sup>53</sup>.
55. PC Good gave evidence in relation to this statement and denied that there had been an association in her mind between the colour of Mr Bayoh's skin and the potential terror connotations.<sup>54</sup> Given the wording within the original statement, which does imply a link between skin colour and terrorism, it is submitted that this denial lacks credibility.
56. PC Alan Paton also referenced the Lee Rigby incident in his evidence to the Inquiry but claimed that he would regard any knife incident as potentially

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<sup>49</sup> Transcript 23 November 2022, page 91, lines 20-21 "*I have no recollection of that at all. I would have documented such a statement....*"

<sup>50</sup> Transcript 17 May 2022, page 112, lines 8-10 "*There is no intelligence...Police Scotland personnel.*"

<sup>51</sup> Transcript of 21 June 2022, page 19, line 19, "*making reference to Lee Rigby.*"

<sup>52</sup> PIRC-00274, page 7, paragraph 5, "*I was also at that point thinking of the Lee Rigby incident in London...*"

<sup>53</sup> PIRC-00274, page 7, paragraph 5, "*I was also at that point...and the potential terrorist connotations.*"

<sup>54</sup> Transcript 31 May 2022, page 141, lines 24-25; page 142, lines 1-2 "*And was there an association....No...*"

terror-related until he received information to rule it out<sup>55</sup>. He correctly pointed out that terrorists are “not just Black”<sup>56</sup> CRER note, however, no officer questioned about this matter referenced any terror incidents in which the person responsible was white, such as the case of the Utoya Island massacre of 2011 which was carried out by a white supremacist.

57. It is submitted that, given the relative likelihood of such an incident occurring in Kirkcaldy, it seems improbable that every knife incident would have been regarded by PC Paton as potentially terror-related, as claimed in his evidence<sup>57</sup>.

58. It is submitted that PC Craig Walker’s statement dated 4 June 2015 demonstrates that his perception of a terror-related threat was quite severe, and includes the quote *“I did even mention to PC Paton if the worst case scenario came to be and he came at the vehicle with a knife or a sword I wasn’t getting out and I might hit him with the vehicle.”*<sup>58</sup>

59. In evidence to the Inquiry on 19 May 2022 PC Walker was referred to his undated self-penned statement<sup>59</sup> Questioning in this session clarified that no airwaves communications featured the term ‘sword’, with PC Walker agreeing that he had “misremembered” this<sup>60</sup>. It is submitted that this may not be a simple ‘misremembering’, but rather a mental image arising in PC Walker’s mind as a result of racial stereotyping linking Mr. Bayoh to the killers of Lee Rigby. This is one of several instances where witnesses have moderated their original positions during the hearings. For example, Sergeant Scott Maxwell originally stated that he considered that this may be a terrorist incident whilst

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<sup>55</sup> Transcript 21 June 2022 (am), page 19, lines 10-12 *“as with every knife call....rule it out.”*

<sup>56</sup> Transcript 21 June 2022 (am), page 20, line 4

<sup>57</sup> As per footnote 48

<sup>58</sup> PIRC-00264, page 4 paragraph 7- page 5 paragraph 1, *“During the journey to Hayfield Road...I might hit him with the vehicle.”*

<sup>59</sup> PIRC-00264

<sup>60</sup> Transcript 19 May 2022 (am), page 38, lines 10-11 *“So you have just misremembered that? Yes.”*



on the scene<sup>61</sup> but as explored during the hearing on 8th June 2022, later claimed that it was not part of his risk assessment and he had discounted it<sup>62</sup>. PC Kayleigh Good also sought to downplay what CRER would contend were racially charged descriptions of Mr. Bayoh, which focused heavily on his size and musculature, claiming that she only meant to indicate that he was “the biggest male” she had seen at a police incident<sup>63</sup>. She also seeks to explain her use of the word “coloured” by reference to the fact that she was young in service at the time (CRER notes that, given this, she had recently completed equality training during police training and yet was not aware of the potentially offensive connotations of this word)<sup>64</sup>. Where the original positions suggested an enhanced perception of threat, had racial undertones or were insensitive, CRER would contend that the moderation put forward in oral evidence was an attempt to avoid culpability for the attitudes underlying such positions. This includes racist attitudes, both overt and subtle (for example, a lack of empathy for Mr. Bayoh may be indicative of a racial empathy gap)<sup>65</sup>.

60. PC Walker’s assertions that this may have been a “suicide-by-cop” incident<sup>66</sup>, and that an incident on a Sunday morning in Kirkcaldy was likely to be terror-related were examined during the hearing on 19 May 2022<sup>67</sup>. It is submitted that none of these assertions were credibly supported by the evidence. It is further submitted that the absence of any other credible rationale for these assertions increases the likelihood that the perception of a terror threat may be racially motivated.

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<sup>61</sup> PIRC-00267, page 4, paragraph 5, “I strongly...their colleagues.”

<sup>62</sup> Transcript 8 June 2022, page 113, line 15- page 115, line 22, “For the avoidance of doubt...linked to terrorism.”

<sup>63</sup> Transcript 31 May 2022, page 180, lines 8-22, “I could see that...police incident.”

<sup>64</sup> Transcript 31 May 2022, page 141, lines 11-17, “First of all...word to use.”

<sup>65</sup> As set out in the glossary to this submission.

<sup>66</sup> Transcript of 19 May 2022 (am) page 39, line 7, “suicide-by-cop scenario”.

61. Inspector Steven Stewart stated in his evidence on 17 May 2022 that there was no reason to suspect that this was a terror-related incident<sup>68</sup>. He further stated that it would not be acceptable for officers attending an incident where a person had a knife to simply 'run down' that person with a van,<sup>69</sup> as asserted by PC Walker. Sergeant Scott Maxwell also gave evidence that, although he had considered whether it could have been a possibility, his risk assessment on the day did not factor in potential terrorism because there was no evidence of that nature<sup>70</sup>.

62. It is submitted that this supports the view that there is no plausible reason for any officer to have believed that this was a terrorist incident meriting deadly or lethal force as set out in the Police Scotland Use of Force Standard Operating Procedure ("Use of Force SOP")<sup>71</sup>. This document sets out that deadly or lethal force may, in certain circumstances, be an option available to officers but it must be proportionate to the perceived threat and degree of imminent danger. For this level of force to be used, the Use of Force SOP requires there to be a high degree of jeopardy involved: the subject must have the means, ability/opportunity and be displaying intent to cause serious injury or kill. CRER notes that the Use of Force SOP lists empty hand strikes, baton strikes and firearms as potential means of delivering deadly or lethal force, but not police vehicles<sup>72</sup>.

63. PC Brian Geddes was also questioned in the evidence he gave on 22 June 2022 about his comments regarding the incident potentially being an attack by ISIS on a female officer. PC Geddes was the only officer to state that he had indeed

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<sup>68</sup> Transcript 19 May 2022), page 48, lines 12-25 "*Can you explain...something to.*" page 49, pages 1-19 "*And how common...psychiatric episode.*"

<sup>69</sup> Transcript 17 May 2022, page 202, lines 4-7, "*if calls...No.*"

<sup>70</sup> Transcript 7 June 2022, page 158, lines 2-3, "*at that time....the case.*"

<sup>71</sup> PS-10933

<sup>72</sup> PS-10933, page 9, paragraph 4.7.6, "*It may in certain circumstances...could potentially deliver lethal force.*"

made a connection between Sheku Bayoh being Black and possible terrorism<sup>73</sup>. CRER contrasts this evidence with other evidence before the Inquiry, where other officers, in spite of clear indications of linking terrorism to ethnicity in some cases, would not acknowledge this.<sup>74</sup> For example, PC Kayleigh Good insisted that she would have regarded an incident with a white suspect in the same way despite having originally stated her fears of a terror threat were "...because of the coloured male"<sup>75</sup>. PC Craig Walker answered a direct 'no' when asked if he ever made assumptions that someone Black would be more likely to be a terrorist<sup>76</sup>, despite having earlier made an otherwise arguably inexplicable link to the Lee Rigby incident<sup>77</sup>.

64. Notably, PC Daniel Gibson, in his evidence on 1 June 2022, did not consider that this could have been a terror-related incident whilst travelling to the scene and clarified that he was not aware at that time of the suspect involved being Black.<sup>78</sup> It is submitted that all of the officers who mentioned thinking the incident could be terror-related were aware that Mr. Bayoh was Black.

65. It is submitted that Martin Graves gave an unclear description of his understanding of racial profiling in relation to terror threats, stating that this is not a term he would use himself<sup>79</sup>. The concept of racial profiling in policing is well-known and subject to many academic studies. It is submitted that the issue of racial profiling in policing is a matter on which the Inquiry may wish to consider in further detail at a future hearing.

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<sup>73</sup> Transcript 22 June 2022, page 175, lines 1-4, "*this connection....Yes.*"

<sup>74</sup> Footnote 47 supra; Transcript 19 May 2022, page 49, lines 13-15, "*Did it.....No.*"

<sup>75</sup> Transcript 31 May 2022, page 139, line 24-page 141, line 10, "*Would the terror...thinking?*"

<sup>76</sup> Transcript 20 May 2022, page 125, lines 10-15, "*Do you ever...No.*"

<sup>77</sup> Transcript 20 May 2022, page 170, lines 2-20, "*In relation to...perception of it.*"

<sup>78</sup> Transcript 1 June 2022, page 131, lines 3-4, "*So you weren't aware.....No...*"

<sup>79</sup> Transcript 28 November 2022, page 102, line 65 "*it's not....myself.*"

66. Nevertheless, Mr Graves did state that race itself should not be a specific risk factor but recognised that racial stereotypes can affect individual perceptions<sup>80</sup>. It is submitted that the explicit links made by some officers between Mr. Bayoh and the threat of terrorism, as outlined above, were unlikely to have been applied had Mr Bayoh been white It is submitted that racial profiling was in operation.

67. In her evidence, Joanne Caffrey whilst not using the phrase racial profiling, stated that identification of a terror threat is required to be intelligence-led, and that “...you can’t just say because of the colour... of the person that that would be a blanket application”<sup>81</sup>

68. It is noted that PC Alan Smith<sup>82</sup>, PC Ashley Tomlinson<sup>83</sup>, PC Daniel Gibson<sup>84</sup> and PC James McDonough<sup>85</sup> do not mention terrorism related fears within their statements. Nor does APS Scott Maxwell, who explained in his statement to PIRC that his request for all units, ARV and dog unit to attend was based on a fear of a potential standoff or hostage situation<sup>86</sup>.

**iv. In relation to PC Walker’s indication that he could ‘hit’ Mr. Bayoh with the police van, it is submitted that the Chair may wish to consider whether it would be normal practice for a person carrying a knife to elicit such a reaction from a Police Officer, whether this course of action would comply with the Use of Force Standard Operating Procedure, and whether the motivation for this description of planned action may be related to a racialised perception of threat.**

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<sup>80</sup> Transcript 28 November 2022, page 103, lines 16-24, “Race itself....risk factor.”

<sup>81</sup> Transcript of 1 December 2022, page 103, lines 20-22

<sup>82</sup> PIRC-00278

<sup>83</sup> PIRC-00263

<sup>84</sup> PIRC-00258

<sup>85</sup> PIRC-00273

<sup>86</sup> PIRC-00266, page 3, paragraph 9, “I also remember asking...are maybe more appropriate.”

v. It is further submitted that the Chair may wish to consider whether officers would have connected Mr. Bayoh with the killers of Lee Rigby had he been white.

vi. CRER further submit that the Chair may wish to consider whether a man walking in the street with a knife in Kirkcaldy in the early hours of a Sunday morning would be suspected of terrorism had he been white.

### **Risk Assessment**

69. Inspector Steven Stewart in the Control Room gave the following instruction whilst Officers were travelling to the incident: *“Inspector Stewart control room to the set attending eh... I’m monitoring this obviously from a... eh... an ARV perspective. If you get sightings of the male you need to make an initial assessment yourself... em and feedback through straight away and I will listen out on the channel.”*

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70. It is submitted that, in light of this statement, the officers who attended Hayfield Road should have been aware that they needed to make an assessment on arrival.

71. As stated in the Inquiry’s chronology of events<sup>88</sup> there is no record of any dynamic risk assessment having been carried out at the scene by any officer. The Control Room was not advised by the first officers at the scene that an initial assessment had been carried out. Inspector Steven Stewart’s outlined the National Decision Model, explaining his rationale for not immediately deploying a dog or ARV unit and helpfully illustrating the approach which should have been taken at the scene<sup>89</sup>.

72. In particular, it is submitted that it is clear from this evidence that a visual assessment and attempt to engage the subject are steps in the National Decision

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<sup>87</sup> PIRC-01399, page 4, lines 11-15, *“Inspector Stewart control room...I will listen out on the channel.”*

<sup>88</sup> SBPI-00001

<sup>89</sup> Transcript of 17 May 2022, page 159, lines 20-24 *“I suppose I would have expected...as well.”*

Model which are required before any consideration of restraint<sup>90</sup>. Inspector Stewart stated in evidence that it was important that “...the officers that were attending the incident made that initial dynamic risk assessment and fed back what was actually happening on the ground in front of them, what the threat was to them or members of the public, whether or not the individual continued to have a weapon or not...”<sup>91</sup> He also provided views on alternative measures that could have been taken for the officers to stay safe during initial assessment, including observing from the vehicle on arrival<sup>92</sup>.

73. Victoria Anthony, police staff supervisor in the Bilston Glen ACR, in her statement similarly points out that officers should be aware of their officer safety training and the requirement to report back to the Control Room for further assistance in such cases<sup>93</sup>.

74. Similar views on the expected process of initial engagement were set out by APS Scott Maxwell in his evidence on 7 June 2022, where he referred to the duty of care to suspects and stated that officers were trained to recognise signs that someone may be having a mental health crisis or be affected by substance use and to respond appropriately<sup>94</sup>.

75. It is submitted that APS Maxwell’s evidence illuminates the expected standards of risk assessment within police practice and confirms that the officers first encountering Mr. Bayoh acted without following due procedure in their attempt at chemical restraint, having at that point noted that no knife was visible and no members of the public were at imminent risk.

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<sup>90</sup> Transcript of 17 May 2022, page 175, lines 3-5, “just standing back...for them.”

<sup>91</sup> Transcript of 17 May 2022, page 145, line 21-p146, line 3

<sup>92</sup> Transcript of 17 May 2022, page 156, lines 14- 15, “attend in your vehicle and you stay in your vehicle.”

<sup>93</sup> SBPI-00207, page 9, paragraph 41, “Attending officers should be aware...Control Room for further assistance.”

<sup>94</sup> Transcript 7 June 2022, page 177, lines 9 and 16

76. It was clarified with Inspector Stewart that it was open to the officers to ask for information about any potential missing persons from the nearby psychiatric hospital<sup>95</sup>; whilst that did not apply in this case, the question was not raised. This relates back to the speed and aggression with which action was taken, which, it is submitted, may have been a result of racial threat perception.
77. The deployment of unarmed officers to a Grade 1 knife call was referred to by Sergeant Scott Dalglish, in his Inquiry statement. Sergeant Dalglish stated that unarmed officers who attend such a scene would be asked to stand back and assess the situation, bearing in mind officer safety. He further stated that *"They should not just have been running into the scene."*<sup>96</sup>

### **Impact of failing to assess risk**

78. On arrival at Hayfield Road, PCs Walker and Paton immediately instructed Mr. Bayoh to *"get down on the ground"*, *"halt"* and similar commands<sup>97</sup>. Whilst Mr Bayoh was unresponsive to these commands, they could see his hands at his side, palms facing them, with no knife present<sup>98</sup>.
79. The issue of hand position, by the side with palms facing outward, was explored in some detail in the evidence provided by Inspector James Young who stated that this may have indicated submission rather than aggression<sup>99</sup>.
80. In the absence of immediate danger, it may be expected that the Officers would have paused for risk assessment. In particular, given Mr. Bayoh's unusual behaviour and unresponsiveness, his welfare should arguably have been the paramount concern, necessitating an assessment of his needs and any potential

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<sup>95</sup> Transcript of 17 May 2022, page 189, lines 4- 8, *"Is it possible.... Yes it could be."*

<sup>96</sup> SBPI-00205, page 8, paragraphs 34-35, *"I have been asked...just running into the scene."*

<sup>97</sup> Statement of Alan Paton, PIRC-00262, page 4, paragraph 7, *"I shouted loudly...GROUND."*

<sup>98</sup> Statement of Alan Paton, PIRC-00262, page 4, paragraph 4, *"with his palms facing forwards."*

<sup>99</sup> Transcript 22 November 2022 (am), page 145, lines 24-25, *"Having your palms....sign of submission."*

vulnerabilities. Statements confirm that a potential mental health issue had already been considered by the first two officers to arrive at Hayfield Road, PCs Walker and Paton, during travel to the scene. PC Walker recalled in his statement to PIRC, *“PC Paton also mentioned the mental health hospital in Whyteman’s Brae was also nearby and he could have been from there.”*<sup>100</sup>

81. The Police Scotland Use of Force SOP provides guidance on de-escalation techniques in the event that officers encounter someone experiencing a mental health issue and states that before using any force, an officer must consider the mental condition of the assailant<sup>101</sup>.

82. Even if officers did not consider Mr. Bayoh’s unusual, uncommunicative behaviour to be a possible indication of mental distress or disorder, at the time of officers first encountering Sheku Bayoh, he was at the ‘passive resistance’ stage of the confrontational continuum described in the SOP<sup>102</sup>. This is two levels below the ‘assaultive resistance’ bar required to establish a need for defensive tactics such as deployment of incapacitant spray<sup>103</sup>.

83. . In an email communication Alasdair MacLeod, Senior Procurator Fiscal Depute provided his opinion regarding Mr. Bayoh having displayed behaviours within the bounds of Level 3 passive resistance, not the higher Level 4 or 5 which may have justified the officer’s actions<sup>104</sup>. CRER note that PC Alan Smith’s statement mentions the potential for Mr. Bayoh to have been experiencing ‘excited delirium’<sup>105</sup>. This is a highly controversial topic from a race perspective, and our views on this in relation to cause of death are provided at the relevant section Notwithstanding these concerns this concept

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<sup>100</sup> PIRC-00264, page 4, paragraph 7, *“PC Paton also mentioned...could have been from there.”*

<sup>101</sup> PS10933, page 5, paragraph 4.3, *“Before using any force...condition of the assailant.”*

<sup>102</sup> PS10933, paragraph 4.6.4

<sup>103</sup> PS10933, paragraph 4.6.6

<sup>104</sup> COPFS-04192, paragraph 3, *“I tend to agree with Eddleston...could be deemed disproportionate.”*

<sup>105</sup> PIRC-00278, page 9, paragraph 4. *“I was also considering that...and sudden death of a subject.”*



features in the Use of Force SOP with clear instructions that individuals experiencing it should be taken to hospital as quickly as possible<sup>106</sup>. It is submitted that this adds weight to the argument that, based on standard procedure in Police Scotland, the Officers first arriving should have assessed Mr. Bayoh's potential needs when it became apparent that he was not responding to them (and subsequently sought medical assistance if required).

84. Instead, a course of action involving use of significant force had evidently been decided upon before the arrival of the Officers<sup>107</sup>, and the attack on Mr. Bayoh with incapacitant spray began in a matter of seconds.

85. As set out in the appendix to this submission outlining the concept of racial threat, people from the dominant ethnic group reacting to a perceived racial threat (whether as individuals or as societies) will act to impose control over the source of the perceived threat. It is submitted that this is echoed in the behaviours of the officers first encountering Mr. Bayoh.

**viii. It is submitted that the Chair may wish to consider whether there is a likelihood that the racialised perception of threat built up within the minds of the Officers first on the scene contributed to their failure to adequately assess the risk posed by Sheku Bayoh, and his potential needs or vulnerabilities, on arrival.**

## **Response by Police Scotland and/or Individual Officers**

### **(i) Initial Contact**

86. Within seconds of arrival on the scene by PC Walker and PC Paton, stopping their vehicle about eight feet from Mr. Bayoh, PC Paton hit his emergency button and then almost immediately deployed his CS spray. Shortly after, PC

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<sup>106</sup> PS10933, paragraph 21.3.8

<sup>107</sup> PIRC-00265, page 3, paragraph 1, "*should the male....rather than engage him.*"

Walker deployed his PAVA spray. This was in response to a man passively resisting their instructions.

87. It appears that this had no effect on Mr Bayoh; witnesses confirm that he was unresponsive to the spray<sup>108</sup>. PCs Walker and Paton, on the other hand, were incapacitated by their own spray<sup>109</sup>.

88. It is submitted that the reason for Mr. Bayoh's unresponsiveness here cannot be identified at this point; [REDACTED] because the wind blowing the spray into the face of the officers was also blowing it away from Mr. Bayoh<sup>111</sup>. Claims within the officers' statements, however, paint him as impervious, feeding into racist stereotypes about Black men being unstoppable dangerous.

89. Mr Bayoh is described at this point as walking past PC Short and PC Tomlinson, ignoring them<sup>112</sup>. It is submitted that this suggests a lack of intent at this point to attack anyone, despite having already been attacked himself by the two officers deploying their sprays. Despite the resistance continuing to be passive, PC Tomlinson again deployed spray<sup>113</sup>.

90. According to the Use of Force SOP, before using any force an Officer must consider:

- The impact factors affecting the situation

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<sup>108</sup> Alan Paton; Transcript 21 June 2022 (am), page 38, lines 2-3, "He just wiped off.... and smiled."

<sup>109</sup> Craig Walker; Transcript of 19 May 2022 (am), page 184, lines 11-12, "I felt mild effects...in my eyes." Alan Paton; Transcript of 21 June 2022 (am), page 37, lines 8-9, "I couldn't keep my eyes open any longer than that..."

<sup>110</sup> [REDACTED]

<sup>111</sup> Transcript 19 May 2022 (am), page 156, lines 9-12, "I'm not convinced...east to west."

<sup>112</sup> Nicole Short; Transcript of 24 May 2022 (am), page 57, line 6, "Mr Bayoh was walking past me..."

<sup>113</sup> SBPI-00043, page 7, paragraph 1, "CS Spray...I attempted to spray Mr Bayoh"

- The physical, mental and sensory condition of the assailant
- The seriousness of the attack
- The presence of any weapons
- That the response must not be excessive<sup>114</sup>

91. It is noted that, until the incident involving Nicole Short, which followed sustained attempts to restrain Mr. Bayoh with incapacitant spray, there was no attack on any officers, and it is submitted that Mr. Bayoh could not be considered an assailant.

92. PC Craig Walker in his evidence on 19 May 2022 was questioned as to previous experience of chemical restraint. He outlined the two other incidents during his 17 or 18 years of service where he had deployed CS or PAVA spray, both of which involved direct violence from the suspect<sup>115</sup>. He clarified that that he had only had contact with members of the Black community as suspects, victims or witnesses *“Just as a response officer out noting statements and that from them.”*<sup>116</sup>. It is submitted that this indicates that it was rare for him to come across Black suspects; it is notable that this was one of only three in which he had deployed spray, and more notable still that the other two suspects became actively violent before being sprayed.

93. Despite this, PC Walker maintained an attempt to justify the attempted chemical restraint of Mr. Bayoh, stating *“...on that point there you would always spray somebody.”*<sup>117</sup>. It is submitted that, on PC Walker’s own evidence regarding his previous experience, this is not the case.

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<sup>114</sup> PS10933, page 5, paragraph 4.3

<sup>115</sup> Transcript of 19 May 2022, page 62, line 3- page 63, line 10, *“We had.....Yes, aye, yes.”*

<sup>116</sup> Transcript 20 May 2022, page 132, lines 20-21, *“Just...from them.”*

<sup>117</sup> Transcript 19 May 2022, page 176, line 9

94. PC Walker also clarified that he had never felt the need to consider hitting someone with a van in any other instance.<sup>118</sup>
95. It is submitted that PC Walker's evidence demonstrated a clear understanding of the importance of calm communication in such incidents. This appears to be a standard policing approach, reiterated in evidence by other officers including Inspector Steven Stewart, PC Ashley Tomlinson and Insp. James Young.
96. On the issue of the point at which PC Walker deployed spray against Mr. Bayoh, PC Walker stated that he was "*followed*" by Mr. Bayoh prior to deploying spray<sup>119</sup>. CRER notes that this contradicts his earlier statements that he sprayed Mr. Bayoh as Mr. Bayoh turned his head towards him<sup>120</sup>. It is submitted that this may be an attempt by PC Walker to justify the speed of deployment and the level of force used by modifying his earlier position in order to create a more negative impression of Mr. Bayoh's behaviour.
97. It is submitted that the comprehensive evidence of previous behaviours, understanding of required behaviours and actual behaviour during this specific incident given by PC Walker clearly demonstrates differential treatment of Mr. Bayoh on his part. The comparators for this differential treatment are other actual and hypothetical suspects, who, it is submitted is clear from PC Walker's evidence, are not Black men. It is submitted that differential treatment of this type may constitute direct discrimination.
98. The CUT principle was described by Insp. James Young and sets out how officers encountering someone with a bladed instrument should create distance, use cover and transmit (i.e., announce to others present that there is a

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<sup>118</sup> Transcript 19 May 2022, page 66, line 8

<sup>119</sup> Transcript 19 May 2022, page 184, line 4

<sup>120</sup> PIRC-00264, page 5, paragraph 7, "*he turned towards me...*"; PIRC-00265, page 3, paragraph 3, "*The male,...in my direction.*"

weapon)."<sup>121</sup> Having explained his understanding of CUT<sup>122</sup> PC Walker offered the excuse that PC Paton was trying to maintain distance, both in his initial command to *"Get the fuck down"*<sup>123</sup> and in his deployment of spray<sup>124</sup> Incongruously, PC Walker also stated during his evidence that creating distance under CUT was an expectation only when a blade was visible (as opposed to suspected), and that a blade was not visible in this instance<sup>125</sup>.

99. It is submitted that the lack of visible bladed implement, the speed with which the response occurred and the aggressive approach of former PC Alan Paton, combined with the expectations of risk assessment and the provisions in the Use of Force SOP<sup>126</sup>, suggests that following the CUT approach (as explored, for example, by Insp. James Young<sup>127</sup>) would not have resulted in the overall course of action. Although creating distance was raised by PC Walker<sup>128</sup>, seeking cover and transmitting was not undertaken in the manner required. In the event that officers believed a bladed weapon was in Mr. Bayoh's possession, CRER submits that by following the CUT approach, combined with the guidance on officers' reasonable response set out in the Use of Force SOP<sup>129</sup>, officers could have avoided physical confrontation.

100. CRER notes that no new evidence was provided by PC Walker regarding his own decision to deploy spray shortly after PC Paton had done so. Mr. Bayoh is described as walking towards him and having *"a stare"* not running, not lunging, not making threats, not attempting to access a knife from

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<sup>121</sup> Transcript 22 November 2022, page 111, line 24 – page 112, line 10, *"So the CUT principle...a weapon."*

<sup>122</sup> Transcript 19 May 2022, page 108, line 5 – page 109, line 6, *"Can you explain...got a knife."*

<sup>123</sup> Transcript 19 May 2022, page 148, lines 22-24, *"Probably why...tried to make."*

<sup>124</sup> Transcript 19 May 2022, page 150, line 16 – page 152, line 16, *"Tell us how...which this."*

<sup>125</sup> Transcript 19 May 2022, page 84, lines 9-10, *"And you couldn't...correct."*

<sup>126</sup> PS1093

<sup>127</sup> Transcript 22 November 2022, page 10, lines 12-22, *"So the CUT principle...in possession of a weapon"*

<sup>128</sup> Transcript 19 May 2022, page 184, line 2, *"Because I was trying to create the space."*

<sup>129</sup> PS-10933, page 8, paragraph 4.7 – page 9. Paragraph 4.7.6, *"By combining...deliver lethal force."*

about his person. It is submitted that this does not appear to meet the requirements for such action set out in the SOP on the Use of Force<sup>130</sup>.

101. PC Alan Paton maintained that Mr. Bayoh's lack of communication, possible drug intoxication and the question of the location of the knife sufficiently distinguished this incident as requiring the level of force used. He clarified that he did not feel in fear of his life until after the CS spray incapacitated him, yet still used a high level of force in the seconds following first encountering Mr. Bayoh. It is submitted that rationale given by PC Paton does not seem a sufficient explanation for the level of force used. CRER submits that neither PC Paton nor PC Walker provided credible explanations for their actions on first encountering Mr. Bayoh, raising the potential for racial threat to have been an underlying factor in the decisions made.

102. Inspector Steven Stewart in his evidence illustrated how police officers should deal with someone who appeared to be experiencing mental distress, who "*had issues*" or were "*under the influence of drugs*", clarifying the importance of giving the person space and using calm physical and verbal approaches<sup>131</sup>. (It is submitted that, in this case, the immediate and aggressive approach taken appears to be the opposite of the behaviours described by Inspector Stewart.

103. Further evidence was heard from multiple officers illustrating the approaches to dealing with potentially violent or dangerous situations without the need for restraint, with reference to actual cases where the subject was not a Black man. This underlines the crucial matter of whether the actions and attitudes of officers would have been different had Mr. Bayoh been white.

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<sup>130</sup> PS10933, page 5, paragraph 4 – page 9, paragraph 4.7.6, "*Confrontational continuum...deliver lethal force.*"

<sup>131</sup> Transcript 17 May 2022, page 175, lines 9-10, "*issues.... drugs*" and lines 11-12, "*standing back.... calm things down.*"

104. Evidence given by officers including PC Ashley Tomlinson<sup>132</sup> PC Kayleigh Good<sup>133</sup> and PC James McDonough<sup>134</sup> who had never deployed spray or a baton in relation to any other knife incident, and PC Alan Smith<sup>135</sup>, who had never deployed a baton and had deployed spray only twice where a weapon was in active use, suggests that this level of force in knife incidents (including those where a knife is actively present) was extremely rare.
105. CRER notes that attempts were made to draw comparison between this incident and another involving a restraint of a (presumably) white man by PC James McDonough's Counsel on 7 June 2022, which involved four officers taking part in restraint<sup>136</sup>.
106. This incident was described as "...bearing some similarities"<sup>137</sup>. It is, however, submitted that the similarities are very limited – the suspect involved had just confessed to seriously wounding someone, was in possession of a knife and had begun spitting at, kicking and attempting to bite officers<sup>138</sup>. It is further submitted that this is not the same as encountering a non-responsive person with no visible weapon and almost immediately initiating an attempt at chemical restraint. This example in fact clarifies that the patterns of response in other knife incidents with a white suspect contrast sharply with the response against Mr. Bayoh.
107. Mr. Bayoh's demeanour and its potential implications for the initial contact with police was commented upon in evidence before the Inquiry.

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<sup>132</sup> Transcript of 25 May 2022, page 27, lines 8-12, "...in any previous....not that I recall."

<sup>133</sup> Transcript of 31 May 2022, page 128, lines 1-7, "And of those knife calls....Never."

<sup>134</sup> Transcript of 7 June 2022, page 12, lines 3-9, "In the six months....I have not used it."

<sup>135</sup> Transcript of 27 May 2022, page 56,, lines 23-25, "I think you said.....knife incident." and page 45, lines 3-6, "I can recall...a blunt implement."

<sup>136</sup> Transcript of 7 June 2022, page 117, line 5- page 119, line 6, "about a year ago....At least four."

<sup>137</sup> Transcript of 7 June 2022, page 115, line 16

<sup>138</sup> Transcript of 7 June 2022, page 118, lines 10-12, "kicking out...bite officers as well."

108. Martin Graves in his evidence set out a scenario where officers on arrival may have felt that a suspect such as Mr. Bayoh may or may not have liked the police, or been prepared to engage, before they actually engaged with him, based on his demeanour. He also stated that they would then have wanted to gauge whether such a person was intoxicated, and that to do so would require communication<sup>139</sup>.

109. Joanne Caffrey in her evidence similarly explored a variety of potential reasons why a suspect may not engage with police officers, including dislike of the police, hearing difficulties, mental ill health or intoxication<sup>140</sup>. Given a description of Mr. Bayoh's demeanour on the day, she asserted that officers would have identified that he was most likely intoxicated or experiencing a mental health crisis and should therefore have sought medical attention.

110. **The Inquiry may wish to consider whether there was sufficient time for PCs Walker and Paton to gauge Mr Bayoh's demeanour before the aggressive engagement began, and if not, whether race played a factor in their perception of his demeanour and likelihood of cooperating with them.**

111. In regard to PC Walker's actions on first encountering Mr. Bayoh, CRER notes with appreciation the Inquiry's line of questioning regarding cultural competence. CRER is of the opinion that language or cultural barriers are not normally the main cause of fundamental breakdown in communications between people in authority and service users / members of the public to whom such barriers apply. Whilst these barriers may create a challenge, that challenge can be met where there is willingness to do so. Decisions on action or inaction

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<sup>139</sup> Transcript of 28 November 2022 , page 28, lines 11-20, "*It might be the case...verify that fact.*"

<sup>140</sup> Transcript of 30 November 2022, page 174, lines 10- 14, "*person has got....mental illness.*"



due to aversive racism<sup>141</sup>, racist assumptions and stereotypes are a more likely factor.

112. As PC Walker pointed out, much can be done to communicate beyond language and culture.<sup>142</sup> The officers involved do not appear to have had sufficient practical knowledge of potential cultural differences to rule out lack of communication stemming from this and consequently, it is submitted, additional consideration of any such difficulties would have been merited.

113. CRER notes that Police Scotland issued a Diversity Booklet in 2013<sup>143</sup>. We do not assume that the officers involved had sight of this, as the means of dissemination are unknown. However, we have concerns about the selective and often stereotypical nature of the contents. This will be explored further in a future submission.

114. It is neither proportionate nor possible for any individual to have full knowledge of the cultural norms, values and expressions within every cultural group in Scotland. Rather, it is important for people working with members of the public to be aware of their own assumptions, to question these and to consider possible cultural differences and the need to tailor their approach to meeting needs. It is clear that such an approach would have been appropriate on this occasion. In a racially literate policing system, this would have included considerations around potentially significant fear of engagement with police. This issue was explored during the hearing on cause of death.

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<sup>141</sup> Aversive racism is a term which describes how people with underlying racial prejudice avoid engaging, or fail to engage adequately, with people from Black and minority ethnic groups." Ref - Dovidio, John F.; Gaertner, Samuel L., eds. (1986). "The aversive form of racism". *Prejudice, Discrimination and Racism*. Academic Press. pp. 61–89.

<sup>142</sup> Transcript 19 May 2022, page 176, line 22 - page 177, line 5, "*even if there's a language barrier...certain tools.*"

<sup>143</sup> PS-11300

115. Regardless of the cause of Mr. Bayoh's unresponsiveness, the speed of aggressive engagement appears to CRER to be entirely unjustified. Unwillingness to engage adequately with people from Black and minority ethnic groups can be described as aversive racism. Where insufficient effort is made to explore potential cultural or linguistic barriers, this is often the underlying reason.
116. **It is submitted that the Inquiry may wish to consider whether the clear inadequacies in effort and length of time taken in initially engaging with Mr. Bayoh indicate that aversive racism was a factor.**

### **Human rights implications**

117. The Equality and Human Rights Commission's Human Rights Framework for Restraint<sup>144</sup> brings together legislation and case law to set out how restraint can be used lawfully, and what constitutes unlawful restraint. It defines restraint as "*An act carried out with the purpose of restricting an individual's movement, liberty and/or freedom to act independently.*"<sup>145</sup> This includes chemical restraint, and it is submitted that it can be considered that Officers' use of incapacitant spray was an attempt to restrain Mr. Bayoh.
118. The Welfare of Persons in Police Custody SOP<sup>146</sup> cited in evidence by Joanne Caffrey<sup>147</sup> (01/12/22, p.91, lines 17-23) states that "*...all custodies are to be treated with care and consideration, ensuring that their fundamental human rights are maintained. No custody should receive less favourable treatment on the grounds of age,*

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<sup>144</sup> Equality and Human Rights Commission (2019), *Human Rights Framework for Restraint*

<sup>145</sup> Equality and Human Rights Commission (2019), *Human Rights Framework for Restraint*, page 4, paragraph 5

<sup>146</sup> PS-11014

<sup>147</sup> Transcript 1 December 2022, page 84, lines 17-21, "*does this SOP apply....custody unit.*"

*disability, gender, race, religion or belief, relationship status, sexual orientation or transgender identity.*"<sup>148</sup> It is submitted that the immediate escalation to chemical restraint, with potential motives relating to racial threat, can be regarded as contrary to this requirement.

119. Further exploration of the human rights law implications of restraint set out within this Framework is referred to under the section (iii) Restraint of Sheku Bayoh.

**ix. The Inquiry may wish to consider whether the attempt to restrain Mr. Bayoh with incapacitant spray on arrival was justifiable and proportionate, whether it contravened the Use of Force SOP and/or Mr. Bayoh's human rights, and whether (given the potential role of racial threat in the Officers' responses) this would have been carried out had Mr. Bayoh been white.**

**(ii) PC Nicole Short Incident**

120. The circumstances of the incident involving PC Nicole Short and Sheku Bayoh are highly contested.

121. The inconsistencies in the level of force reported by both Police Officers and civilian witnesses are of primary relevance to consideration of the role played by race. As set out previously and expanded on in the appendix, racial stereotypes frame Black men as aggressive, inhumanely strong and dangerous.

122. This picture would be echoed by Nicole Short's assertion that Mr. Bayoh turned to her, stating "*Fucking come on then*" and adopting a boxing position<sup>149</sup>. PC Tomlinson's description of the incident differs. He alleged that Mr. Bayoh chased PC Short, caught up with her and punched her on the back of the

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<sup>148</sup> PS11014, Section 1.1.2

<sup>149</sup> Transcript 24 May 2022, page 64, lines 17- 22, "*Fucking come on then.... within a ring.*"

head<sup>150</sup>. PC Walker also claimed to have seen him chasing PC Short (having missed the earlier part of the incident as a result of incapacitation due to spray)<sup>151</sup>. It is submitted that it is difficult- to ascertain from the enhanced CCTV footage from Gallagher's pub whether any such stance was taken, whether any chase occurred, or whether Mr. Bayoh was simply seeking an exit from his position amidst the group of Officers.

123. There is broad agreement amongst witnesses that at this point Mr. Bayoh punched Nicole Short on the back of the head. PC Short described it in evidence as *"this almighty blow to the back of my head"*<sup>152</sup> In her statement she stated: *"The blow was so powerful it knocked me flying to my face. I remember seeing the kerb coming towards me and trying to put my hands out to stop my face hitting the ground...I passed out at this point. The next thing I remember was curling up in a ball to protect my head...Nothing came."*<sup>153</sup>

124. This is contrary to other Officers' statements (such as PCs Tomlinson<sup>154</sup> and Walker<sup>155</sup>), who claim that she was stamped on repeatedly.

125. CRER note that PC Short has given differing accounts of what Mr Bayoh is said to have done during this incident. She later claims to have feared for her life<sup>156</sup>. PC Tomlinson also later claims to have believed that PC Short had been killed<sup>157</sup>.

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<sup>150</sup> Transcript 25 May 2022, page 76, lines 7-8, *"basically running after PC Short,"* and page 77, lines 15-16, *"what I saw.. back of her head."*

<sup>151</sup> Transcript 25 May 2022, page 76, lines 7-8, *"basically running after PC Short,"* and page 77, lines 15-16, *"what I saw.. back of her head."*

<sup>152</sup> Transcript 24 May 2022, page 71, lines 8-9

<sup>153</sup> PIRC-00253, page 3, paragraph 6-page 4, paragraph 1, *"The blow was so powerful...I can't remember who it was."*

<sup>154</sup> Transcript 25 May 2022, page 80, line 5, *"then he stamped on her back."*

<sup>155</sup> Transcript 20 May 2022, page 11, lines 22-23, *"he brought...full force stamp."*

<sup>156</sup> PIRC-00253, page 3, paragraph 4, *"I knew he was going to kill me."*

<sup>157</sup> PIRC-00263, page 3, paragraph 3, *"I thought he had killed her"*

126. Statements by civilian witnesses also vary considerably. Kevin Nelson, a key witness, described Mr. Bayoh lashing out with his fists in the direction of PC Short, with one punch connecting before he tried to move away<sup>158</sup>.
127. This description appears closer to the scene in the enhanced CCTV footage from Gallagher's pub.<sup>159</sup> It is submitted that there appears to be, as witness Sean Mullen described in his statement, a "coming together" between Mr. Bayoh and the Officers<sup>160</sup>. Mr. Bayoh connects with PC Short, and it appears that both go down onto the ground, with Mr. Bayoh attempting to make an escape before being pulled again to the ground by PCs Paton, Walker and Tomlinson<sup>161</sup>.
128. Danny Robinson (who did not give evidence) claims in his statement that "*the Black guy went to the female officer and picked her up and slammed her down on the floor. She was screaming. The man then fell on top of the female officer. He must have tripped or something because I never seen anybody hit him. He just fell. I think he was lying on top of her legs.*"<sup>162</sup> He went on to say: "*When he slammed her down on the ground the Black man definitely lifted her up off her feet with his two hands and threw her down on her side*"<sup>163</sup>.
129. It is submitted that this contradicts all other claims made in relation to the incident with PC Short, does not fit well with what can be seen on the CCTV, and can arguably be considered implausible. This perception seems to reflect racial stereotypes about Black men being unusually strong and unstoppably violent.

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<sup>158</sup> Transcript 31 May 2022, page 29, line 24-25, "*the first blow... force of the blow,*" and page 35, line 17, "*he then changed direction.*"

<sup>159</sup> SBPI-00157

<sup>160</sup> PIRC-00120, page 2, paragraph 4, "*There was a coming together...and the two officers.*"

<sup>161</sup> SBPI-00157

<sup>162</sup> PIRC-00117, page 2, paragraph 7

<sup>163</sup> PIRC-00117, page 3, paragraph 3

130. Evidence from Dr. Katherine Mitchell on 9 June 2022, the first doctor to examine PC Short after the incident, indicated that it was highly improbable that the resulting injuries would not have been identified and noted on the day<sup>164</sup>. Dr. Gillian Norrie, Force Medical Examiner, in evidence given on 9 June 2022 confirmed the accuracy of her notes showing that PC Short had told her about the 'stamping', but that no back injury had been found<sup>165</sup>. Both physicians confirmed that her Glasgow Coma Scale rating was 15/15 and that there was no reason to suspect that she had been unconscious<sup>166</sup>.

131. Although Dr. Ian Anderson's notes dispute this his examination was made too late to observe direct signs of injury related to the alleged stamping, only potential indirect symptoms relating to the strike to the lower back of her head (which is largely undisputed by witnesses)<sup>167</sup>.

132. Likewise, although aspects of Dr. Rudy Crawford's evidence (which are based on pre-existing statements rather than physical examination) seem to support the allegation of stamping, in his evidence on 9 June 2022 the best he could say was that he would not rule out a stamp despite there being no medical evidence to support it<sup>168</sup>. A line-by-line examination of medical notes during his evidence session revealed no recorded injury to the lower back, or reliable evidence of unconsciousness although evidence of minor injury to the back of the head was recorded, along with some scrapes due to falling.

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<sup>164</sup> Transcript 9 June 2022, page 13, lines 20-21, *"I can't see any reason... note of it."*

<sup>165</sup> Transcript of 9 June 2022, page 61, line 1, *"back stamped on,"* and page 71, lines 5-6, *"there was.. in those areas."*

<sup>166</sup> Transcript of 9 June 2022, page 31, lines 18-20, *"you were able... that's correct."* and page 64, line 7, *"her GCS...was 15 out of 15"*

<sup>167</sup> Transcript of 9 June 2022, page 131, lines 11-13, *"I still had...her blunt head injury."*

<sup>168</sup> Transcript of 9 June 2022, page 178, line 11-13, *"I do not think... on that basis alone."*

133. Former PC Nicole Short remains the single witness to claim that Mr. Bayoh spoke a word during the interactions with police and no other witness saw him *“boxing, skipping”*<sup>169</sup>. In the absence of any corroborative evidence, CRER submit that it is unlikely that he adopted such a stance or challenged her to *“Fucking come on then.”*<sup>170</sup> PC Short describes Mr Bayoh at various points in statements and evidence to the hearing as cold<sup>171</sup>, blank<sup>172</sup>, unresponsive<sup>173</sup>, crazy<sup>174</sup>, out of control<sup>175</sup>, laughing<sup>176</sup> and violent<sup>177</sup> – all within a matter of a few seconds of first encountering him. It is submitted that the picture painted by former PC Nicole Short appears likely to be intended to demonise Mr. Bayoh.
134. The information provided by Kevin Nelson, appears to indicate that Mr. Bayoh may have been trying to make an escape<sup>178</sup> and swinging his arms in an uncontrolled manner<sup>179</sup> as he did so. It is submitted that this suggests that rather than a deliberate act of violence, the incident involving PC Short may not have met the bar to be considered assaultive resistance.
135. In particular, it is submitted that these conflicting accounts throw doubt on whether there was a deliberate attack on the person of another with evil intent. It is submitted that this is of importance to the later restraint, as PC Craig Walker indicated that in his opinion, the *“chasing”* of PC Nicole Short was an act of assaultive resistance.<sup>180</sup>

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<sup>169</sup> Transcript 24 May 2022, page 64, line 20, *“kind of like a boxer skip.”*

<sup>170</sup> Transcript 24 May 2022, page 63, line 25

<sup>171</sup> SBPI-00041, page 2, paragraph 10, *“Bayoh was cold, almost blank, unresponsive...”*

<sup>172</sup> PIRC-00117, page 3, paragraph 3

<sup>173</sup> *Ibid*

<sup>174</sup> PIRC-00253, page 2, paragraph 13, *“crazy man.... he was completely out of control.”*

<sup>175</sup> Transcript of 9 June 2022, page 31, lines 18-20, *“you were able... that’s correct.”* and page 64, line 7, *“her GCS...was 15 out of 15”*

<sup>176</sup> PIRC-00253, page 3, paragraph 2, *“he walked past laughing at us.”*

<sup>177</sup> Transcript of 24 May 2022, page 48, line 13, *“He then turned violent.”*

<sup>178</sup> SBPI-00014, page 4, paragraph 1, *“He tried to .....to my left.”*

<sup>179</sup> Transcript 31 May 2022, page 30, line 29, *“..it was just wild swinging*

<sup>180</sup> Transcript of 20 May 2022, page 73, line 15

136. It is submitted that it is clear from evidence provided during the hearing on 24 May 2022 by PC Nicole Short that Mr. Bayoh's movement towards her occurred at the time that she had just drawn her baton, after she had heard PC Walker obtaining a baton from PC Paton<sup>181</sup>. CRER notes that there is evidence from Kevin Nelson, who described an abrupt change in Mr Bayoh's behaviour, stating "*It was like he just woke up*"<sup>182</sup>.
137. It is submitted that an inference that Mr. Bayoh lacked an intention to attack PC Short is supported by evidence given to the Inquiry by PC Ashley Tomlinson on 25 May 2022 who described how having run towards him initially, Mr. Bayoh "*seemed to veer off*" to his right rather than attacking<sup>183</sup>. From the various pieces of evidence considered, it appears this brought him directly into the path of PC Nicole Short, who turned to make her own escape before being struck.
138. It is noted that PC Walker (regarded Mr. Bayoh's conduct at this point as constituting serious aggravated assaultive resistance<sup>184</sup>. It is submitted that the conduct described by Kevin Nelson involving one or more brief strikes with swinging arms in the pursuit of escape<sup>185</sup>, could not meet the criteria for this set out within the SOP on use of force<sup>186</sup>.
139. PC Nicole Short only recalled a single punch, and therefore appears to base her belief in a potential further stamping on the accounts of other officers<sup>187</sup>. PC Alan Smith stated during his evidence that on arrival at the scene, PC Short told him that she had been struck to the back of the head<sup>188</sup>,

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<sup>181</sup> Transcript of 24 May 2022, page 60, line 23, "*I took my baton out...*"

<sup>182</sup> Transcript 31 May 2022,, page 56, line 3.

<sup>183</sup> Transcript of 25 May 2022, page 76, line 1

<sup>184</sup> Transcript of 20 May 2022, page 73, lines 13-15, "*When would he....to chase PC Short.*"

<sup>185</sup> Transcript of 31 May 2022, page 35, lines 23-24, "*he had stopped swinging... she was down.*"

<sup>186</sup> PS11014

<sup>187</sup> Transcript of 24 May 2022, page 94, lines 9-12, "*And is that... Yes.*"

<sup>188</sup> Transcript of 27 May 2022, page 73, lines 4-5, "*she conveyed that...back of the head*"



subsequently broadcast by him in an airwaves message which confirmed that she was not obviously seriously injured<sup>189</sup>.

140. Both PC Craig Walker<sup>190</sup> and PC Ashley Tomlinson<sup>191</sup> stated in their evidence that PC Short was stamped on. PC Tomlinson stated in his evidence on 25 May 2022 that this happened twice, although other statements and recollections by former PC Short of how he described this at the time are not as clear on the number of times<sup>192</sup>. Witness Kevin Nelson did not see this and stated that, as Mr. Bayoh was in the process of trying to make an escape and moving towards him, it would not have been possible<sup>193</sup>.

141. In the event that the stamping claim is not considered credible (or at least merits doubt), it may be that the Inquiry will wish to consider whether the claim was made in order to excuse the PC Tomlinson striking Mr Bayoh with his baton<sup>194</sup>, as well as the subsequent restraint.

142. Former PC Short made previous statements in which she dismissed medical professionals' views that her memory of events surrounding the incident means she could not have lost consciousness, stating that she did not remember everything clearly<sup>195</sup>. It is submitted that the claim of unconsciousness appears unsubstantiated.

143. The allegations relating to the stamp and subsequent unconsciousness have been a major theme of the racially charged, demonising discourse surrounding the incident. As such, we would suggest that assessment of the

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<sup>189</sup> PIRC-01396, page 6

<sup>190</sup> Transcript 20 May 2022, page 11, lines 22-23, "he brought...full force stamp."

<sup>191</sup> Transcript 25 May 2022, page 80, line 5, "then he stamped on her back."

<sup>192</sup> SBPI-00041, paragraph 30, "he told me... stamping on you."

<sup>193</sup> Transcript of 31 May 2022, page 45, lines 4-9, "Is it possible... No."

<sup>194</sup> PIRC-00263, page 3, paragraph 4, "I struck him...to the head area."

<sup>195</sup> SBPI-00041, page 3, paragraph 23, "I couldn't remember... of the incidents," and page 4, paragraph 25, "Her theory... consciousness."

credibility of these allegations are central to the Inquiry's consideration of the role of race.

**x. The Chair may wish to consider the varying claims made regarding the level of violence and risk to life posed by Mr. Bayoh during the Nicole Short incident (and associated comments made by other officers in the following section regarding restraint) in light of the findings of the American Psychological Association literature review into racial threat and perceptions of physical size, strength and formidability.**

144. The American Psychological Association literature review opens with a selection of quotes by Police Officers about men and boys who have died during interaction with Police. *“Hamilton had a “muscular build” and “most definitely would have overpowered . . . me or pretty much any officer I can think of, to tell you the truth. He was just that big, that muscular”* – this refers to a man of 5ft 7in in height, weighing 169 pounds.

145. The second quote, *“He’s menacing. He’s 5 ft 7, 191 pounds”* referred not to the same man, but to Tamir Rice, a 12-year-old boy shot by Police whilst playing in the park.<sup>196</sup>

146. As previously mentioned, CRER contends that the perception of racial threat is an issue of key importance throughout the hearings. This is summarised in more detail in Appendix 1, however for further references outlining the societal perception of Black men as a threat, dangerous and superhuman, the literature review mentioned above would be an indispensable source.

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<sup>196</sup> Wilson, J.P., Hugenburg, P. and Rule, N.O. (2017) [Racial Bias in Judgments of Physical Size and Formidability: From Size to Threat](#). American Psychological Association Journal of Personality and Social Psychology, 2017, Vol. 113, No. 1

147. Variations in accounts of the Nicole Short incident appear to have developed at the scene and thereafter. For example, APS Maxwell arrived shortly after this incident and broadcast via the Airwave the following message: “*Although there’s no visible injuries to PC Short she’s eh... been stomped to the body a few times etcetera... ehm... and struck to the head...*”<sup>197</sup> The reason for his perception that she had been “*stomped to the body*” when she herself did not identify this at the time is not clarified.

**xii. The Inquiry may wish to consider whether these varying accounts are an attempt to justify the Officers’ conduct. Namely, lack of initial risk assessment swiftly followed by excessive and escalating use of force, culminating in resistance from Mr. Bayoh which necessitated a restraint that would otherwise not have been justified. The Inquiry may wish to consider whether this series of events would have been likely to have occurred had Mr. Bayoh been white.**

**(iii) Restraint of Sheku Bayoh**

**Reflection of racial stereotypes**

148. Statements from both Police officer and civilian witnesses confirm that there was difficulty in restraining Mr. Bayoh after he was taken down to the ground through a series of baton strikes and tackles following the incident with Nicole Short. Mr. Bayoh may well have been strong, however some of the descriptions of him during restraint reflect well-evidenced racial stereotypes of Black men as superhuman, for example that he “*bench pressed*” officers<sup>198</sup> or the detailed description of his musculature given by PC Good, who describes him in her statement to PIRC as “*massive... the biggest male that I have seen.*”<sup>199</sup>

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<sup>197</sup> Transcript of 8 June 2022, page 13, lines 13-15

<sup>198</sup> PIRC-00263, page , paragraph 3, “*He started to bench press both of us.*”

<sup>199</sup> PIRC-00274, page 10, line 1

149. In line with the aforementioned research into race and threat perception, her views were evidently not tempered by the fact that Mr. Bayoh was several inches shorter and several stones lighter than her colleagues present at the time. Forensic records show that PC Paton was 6ft 4in and 17 stones<sup>200</sup> and PC Walker 6ft 4in tall and weighed 25 stones<sup>201</sup>. At 5ft 11in and 13.5 stones, PC Tomlinson<sup>202</sup> was around the same size as Mr. Bayoh, who it is understood was 5ft 10in and 12 stones 11lb<sup>203</sup>.

### **Means of restraint**

150. A key consideration for the Inquiry is whether potentially dangerous forms of restraint were being used. It is noted that this may be difficult to assess reliably, because accounts vary and CCTV and images available are insufficiently clear. Accounts of whether and for how long Mr. Bayoh was in the prone position vary, as do accounts of whether officers were lying or kneeling on his torso.

151. This, it is submitted, is of relevance in considering the role of race. The Inquiry will be aware that unsafe restraint methods frequently feature in cases where Black men in particular die in Police custody.<sup>204</sup> Racial threat and lack of empathy ('the racial empathy gap')<sup>205</sup> are both factors frequently raised in research aiming to understand this pattern.

152. Senior Counsel to the Inquiry's line of questioning to both PC Ashley Tomlinson<sup>206</sup> and PC Craig Walker<sup>207</sup> included extensive questioning on their

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<sup>200</sup> PIRC-01305, page 4

<sup>201</sup> PIRC-01302, page 4

<sup>202</sup> PIRC-01306, page 4

<sup>203</sup> PIRC-01444, page 4 paragraph 3, "*measuring....(12st 10lb)*"

<sup>204</sup> Analysis by [Inquest \(2022\)](#) demonstrates that the proportion of BME deaths in UK police custody where restraint is a feature is over two times greater than in other deaths in custody

<sup>205</sup> Forgiarini, M. et al (2011) [Racism and the Empathy for Pain on Our Skin](#). *Frontiers in Psychology Journal* 2:108

<sup>206</sup> Transcript of 25 May 2022, page 86 onwards

<sup>207</sup> Transcript of 20 May 2022, page 6 onwards

actions immediately after former PC Short fell to the ground. In both cases, this included exploration of the level of use of force (in line with the Use of Force SOP) that they believed themselves to have been deploying during the restraint following the Nicole Short incident<sup>208</sup>.

153. At the point when an initial attempt to restrain Mr Bayoh was made, it is submitted that both PC Paton and PC Walker deployed level 4 defensive tactics, namely the use of incapacitant spray<sup>209</sup>. It is submitted that Mr. Bayoh's behaviour at that point would not reflect PC Walker's understanding of the circumstances requiring level 4 tactics: when someone is "*fighting back*"<sup>210</sup>.

154. Following the incident with PC Nicole Short, both PC Ashley Tomlinson and PC Craig Walker immediately physically engaged Mr. Bayoh<sup>211</sup>.

155. PC Ashley Tomlinson repeatedly claimed that he believed PC Short to have been killed, or about to be killed, thereby meriting the use of deadly force in line with the Use of Force SOP<sup>212</sup>. This is the justification given for striking Mr Bayoh on the head with a baton<sup>213</sup>.

156. **The Chair may wish to consider whether, had Mr Bayoh been white, he would have been repeatedly struck with a baton. CRER notes that there is evidence before the Inquiry from a number of officers that they had never had cause to use a baton during other knife incidents where the suspect was white.**

157. Of relevance to this consideration is that despite PC Tomlinson's evidence to the Inquiry on that he was "*fearing that I was going to be attacked*"<sup>214</sup>,

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<sup>208</sup> PC Walker; Transcript of 20 May 2022, page 74, lines 8-11, "*serious aggravated ...the ground.*"

<sup>209</sup> PS10933, page 9, section 4.7.5

<sup>210</sup> Transcript of 20 May 2022, page 77, line 19

<sup>211</sup> PC Tomlinson; Transcript of 25 May 2022, page 87, line 2, "*I used..a blow.*" PC Walker; Transcript of 20 May 2022, page 15, lines 9-10, "*so I...shoulder charge.*"

<sup>212</sup> PS10933

<sup>213</sup> Transcript of 25 May 2022, page 93, lines 25-26, "*I thought... after killing Nicole.*"

<sup>214</sup> Transcript of 25 May 2022, page 75, line 21

Mr. Bayoh in fact made no contact with him either whilst swerving out of his way before the incident involving Nicole Short, or whilst being repeatedly struck with a baton to the head afterwards<sup>215</sup>. It is submitted that had Mr Bayoh been extremely dangerous, in possession of superhuman strength, and intending to cause harm to officers, he would have been able to do so when being struck with a baton and restrained.

158. APS Scott Maxwell stated that, had he known that Mr. Bayoh had been struck with a baton to the head, he would have immediately called for an ambulance<sup>216</sup>. Mr. Stephen Kay was of the same view, adding that the deployment of spray may also have been a reason for seeking medical attention<sup>217</sup>.

159. Joanne Caffrey stated that someone in custody having suffered a head injury creates a requirement for immediate or urgent medical provision, which takes priority over apprehension<sup>218</sup>, in line with the Welfare of Persons in Police Custody SOP<sup>219</sup>.

160. It is submitted that none of the officers on the scene sought medical attention following Mr Bayoh having been struck with a baton, waiting until he became unconscious before calling for an ambulance.

161. **The Inquiry may want to consider why, only APS Maxwell identified medical attention for Mr Bayoh as a priority, and whether the racial empathy gap may have played a part in the failure to call an ambulance by officers who were aware that Mr. Bayoh had been struck with a baton to the head. It is submitted this is especially relevant in light of the fact that former PC Nicole Short, having also received a blow to the head, quickly had an**

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<sup>215</sup> PC Tomlinson; Transcript of 25 May 2022, page 87, line 2, *"I used..a blow*

<sup>216</sup> Transcript of 8 June 2022, page 26, lines 5-11, *"if you had heard... yes."*

<sup>217</sup> Transcript of 23 November 2022, pages 47, lines 23- page 48, line5, *"We may have ...process."*

<sup>218</sup> Transcript of 1 December 2022, page 83, lines 8-13, *"preservation...leaving the casualty."*

<sup>219</sup> PS11014

**ambulance called to assist her<sup>220</sup>. It is submitted that Mr Bayoh, a Black man, received differential treatment when compared to PC Short, a white Police officer. It is further submitted that this is an example of direct discrimination.**

162. PC Craig Walker in his evidence stated that, when bringing Mr. Bayoh to the ground by force, Mr. Bayoh landed on his back<sup>221</sup>. It is submitted that he later provided unclear evidence about the eventual position of Mr. Bayoh, describing him as “...*face-down but he was never fully on his front, his arm was always underneath him.*”<sup>222</sup>

163. Much of the evidence heard suggested that officers involved in the restraint did not apply their body weight or lie across Mr. Bayoh<sup>223</sup>. Witness Christopher Fenton, who had significant experience of restraint in his professional career<sup>224</sup>, disagreed with this and felt that they were lying on top of Mr Bayoh like “*a rugby scrum*”<sup>225</sup>. He did not feel that there was a struggle involved at that point.

164. His evidence raised the suggestion that the method and length of restraint were not within the bounds of acceptable practice and constituted a significant risk of impeding breathing<sup>226</sup>.

165. PC Walker in evidence stated that at no point was Mr. Bayoh doing anything resembling a ‘push up’ nor were he or other officers being lifted into the air as they tried to push him on to his front<sup>227</sup>, as alleged by PC Nicole

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<sup>220</sup> SBPI-00044, page 7, paragraph 24- “*I’m gonna need an ambulance here.*”

<sup>221</sup> Transcript of 20 May 2022, page 20, lines 3-4, “*Was that... Yes.*”

<sup>222</sup> Transcript of 20 May 2022, page 27, lines 11-12

<sup>223</sup> Eg PC Alan Paton; Transcript of 21 June 2022, page 58, lines 12-15, “*was he lying on.. alongside him.*”

<sup>224</sup> Transcript of 22 June 2022, page 47, line 2-6, “*And this is something...Mm-hm.*”

<sup>225</sup> Transcript of 22 June 2022, page 20, line 17

<sup>226</sup> Transcript of 22 June 2022, page 26, line 11-15, “*So..... compromise their breathing.*”

<sup>227</sup> Transcript of 20 May 2022, page 68, lines 8-11, “*did you have....on the ground.*”

Short<sup>228</sup> and at no point was Mr Bayoh completely on his front or prone<sup>229</sup> as alleged by PC Kayleigh Good<sup>230</sup> and DI Samantha Davidson<sup>231</sup>. It is submitted that both of these positions cannot be simultaneously true.

166. As mentioned above, Christopher Fenton stated that Mr. Bayoh was in the prone position, but he did not see a lot of struggling going on<sup>232</sup>.

167. The Inquiry, in considering which of these contradictory scenarios is likely to be true, may wish to consider a potential racist motivation for the 'push up' allegation which connects to racial stereotypes regarding Black men having superhuman strength.

168. Unlike PC Tomlinson's evidence regarding striking Mr. Bayoh with a baton, where no contact was initiated by Mr. Bayoh, PC Walker claimed that whilst on the ground 'punches were exchanged'<sup>233</sup>. We note that the alleged punches delivered by Mr. Bayoh landed in the area of PC Walker's stab vest and are not claimed to have been aimed at his face<sup>234</sup>.

169. PC Craig Walker stated that he had used "*pulled punches delivered tactically*" to Mr. Bayoh's face<sup>235</sup>. Whilst an explanation was given for this in terms of the need at that point to handcuff Mr. Bayoh<sup>236</sup>, it is submitted that the Inquiry may wish to consider whether this was justified and proportionate. In particular, the Chair may wish to consider whether earlier action in line with protocol to de-escalate the situation would have avoided the need for restraint and spared Mr. Bayoh from what was, it is submitted, a form of assault.

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<sup>228</sup> SBPI-00041, page 3, paragraph 19, "with the three officers....to the ground."

<sup>229</sup> Transcript of 20 May 2022, page 32, lines 14-16, "he was never... underneath him."

<sup>230</sup> Transcript of 31 May 2022, page 155, lines 10-14, "Right...yeah."

<sup>231</sup> Transcript of 10 June 2022, page 137, line 3, "He was in the prone position, lying down."

<sup>232</sup> Transcript of 22 June 2022, page 23, lines 4-6, "...in your... Yes."

<sup>233</sup> Transcript of 20 May 2022, page 21, line 22, "there was an exchange of punches"

<sup>234</sup> Transcript of 20 May 2022, page 22, line 22, "mainly my stab vest and that."

<sup>235</sup> SBPI-00039, page 8, paragraph 53.

<sup>236</sup> Transcript of 20 May 2022, page 24, line 14-15, "that presents...apply cuffs."



170. CRER notes that expert witnesses did not have a conclusive view on the potential causes of Mr. Bayoh's broken rib but as set out by Professor Anthony Freemont, this was unlikely to have been as a result of CPR<sup>237</sup> and more likely to have occurred during the restraint, for example as a result of falling onto an outstretched arm<sup>238</sup>

**xiii. It is submitted that the Inquiry may wish to consider whether the restraint of Mr Bayoh was unsafe and whether excessive levels of force were used. It is further submitted that the Inquiry may wish to consider, whether Mr Bayoh would have been restrained in such a manner had he been white, and whether the perceived racial threat posed by Mr Bayoh contributed to the manner in which he was restrained.**

### **Human rights implications**

171. As indicated previously the Police officers attempt to restrain Mr. Bayoh began not after the Nicole Short incident, but immediately on arrival with chemical restraint through the use of incapacitant spray.

172. From a race perspective, in this case, the safety of the restraint methods used is not necessarily the primary concern. CRER submit that the primary issue was the decision to restrain him in the first place. Mr. Bayoh may not have required restraint had appropriate risk assessment and de-escalation been carried out. It is submitted that he was placed under a significant amount of physiological stress by this restraint, at a time when he may have required care. This failure to de-escalate and risk assess may arguably have had serious implications for his survival. We discuss this in more detail at the section on cause of death.

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<sup>237</sup> Transcript of 17 May 2023, page 110, lines 9-16, "*So certainly...yes, yes.an*"

<sup>238</sup> Transcript of 17 May 2023, page 106, lines 13-17, "*I think so...the equivalent.*"

173. Mr. Bayoh's human rights in regard to restraint include Article 3 (prohibition on torture, inhuman and degrading treatment), Article 8 (respect for autonomy, physical and psychological integrity) and Article 14 (non-discrimination) of the European Convention on Human Rights (ECHR) as incorporated into domestic law by the Human Rights Act 1998. In addition, this case requires attention to Article 2, the right to life.

174. The Equality and Human Rights Commission's Human Rights Framework for Restraint sets out that in order to carry out restraint lawfully in regard to the three rights above, the following principles must be complied with<sup>239</sup>:

- The means of restraint and its duration must be necessary, and no more than necessary, to accomplish the aim. This requires consideration of whether there is a less intrusive measure that could reasonably achieve the aim, and the end must justify the means;
- A fair balance has to be struck between the severity and consequences of the interference for the individual being restrained and the aim of the restraint. This requires consideration of any reasons why an individual may be particularly vulnerable to harm, such as their age, experience of trauma, health conditions or disabilities; and
- Minor acts of physical interference such as a guiding hand may not breach rights, but the use of more significant physical force may only be used to restrain: a) as a last resort, where there is no viable alternative b) where there is a genuine belief that it is strictly necessary to prevent serious harm including the risk of injury to the person or others, or in limited cases, preventing a crime, disorder or damage to property

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<sup>239</sup> Equality and Human Rights Commission (2019), *Human Rights Framework for Restraint*, page 7, paragraph 8.

175. With the attempted restraint being initiated almost immediately upon arrival, it is doubtful that the Officers undertook consideration of whether there was a less intrusive measure that could reasonably achieve the aim. This links more broadly to the Inquiry's consideration of the need for risk assessment.
176. It is submitted that no consideration was given to the consequences of the interference for the individual being restrained, and despite Mr Bayoh's obviously unusual behaviour, his potential vulnerabilities were not taken into account.
177. It is further submitted that the speed and severity of the action taken, at a time when Mr. Bayoh had no visible weapon and was not violent, suggests that this was not a last resort and that a viable alternative may have been available.
178. The content of officers' statements suggests that they may have had a genuine belief that restraint was necessary to prevent harm to themselves and their colleagues. It is submitted that this would not negate the requirement to consider other viable means, and potential vulnerabilities.
179. Whether the foundations of that belief were influenced by racial stereotypes is a matter of crucial importance. It should be evident that whilst a belief founded on racial stereotypes and perception of racial threat may be considered genuine by the holder of the belief, acceptance of this would raise serious issues regarding human rights and equality law. If such genuine beliefs are accepted as excusing forms of conduct which would otherwise be inexcusable, this would effectively give permission to discriminate.
180. For this reason, the potential breach of Mr. Bayoh's human rights is central to the consideration of the role played by race. Article 14 of the ECHR

confers a right to non-discrimination in regard to all other rights, including on the grounds of race.

**xv. The Inquiry may wish to consider whether the actions of Officers breached Mr. Bayoh's human rights, including Article 14 of the ECHR regarding non-discrimination.**

### **After the Restraint & Calling the Ambulance**

181. Both Police Officers and civilian witnesses appear to concur that, once Mr. Bayoh's struggling ceased, attention was paid to his level of consciousness<sup>240</sup>. He was on his side (similar to the rescue position) and when it became evident that he was not breathing, CPR was started promptly<sup>241</sup>. PC Smith appears to have been leading proceedings at this point<sup>242</sup>.

182. The Inquiry has considered the issue of when Mr Bayoh's handcuffs were removed. CRER was previously unaware that they had not been removed until he reached Victoria Hospital, meaning that no police officer or paramedic had carried this out at the scene<sup>243</sup>.

183. It is understood that this may have impeded treatment. Although we note that there were some contradictory views on this for example from paramedic David Taylor<sup>244</sup>, evidence supporting this from Hearing 1 includes evidence from Linda Limbert<sup>245</sup> and from Dr. Gillian Pickering, whose view it was that handcuffs would impede CPR<sup>246</sup>.

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<sup>240</sup> Eg PC Alan Smith; Transcript of 27 May 2022, page 141, lines 10- 17, "Once I...Yes."

<sup>241</sup> Transcript of 27 May 2022, page 150, lines 12- 15, "How long..inside 10 seconds"

<sup>242</sup> Transcript of 27 May 2022, page 150, line 7, "I immediately....start CPR"

<sup>243</sup> SBPI-00017, page 12, paragraph 64, "A doctor...with us."

<sup>244</sup> Transcript of 22 June 2022, page 96, lines 13- 15, "did the presence....No"

<sup>245</sup> Transcript of 17 May 2022, page 71, lines 16-17 "You had to get them off...get access."

<sup>246</sup> Transcript 1 June 2022, page 25, lines 11-13, "And you're...Yes."

184. In light of the possible role of racial threat and the racial empathy gap in treatment of Black men requiring medical treatment, particularly in custody, it is submitted that the Inquiry may wish to give consideration to whether Mr. Bayoh's handcuffs would have been more likely to have been removed at an earlier stage had he been white.

185. We submit that this has implications not just for the prospects of Mr. Bayoh's medical outcome, but for the dignity and appropriate care of a man in severe medical distress.

186. PC Alan Smith raised that, in the event of 'excited delirium', a suspect could become dangerous again despite being presently unconscious<sup>247</sup>. Given the highly racialised nature of the concept of 'excited delirium', the Chair may wish to consider whether, despite PC Smith's assertions to the contrary<sup>248</sup>, Mr. Bayoh's ethnicity was a factor in the suspicion of 'excited delirium' and associated perception of threat.

## Victoria Hospital

187. The efforts of the medical staff (seven doctors, assisted by nursing staff) to resuscitate Mr. Bayoh are noted<sup>249</sup>. Tragically they were unable to successfully do so, and Mr. Bayoh's life was pronounced extinct at 0904 hours on Sunday 3 May 2015.

188. There is no evidence before the Inquiry about Mr. Bayoh's treatment on arrival at hospital which raises concerns about potential breaches of equality or human rights law, or broader forms of racism or racial discrimination.

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<sup>247</sup> Transcript of 27 May 2022, page 154, line 19, "*people can make a sudden recovery...*"

<sup>248</sup> Transcript of 27 May 2022, page 189, lines 8-12, "*If he had been white.... any difference.*"

<sup>249</sup> eg Dr Gillian Pickering; Transcript of 1 June 2022, page 84, line 24- page 85, line 7, "*I think we should stop....do our best.*"

## Considerations relating to Key Individuals

1. **Sheku Bayoh: his personality and temperament; ethnicity and religion; relevant past medical history; history of drug/steroid use in around 2015.**

189.

[REDACTED]  
[REDACTED]  
[REDACTED] CRER submit that these are not relevant and will expand on this in future submissions.

190. Witnesses Martyn Dick, Kirsty MacLeod and Zahid Saeed describe how, in the early hours of the morning, it appeared that Mr Bayoh's mood changed from good to antagonistic. It appeared that he believed that the others in the house were being disrespectful towards him. Zahid Saeed had seen him like this before although he is the only witness to mention any previous similar experience, and others claim that this seems out of character – indeed, Mr. Saeed later claimed to have told Mr. Bayoh that his behaviour was out of character after locating him at his home later in the morning<sup>251</sup>.

191. Neil Morgan described Mr Bayoh as follows: *“He was just a nice, pleasant, friendly, nice guy. Just a really nice guy, never no trouble, nothing, just nice.”*<sup>252</sup> Mr Morgan also challenged the stereotypical assertion that Mr. Bayoh was ‘massive’; *“He worked out, you could tell. He wasn’t a giant.”*<sup>253</sup>

192. In relation to Mr. Bayoh's behaviour on the day, Neil Morgan further described him as *“Gazey... Other than he seemed quite calm, like I said. He wasn’t in a rage or anything like that”*.<sup>254</sup>

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<sup>250</sup> [REDACTED]

<sup>251</sup> PIRC-000032, page 3, *“I asked him once again...nothing he said made sence.”*

<sup>252</sup> Transcript of 13 May 2022 page 35, lines 16-17

<sup>253</sup> Transcript of 13 May 2022 page 35, line 22

<sup>254</sup> Transcript of 13 May 2022 page 43, lines 20-22

193. The evidence provided by officers about their reasoning for believing Mr. Bayoh to pose an immediate danger on their first arrival at the scene materially involves him staring and being unresponsive. This could be interpreted as not dissimilar to Mr. Morgan's description, however the perception of threat stated by officers is vastly different.
194. Evidence from both neighbours taken during the hearing on 13/05/22 suggested that the fight observed between Mr. Bayoh and Mr. Saeed was out of character for Mr. Bayoh, and we note that it has not been possible to ascertain the reasons for this fight, save for the possibility of some perceived wrongdoing on the part of Mr. Saeed (witness Naomi Rhodes confirmed her initial statement that Mr. Saeed said "*I'm sorry*" during the fight)<sup>255</sup>.
195. Taking into account the fact that Mr. Bayoh appeared to be calm after the fight, which does not seem to have been prolonged, we would submit that the fact a fight occurred earlier cannot be assumed to mean that Mr. Bayoh was of aggressive demeanour when first encountered by police officers.
196. Evidence given by witness Alan Pearson suggested that Mr. Bayoh's later behaviour on the road may have been an attempt to hail a taxi<sup>256</sup>
197. Mr. Pearson also confirmed his statement that "*The male with the knife did not brandish it or act in a threatening way on the two occasions I seen him.*"<sup>257</sup>
198. During the evidence led in Hearing 1, witness Naomi Rhodes described him as "*...A good neighbour, friendly-natured, whenever he spoke he had a smile on his face.*"<sup>258</sup>

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<sup>255</sup> Transcript of 13 May 2022, pages 64, line 25 – page 65, line 6, "*I only heard...yes.*"

<sup>256</sup> Transcript of 17 May 2022, page 10, lines 14-15, "*it looked like....a taxi.*"

<sup>257</sup> Transcript of 17 May 2022, page 27, lines 8-10

<sup>258</sup> Transcript of 13 May 2022, page 61, lines 7-8

199. In relation to drug use, witness Zahid Saeed stated in his statement of 3rd May 2015 that until this point, he had never seen Mr. Bayoh with drugs<sup>259</sup>. Collette Bell's statements indicate that she had never seen him with drugs and did not believe he had taken drugs during their relationship<sup>260</sup>. His friend Christopher Lees gave a statement in which he stated that although he believed Mr. Bayoh had taken ecstasy on "a few occasions"<sup>261</sup>, he believed that what he had heard about Mr. Bayoh's behaviour in relation to this incident was "totally out of character"<sup>262</sup> (page 3, para 7). Steroid use would appear to be the only well evidenced form of regular drug use on Mr. Bayoh's part.

200. However, even in the event that Mr. Bayoh had been described by others as a habitual drug user or a hostile and violent person, this does not negate Police Scotland's duty of care. Mr. Bayoh's behaviour on arrival of the Officers at the scene should have been judged on its own merits, through an assessment of risk and need. This was not undertaken.

**2. Whether any of the attending officers had a history of racist behaviour/intolerance/lack of awareness of racial issues; a history of violence or excessive use of force; a history of heavy-handedness or dishonesty.**

201. This issue was investigated by the PIRC in a way that, it is submitted, was flawed, and little further information has come to light through disclosure. We therefore have limited knowledge of this issue. We would note, however, that lack of previous allegations against most of the specific officers involved does not indicate no wrongdoing in this instance. Further explanation of our

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<sup>259</sup> PIRC-00032, page 2, paragraph 5, "I had never seen...in passing."

<sup>260</sup> PIRC-00027, page 3, paragraph 6, "But as long...against them."

<sup>261</sup> PIRC-00012, page 3, paragraph 5

<sup>262</sup> PIRC-00012, page 3, paragraph 7



concerns regarding the PIRC investigation will be set out in our submission to the relevant hearing.

202. The focus of this issue has primarily been on PC Alan Paton. Disclosure of paperwork confirming a complaint against the police relating to Alan Paton<sup>263</sup> shows that he was considered to have failed to undertake his responsibilities under the then Fife Police Race Relations Policy and Interpreting Operating procedures in relation to one incident but was only provided with 'corrective advice'<sup>264</sup>. It is submitted that this could be interpreted as a 'slap on the wrist' and, it is submitted, may be indicative of an organisational culture where such failures had no material consequences.

203. In relation to the allegations made by PC Paton's family it is submitted that Pamela Paton's statement to PIRC that she and Alan Paton had been "*married in the Caribbean by a Black minister with Black witnesses*"<sup>265</sup> is irrelevant to the question of whether PC Paton holds any racist views or beliefs; it is possible to have any degree of relationship with Black and minority ethnic people and still hold racist attitudes, beliefs and behaviours.

204. CRER submit that it is extremely unlikely that anyone who does not hold some degree of racist attitudes would make the statement allegedly made by PC Alan Paton to his Grandfather William Paton, namely that he "*was a total racist and hated all Blacks*" contained within the latter's statement.<sup>266</sup>

205. The allegations of racism made by Barry and Karen Swan are framed as part of a deep-seated rift in the family of PC Alan Paton. Whether or not there was such a rift does not negate the evidence provided. However, PC Paton's alleged attitudes and behaviours are simply the tip of the iceberg and should

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<sup>263</sup> PS-1358(a)

<sup>264</sup> PS-1358(a), page 4, paragraph 9

<sup>265</sup> PIRC-00405, page 4, paragraph 3

<sup>266</sup> PIRC-00473, page 2, paragraph 1

not be dwelt upon at the expense of considering how Mr. Bayoh was treated throughout the incident, the ultimate impact of that treatment on his chances of survival, and whether this would have been the same had Mr. Bayoh been white.

206. In terms of the implications for Police Scotland and the wider justice system, it is submitted that the organisational culture and broader social structures within which this incident took place are of greater importance than previous evidence of wrongdoing on the part of the officers concerned. We do not consider that this type of evidence is the best way to consider the potential role of race in this instance and will expand on this further in relation to our concerns regarding the PIRC investigation during a later hearing.

### **Cause of Death**

207. CRER's remit in considering the evidence before the Inquiry on cause of death relates only to the role, if any, played by race. Our input in this matter is therefore necessarily limited.

208. We appreciate the complexity of the evidence heard and welcome the Inquiry's consistent approach to including exploration of issues such as race and so-called 'excited delirium' with those witnesses with relevant professional expertise.

### **Excited delirium**

209. CRER is aware of the racially charged nature of supposed 'excited delirium'.

210. Having considered the evidence before the Inquiry, and in light of our existing knowledge of the historical and contemporary evidence of racism surrounding the term, it is submitted that evidence regarding excited delirium provided by expert witness Dr. Steven Karch is not credible.

211. We note that in his Inquiry statement Dr. Karch claims *"I know nothing of the racial characteristics of the people who succumb."*<sup>267</sup> As someone providing 'expert evidence' on this subject to the Inquiry and more widely over many years, given the high profile of links between race and excited delirium, it is submitted that this seems highly unlikely.
212. Neither do we submit that the evidence on this subject provided by Anthony Bleetman is credible<sup>268</sup>. We note with particular concern that Dr. Bleetman claims that there is 'no chance' that a person in Mr. Bayoh's condition could be 'talked down'<sup>269</sup> and that he encourages the use of TASER in such instances<sup>270</sup>. This attitude is at odds with the evidence on de-escalation given by many witnesses across the hearings and, if adopted in practice, would inevitably lead to human rights abuses which would predominantly affect communities at risk of experiencing differential treatment, and particularly Black men such as Mr. Bayoh.
213. CRER's position on excited delirium is shared by other expert witnesses. These witnesses have raised concerns about the validity of the concept of excited delirium, with particularly detailed evidence provided by Dr. Maurice Lipsedge<sup>271</sup>. CRER submits that this evidence is robust and insightful, and is in alignment with our own understanding of the issue. Dr. Nathaniel Cary offered a similar perspective<sup>272</sup>.
214. Both of these witnesses underlined that excited delirium is not a valid cause of death and that a focus on it comes at the expense of consideration of the role of restraint. They further demonstrated an understanding of the

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<sup>267</sup> SBPI-00319, page 26, paragraph 9

<sup>268</sup> COPFS05627, page 1, paragraph 4

<sup>269</sup> COPFS05627, page 2, paragraph 3

<sup>270</sup> COPFS05627, page 2, paragraph 9

<sup>271</sup> Transcript 11 May 2023

<sup>272</sup> SBPI-00268, page 43, paragraph 173, *"I've been interested...years"*

development of the concept in order to justify deaths in custody, with particular emphasis on the racialised nature of this within Dr. Lipsedge's evidence.

215. Outwith the present Inquiry, and given the implications for justice where Black men die in police custody internationally, CRER would submit that previous inquiries and investigations reliant on evidence about excited delirium given by individuals with such undisclosed conflicts of interest require review.

216. To CRER's knowledge, excited delirium has never been cited (or suggested for citation) as a cause of death in Scotland previously. Dr. Kerryanne Shearer stated that "*...no UK forensic pathologists would use it as a cause of death.*"<sup>273</sup> .

217. Unless evidence is available to the contrary, it would appear that Mr. Bayoh, a Black man who died following police contact, is the only person in Scotland for whom this has been raised as a potential cause of, or contribution to, death.

218. The Chair may want to consider whether, had Mr. Bayoh been white, evidence on the potential role of excited delirium in relation to cause of death would have been heard by the Inquiry at all.

219. We note that a number of other features of the evidence provided by Steven Karch in his statement PIRC-02526(a), including regarding heart abnormalities<sup>274</sup>, positional asphyxia<sup>275</sup> and the potential consequences of restraint<sup>276</sup> are at odds with other expert witnesses' views (for example those

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<sup>273</sup> Transcript of 10 May 2023, page 11, lines 22-23

<sup>274</sup> PIRC-02526(a), page 1, paragraph 3; page 4, paragraph 7; page 8, paragraphs 1-2

<sup>275</sup> PIRC-02526(a), page 6, paragraph 7-8 and page 7

<sup>276</sup> PIRC-02526(a), page 6, paragraph 6

set out by Professor Jack Crane<sup>277</sup>). Concerns about the validity of his evidence are also raised by Dr. Nathaniel Cary<sup>278</sup>. Similar evidence is provided by Dr. Karch in his Inquiry Statement SBPI-00319<sup>279</sup>.

220. Whilst such medical matters are beyond CRER's ability to assess independently, we believe that deployment of such claims in the face of other available evidence mirrors trends seen in other cases (whether or not invoking 'excited delirium') where alternative explanations for cause of death are sought, arguably in order to excuse the deaths of people (often Black men) in police custody and/or restraint situations. Examples of such cases were set out in the Inquiry Statement provided by Dr. Maurice Lipsedge<sup>280</sup>.

221. The Inquiry may wish to consider the motivations of witnesses rejecting the potential role of restraint and struggle following restraint in cause of death and given the disproportionate rate at which Black men die in such circumstances, whether such alternative explanations would be equally likely to be heard by the Inquiry in the event that Mr. Bayoh had been white.

222. It is understood that concerns were raised by the Bayoh families in regard to the decision to engage Dr. Karch as an expert witness. CRER shares these concerns and will set out in detail the rationale for this a future submission when the Inquiry hears evidence on the role of PIRC.

## **Restraint**

223. Significant differences in position between expert witnesses emerge in relation to the importance of restraint to Mr. Bayoh's cause of death.

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<sup>277</sup> COPFS00134, page 6, paragraphs 2 & 6; page 7, paragraph 7; page 8, paragraph 2 and SBPI-00322, page 3, paragraph 10

<sup>278</sup> SBPI-00323, page 3, paragraph 10

<sup>279</sup> SBPI-00319, page 22, paragraph 79 and page 26, paragraph 93- page 30, paragraph 103

<sup>280</sup> SBPI-00298, page 2, paragraph 4 – page 5, paragraph 8

224. Evidence was heard which may suggest that the original information provided to expert witnesses was insufficient in regard to the extent of the restraint placed upon Mr. Bayoh. For example, Dr. Nathaniel Cary (transcript of 24<sup>th</sup> May, p.93, line 8 – p.94 line 12 inclusive) described discussing with Prof. Sebastian Lucas the extent of the restraint which occurred, feeling that Prof. Lucas had significantly underestimated this (with the result that Prof. Lucas reconsidered his position to better recognise it)<sup>281</sup>. Professor Lucas stated that *“What I can see of the scenario has obviously changed, because, I think when I was sent all this original material, there was very little evidence or information about restraint.”*<sup>282</sup> Dr. Elizabeth Soilleux’s original report noted that she did not feel able to provide a definitive view on restraint based on witness statements or CCTV<sup>283</sup>.
225. Some other expert witnesses previously appear to have discounted or minimised the importance of restraint to the cause of death. These include, for example, William Lawler<sup>284</sup>.
226. CRER concludes that the evidence available from eyewitnesses and the officers involved is difficult to rely on. Whilst CRER lacks the medical knowledge to meaningfully interpret aspects of the complex evidence heard regarding forensic views on restraint, this has been valuable in illuminating the physical effects of restraint upon Mr. Bayoh.
227. Considerations around restraint are important not only from the wider perspective of race and policing, but because the role of restraint in death can potentially be underestimated at post-mortem. As pointed out by Dr. Kerryanne Shearer in her evidence to the Inquiry, indicators of asphyxiation such as facial congestion and swelling are more difficult to identify in people

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<sup>281</sup> Transcript 24 May 2023, page 93, line 8 – page 94, line 12

<sup>282</sup> Transcript 23 May 2023, page 56, lines 12-16, *“What I can see...about restraint.”*

<sup>283</sup> COPFS-00031, page 31, paragraph 1, lines 6-9

<sup>284</sup> COPFS-014182(d), page 5, paragraph 6

with darker skin tone<sup>285</sup>. Without care being taken to examine all possible alternative factors in order to mitigate this, asphyxiation as a result of restraint can be missed and cause of death misattributed. This impacts access to justice for the families of those who have died following restraint.

228. Dr. Nathaniel Cary outlined in his evidence to the Inquiry on that not all witnesses have significant experience in dealing with deaths where restraint is a factor<sup>286</sup>; CRER recognises this, and our consideration of the evidence has therefore relied primarily on those witnesses who, insofar as can be determined, appear to have more extensive experience.

229. We note that several expert witnesses assessed the propriety of the restraint (insofar as the information presented to them facilitated this) from the perspective that it occurred after the Nicole Short incident and was therefore necessary to secure officer safety. Again, these included William Lawler and Prof. Sebastian Lucas. As explored in evidence on 23 May 2023, Prof. Lucas had informally stated in an email to Crown Office “...*the police officers involved should not be prosecuted assuming they approached and restrained Bayot (sic)...in the normal approved fashion, appropriate for the perceived risk*”. CRER note that Prof. Lucas rescinded this opinion in oral evidence due to information now known to him about the restraint<sup>287</sup>. It is submitted that use of force and restraint attempts commenced when Mr. Bayoh was passively resisting, and his subsequent behaviour may be interpreted as an attempt to secure his own safety.

230. This was explored by Dr. Maurice Lipsedge in his evidence to the Inquiry specifically in regard to the role of race<sup>288</sup>. Dr. Lipsedge set out his

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<sup>285</sup> Transcript of 9 May 2023, page 92, lines 21- 22, “*the caveat...injuries*”

<sup>286</sup> Transcript of 24 May 2023, page 83, lines 15- 20, “*which is important...your speciality.*”

<sup>287</sup> Transcript 23 May 2023, page 55, line 16 – page 64, line 4 “*I will not put this...made me change my mind.*”

<sup>288</sup> Transcript of 11 May 2023, page 80, line 14 – page 87, line 6, “*I must mention ethnicity...exactly the point.*”

opinion on the impact that fear of racism, including because of personal experience, may have had on Mr. Bayoh's reaction to restraint.

231. CRER concurs with these views. They are supported by evidence from Mr. Adeyemi Johnson regarding Mr. Bayoh's opinion of the police; *"He does not trust the police. He has always said do not resist the police. Put your hands forward and fight your case later."*<sup>289</sup>

232. Given the concerns set out elsewhere in this submission regarding the manner in which Mr. Bayoh was so quickly subjected to the use of force, and the potential underlying racial motivation for this, CRER welcomes the views of expert witnesses who stated that officers should have sought medical attention on contact with Mr. Bayoh and attempted de-escalation to avoid the need for restraint. Evidence on this is set out by, for example, Michael Eddleston<sup>290</sup> and Prof. Jason Payne-James<sup>291</sup>. The same point was raised by Dr. Maurice Lipsedge during his evidence to the Inquiry<sup>292</sup>.

233. Michael Eddleston's Inquiry Statement states that on the balance of probabilities, he does not believe that Mr. Bayoh would have died were it not for police contact and subsequent restraint<sup>293</sup>. The importance of struggle and restraint was also raised by Dr. Ralph BouHaider<sup>294</sup>, Dr. Nathaniel Cary<sup>295</sup> and Dr. Jack Crane<sup>296</sup>. The degree of mechanical and/or positional asphyxia potentially arising from restraint was explored in oral evidence from Dr. Nathaniel Cary.

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<sup>289</sup> PIRC-04350, page 3, paragraph 3, lines 4-6

<sup>290</sup> COPFS000038, page 6, paragraph 16- page 8, paragraph 24

<sup>291</sup> SBPI-00321, page 15, paragraph 50

<sup>292</sup> Transcript of 11 May 2023, page 91, line 5 – page 92, line 12

<sup>293</sup> SBPI-00317, page 34, paragraph 141, lines 5-7

<sup>294</sup> SBPI-00318, page 31, paragraph 108, *"I am asked... asphyxia."*

<sup>295</sup> SBPI-00323, page 4, paragraph 11

<sup>296</sup> SBPI-0032, page 24, paragraph 74



234. CRER is not qualified to assess the evidence before the Inquiry in regard to the mechanism of death, however we note that many of the expert witnesses attributed significance to the role of struggle and restraint. The emphasis put upon this varies between witnesses, however, it appears to be clear that struggle and restraint played some part in Mr. Bayoh's death.

235. Our concerns about the motivation for, and speed of, the initial attempt at chemical restraint being initiated are reiterated here. It is entirely possible that the subsequent physical restraint would not have been necessary if Mr. Bayoh had been treated with empathy rather than aggression when found to be unresponsive to commands.

236. The Inquiry may wish to consider whether, had Mr. Bayoh been white, this situation may not have transpired, and his life may not have been lost.

#### **Sickle cell trait**

237. CRER welcomes the Inquiry's careful consideration of the role of race in regard to Sickle Cell Trait within the cause of death hearing.

238. It is submitted that identification of sickling and subsequent examination of this, whilst complex, has been essential to the evidence on cause of death from a race perspective.

239. CRER notes that Mr. Bayoh has been described as having sickle cell trait, a normally symptom-free condition, as opposed to sickle cell disease. It is submitted that it may be inferred from the evidence available that, on balance, this is unlikely to have made a significant contribution to his cause of death and, in the event that sickling of the blood cells did contribute, the role of restraint and struggle has likely precipitated this, for example if Mr. Bayoh became hypoxic as a result, as explored by Dr. Nathaniel Cary.<sup>297</sup>

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<sup>297</sup> SBPI-00323, page 8, paragraph 25, "My view.... become hypoxic."

240. From a race perspective, the importance of this topic lies in the wider consideration of sickle cell implications where Black individuals, disproportionately at risk from this condition, require a post-mortem or subsequent consideration of cause of death in cases such as this.
241. Evidence has been disclosed by the Inquiry regarding deaths of Black men in police custody where sickling has been identified as a cause of death as opposed to causes associated with excessive use of force and restraint. The article in question has been disclosed as WIT-00058, Dyson, S.M. and Boswell, G. (2006) Sickle Cell Anaemia and Deaths in Custody in the UK and the USA. Its findings concur with our existing understanding of the race implications of this trend (although we are not qualified to comment on the medical content).
242. It is noted that Dr. Elizabeth Soilleux was asked to comment on the validity of this article, which outlines the racial implications of this matter in the UK and USA and concluded that the authors were not qualified to comment on this<sup>298</sup>.
243. CRER would note that (to our knowledge) Dr. Soilleux herself is not a sociologist nor a criminologist, and that therefore she lacks the expertise to judge whether the sociological or criminological content of this article is of value. Her criticism of the language used in the paper includes describing content on lack of empathy, racism and abuse as '*emotive*'<sup>299</sup>, and therefore she dismisses its relevance. It is submitted that this demonstrates a lack of understanding of the nature of racism and of the importance of academic studies in this area.
244. The variety of views given on the importance of sickle cell trait to cause of death underlines how vital it is that only those with significant proven

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<sup>298</sup> COPFS-00039, page 17, paragraph 1, "*It appears... on this area.*"

<sup>299</sup> COPFS-00039, page 15, paragraph 22, "*in a similarly emotive manner*"

expertise, in possession of all relevant information, should attempt to assess it. Conclusions made by people with either insufficient expertise, or insufficient information in regard to factors such as restraint, risk pushing similar cases in Scotland towards the racially biased conclusions seen in cases such as those described within the above article.

245. Under normal circumstances, we assume that this expertise will only be sought where sickling has been identified through post-mortem. The evidence provided by Dr. Kerryanne Shearer to the Inquiry clearly shows that in 2015, there was no routine consideration of this in Scottish post-mortem practice<sup>300</sup>. It is unclear whether this has changed or not in the intervening time.

246. The need to ensure that sickle cell disease or trait are not used to unfairly justify deaths in custody sits alongside the equally important need to ensure an adequate, responsive and robust post-mortem process for communities disproportionately affected by sickle cell disease and trait.

247. **The Inquiry may want to consider the implications of this, in the interests of ensuring that such ‘colour blind’ approaches do not continue in the present day. It is submitted that the Chair may wish to consider whether there is a need to recommend measures to address lack of understanding and investigation of sickle cell disease in the current post-mortem structure.**

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<sup>300</sup> Transcript of 10 May 2023, page 66, lines 7-23, “it is something... Definitely, yes.”

## **Evidence on race and racism arising**

248. Various aspects of particular relevance to race were raised during the evidential hearings.
249. For ease of reference, we will collate some specific examples of evidence regarding race in this section. This particularly includes evidence arising from lines of questioning introduced during the hearing regarding race.
250. A large volume of evidence relating to racial competence, practices and processes within policing in Scotland was heard before the Inquiry. Some of this evidence is touched on within this section. However, given that much of this relates more closely to the subjects of future hearings and less so to the specific themes of the hearings, we will reserve our views on the majority of this content for the time being.
251. It is submitted that a key underlying theme throughout both statements and evidence given by the officers first on the scene is the absence of compassionate or empathetic language. It had been considered that there may be an influence of drugs or mental illness at play, and it was acknowledged that Mr. Bayoh was unresponsive and not visibly armed with a knife<sup>301</sup>.
252. Despite this, none of the officers describe any concern for Mr. Bayoh's welfare. Instead, they uniformly describe a feeling that he was dangerous. This closely follows the theme set out in Appendix 1 regarding racial threat, the racial empathy gap and the risks experienced by Black men in situations where, had they been white, more compassion may have been shown.
253. The Inquiry has explored the fact that, for over four minutes whilst Mr. Bayoh was unconscious but still breathing, none of the officers on the scene attempted to find anything to keep him warm with or to cushion his head with,

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<sup>301</sup> eg PC Walker; Transcript of 19 May 2022, page 91, lines 8-10, "*The male...the pavement.*"

despite it being cold and raining and Mr. Bayoh wearing no jacket<sup>302</sup>. Meanwhile, APS Scott Maxwell did make efforts to ensure former PC Nicole Short was warm and comfortable<sup>303</sup>. This appears to be differential treatment which may constitute direct discrimination.

254. Joanne Caffrey's evidence explored police practice on keeping casualties warm; Ms. Caffrey indicated that she had witnessed police officers going so far as to remove their own jacket or to request a blanket from nearby houses for these purposes<sup>304</sup>.

255. Similar considerations apply to the calling of ambulances for both parties, as discussed previously. This may also constitute direct discrimination.

256. This is supported by the audio recordings set out in PS02071, which demonstrate that whilst significant information was conveyed to Ambulance Services regarding PC Nicole Short's injuries, information was neither sought nor given in the early communications with regard to Mr. Bayoh's injuries or state of health.

257. The Inquiry may wish to consider whether information regarding his unresponsive condition should have been passed to Ambulance Services, whether this may have hastened their response and potentially led to a different outcome for Mr. Bayoh. This may relate to race, as part of a broader pattern of lack of empathy and concern by police towards Mr. Bayoh which may have been at least partly motivated by aversive racism.

258. In relation to their specific actions towards Sheku Bayoh during this incident, all officers asked about this directly denied that Mr. Bayoh's race played any role in their assumptions and choices<sup>305</sup>. In the face of evidence

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<sup>302</sup> Transcript of 8 June 2022, page 21, lines 11-18, "I just wondered... at that time."

<sup>303</sup> Transcript of 8 June 2022, page 10, lines 3-5, "you made her ...Yes.."

<sup>304</sup> Transcript of 1 December 2022, page 92, lines 15-17, "or gone to....on occasions."

<sup>305</sup> eg Alan Paton; Transcript of 21 June 2022, page 173, lines 15-21, "Were you aware.... (shakes head.)"

suggesting racially biased assumptions about the nature of the incident, as well as disproportionately heavy handed and differential treatment CRER do not find this credible.

259. Throughout their evidence, all officers claimed that race played no part in this incident<sup>306</sup>. However, despite regularly being called out to knife incidents, none were able to provide evidence of examples where the course of action unfolded in the same way as this incident. The other incidents referred to did not involve a Black suspect. It is submitted that this indicates the officers in this instance subjected Mr. Bayoh to differential treatment, which may constitute direct discrimination.

260. Inspector Steven Stewart in his evidence on 17/05/22 was questioned about a message received from Stephen Kay which described Mr. Bayoh as being "*the size of a house*"<sup>307</sup>. Inspector Stewart was of the opinion that Mr. Bayoh could not objectively be described as such. Inspector Stewart stated that he believed this term would indicate someone who is "*Massively built*"<sup>308</sup> "6-foot plus is what I think of when I think about someone that size."<sup>309</sup> . On further questioning, he confirmed that he would not regard someone who is 5ft 10in and 12st 10lb as being "*the size of a house*". This links to the overestimation of size and threat posed by Black men and boys referred to previously within this submission.

261. Inspector Steven Stewart confirmed that Stephen Kay told him that "*the man had ran at them with a knife*"<sup>310</sup>, information which subsequently was circulated (including by Inspector Stewart himself), presumably with consequences for how the incident would be regarded within the police force.

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<sup>306</sup> eg Nicole Short; Transcript of 24 May 2022, page 158, lines 18-22 "*Was there anything...like that.*"

<sup>307</sup> Transcript of 17 May 2022, page 193, lines 8-9

<sup>308</sup> Transcript of 17 May 2022, page 193, line 11

<sup>309</sup> Transcript of 17 May 2022, page 193, lines 18-19

<sup>310</sup> Transcript of 17 May 2022, page 195, line 8

This was categorically not the case, and the Inquiry may want to consider the rationale, motivation and impact of this fictional account (specifically, whether the intention was to avoid the impression of excessive use of force with a potential racial motivation on the part of the officers attending)

262. Similarly worthy of consideration are the messages broadcast by APS Maxwell. These paint a picture of a violent attack against former PC Short leading to Mr. Bayoh being struck with a baton and sprayed, when in fact the aggressive restraint attempts occurred prior to the incident involving former PC Short, the nature of which is debated.

263. PC Walker's evidence on 19 May 2022 included contradictions which, it is submitted suggest his initial statement, and presumably views at the time, were likely influenced by racial stereotyping. In the hearing, he described Mr. Bayoh as simply walking towards him with '*a stare about him*' prior to his decision to deploy spray<sup>311</sup>. In his Response to a Rule 8 request (SBPI-00039) PC Walker described Mr. Bayoh as being in "*...some sort of 'rage' or zombie state*", which does not seem credible in light of his description in evidence of Mr Bayoh simply walking and staring<sup>312</sup>. In evidence he attempted to explain these differences by describing that Mr. Bayoh may have got so angry that he had somehow "*lost his senses*".<sup>313</sup>

264. Former PC Nicole Short was similarly questioned in evidence on 24 May 2022 about her description of Mr Bayoh in an affidavit dated 30 August 2018<sup>314</sup> stating "*I've never seen anything like it before, he was like a zombie.*"<sup>315</sup> She claimed in evidence that race did not impact her view on this. Alan Paton also described

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<sup>311</sup> Transcript of 19 May 2022, page 160, line 11

<sup>312</sup> SBPI-00039, page 6, paragraph 38

<sup>313</sup> Transcript 19 May 2022, page 166, line 25

<sup>314</sup> Transcript 24 May 2022, page 119, lines 1-12, "*So I would like...No.*"

<sup>315</sup> SBPI-00061, page 3, paragraph 6

him as “*being a zombie on that morning*”<sup>316</sup>. He made various claims relating to Mr. Bayoh’s motives for carrying a knife, intentions to retrieve a knife, his use of steroids and of drugs, none of which could have been known to him at the time<sup>317</sup>. These claims are not all necessarily evidenced even in the aftermath of the incident, and, it is submitted, seem calculated to avoid the appearance that his attitude towards Mr. Bayoh was influenced by racial stereotypes about strength and danger.

265. **The Inquiry may wish to consider the significant volume of academic literature on ‘zombie’ stereotypes relating to Black men and racial threat. Officers routinely come into contact with people insensible as a result of substance use, with far differing outcomes, and repeated use of the word ‘zombie’ and similar terminology may, it is submitted, be seen as part of a pattern of racially charged attitudes evident within this case.**

266. CRER welcomes the exploration of unconscious bias within the evidence hearings. For consistency with the language used in the hearings, we use the term ‘unconscious bias’ here. However, when considering such issues, it is suggested that the Chair may wish to view this from the ‘unwitting racism’ perspective defined by Sir William Macpherson and referenced by CRER in its opening statement: *“Unwitting racism can arise because of lack of understanding, ignorance or mistaken beliefs. It can arise from well-intentioned but patronising words or actions. It can arise from unfamiliarity with the behaviour or cultural traditions of people or families from minority ethnic communities. It can arise from racist stereotyping of black people as potential criminals or troublemakers. Often this arises out of uncritical self-understanding born out of an inflexible police ethos of the ‘traditional’ way of doing things. Furthermore such attitudes can thrive in a tightly*

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<sup>316</sup> Transcript of 21 June 2022, page 87, lines 11-12, “*I can only...that morning.*”

<sup>317</sup> eg Transcript of 21 June 2022, page 21, lines 9-17, “*he was walking...killing him.*”



*knit community, so that there can be a collective failure to detect and outlaw this breed of racism. The police canteen can too easily be its breeding ground."*

267. PC Walker in evidence on 20 May 2022 was asked directly about his understanding of unconscious bias and gave a reasonable account of this, despite stating that he was never required to reflect on it on a personal level as part of training<sup>318</sup>. CRER submits that there is a significant likelihood that PC Walker did react in a racially biased manner during this incident. We further submit that his ability to define unconscious bias should not be regarded as credible evidence to suggest that he did not act in a biased way in this case.

268. PC Nicole Short in her evidence on 24 May 2022 also displayed some understanding of the requirement for cultural competency in order to avoid unconscious bias<sup>319</sup>, but stated that she had never reflected on her own unconscious bias and denied that she had been in any way influenced by race in this instance<sup>320</sup>. Again, given her use of language (including the post-incident use of the phrase "*wee Pakistani doctor*" to describe a man whose ethnicity was unknown to her)<sup>321</sup> and unusual level of threat perception to an unarmed, unresponsive individual, we submit that this denial lacks credibility.

269. PC Ashley Tomlinson provided similar views, stating that he had not identified any unconscious bias in his own attitudes<sup>322</sup>. Despite this, the level of perceived threat described by PC Tomlinson prior to the incident involving Nicole Short appears, it is submitted, disproportionate. Mr. Bayoh swerved around him and did not deliberately come into contact with him during the incident at any point<sup>323</sup>. Arguably, this should have reduced PC Tomlinson's

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<sup>318</sup> Transcript of 20 May 2022, page 126, lines 12-15, "*You don't recall...No.*"

<sup>319</sup> Transcript of 24 May 2022, page 160, lines 15-24 "*I have to say...deal with it.*"

<sup>320</sup> Transcript of 24 May 2022, page 158, lines 18-22 "*Was there anything...like that.*"

<sup>321</sup> PIRC-00253, page 5, paragraph 4

<sup>322</sup> Transcript of 26 May 2022, page 169, lines 16-18, "*And were you...No.*"

<sup>323</sup> Transcript of 25 May 2022, page 76, lines 1-2, "*I remember ... to my right.*"

perception of the threat posed by Mr. Bayoh – directly in the line of potential attack, he was avoided. It is submitted that this level of threat response appears unlikely to have manifested in the event that Mr. Bayoh had been white.

270. PC Kayleigh Good, whose previous statements included an overtly racist assumption of terrorist connections “*due to the fact of the coloured male*”<sup>324</sup> and a description of Mr. Bayoh as “*massive*”<sup>325</sup> and as the biggest male that she had seen<sup>326</sup> (despite his being half of the weight and much smaller in height than PC Craig Walker), did not, in CRER’s view, provide credible information in her evidence on 31` May 2022 regarding whether her attitudes on that day were racist. Her perception that Sheku Bayoh may have been ‘faking’ unconsciousness,<sup>327</sup> a perception shared by some other officers, could be considered as demonstrating a racial empathy gap.

271. Inspector Stewart’s recognition of the role of racial stereotyping in policing and in relation to stereotypes of aggression is welcomed by CRER, and, it is submitted, stands in stark contrast to the evidence given by officers who were unable to recognise this. PC Daniel Gibson<sup>328</sup> PC James McDonough<sup>329</sup>PC Alan Paton<sup>330</sup> and APS Scott Maxwell<sup>331</sup> also acknowledged the existence of certain stereotypes, but predominantly around criminality, particularly gang membership. It may be regarded as notable that this specific stereotype relates more to urban policing, particularly in larger towns and cities in England and the USA and may be regarded as irrelevant in Kirkcaldy.

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<sup>324</sup> PIRC-00274, page 7, paragraph 5

<sup>325</sup> PIRC-00274, page 10, paragraph 1; Transcript of 31 May 2022, page 189, lines 13-14, “*I thought ...unconscious.*”

<sup>326</sup> Transcript of 1 June 2022, page 201, lines 17-18, “*I probably...part of a gang.*”

<sup>327</sup> Transcript of 7 June 2022, page 109, line 22, “*all young...gangs.*”

<sup>328</sup> Transcript of 21 June 2022, page 173, line 9, “*youths in a gang.*”

<sup>329</sup> Transcript of 8 June 2022, page 84, lines 17-18,, “*part of a gang.*”

<sup>330</sup> Transcript of 17 May 2022, page 205, lines 3-11, “*What training.... a hate incident is*”

<sup>331</sup> Transcript of 19 May 2022, page 2, “*I don’t deliver... that side of things.*”

272. We note, however, that Inspector Stewart was initially unable to clearly answer questioning about the extent to which training within the service covers the topic of racial stereotyping, instead providing an answer regarding the reviewing of hate crime, an unrelated matter<sup>332</sup>. Further examination of this issue with Inspector Stewart in evidence on 19 May 2022 clarified that he was unaware of any activity on this issue and could confirm it does not feature in the training he is aware of, despite having Equality and Diversity related responsibilities.

273. It is submitted that meaningful awareness of racial stereotyping, unconscious bias and risks of death during restraint for Black men was very rare amongst officers giving evidence. The fact that there appears to be no mechanism to address this within the police service is a matter of grave concern, given the known role of these issues in unequal justice and policing outcomes.

274. The Inquiry will return to the issue of training at a future hearing, and our full considerations on this will be set out in our submission at that point. However, we note that the evidence given by police officer witnesses during the evidential hearings suggests that little training has been provided beyond a section within initial police training.

275. One of the few witnesses to demonstrate an awareness of issues around race and policing was Det. Supt. Patrick Campbell. In one of the later hearings connected to post-incident management, he indicated that he had picked up this knowledge from his own research.<sup>333</sup> It is noted that he did not begin this research until after the death of Mr. Bayoh<sup>334</sup>. The concept that officers should

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<sup>332</sup> eg Inspector Steven Stewart, Transcript of 19 May 2022, page 2, lines 21-23, *"I have not...suspects."*

<sup>333</sup> Transcript of 14 March 2023, page 129, lines 11-24, *"No, no...as such."*

<sup>334</sup> Transcript of 14 March 2023, page 129, line 25 – page 130, line 3, *"When did you...incident in Kirkcaldy."*

simply pick up information on race and policing informally or in their spare time, as Det. Supt. Campbell had, appears negligent. There was clearly no indication within the evidence that the officers involved had any such information.

276. In addition, any training received appears to have been ineffective in regard to racial competence. Aside from the ability to define unconscious bias, few officers demonstrated any understanding of the issues that CRER would expect to feature in appropriate training, for example information on the known issues regarding race and policing such as stereotypes and racial profiling, as well as the role of race in deaths in custody in the UK and elsewhere. Although some could define unconscious bias, we note that they did not believe training had provided them with any techniques to guard against it. CRER also notes that unconscious bias training is of contentious value, with the Equality and Human Rights Commission's research demonstrating that it can backfire depending on the content and delivery.<sup>335</sup>

277. Joanne Caffrey in evidence demonstrated that she is aware of these issues and usefully outlined the background to the inquiry into the death in custody of Christopher Alder<sup>336</sup>, which the Inquiry may consider has some resonance with the case of Mr. Bayoh.

278. Issues such as Black Lives Matter and deaths of Black men at the hands of Police outside of Scotland had come to the attention of some officers, however their evidence suggests that there was no discussion of this or sharing of information within the Scottish police force. It is submitted that this

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<sup>335</sup> [Equality and Human Rights Commission \(2018\). Unconscious Bias: An assessment of the evidence for effectiveness.](#)

<sup>336</sup> Transcript of 1 December 2022, page 108, lines 12-25 "*Yes... the victim*" and page 109, lines 1-23, "*of an assault.... was covering*"

demonstrates a worrying level of insular thinking and a lack of regard for the potential concerns of, and issues affecting, Black communities in Scotland.

279. The majority of officers had not had any engagement with the local Black community. James McDonough in his evidence seemed to perceive this as being the role of community and partnership teams<sup>337</sup>. This was backed up with additional detail on engagement with the Black community in Kirkcaldy by Ms Jane Combe.<sup>338</sup>

280. In a situation such as this where officers in response teams do not get the chance to benefit from interacting with the diverse variety of communities within an area and the potential learning from this, it is submitted that it was even more important that the police force actively undertake information sharing and training to ensure appropriate responses as and when such engagement becomes necessary in the line of duty.

281. Officers were also asked about racist comments, jokes and 'banter' within the police force. Of all of the officers asked about this during Hearing 1, none were willing to say that they had ever witnessed this. Ms Jane Combe was, however, prepared to confirm what she had put in her statement that she would not be 'naive enough' to believe that racism did not exist within Fife Constabulary at that time<sup>339</sup>. This candour is welcome.

282. In relation to their specific actions towards Sheku Bayoh during this incident, all officers asked about this directly denied that Mr. Bayoh's race played any role in their assumptions and choices<sup>340</sup>. In the face of evidence suggesting racially biased assumptions about the nature of the incident, as well

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<sup>337</sup> Transcript of 7 June 2022, page 108, lines 21-21, "*There is also....involved in them.*"

<sup>338</sup> Transcript of 10 June 2022, pages 46, lines 22-24 - page 47, lines 1-3, "*There wasn't .. closely with them.*"

<sup>339</sup> SBPI-00124, page 10, paragraph 53

<sup>340</sup> eg Alan Paton; Transcript of 21 June 2022, page 173, lines 15-21, "*Were you aware.... (shakes head.)*"

as disproportionately heavy handed and differential treatment it is submitted that this is not credible.

283. In the evidence given by PC Brian Geddes, the Inquiry raised the issue of the comment made by PC Harris regarding *"ISIS staying in the station."*<sup>341</sup>

284. It is submitted that this is an overtly racist comment, and we welcome the Inquiry's exploration of it as such.

285. PC Geddes' claim to have reported the statement to PS Eric Anderson<sup>342</sup> is challenged within that officer's statement<sup>343</sup>

286. As suggested during the hearing<sup>344</sup>, the lack of response to this by PC Geddes at the time suggests that his claim that he would always challenge racist comments is not valid.

287. We submit that the similar comments made by all of the officers asked about this are unlikely to be entirely true, as well as their comments that they have never heard anything racist said by fellow officers, and the comments of several officers to the effect that they are unaware of racial stereotypes. For example, PC Craig Walker<sup>345</sup>, PC Nicole Short<sup>346</sup>, PC Ashley Tomlinson<sup>347</sup>, PC Alan Smith<sup>348</sup>, PC Kayleigh Good<sup>349</sup> and PC Daniel Gibson<sup>350</sup>, amongst others, all claimed that they had not witnessed racism within Police Scotland but, if they did, they would challenge it. This instance involving PC Harris and PC Geddes clearly shows that stereotyping can and does happen within the police

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<sup>341</sup> Transcript of 22 June 2022, page 166, line 20, *"ISIS staying in the station."*

<sup>342</sup> SBPI-00154, page 3, paragraphs 7-10, *"I remembered.... this comment."*

<sup>343</sup> SBPI-00174, page 8, paragraph 29, *"I can only suggest.... didn't take place"*

<sup>344</sup> Transcript of 22 June 2022, page 166, line 20, *"ISIS staying in the station."*

<sup>345</sup> Transcript 20 May 2022, page 127, line 23 – page 128, line 15, *"Okay...no."*

<sup>346</sup> Transcript of 24 May 2022, page 162, line 14 – page 163, line 12, *"Can I...Never, no."*

<sup>347</sup> Transcript of 26 May 2022, page 170, line 10 – page 171, line 5, *"Okay. And had...No."*

<sup>348</sup> Transcript of 27 May 2022, page 185, lines 7-25, *"Right. And were...Yes."*

<sup>349</sup> Transcript of 31 May 2022, page 176, line 18 – page 177, line 7, *"Prior to...raise it to management."*

<sup>350</sup> Transcript of 1 June 2022, page 194, line 5-18, *"Before May 2015...my colleagues, no"*

force in Scotland; that racist comments are in fact made and may not be challenged.

288. Police witnesses gave various views on how they would deal with racism if they witnessed it. It is submitted that, from the evidence before the Inquiry, processes for challenging racism within policing are lax at best and absent at worst. He also confirmed that there is no recording process in place for such incidents<sup>351</sup> It is submitted that this is yet further evidence of the lack of racial competence within policing in Scotland. CRER will explore this and other evidence regarding racial competence in policing in later submissions, particularly in the final hearing on the role of race.

289. It is also notable that PC Geddes, in his statement, attempts to describe Mr. Saeed by saying *"I'm trying not to say the wrong word here, the Asian gentleman that was in the cells."*<sup>352</sup> The Inquiry may wish to consider what word PC Geddes was trying to avoid, and why he did not find it straightforward to describe Mr. Saeed as Asian. This may be indicative of aversive racism – a reluctance to engage with both Black and minority ethnic people, and to engage in racial discourse. This often manifests in the form of fear of being accused of racism and is a major theme emerging from the evidence.

290. The uniform way in which many officers answered simply 'no' to most questions on race was notable and may also be suggestive of aversive racism.

291. The role of race in any context, including the context of this Inquiry, is never a matter of simply whether someone may be considered by others to be 'a racist'. Those with any level of relationship to people from Black and minority ethnic backgrounds are entirely capable of having racist attitudes and

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<sup>351</sup> Transcript of 3 March 2023, page 144, line 18, *"No..it wouldn't have been shared*

<sup>352</sup> SBPI-00154, page 7, paragraph 24

behaving in racist manners; racism is a structure which influences society even in the absence of explicit demonstrations of prejudice.

292. In CRER's view, the role of race in former PC Alan Paton's actions should be considered in exactly the same way as other officers. We consider the additional emphasis placed on Mr. Paton by the media to be understandable on account of complaints and claims made against him, and the question of prior evidence of racism is relevant. However, it is vital that these matters do not distract from the wider implications in regard to race.

### **Considerations on race and racism for future hearings.**

293. It is regrettable that Hearing 1 was not able to take into account evidence from witness Zahid Saeed, although the difficulties which arose are noted. It is hoped that Mr. Saeed can receive any necessary support to participate fully in future hearings on post-incident management, as his experience is of crucial relevance to the consideration of the role of race.

294. We note the initial questioning of Ms Jane Combe regarding the concerns of the Black community and post-incident community engagement and anticipate that this will be an important issue for consideration in future hearings. We note in particular Ms. Combes' assertion that there were indeed concerns within Fife Constabulary about potential interest in the case due to Mr. Bayoh's ethnicity, as "*...if it is to do with an ethnic minority, the media will come on the back of that*"<sup>353</sup>, followed by the somewhat incongruous statement that there would not, in Fife, be a particular resonance with Black men in police custody<sup>354</sup>.

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<sup>353</sup> Transcript of 10 June 2022, page 104, lines 20-21

<sup>354</sup> Transcript of 10 June 2022, page 104, lines 22-24, "*And is there... Not in Fife, no.*"



295. We appreciate that the Inquiry may consider the issue of excited delirium in depth at a future hearing, aside from considerations already heard within the cause of death hearing. Witness Christopher Fenton raised the issue of excited delirium, stating that he would interpret a patient grunting whilst restrained as being in a state of excited delirium<sup>355</sup>. Given the detailed (if highly contested) informal diagnostic criteria for 'excited delirium', CRER submits that grunting would not be sufficient grounds for such an assumption, even in the event that such a condition existed.

296. We note that PC Walker stated that the behaviour observed by him did not suggest that Mr. Bayoh could have been experiencing 'excited delirium' (or similar) as described in guidance at the time<sup>356</sup>. This evidence suggests that any further consideration of 'excited delirium' should proceed on the understanding that even should such a condition exist, it would not have been a diagnosis applying to Mr. Bayoh.

297. Regarding the questioning of witnesses on matters of possible racial discrimination, whilst CRER appreciates that the Inquiry may feel bound to ask plainly whether particular actions would have been taken had Mr. Bayoh been white, it is submitted that such questions will never uncover the truth about racist behaviours. Where the motivation for these behaviours are implicit, the witnesses themselves may not realise that they would have behaved differently. Racism only rarely manifests through a deliberate, self-aware decision to treat someone differently on the grounds of race.

298. We would therefore reiterate that the best way to assess these issues is to seek practical examples, from record as opposed to memory where possible, where similar circumstances have led to differential treatment where a white person is involved. Such examples do not necessarily need to involve the key

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<sup>355</sup> Transcript of 22 June 2022, page 59, lines 7-8 "*I would assume... grunting.*"

<sup>356</sup> Transcript of 19 May 2022, page 129, lines 7-10 "*Extremely erratic we had here.*"

officers present during this case; if, as a service, policing in Scotland is generally applied differently where the subject is white, the Inquiry may wish to consider this.

## **Conclusion**

299. CRER contends that several of the officers despatched to the scene were motivated by a sense of racial threat. Those first to arrive sought to restrain Mr. Bayoh within a matter of seconds. This was a disproportionate use of force according to the terms of the Use of Force SOP and can therefore be described as an act of police brutality.

300. This alone is a grave matter. The role of the subsequent restraint in Mr. Bayoh's death adds considerable gravity and is understandably a primary focus of the Inquiry. Considering the evidence before the Inquiry, CRER considers it unlikely that this sequence of events would have transpired in the same way had Mr. Bayoh been white.

301. The Inquiry's consideration of race is of utmost importance due to its implications for the future of criminal justice in Scotland. The culture of denial regarding racism in policing has, it is submitted, been manifestly obvious from the evidence given by officers during the hearings. Reforms to ensure that people at risk of facing racism are safe, respected and treated fairly in situations involving Police contact are vital.

302. Whilst CRER notes the recent statement from the Chief Constable on institutional racism, which references his opening statement to this Inquiry, the findings of the independent review which underly this statement are not new. CRER has consistently highlighted the need for action to guard against institutional racism in Scottish policing, and a number of reviews over many years have clearly demonstrated its existence. These include reviews regarding

the Simon San and Surjit Singh Chhokar murder investigations. The same promises to tackle racism within the force are made each time, yet the same issues remain unresolved. It is vital that the current commitments and the future findings of this Inquiry are not subject to the same tokenistic approach.

303. Differential treatment, discrimination and racial bias within policing are not simply a matter of rights, ethics or social values. They do not simply raise concerns about policing by consent, or even institutional racism. They are a threat to the life opportunities, wellbeing and the very lives of Black and minority ethnic people in Scotland. The importance of the Inquiry's remit in regard to these factors cannot be underestimated, and we will endeavour to assist the Inquiry to the very best of our abilities as it continues its consideration of the role of race.

Jatin Haria

Carol Young

Coalition for Racial Equality and Rights

23 June 2023

## Appendix 1: Racial Threat and the Demonization of Black Men

*This appendix presents an expanded and referenced version of the section on racial threat within the main submission (p. 2-3).*

Throughout the sections of this submission analysing disclosure relevant to the events and issues to be included in the Chair's report, a specific key theme arises repeatedly. This theme is racial threat.

Racial threat theory describes how white majority ethnic populations, being both in the dominant position in society and surrounded by pervasive racial stereotypes, treat people from negatively racialised<sup>357</sup> groups as a threat.

Particularly for Black men (also for Black women, who face a complex range of additional stereotypes), these stereotypes focus largely on danger and deviance.<sup>358</sup> Research has demonstrated that the stereotype of the threatening, violent and dangerous Black male extend so far that even five-year-old boys who are Black are associated with danger.<sup>359</sup>

Racial threat was first identified in relation to people from ethnic groups of African origin.<sup>360</sup> Whilst it has relevance for other non-white minority ethnic groups in the UK, Black people are still disproportionately affected by perceptions of racial threat.

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<sup>357</sup> Racialisation is the process whereby people are divided into racial groups based on stereotypes and pseudoscience. Historically, racialisation has been carried out in order to justify and maintain systems of oppression. It creates advantages for groups classed as white (white privilege) and disadvantages for those groups negatively impacted by racialisation (racism).

<sup>358</sup> See, for example, Smiley, C.J. and Fakunle, D. (2016). [From "brute" to "thug:" the demonization and criminalization of unarmed Black male victims in America](#). *Journal of Human Behavior in the Social Environment*, 26:3-4; Wilson, J.P., Hugenburg, P. and Rule, N.O. (2017) [Racial Bias in Judgments of Physical Size and Formidability: From Size to Threat](#). *American Psychological Association Journal of Personality and Social Psychology*, 2017, Vol. 113, No. 1

<sup>359</sup> Todd, A. et al (2016). [Does Seeing Faces of Young Black Boys Facilitate the Identification of Threatening Stimuli?](#) *Psychological Science* Vol 27, Issue 3, 2016

<sup>360</sup> In our work for the Inquiry, we refer to Mr. Bayoh as Black and also use this term when referencing racial issues facing people of African origin; however we do appreciate that not everyone of African origin uses or indeed condones this term and we also reflect the broader use of the term Black as a political unifier for those experiencing racism in other areas of our work.

Racial threat theory has been researched and written about extensively in the US at societal level from the late 1960s onwards.<sup>361</sup> This body of work sets out how white populations experience a surge in fears on the arrival and growth of a Black population within their community, specifically fears that the dominant position of white people might become difficult to maintain. These fears have been explored from a number of angles but most typically, are identified as relating to fear of decreasing white economic security, political power and safety (the latter point is sometimes addressed purely in terms of criminal threat, and at other times ‘symbolic threat’ which also takes in non-criminal but supposedly ‘deviant’ behaviours on the part of Black populations).<sup>362</sup>

This sense of threat leads institutions and individuals to seek to impose control on Black populations and the individuals within them.

Institutionally, this may be through legislation which disadvantages these populations, punitive immigration policies, other discriminatory policies and practices (e.g. employment discrimination, disproportionate judicial sentencing practices, disproportionate levels of school exclusion) and institutional racism more generally of the type described by Lord Macpherson in the Report of the Stephen Lawrence Inquiry.

Individually, this manifests in the behaviours that create and maintain those institutional and social levels of discrimination – the results can be seen, for example, in a large scale study by the Guardian showing differential treatment including that Black and minority ethnic people are twice as likely to have been wrongfully accused of shoplifting, unfairly asked to leave a restaurant, bar or club and to have been unfairly denied a promotion at work.<sup>363</sup>

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<sup>361</sup> Originally proposed by H.M. Blalock in the 1967 publication *Toward a theory of minority-group relations*.

<sup>362</sup> See, for example:

<sup>363</sup> Booth, R. and Mohdin, A. (2018). [Revealed: the stark evidence of everyday racial bias in Britain](#). Guardian newspaper article

As the above study demonstrates, the impact of racial threat perception on Black people is that they are routinely treated with less empathy, more readily suspected of wrongdoing, denied the benefit of doubt, suspected of worse wrongdoing when wrongdoing is evident, and punished more harshly (whether evidence of wrongdoing is robust or not).

Perceptions of racial threat can elicit a wide range of responses which have the ultimate impact of disadvantaging groups of people who are negatively racialised.

At its most overt, the concept of racial threat is openly mirrored in the rhetoric and recruiting tactics of white supremacists and associated far right movements. There is ample evidence regarding the operation of far-right movements in Scotland, with right wing extremism recently being identified as the most common reason for anti-terror referrals.<sup>364</sup>

This rhetoric has an impact on wider society that goes far beyond its political margins. For example, research with people voting for far-right parties has shown that despite believing that they are not personally racist, they do believe the racialised myths about economic, social and safety threats espoused by these parties.<sup>365</sup> Furthering the influence of white supremacists has destructive outcomes regardless of the motivation of those voting for them, sharing their content through social media or discussing their malign theories within communities.

Although attempts to establish a democratic political presence for the far right in Scotland have generally not been successful,<sup>366</sup> more covert forms of prejudiced behaviour remain common,<sup>367</sup> and racial threat perceptions are evident in social

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<sup>364</sup> Williams, M. (2021) [Far right fanatics become biggest terrorist danger in Scotland](#). The Herald, 19<sup>th</sup> November 2021

<sup>365</sup> Ashe, S. (2021) 'Whiteness, class and the 'communicative community': A doctoral researcher's journey to a local political ethnography' in *Researching the Far Right: Theory, Method and Practice*

<sup>366</sup> Some discussion of this can be found in CRER (2021) [Fostering Good Relations in Scotland: Developing community cohesion through public policy](#)

<sup>367</sup> See, for example, Meer, N., Akhtar, S. and Davidson, N. (eds) / Runnymede (2021) [Taking Stock: Race Equality in Scotland](#)

attitudes. The most recent Scottish Social Attitudes Survey report on discriminatory attitudes found that 22% of people felt that there were “sometimes good reasons to be prejudiced”, and 16% felt that “attempts to give equal opportunities to Black and Asian people have gone too far”. A further 33% stated that they would prefer to live in an area where most people are similar to them, rather than a diverse area.<sup>368</sup> Note that social desirability bias will have affected responses, meaning that the true proportion agreeing with these statements is likely to be considerably higher.

In relation specifically to Black men and criminal justice in the UK, the mass application of racial threat can be seen in moral panics, most prominently including the ‘mugging crisis’<sup>369</sup> and undercover policing operations and smear campaigns against Black anti-racist activists.<sup>370</sup> The discriminatory ‘gangs matrix’ used in London has been challenged, resulting in 2021 in the removal of names of a thousand people who represented no risk.<sup>371</sup> More recently, attempts to equate Blackness and Black musical culture with criminality can be seen in the moral panics over grime<sup>372</sup> and drill music<sup>373</sup>.

A tangible example of how these socially visible, individually enacted forms of discrimination criminalise Black men unfairly can be seen in the 2017 case where 11 young Black men, most of whom were neither present during the incident nor friends

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<sup>368</sup> Scottish Government Social Research (2015) [Social Attitudes Survey: Attitudes to discrimination and positive action](#)

<sup>369</sup> See Stuart Hall et al’s groundbreaking 1998 Critical Social Studies publication [Policing the Crisis: Mugging, the State and Law and Order](#).

<sup>370</sup> Currently being investigated as part of the Undercover Policing Inquiry; Evans, R. et al (2001). [Police spying inquiry to examine targeting of UK black justice groups](#). Guardian newspaper article

<sup>371</sup> Dodd, V. (2021). [A thousand young, black men removed from Met gang violence prediction database](#). Guardian newspaper article

<sup>372</sup> Fatsis, S. (2009). Policing the beats: [The criminalisation of UK drill and grime music by the London Metropolitan Police](#). The Sociological Review Vol 67, Issue 6

<sup>373</sup> Fatsis, S. (2018). [Grime: Criminal subculture or public counterculture? A critical investigation into the criminalization of Black musical subcultures in the UK](#). Crime, Media, Culture: An International Journal. Vol 15, Issue 3

with the perpetrators, were jailed following a murder case in which they were demonised as ‘gang members’ where no such gang existed.<sup>374</sup>

There is a dearth of Scotland specific research on outcomes for Black people in criminal justice and other areas of life. Nevertheless, the experiences of Black communities in Scotland very much replicate these patterns. As the Black community in Scotland grows in size, the inequalities resulting from discrimination become identifiable; for example, there is evidence that school exclusion rates may be rising dramatically for Black pupils in Scotland, where previously they sat at or near the rate for the white Scottish population.<sup>375</sup> Black, African and Caribbean individuals are present in Scotland’s prison population at twice the per capita rate for white Scottish people.<sup>376</sup> Research undertaken on MSc placement at CRER has also tentatively identified disparities in treatment for Black nurses in Scotland, including (anecdotally, however reflecting established disparities in England) in relation to disciplinary processes.<sup>377</sup>

The concept of racial threat has undoubted relevance for the social context underlying the Inquiry’s remit. It is key to consideration of the Inquiry’s central question: Would it have made a difference if Sheku Bayoh had been white?

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<sup>374</sup> Conn, D. (2021). [One death, 11 jailed teenagers: was a Moss Side murder trial racist?](#) Guardian newspaper article

<sup>375</sup> Statistics for 2018/19 showed a very high level of exclusions for Caribbean and Black pupils, around twice the per-capita level of white Scottish pupils. This trend was not evident in earlier datasets. However rates for both groups dropped to around the same level over 2020/21, likely as a result of the Coronavirus pandemic and resulting instability in school attendance / discipline. Future trends will require close monitoring.

<sup>376</sup> Scottish Government (2020) [Scottish Prison Statistics 2019-2020](#)

<sup>377</sup> Fiadzo, C. (2018) [The Racialized Somatic Norm in Nursing](#).



