

THE PUBLIC INQUIRY INTO THE DEATH OF SHEKU BAYOH

WRITTEN SUBMISSIONS

on behalf of

CORE PARTICIPANTS

DC TOMLINSON, AND PCS SMITH AND GOOD

Introduction

1. This written submission is presented on behalf of Core Participants DC Tomlinson and PCs Smith and Good.

Executive summary¹

- A. On the evening of 2 May 2015 and the morning of 3 May 2015 Sheku Bayoh used illegal drugs, namely MDMA and alpha-PVP.
- B. He became paranoid and violent, attacking a close friend, Mr Saeed. He displayed a pattern of violence towards Mr Saeed in the form of punching him as he walked away which, was later mirrored in his behaviour towards Nicole Short. Mr Saeed was so disturbed by the violence that he feared Sheku Bayoh would attack Collette Bell, Mr Bayoh's partner, and so he warned her.
- C. This was not the first occasion on which Mr Bayoh had taken drugs and become paranoid. He had displayed a similar, albeit apparently less severe reaction, earlier in 2015 when taking drugs at a party with Mr Saeed.

¹ References are contained in the substantive body of the document

- D. Sheku Bayoh armed himself with a knife and was behaving violently and erratically in the vicinity of Hayfield Road, causing fear and alarm to passing motorists who called the police.
- E. His behaviour led to at least 6 calls to Police Scotland.
- F. Officers were deployed to respond to the incident without an ARV or dog handler. The ARV and the dog handler were at least 20 minutes away. It would have been reasonable for the ACR inspector to have deployed the ARV and the dog handler at 7.16am on the basis of the number of calls received and the strength of the intelligence. As it was, officers were deployed to the scene and instructed to feed back on the channel.
- G. The only information the officers had about the identity of the man with the knife, who we now know to have been Sheku Bayoh, was limited to the information passed from members of the public which consisted of a physical description of him and the knife. The officers had no information regarding his identity, or what may have led him to act in this way. Such information could have been used to inform their assessment of risk and tactics. However, the information the officers had was limited to the descriptions of Sheku Bayoh, armed with a knife and causing fear and alarm to the public. On that basis, officers quite reasonably assumed he was intent on causing harm.
- H. The first officers on the scene tried to control him with verbal commands or what has been referred to as verbal dominance. Those attempts were unsuccessful and so they used their incapacitant spray which was also unsuccessful.
- I. The tactics employed by PCs Walker and Paton were within the range of reasonable options in all the circumstances given the information they had.

However, those tactics set the tone for the engagement of other officers arriving at the scene thereafter.

- J. It would have been difficult in the circumstances to justify taking up a position a distance away from Sheku Bayoh because to do so would have potentially allowed him to interact with a member of the public.
- K. PC Short and Tomlinson were the next two officers on the scene after Walker and Paton. They exited their vehicle at approximately 7.20.41. By 7.21.19 Nicole Short had been injured and Sheku Bayoh had been taken to the ground. That illustrates the speed with which events were unfolding and how little time the officers had to react.
- L. Upon arrival PC Tomlinson witnessed PC Walker with his hands to his face and believed that he had been injured by Sheku Bayoh. He issued verbal commands to Sheku Bayoh which Sheku Bayoh ignored and then used his incapacitant spray, which also proved unsuccessful, as a control measure.
- M. Sheku Bayoh ran after and punched Nicole Short to the back of her head knocking her to the ground. He then stamped on her. This was witnessed by PCs Tomlinson and Walker who, by that time, had begun to recover from the effects of his spray.
- N. In response to the violent attack on Nicole Short, PC Tomlinson struck Sheku Bayoh with his baton first on the head and then on the arms. He believed Sheku Bayoh posed a danger to Nicole Short's life.
- O. The Police Scotland Use of Force SOP is the relevant policy in terms of the use of a baton. Police officers have to justify the use of force by reference to the criteria of justification and preclusion. The use of force should be the reasonable and proportionate to the perceived threat. Further the use of other response

options must be considered inappropriate or have already been tried and failed.

- P. Officers should justify the use of force with regard to the confrontational continuum contained in the SOP and should have regard to the impact factors when dealing with such an incident.
- Q. The decision in relation to which tactics to employ is to an extent subjective because it relies upon an officer's own perception and assessment of the circumstances.
- R. In the present case PC Tomlinson's use of his baton was justified in the circumstances given his belief that Sheku Bayoh may have been armed with a knife; that PC Walker and perhaps Paton also had been injured by him; the violent attack on Nicole Short and his belief that Sheku Bayoh intended to kill her; and his belief that Sheku Bayoh intended to harm him.
- S. The Chair is invited to accept the evidence of PCs Walker and Paton that Sheku Bayoh stamped on Nicole Short. Kevin Nelson, a local resident, is not in a position to assert that the stamp did not occur given that his view was obscured by a hedge and parked cars and that he left his vantage point and therefore had no view of the incident at all for a period of at least around 15 seconds in what was an extremely fast paced incident.
- T. The direct evidence of the stamp from the two officers was not disturbed by the medical evidence. We heard evidence from Rudy Crawford, Consultant in Accident and Emergency Medicine, that stamps can result in little in the way of physical injuries.
- U. The scientific evidence in the form of the reports from Lorna Dawson and Paul Ryder could not rule out the possibility that Sheku Bayoh had stamped on

Nicole Short. Paul Ryder conceded there was a mark on her vest and he was unable to say that it had not been made by Sheku Bayoh's boots.

V. PC Walker brought Sheku Bayoh to the ground with what has been described as a bear hug. That was reasonable in the circumstances given the violence displayed towards Nicole Short.

W. Bearing in mind the level of violence displayed by Sheku Bayoh and that he was reportedly in possession of a knife, his continued restraint was appropriate. It was necessary to gain control of his arms and legs and the use of cuffs and leg restraints was appropriate and in line with the guidance in the SOP.

X. PCs Smith and Good arrived at the scene at approximately 7.21.31. The first thing they did was to have contact with Nicole Short. At 7.21.38 PC Smith, while running, transmits that the male is secure on the ground. He is mistaken as a closer look reveals that the officers are struggling to restrain him. PC Smith identifies the need to control his hands given the as yet unrecovered knife.

Y. Sheku Bayoh is handcuffed and leg restraints are applied. At the end of the restraint Sheku Bayoh is turned on his side and is noted to be unconscious but breathing and an ambulance is requested by PC Smith at 7.25.17.

Z. There has, as yet been no exposition of the training provided to officers. However, the first aid provided was in line with training. Alan Smith monitored the breathing of Sheku Bayoh after he became unconscious. He called an ambulance. After he became aware of baton strikes, PC Smith checked for injuries. At first, Sheku Bayoh was unconscious but breathing. When he stopped breathing PC Smith commenced CPR. PC Smith tried to administer rescue breaths. He drove the ambulance to the hospital.

- AA. Sheku Bayoh struggled ferociously during the restraint. He went from being on his side to being closer to being prone. Any movement to the prone position was due to his resisting restraint and was, in any event, for a short time only. He was handcuffed to the front in a palm to palm position.
- BB. The post mortem results did not indicate that the use of force during the restraint was excessive. There were no injuries to suggest it was. The presence of petechial hemorrhages can be explained by the resuscitation.
- CC. It was discovered post mortem that Sheku Bayoh had Sickle Cell Trait. In his initial report Professor Lucas was 'impressed' by the amount of sickling in the organs and considered that it must have occurred antemortem. He considered Sickle Cell Trait to be a significant factor in the death. He retreated from this position more recently and explained that a factor in his decision to do so was certain discussions he had had with Nat Cary. He pointed to the level of sickling in the lung as an indication that Sickle Cell was perhaps not as significant as he first considered it to be. The same lung samples were, however, available at the time of his original report and so his change in position ought to be treated with caution.
- DD. The factors which played a part in the death of Sheku Bayoh were his consumption of alpha-PVP, a synthetic cathinone and stimulant which is reported to cause drug induced psychosis and paranoia; his struggle against restraint and the underlying sickle cell trait.
- EE. Sheku Bayoh had, prior to the incident, displayed paranoid thoughts about police officers. He had also displayed a distrust of police officers generally.
- FF. The concentration of alpha-PVP in his blood was within the range of fatal doses. Alpha-PVP causes intense paranoia and tachycardia.

GG. The consumption of controlled drugs, most likely alpha-PVP caused him to become paranoid and violent which led to his restraint. But for his drug induced behaviour he would not have been restrained. His drug induced paranoia also caused him to struggle against the restraint.

HH. The drugs made a material contribution to the death. But for the drugs he would not have died.

II. The restraint was necessary, justified and proportionate in the circumstances.

JJ. Those displaying drug induced paranoia will fight against whatever they encounter and will not understand their surroundings.

KK. Police officers restraining individuals in public places do not ordinarily or as a matter of course do not normally have medical staff on hand who can administer sedative drugs. The event suggested that the restraint of those suffering drug induced psychosis in the community by police officers is inherently risky. The evidence was that when the restraint commenced the prognosis for Sheku Bayoh was poor. That restraint was, however, again on the evidence, required by the circumstances.

LL. The cause of death being multifactorial rather as opposed to being the result of a single causal agent, the increase in material risk principle does not apply in terms of causation.

Structure

2. In terms of structure, this submission is divided into the following chapters:
 1. Background Events during the night of 3/3 May 2015 and movements of Sheku Bayoh
 2. Reports by members of the public

3. Response by the Area Control Room
4. Deployment of Officers
5. Initial engagement of police officers with Sheku Bayoh: PCs Walker and Paton
6. Involvement of PCs Short and Tomlinson
7. Whether Sheku Bayoh stamped on PC Short
8. PC Tomlinson striking the head of Sheku Bayoh with the baton
9. Sheku Bayoh being brought to the ground
10. Initial Restraint
11. Continued Restraint : involvement of other officers
12. Position of Sheku Bayoh during the restraint
13. Force Applied to Sheku Bayoh during the restraint
14. The point at which Sheku Bayoh stopped breathing
15. First aid by officers
16. The knife
17. Cause of death
18. Causation
19. Race

Chapter 1

Background events during night 02/03 May 2015 and Movements of Sheku Bayoh

Evidence

3. This section will also cover the movement of Sheku Bayoh on the morning of 3 May 2015.
4. The evidence before the Inquiry is that Sheku Bayoh had attended a party at his sister's house on Saturday 2 May 2015. He was dropped off there by his partner, Collette Bell who, had decided to spend the night at her mother's house with their son. The couple normally lived together in a property on Arran Crescent, Kirkcaldy. Collette Bell dropped him off at the party at approximately 5.50pm.²
5. Sheku Bayoh's close friend Zahid Saeed joined him at the party in the evening.³ Sheku Bayoh was drinking alcohol but was not drunk. It was a children's party, but the adults were having a drink. They left the party just after 9pm and in time to go to Asda which, closes at 10pm.⁴
6. They went from Asda to the home Sheku Bayoh shared with Collette Bell on Arran Crescent. They had arranged to watch a boxing match at Martyn Dick's house but it was taking place in America and due to the time difference was not due to be televised in the UK until sometime after 3am.⁵
7. At Arran Crescent they drank alcohol together and listened to music. Mr Saeed said in his inquiry statement that Sheku Bayoh took MDMA and Ecstasy and that he was also taking 'substances'. He also said that Sheku Bayoh had taken recreational drugs in his company in the past. He was asked whether he was aware of Sheku Bayoh having negative experiences while taking drugs. He recounted an incident earlier in 2015 when he became paranoid at a party after

² PIRC-00027 statement of Collette Bell page 2

³ SBPI – 00071 para 3

⁴ SBPI – 00071 para 4

⁵ SBPI – 00071 para 5

taking MDMA and Ecstasy and believed others were talking about him and his race in particular. Mr Saeed thought that he may have been hallucinating.⁶

8. Mr Saeed left Sheku Bayoh alone in Arran Crescent for a period of time between 1.30 and 3am.⁷ Mr Saeed has refused to explain where he was between those times or who he had contact with.⁸ When he returned to Arran Crescent Mr Saeed did not detect any discernible change in Sheku Bayoh's mood.⁹
9. Sheku Bayoh and Mr Saeed arrived at Martyn Dick's house just after 4am. Mr Bayoh's mood began to change at Martyn Dick's house and he started to display signs of paranoia.
10. He left Martyn Dick's house between 5.30 and 5.45am. Mr Saeed described an event earlier in 2015 when Sheku Bayoh displayed similar paranoid behaviour while taking recreational drugs. During the earlier incident his paranoia was focused on issues related to his race and the perception that others were talking about it in a negative manner.¹⁰
11. Mr Saeed followed Mr Bayoh to his home in Arran Crescent. At this point he accused Mr Saeed of being "CID".¹¹ Mr Saeed tried to reason with him assuring him that he was not CID and telling him it was the effects of the drugs making him paranoid. He described Sheku Bayoh responding positively to this and "switching" back to his normal demeanour. Mr Saeed described not feeling "right" himself and thinking the drugs he had taken had perhaps been mixed with something else.¹²

⁶ SBPI – 00071 para 7

⁷ SBPI – 00071 para 9

⁸ PIRC-00033 Statement of Mr Saeed

⁹ SBPI – 00071 para 9

¹⁰ SBPI – 00071 para 12

¹¹ SBPI – 00071 para 14

¹² SBPI – 00071 para 14

12. Mr Saeed described fluctuation of Sheku Bayoh's mood. One minute he thought Mr Saeed was CID and the next he recognised Mr Saeed. Mr Saeed described trying to explain to Sheku Bayoh that the drugs must have been mixed with something and encouraging him not to take anymore. His evidence was that Sheku Bayoh gave him a bag of drugs which he flushed down the toilet in his mother's house. After giving him the bag of drugs Mr Saeed describes him "switching again" and thinking Mr Saeed was CID. Mr Saeed described a change in Sheku Bayoh's body language and him becoming "stiff". Mr Saeed thought it best to leave due to the fluctuations in Sheku Bayoh's mood.¹³

13. The back door of the property was open. Mr Saeed described feeling unsafe and having a "gut feeling" that he should leave. As he was walking out the kitchen door Sheku Bayoh punched him on the head and Mr Saeed began to run. Sheku Bayoh picked up a washing pole and threw it at Mr Saeed. Mr Saeed ran out of the front of the house and somehow slipped. The net result was that Sheku Bayoh was on top of him, punching him in the head. Mr Saeed's evidence in his statement was that he did not fight back. Sheku Bayoh, however, continued punching him in the head.¹⁴

14. Mr Saeed got away and called Martyn Dick who came to collect him. Mr Dick and Mr Saeed then drove by Sheku Bayoh's house at Arran Crescent and, to them at least, it appeared as though Sheku Bayoh was at home. Mr Dick and Mr Saeed returned to Mr Dick's house at around 7am.¹⁵

15. The evidence of Sheku Bayoh's then neighbour, Neil Morgan is also before the Inquiry. Mr Morgan arrived home at Arran Crescent around 6.20am on Sunday 3rd May 2015 after having worked a nightshift. His daughter and her friend

¹³ SBPI – 00071 paras 16-17

¹⁴ SBPI-00071 para 18

¹⁵ SBPI-00071 para 24

came to tell him that Sheku Bayoh, who they called Chris, was fighting in the gardens. Mr Morgan had recently been the victim of an attempted robbery and he thought perhaps Sheku Bayoh had apprehended a robber so he went outside to see if he could assist. He caught up with Sheku Bayoh as he was walking towards Cramond Gardens. He asked him if he had stopped a robbery. He said “no man, no one’s robbing no one”. Mr Morgan asked Sheku Bayoh if he was okay and at that point Sheku Bayoh turned to face him. He was holding a knife which Mr Morgan described in his PIRC statement as having a stainless steel blade and being the biggest one you would get in a kitchen block.¹⁶ He had the knife down the right side of his body and was tapping his leg.

16. Mr Morgan warned Sheku Bayoh about carrying the knife in a public place. Sheku Bayoh responded by saying “No, it’s all right, man, it’s all right, it’s not even sharp”. As he said this Mr Morgan described Sheku Bayoh poking the knife into Mr Morgan’s belly a little. Although Mr Morgan didn’t feel threatened by this, he felt wary. Mr Morgan encouraged Sheku Bayoh to come back to his house and have a cup of coffee but Sheku Bayoh declined and walked off.¹⁷

17. Mr Morgan’s wife, Pauline Morgan, has produced an Inquiry statement in which she describes her husband recounting the story of his interaction with Sheku Bayoh and her being cross that he invited Sheku Bayoh in for a cup of tea when he was in possession of a knife. She describes seeing Sheku Bayoh trying to get back into his house and banging on the door. She also describes seeing Sheku Bayoh banging on a car with a knife. The car was parked beside his house.

¹⁶ PIRC-00073

¹⁷ SBPI-00024 paras 31-36

18. She witnessed an Asian man in his thirties get out of a van and into the car. At that point her daughter and her friend told Mrs Morgan that the Asian man was the person Sheku Bayoh had been fighting with. Mrs Morgan described him as slim build, tall and in his late 30s. He drove off in the car which Sheku Bayoh had been hitting with the knife. Mrs Morgan thinks this happened sometime around 7am.¹⁸
19. Mr Saeed contacted Collette Bell around 7.30am by phone. He told her that Sheku Bayoh had attacked him and that he had managed to escape by running away. He advised Collette not to return home because he was worried that Sheku Bayoh might be violent towards her. He told Collette Bell that Sheku Bayoh had used him as human punchbag.¹⁹
20. Collette Bell was so worried that she did go home, arriving at Arran Crescent at approximately 8.05am on Sunday 3rd May. The property was in disarray with the kitchen drawer containing knives lying open and fridge magnets on the floor.
21. The upstairs of the property was also disturbed with a television lying on the floor. Collette Bell called Mr Saeed again around 8am after she had returned to Arran Crescent. She told him that the property was in disarray. Mr Saeed said that when he was there everything had been neat and tidy.²⁰ This suggested that Sheku Bayoh was throwing things around while alone in the property after the departure of Mr Saeed.
22. Collette Bell called the police to explain that her boyfriend had been in a fight and was missing.²¹ A transcript of the call is lodged. Collette Bell explains that

¹⁸ SBPI – 0080

¹⁹ PIRC000-27 statement of Collette Bell page 3

²⁰ SBPI-00071 para 26

²¹ PIRC000-27 statement of Collette Bell page 3

Sheku Bayoh has beaten up his friend which is out of character; that the friend is worried for the safety of others and that Sheku Bayoh has gone missing.²²

Conclusions on the Evidence

23. It is clear from the evidence before the Inquiry that Mr Bayoh had been paranoid and violent prior to the encounter with the police officers at Hayfield Road.
24. That Sheku Bayoh suffered from paranoia around issues related to race was known to his friend, Mr Saeed, and had been evident in the past.
25. It is notable that, on this particular occasion, Sheku Bayoh was also displaying paranoia about police officers; he accused his friend, Mr Saeed, of being a CID officer.
26. The similarities between the violence perpetrated by Mr Bayoh on Mr Saeed, and Mr Bayoh's subsequent attack on Nicole Short are also of note. In the first place, Mr Saeed described being punched as he was walking out the kitchen door. Nicole Short was punched from behind as she was running away from Mr Bayoh.
27. Further, Mr Saeed described Mr Bayoh continuing to display violence towards him, to being chased and knocked to the ground, with the attack continuing once he was on the ground notwithstanding that Mr Saeed did not, according to Mr Saeed, put up any resistance. Mr Saeed's evidence was that he did not fight back, yet Sheku Bayoh continued to reign blows on his head.

²² PIRC-01384

28. In a similar vein, there is evidence before the Inquiry (which is considered elsewhere in this submission) that having knocked PC Short to the ground, Mr Bayoh proceeded to stamp on her as she lay on the ground, indisposed.

29. In summary, the evidence shows that Mr Bayoh was a man under the influence of drink and drugs at the material time. He was acting in a violent manner towards his friends. He was displaying paranoia around police officers. Indeed, he was driven to violence towards his friend at least in part because he thought his friend was a police officer. He acted violently although unprovoked, and continued to attack even where his victims did not fight back.

Chapter 2

Reports by members of the public

Evidence of the calls to police

30. On the morning of 3 May, Police Scotland received at least 6 calls from members of the public regarding Sheku Bayoh's behaviour.²³ He has been described as appearing as if he was 'on a mission'. Motorists were warning each other and turning back to avoid him.²⁴ He was reported to be trying to stop motorists.²⁵ He was, quite understandably, causing fear alarm to the public. The narrative was reminiscent of many tragic events reported in the news.

31. It was the evidence of PC Walker that this was an unusual type of incident in Kirkcaldy, especially for a Sunday morning.²⁶

²³ PIRC – 00199; PIRC 0144; PIRC – 01388; PIRC – 01387; PIRC – 01386 ; PIRC – 01385 ; PRIC-01384 ; PIRC-01383

²⁴ Statement of witness Grey PIRC-00199

²⁵ PIRC – 01387 call log of Linda Limbert

²⁶ Evidence of Craig Walker 19 May 2022 at page 49 line 22 to page 50 line 6 " Just that it made it...put that sort of at night time."

32. Joanne Caffrey agreed²⁷ that reports of this type on a Sunday are unusual. That was not simply because the incident involved reports of the presence of a knife. Reports of altercations between individuals where a knife might be involved were one thing; the reports received from the public regarding Mr Bayoh's behaviour were not the norm.
33. Ms Caffrey also said²⁸ that the fact there were so many members of the public reporting Mr Bayoh's behaviour in similar terms lent credence to the reports.
34. PC Walker was clear in his evidence that the fact Mr Bayoh had been striking out with the knife prior to officers attending suggested to the officers that Mr Bayoh had the intent to harm others.²⁹
35. The members of the public who called to report the incidents did not know Sheku Bayoh. Mr Saeed knew that Sheku Bayoh was acting violently and displaying paranoia about police officers and was sufficiently worried to call Collette Bell, yet he did not contact the police. Had he done so the police officers would have been armed with information about the background and the identity of Sheku Bayoh. As it was, all they could do was speculate about the identity of the man with the knife. They had no information about what the man might have been upset about. PC Smith was clear in his evidence that with the information they had, only a basic assessment could be made of the risk.³⁰
36. Notably, Collette Bell, very responsibly, did call the police, but by that time it was too late.

²⁷ Evidence of Joanne Caffrey 30 November 2022 page 68

²⁸ Evidence of Joanne Caffrey 30 November 2022 page 68

²⁹ Evidence of PC Walker Day...page 43

³⁰ Evidence of Alan Smith 27 May 2022 pages 17 line 25 to page 18 line 9 "The risk with a knife is very significant.....extremely high."

Conclusions on the evidence

37. The evidence of and relating to the reports by the members of the public is significant in the following respects:

a) **The number of calls**

The volume of calls, and the fact they were in similar terms, lent credence to the reports themselves. The tenor of the calls also demonstrated the alarm felt by the public at Mr Bayoh's behaviour.

b) **The nature of the behaviour**

The evidence also demonstrates the unusual nature of the incident, particularly for that time of day on a Sunday. On the basis of those reports, it was reasonable for the officers to assess that it was more likely than not that Mr Bayoh was armed with a knife and that he was behaving violently. It was entirely reasonable for the officers to assess the risk presented by Mr Bayoh on that basis.

Importantly, the officers had no other information relating to Mr Bayoh. Neither Mr Saeed nor Mr Morgan had contacted them to report his behaviour or their interactions with him. The officers did not know this was Sheku Bayoh. They knew nothing about him other than that he was reported as having a knife, behaving erratically and as being of large muscular build.

c) **The mindset of the officers.**

The reports of a man with a knife lashing out at passing vehicles created, quite reasonably, an apprehension in the minds of the officers. They quite fairly considered that they were dealing with a man with intent to do harm to others. As stated above, the identity and characteristics of

the man in question were not known to them. Their assessment of the risk therefore had to be based on the information they had. Others who might have informed the police of factors which might have influenced their assessment of risk had chosen not to do so. The officers simply had to respond to the incident on the basis of the information available to them at the time.

d) The assessment of risk as regards the presence of the knife.

As stated above, the officers' assessment of risk could only be based on the information they had available to them at the time. They were responding to an incident in real time. This was no training incident and they were without the benefit of hindsight. Those who could have informed their assessment had chosen not to contact police.

Under particular reference to questions from the Inquiry regarding whether it was considered that Sheku Bayoh was experiencing a mental health crisis and whether it was considered that he may have been from the nearby psychiatric hospital, PC Smith's response is worthy of note.

PC Smith made a distinction between a knife incident and knife crime. He distinguished between incidents where the carrying of the knife had criminal intent and those where there is no criminal intent which would generally be self-harming.³¹ In terms of risk his view was that if someone is reported to have a knife, in terms of your assessment of risk, you proceed as if they have the knife concealed until you have searched, controlled and confirmed they do not have it.³²

³¹ Evidence of Alan Smith 27 May 2022 page 44

³² Evidence of Alan Smith 27 May 2022 page 49

Regardless of where Mr Bayoh had come from there were credible reports of him being armed with what was described by one caller as a very large knife. He was also described as behaving in a violent way.

The officers therefore had to proceed on the basis that Sheku Bayoh was armed, even if the knife was not visible to them on arrival.

Perception as to Mr Bayoh's size

The officers were questioned as to their assessments of Mr Bayoh's size as stated in their original statements provided to the PIRC.

Harry Kolberg relayed not only a report of a man with a knife; he also suggested that the man himself was large.

That Sheku Bayoh was, in reality, smaller than certain officers who attended the scene is, it is respectfully submitted, largely irrelevant. His behaviour, demeanour and clothing created *a perception* of his size in the minds of both the public and the officers as to his size.

Sheku Bayoh was of a muscular build and at the time was wearing clothing which accentuated his muscular physique. He was known to attend the gym and take steroids to enhance his physical condition. He had taken drugs on this particular occasion which, it is said, had caused him to act in an aggressive manner shortly before his interaction with officers. He then went on to act aggressively towards the officers who attended.

That certain members of the public who reported seeing this man with a knife, and the officers who subsequently interacted with him, should have perceived this man as 'large' at the time is entirely understandable when viewed in that context.

Chapter 3

Response in Area Control Room

Evidence

38. The controller diverted a unit to Hayfield Road at 7.16am. Sergeant Maxwell requested specialist resources, an ARV and a dog and all units at 7.16am.

39. It was the evidence of Martin Graves that by 7.16am, given the logs at 7.14, 7.15 and 7.17am, a controller would be considering specialist resources as by then, there was sufficient information to confirm the involvement of a knife or edged weapon.³³ The deployment of specialist resources should have been under consideration before Sergeant Maxwell made the request.³⁴

40. Deployment of an ARV in Scotland can be done where there is a bladed weapon involved. It requires the authority of the Inspector.³⁵

41. It was Mr Graves' evidence that officers faced with that type of call or that number of calls would have expected an armed response to be sent and it would give them support in relation to what might happen if they encounter an individual with a knife.³⁶

42. The sheer number of calls and the fact it was a Sunday should have led the controller to take notice of it quickly. ³⁷

³³ Evidence of Mr Graves page 142

³⁴ Evidence of Mr Graves 25 November 2022 page 142

³⁵ Evidence of Mr Graves 25 November 2022 page 143

³⁶ Evidence of Mr Graves 25 November 2022 page 148 lines 5-12 "I think deployment is.....individual armed with a knife."

³⁷ Evidence of Mr Graves 25 November 2022 page 144

43. Mr Graves' evidence was that he would have "rolled the ARV immediately" on the basis of the intelligence and information, and the knowledge that it was 20-25 minutes travelling time from the incident.³⁸
44. Inspector Stewart decided to deploy officers and have them feed back before deploying an ARV. The difficulty with that course of action was that the ARV was 20 – 25 minutes away.
45. The officers were sent to deal with an incident about which there was reliable information that an individual was armed with a knife. The request was that they feed back through the channel. Mr Graves' evidence was that, in an incident such as this, it is very common for officers who attend initially not to provide feedback because they are dealing with the situation. It is more likely that the second unit to attend will provide the feedback.³⁹
46. Mr Graves was clear that the speed at which an incident develops greatly impacts upon the ability to rationally process information; that we become more responsive and reactive.⁴⁰
47. It was the view of Mr Graves that until the point it was transmitted that the male was secure on the ground at 7.21.38, the need for the ARV should not have been disregarded. Therefore, there was still a need for an ARV when PC Paton pressed his emergency button to update as to the assault on Nicole Short because at that point there was still the possibility that the male will escape, armed.⁴¹

³⁸ Evidence of Mr Graves 25 November 2022 page 136-137

³⁹ Mr Graves 25 November 2022 page 54, line 10 "It's very common unfortunately.....location".

⁴⁰ Mr Graves 25 November 2022 page 159 line 2 "The speed at whichincident"

⁴¹ Mr Graves 25 November 2022 page 157

48. Page 178 of transcript line 20 records that Mr Graves was asked about whether ACR, if told that a person is suffering a mental health crisis, would contact an ambulance. Mr Graves agreed that would be possible.

49. Acting Sergeant PS Maxwell was in overall charge of the incident. He was the supervisor at Kirkcaldy Station.⁴² The control room would not take control unless it was declared a Firearms Incident.⁴³

Conclusions on the evidence

50. It would have been reasonable to deploy an ARV at 7.16am. However, it was some distance away (20-25 minutes). Specialist resources would have assisted the officers in their task and provided additional safety measures in the event of an escape.

51. Officers and members of the public were put at additional risk by the failure to deploy.

Chapter 4

Deployment of officers

52. The decision was made to deploy officers to the scene.

53. In both his oral evidence and his inquiry statement, PC Smith confirmed that there was no message to the officers that an ARV had been deployed; simply a message from the controller that one was being organised.⁴⁴

⁴² Evidence of Alan Smith 27 May 2022 pages 43-43

⁴³ Evidence of Alan Smith 27 May 2022 page 43

⁴⁴ Evidence of Alan Smith 27 May 2022 page 22 – 23

54. PC Smith was clear that absent a message that the dog handler or the ARV were nearby, as in present in Kirkcaldy, they would not play a part in his assessment of the risk and the situation.⁴⁵

Chapter 5

Initial engagement of police officers with Sheku Bayoh: PCs Walker and Paton

Evidence

55. PCs Paton and Walker were first on the scene. As the first to arrive they initiated the engagement with Sheku Bayoh. They were experienced officers.

56. Counsel for the inquiry explored several different approaches which could have been taken by officers engaging with Sheku Bayoh.

57. Officers Smith, Good and Tomlinson make no criticism of the manner in which Officers Walker and Paton chose to engage with Mr Bayoh. They were facing an individual who was reportedly armed with a very large knife which he was using to lash out at passing vehicles. These reports by the public demonstrated an intent on his behalf to harm others.

58. As the first officers on the scene, they had to make an assessment of the situation and decide on the appropriate action.

59. PC Walker was clear in his evidence that in almost 18 years of police service he has used his spray on only around 3 occasions. That demonstrates the seriousness of the situation.⁴⁶

60. In his evidence, PC Smith spoke about the difficulty of standing back and observing a person reportedly in possession of a knife. He expressed the view

⁴⁵ Evidence of Alan Smith 27 May 2022 page 34 lines 23 to page 35 line 4

⁴⁶ Evidence of Craig Walker Daypage 61

that in his professional experience it was a difficult thing to do because of the potential danger to the public. His view was that it would only really be a possibility where the subject was standing still and there was no realistic chance of a member of the public approaching them.⁴⁷

61. For his part, Mr Graves spoke about the difficulty of keeping a distance from the subject, namely that although it may protect the officer, it does not protect any member of the public coming into contact with the individual and police officers have a duty to protect. That control measure is therefore not always suitable or appropriate. It is a balancing act, but since they are responsible for public safety, they may have to act to mitigate risk to the public.⁴⁸

62. Further, Mr Graves explained that once PCs Walker and Paton engaged with Sheku Bayoh in the way they did it, which could be described as verbal dominance, it was difficult to come back from that until such time as control over him was gained.⁴⁹

Conclusions on the evidence

63. The evidence confirms that, having been deployed to the scene it would have been difficult to stay back from Sheku Bayoh without risking public safety. Hayfield Road was a built up area and there was evidence before the inquiry that Sheku Bayoh had been acting in a violent way towards members of the public prior to the officers arrival. They were facing an individual who was brandishing a knife and causing fear and alarm to members of the public.

64. Once the mechanism of verbal dominance had been engaged, that set the tone for the engagement of the officers who would subsequently arrive on the scene.

⁴⁷ Evidence of Alan Smith 27 May 2022 page 30

⁴⁸ Evidence of Mr Graves 25 November 2022 page 161

⁴⁹ Mr Graves Day 27 page 4 at line 21 onwards "Once that decisionyou've given them."

Control over Sheku Bayoh essentially had to be gained before any other approach could be attempted.

Chapter 6

Involvement of PCs Short and Tomlinson

Evidence

65. DC Ashley Tomlinson, who was at the time PC Tomlinson, and PC Nicole Short arrived together, after PCs Walker and Paton, in the smaller police van known as the “Fish Van”.

66. They arrived at the locus, Hayfield Road, at approximately 7.20.39. and exit the vehicle at around 07.20.41⁵⁰ On arrival PC Tomlinson believed PC Walker to have been injured. At 7.20.42 Alan Paton activated his emergency button but PC Tomlinson was not aware of it.⁵¹

67. Only 20 seconds later, at 07.21.02, Alan Paton transmits via the airwaves that PC Short has been injured.⁵²

68. PCs Short and Tomlinson had been at the scene for what must have been less than **23 seconds** before PC Short was violently attacked by Sheku Bayoh.

69. At 07.21.19 PC Tomlinson activated his emergency button. By this point Sheku Bayoh had been taken to the ground by PC Walker. He had probably been on the ground for seconds at this stage.⁵³

Conclusions on the evidence

⁵⁰ SBPI -00047 Timeline

⁵¹ SBPI -00047 Timeline

⁵² SBPI -00047 Timeline

⁵³ SBPI -00047 Timeline and evidence of Ashley Tomlinson 26 May 2022 at page 42 lines 9-11

70. The involvement of PC Tomlinson is set out in more detail in the sections which follow.
71. The evidence demonstrates that PC Tomlinson arrived at the scene and formed a belief that PC Walker had been injured.
72. Further, the Inquiry can conclude from the evidence that this was an extremely fast-moving situation. Only around 23 seconds had elapsed between PC Tomlinson's arrival and the attack on PC Short leaving her indisposed on the ground. PC Tomlinson had very little time to react.
73. Upon arrival he believed that PC Walker had been injured. As will be discussed further below, PC Tomlinson used his baton after Nicole Short had been punched to the head and stamped on by Sheku Bayoh. Thereafter, he assisted with the restraint of Sheku Bayoh.
74. In the context of the extremely fast-moving situation he found himself in, his belief that PC Walker had been injured and the violent attack on Nicole Short, the use of the baton was a justified and proportionate response to the violent attack on Nicole Short.
75. As stated earlier, standing the choice by PCs Walker and Paton of verbal dominance as the appropriate approach to take to Sheku Bayoh on arrival at the scene, it was difficult for PCs Tomlinson and Short to stay back on their arrival at Hatfield Road. That was particularly so standing that the emergency button had been pressed and the two officers had become affected by their spray.
76. The decision by PCs Tomlinson and Short to engage with Sheku Bayoh at the locus was within the range of options the reasonable officer would have chosen in the circumstances.

Chapter 7

Whether Sheku Bayoh stamped on PC Short

Evidence

77. The evidence of PCs Tomlinson and Walker was that Sheku Bayoh stamped on PC Short after knocking her to the ground. It is submitted that the Chair should accept that evidence. Both officers were reliable and credible in giving their evidence. They gave their evidence in a straightforward manner and tried to assist the Inquiry.

78. Further evidence, albeit hearsay evidence, of the stamp was before the Inquiry from as early on in the incident as 7.24.28 in the form of the transmission by Sergeant Maxwell that Nicole Short had been “stomped” to the body a few times and struck to the head.⁵⁴

79. It was suggested by Kevin Nelson, who lives in a ground floor cottage flat on Hayfield Road, that the stamp could not have occurred.

80. Kevin Nelson was watching from the living room window of his ground floor cottage flat in Hayfield Road. It is notable that he did witness Sheku Bayoh walking and the first officers arrive on the scene. He also witnessed an officer spray Mr Bayoh with something and the spray go back into the officers face such that he put his hands to his face.⁵⁵ He then saw Mr Bayoh change direction towards a female police officer who he swung out to hit.⁵⁶ He spoke to Sheku

⁵⁴ SBPI -00047 Timeline page 7

⁵⁵ Evidence of Kevin Nelson 31 May 2022 page 25

⁵⁶ Evidence of Kevin Nelson 31 May 2022 page 26

Bayoh striking out more than one blow and to the policewoman stumbling back.⁵⁷

81. It is respectfully submitted that Kevin Nelson is not in a position to assert that the stamp did not happen. By his own admission, his view of the incident was obscured by the hedge in front of his home and parked cars. It was his evidence that although he witnessed Sheku Bayoh punch Nicole Short more than once, he was unable to see where she fell because of the hedge and the cars. By his own admission, he did not have a view of what was happening on the ground.⁵⁸ He was unable to see Sheku Bayoh's feet. ⁵⁹

82. Added to that, his confirmed that he left the window to go to his garden.⁶⁰ The timeline suggests that he emerged from his property at 7.21.21 and got to his gate at Hayfield Road at 7.21.24.⁶¹ That meant there was a period when he had no view at all of what was happening outside.

83. Kevin Nelson's evidence is that by the time he got to his gate Sheku Bayoh and the policeman were on the ground. Other police officers were present by that time.⁶²

84. Alan Paton transmitted via the airwaves at 7.21.02 that Nicole Short had been injured. By the time Ashley Tomlinson pressed his emergency button at 07.21.19, Sheku Bayoh was down on the ground. Mr Nelson thought it perhaps took 12 to 15 seconds for him to get from his window to his gate.⁶³

⁵⁷ Evidence of Kevin Nelson 31 May 2022 pages 29-31

⁵⁸ Evidence of Kevin Nelson 31 May 2022 pages 32 line 25 – page 33 line 13 “did you see how she fell.....No and page 48 lines 1-2 .”

⁵⁹ Evidence of Kevin Nelson 31 May 2022 page 49 lines 19-20

⁶⁰ Evidence of Kevin Nelson 31 May 2022 page 41

⁶¹ SBPI -00047 Timeline page 4

⁶² Evidence of Kevin Nelson 31 May 2022 page 42

⁶³ Evidence of Kevin Nelson 31 May 2022 page 41 lines 8 to 19 “What was the experiment.....I can't remember exactly.

85. It is notable that although he witnessed some of the incident, crucially, he did not witness the baton strikes by PC Tomlinson to Sheku Bayoh.⁶⁴ The fact he missed that event suggests that his recollection of events is at least incomplete. That would be entirely consistent with his having had only a partial view of events from his window, and his having moved from his window through his house to go to his garden, at which point he would have had no view.

86. Mr Nelson's evidence before the Inquiry was that Sheku Bayoh ran or moved away from Nicole Short after punching her. That detail was absent from the statements Mr Nelson provided to the PIRC in May 2015 and to the Crown in October 2016. He was asked about the discrepancy in his inquiry statement and in evidence. He has given no satisfactory explanation for that discrepancy.⁶⁵

87. Notably Mr Nelson gave a television interview for the BBC in which he spoke about the events. The televised version of the interview did not mention the fact that he had left his window. He was asked about that omission in his inquiry statement and in his evidence. Mr Nelson's response was that the interviewer had his statement and so was aware he had left the window; that it would have been discussed and that the interview was edited to leave that part out.⁶⁶

88. Mr Nelson was prepared to appear on television to suggest these officers have fabricated the stamp when, by his own admission, he had an obscured view of events and left his viewpoint for a period of around 15 seconds. Bearing in mind that there was a period of only less than 17 seconds between PC Paton updating control on the injury to PC Short and Sheku Bayoh being taken to the ground, that gap of 15 seconds, during which time he had no visual of the

⁶⁴ Evidence of Kevin Nelson 31 May 2022 page 63 line 6 to 15 " And then the next.....close enough to do that."

⁶⁵ Evidence of Kevin Nelson 31 May 2022 page 98-99

⁶⁶ Evidence of Kevin Nelson 31 May 2022 pages 95 – 96

incident, is significant. Furthermore, the fact that he did not witness the baton strikes by PC Tomlinson confirms he did not witness everything which occurred.

89. Any reasonable witness, who by his own admission had an obscured view and had left his window for a period of around 15 second in the midst of a fast paced incident would accept that the stamp was a possibility. Mr Nelson refused to accept that.⁶⁷ Such steadfast refusal indicates that Mr Nelson is not a reasonable witness.

90. PC Short does not remember being stamped upon. However, it was the evidence of Mr Anderson, Consultant in Accident and Emergency Medicine that he considered she had suffered a not insignificant blunt force head injury giving rise to significant injury.⁶⁸ He formed the impression from talking to her that she had a spell of post traumatic amnesia which was relatively brief. ⁶⁹The Inquiry also heard evidence from Rudy Crawford, Accident and Emergency Consultant who shared the same view regarding the lack of memory.⁷⁰

91. When PC Smith arrived at the scene, he saw Nicole Short who was staggering and looked on the brink of collapse.⁷¹

92. Mr Crawford was clear that the injuries sustained were consistent with her being propelled through the air and landing in the manner described. That opinion was expressed in his report and was not challenged in evidence or departed from by Mr Crawford in his evidence.⁷²

⁶⁷ Evidence of Kevin Nelson 31 May 2022 page 89-90

⁶⁸ Evidence of Ian Anders page 128 lines 27-28

⁶⁹ Evidence of Ian Anders page 135 page 1-5

⁷⁰ Evidence of Rudy Crawford 9 June 2023 at page 156 lines 3-14 "In my opinion...recollection of this event."

⁷¹ Evidence of Alan Smith 27 May 2022 page 71

⁷² Evidence of Rudy Crawford, 9 June page 160 lines 3 to 10.

93. Mr Crawford highlighted the pain Nicole Short experienced on the right hand side of her body.⁷³ Junior counsel to the inquiry suggested to Mr Crawford that the right sided pain could have arisen as a result of Nicole Short falling onto her utility belt and he did accept that as a possibility.⁷⁴ Crucially, in relation to the stamp, Mr Crawford was clear that while a stamp to the body *can* cause devastating injury, that is not always the case. The severity of the injury depends upon the “severity and effectiveness” of the stamp.⁷⁵
94. The demonstrations of the stamps by PCs Walker and Tomlinson were put to Mr Crawford by junior counsel to the inquiry. Mr Crawford was clear that, in his experience, what appears to be a very severe stamp does not necessarily correlate to serious or life threatening injuries.⁷⁶
95. Mr Crawford has significant professional experience. It is that significant professional experience which formed the basis for his evidence.
96. Further, Mr Crawford’s evidence was that the tenderness over the right lower rib cage identified by Mr Anderson when he examined PC Short was consistent with having been caused by blunt injury and was consistent with the blunt injury being a stamp or a blow to the right lower chest.⁷⁷
97. Paul Ryder, scientist with Cellmark prepared a Tread Analysis Report⁷⁸ and gave evidence. His evidence was that he was unable to confirm the origin of the marks on Nicole Short’s vest.

⁷³ Evidence of Rudy Crawford 9 June 2022 page 170 lines 4-11

⁷⁴ Evidence of Rudy Crawford 9 June 2022 page 171 line 18

⁷⁵ Evidence of Rudy Crawford 9 June 2022 page 173 lines 14 to 18 “Well, yes....yes.”

⁷⁶ Evidence of Rudy Crawford 9 June 2022 page 175 line 15 to page 177 line 5 “ you said earlier that the damageresults in life threatening injuries”

⁷⁷ Evidence of Rudy Crawford 10 June 2022 page 17 lines 3-18 “I would say that....would be consistent with a stamp.”

⁷⁸ SBPI-00171

98. He was taken to a photograph of Nicole Short's vest by the Dean of Faculty.⁷⁹ He conceded that the vest or jacket was generally "pretty clean". Mr Ryder was referred to a 3 sided mark on the jacket. He accepted that the mark had to have come from somewhere and that if Nicole Short had put the vest on clean that day then something must have happened that day.
99. Critically, Mr Ryder accepted he could not exclude the possibility that the mark on the vest came from Sheku Bayoh's boot.⁸⁰
100. The soil analysis by Lorna Dawson ruled out the possibility that Craig Walker stood on Nicole Short.⁸¹

Conclusions on the evidence

101. It is clear from the evidence of all involved that the incident happened quickly and the officers were in a heightened state of alert due to the violence of the situation.
102. There was credible and reliable evidence before the Inquiry that Sheku Bayoh stamped on Nicole Short.
103. That evidence was not interfered with by the medical evidence, which did not rule out that a stamp had occurred. It is of course worthy of note that PC Short was, at the time, wearing her police issue vest which although designed to protect from a stab injury, would have also offered some protection against blunt force trauma in the form of a stamp.

⁷⁹ Evidence of Paul Ryder page 80

⁸⁰ Evidence of Paul Ryder at page 85

⁸¹ SBPI-00182

104. The evidence of the stamp was also not interfered with by the evidence of Paul Ryder, which instead acknowledged that there was a mark on Nicole Short's vest which could have come from Sheku Bayoh's boots.
105. Nor was the evidence of the stamp interfered with by the evidence of Lorna Dawson, which again did not rule out the possibility of a stamp by Sheku Bayoh.
106. Furthermore, there was no need for PCs Tomlinson and Walker to lie about the stamp to justify their use of force. The use of force was justified when Sheku Bayoh punched Nicole Short.
107. In summary, there are two positive, direct accounts of a stamp before the Chair. The transmission shortly after the incident by Sergeant Maxwell lends further credence to those positive direct accounts.
108. In the face of that evidence, taken together with the medical and scientific evidence, the evidence of Mr Nelson is simply not credible nor reliable on the question of stamp. He is simply not in a position state with any certainty that the stamp did not occur. His account of the incident is inaccurate in other respects. On that basis, it is respectfully submitted that the Chair should treat Mr Nelson's account with the utmost caution.

Chapter 8

PC Tomlinson striking the head of Sheku Bayoh with the baton

109. At the time of the incident PC Tomlinson had 18 months police service. When attending the call he was aware that Hayfield Road was a relatively busy,

built up area with residential properties also close to the hospital.⁸² He was aware of the reports of the male with the knife and explained in his evidence that he would not be complacent about his possession of a knife but would proceed as if there knife was present until the individual was secured or the knife located.⁸³ On the way to the locus the possibility of a casualty and general danger to those in the area crossed his mind.⁸⁴ PC Tomlinson was 5ft 11 inches tall and weighed approximately 13.5 stones.⁸⁵

110. PC Tomlinson was asked about why he did not feed back on the channel to the ACR and he explained that the incident happened so fast that he didn't have the opportunity to do so. It wasn't safe to do so because he needed his hands to defend himself.⁸⁶

111. We heard from PC Tomlinson that this incident differed from other knife incidents due to the number of calls from members of the public reporting the male in possession of the knife.⁸⁷

112. PC Tomlinson arrived at the scene with PC Short. His van stopped at the locus at 7.20.39. He was driving the van. The driver's door opened at 7.20.41 and PC Tomlinson exited the vehicle. PC Paton pressed his emergency button at 7.20.42 but PC Tomlinson was unaware of the activation probably because he was moving around and wouldn't necessarily have felt the vibration emitted by the transmission.⁸⁸

⁸² Evidence of Ashley Tomlinson 25 May 2022 page 24 lines 1-3

⁸³ Evidence of Ashley Tomlinson 25 May 2022 page 29 – 30

⁸⁴ Evidence of Ashley Tomlinson 25 May 2022 page 32

⁸⁵ Evidence of Ashley Tomlinson 25 May 2022 page 38 lines 1-3

⁸⁶ Evidence of Ashley Tomlinson 25 May 2022 page 42 lines 6 – 11 “Not throughoutor use equipment.”

⁸⁷ Evidence of Ashley Tomlinson 25 May 2022 pages 43-44

⁸⁸ Evidence of Ashley Tomlinson 25 May 2022 page 47 lines 9 – 18 “were you conscious.....necessarily felt the vibration.”

113. By this point both PCs Walker and Paton had been affected by their own incapacitant spray.
114. When he exited the van, the first thing PC Tomlinson saw was PC Walker standing somewhere in the area of the front of the transit van which they referred to as the “19 van”.⁸⁹ He was close to the front passenger wheel arch.⁹⁰ The first thing he saw was PC Walker put his hands to his face. He formed the opinion that PC Walker was putting his hands to his face because he had been slashed or injured to the face with the knife.⁹¹
115. PC Tomlinson saw PC Walker with his hand to his face and thought that he had been injured. He also believed PC Paton, who was not visible to PC Tomlinson upon his arrival, had been injured.
116. At this point, Sheku Bayoh was walking with purpose away from PC Walker. PC Tomlinson provided him with commands such as “stop” and “get down on the ground” which were ignored by Sheku Bayoh. The object of providing these commands was to gain some control of the situation.⁹²
117. PC Tomlinson was unable to see PC Paton and was concerned about that because he knew that he and Walker had arrived as a crew. He was concerned that something had happened to PC Paton.⁹³
118. Sheku Bayoh was ignoring PC Tomlinson’s commands and walking off. PC Tomlinson warned Sheku Bayoh that he would use his spray.⁹⁴ That was also ignored by Sheku Bayoh. PC Tomlinson adopted a defensive stance and used his spray twice. The first spray was taken by the wind but the second

⁸⁹ Evidence of Ashley Tomlinson 25 May 2022 page 51 l

⁹⁰ Evidence of Ashley Tomlinson 25 May 2022 page 52

⁹¹ Evidence of Ashley Tomlinson 25 May 2022 page 52 lines 17-21

⁹² Evidence of Ashley Tomlinson 25 May 2022 page 44 lines 7-9 “When I got.....sort of control.”

⁹³ Evidence of Ashley Tomlinson 25 May 2022 page 59 lines 1-5

⁹⁴ Evidence of Ashley Tomlinson 25 May 2022 page 62

made contact with Sheku Bayoh's left neck / shoulder area. Despite connecting, the spray had no effect.⁹⁵ During that time PC Tomlinson was continuing to shout commands which were being ignored.⁹⁶ eventually Sheku Bayoh turned to face PC Tomlinson. At this point PC Tomlinson felt he was going to be attacked. Sheku Bayoh ran towards PC Tomlinson but then veered off and ran after Nicole Short.⁹⁷

119. PC Tomlinson witnessed Sheku Bayoh punch Nicole Short to the back of the head and she fell forward onto the road.⁹⁸ He described Nicole Short lying flat on the road.⁹⁹ When she tried to push herself back up, Sheku Bayoh stamped on her back while she was on the ground. PC Tomlinson believed that Sheku Bayoh had killed PC Short or was intent on killing her.¹⁰⁰ PC Tomlinson was clear in evidence that his PIRC statement should be preferred on these matters because it was provided closer in time to the incident.¹⁰¹

120. PC Tomlinson believed that Sheku Bayoh had killed Nicole Short or, was in the process of killing her. He decided to use his baton in defence of Nicole Short and himself. He acted in defence of PC Short by striking Sheku Bayoh to the head area with his baton.¹⁰²

121. The first strike was from the back of the head to the jawline. That did not stop Sheku Bayoh so he delivered two more strikes in the same area. The further two strikes caused Sheku Bayoh to turn around and look at PC

⁹⁵ Evidence of Ashley Tomlinson 25 May 2022 pages 67 - 71

⁹⁶ Evidence of Ashley Tomlinson 25 May 2022 page 72

⁹⁷ Evidence of Ashley Tomlinson 25 May 2022 page 75-76

⁹⁸ Evidence of Ashley Tomlinson 25 May 2022 page 77 lines 15-19 "What I saw wasfell forward onto the road."

⁹⁹ Evidence of Ashley Tomlinson 25 May 2022 page 79

¹⁰⁰ Evidence of Ashley Tomlinson 25 May 2022 page 80 lines 3-6 "When Mr Bayoh hasthought he'd killed her."

¹⁰¹ Evidence of Ashley Tomlinson 25 May 2022 page 86 lines 6 -11

¹⁰² Evidence of Ashley Tomlinson 25 May 2022 page 87 lines 1-11

Tomlinson. PC Tomlinson's evidence before the inquiry was that he was unsure whether the further strikes connected.¹⁰³ Sheku Bayoh was then facing PC Tomlinson with his fists clenched in a boxing stance.¹⁰⁴ Believing he was about to be attacked, PC Tomlinson he delivered a further 2-3 baton strikes to Mr Bayoh's arms.¹⁰⁵

122. At that point Sheku Bayoh was taken to the ground by PC Walker who had recovered to some extent from the effects of his spray and realised what was going on.

123. In delivering the baton strikes PC Tomlinson was acting in defence of PC Short and himself.

124. PC Tomlinson was asked about whether he considered the possibility that Sheku Bayoh was suffering from a mental health crisis and whether he gave consideration to treating the incident as a medical emergency and requesting an ambulance. PC Tomlinson's response was clear: he wasn't afforded enough time to do that. He had to react quickly to the danger posed to him and Nicole Short.¹⁰⁶

125. He was clear in evidence that training had its limitations and could not prepare an officer for the reality of a situation such as the one he found himself in.¹⁰⁷

¹⁰³ Evidence of Ashley Tomlinson 25 May 2022 page 88

¹⁰⁴ PIRC statement of Ashley Tomlinson taken 4 June 2015

¹⁰⁵ Evidence of Ashley Tomlinson 25 May 2022 pages 92-93

¹⁰⁶ Evidence of Ashley Tomlinson 25 May 2022 page 97 line 23 to page 98 line 7 "and having considered.....anything else."

¹⁰⁷ Evidence of Ashley Tomlinson 25 May 2022 page 99

126. He was asked whether he would treat someone suffering from a mental health crisis differently from someone who wasn't. Where someone is armed with a knife there is a need to control.¹⁰⁸

127. After delivering the baton strikes to the arms, PC Tomlinson became aware of PC Walker coming into view from his left hand side. He took Sheku Bayoh to the ground with what has been described as "a bear hug".¹⁰⁹

128. The Use of Force Standard Operating Procedure ("SOP")¹¹⁰ was the SOP in force at the relevant time.

129. It provided that the decision to use any defensive technique or equipment in a confrontational situation was for each individual officer to assess based on the circumstances.

130. Section 2.5 provides as follows:

The decision to use any defensive technique or equipment in a confrontational situation is for each individual to assess based on the circumstances involved.

131. The SOP provided that there were two criteria for the use of any physical force. These were:

- Justification: where the force used is reasonable and proportionate to the perceived threat, and
- Preclusion: where other reasonable response options have either been attempted and failed or are considered inappropriate.¹¹¹

132. Section 2.7 provides:

¹⁰⁸ Evidence of Ashley Tomlinson 25 May 2022 page 100

¹⁰⁹ Evidence of Ashley Tomlinson 25 May 2022 pages 101 – 102

¹¹⁰ PS 10933

¹¹¹ PS 10933 para 2.6

The overriding principle is that any force used by Police Officers and Police Staff must never be excessive. Any force used must be reasonable based on the individual person's perception of the threat that they are immediately facing.

133. The individual officer's perception is of the threat is key and so, there is an element of subjectivity to the exercise.

134. The Confrontational Continuum provided officers with assistance in determining what may be considered the appropriate level of force and was to be used in assisting officers to justify the extent of any force used:

4. Confrontational Continuum

4.1 When engaged in confrontational situations, Police Officer must at all times consider the force continuum with regards to the escalation and de-escalation of force.

4.2 The confrontational continuum assists officers to determine what may be considered to be the appropriate level of force to be used in any eventuality and should be used to assist officers to subsequently justify the extent of the any force used. Police officers should refer to the force continuum in any reports which are required to be completed in relation to the use of force.

4.3 Before using any force an officer must consider:

- the impact factors affecting the situation,*
- the physical, mental and sensory condition of the assailant,*
- the seriousness of the attack,*
- the presence of any weapons, and*
- that the response must not be excessive.*

135. The confrontational continuum is presented in the SOP in graph form.

136. The SOP contained a list of impact factors which are described as “human and environment differences which make every incident unique and every person’s perception different.”

137. The impact factors listed are as follows:

- Size, age strength, gender
- Drugs/alcohol
- Ability
- Numbers involved
- Opportunity and intent to do harm
- Weapons
- Skill levels
- Injury / fitness
- Exhaustion
- Willingness to listen
- Special knowledge
- Nature of crime
- Clothing
- Proximity of others
- Danger to others
- Police powers, skills and perception

- Space available
- Proximity of obstructions / hazards
- Location (e.g kitchen – access to knives)
- Escape routes
- Weather conditions and
- Conditions underfoot 112

138. The above impact factors are described as having a crucial bearing on decision making and tactics and providing justification for the use of force. The factors are relevant to both the officer and the person being dealt with.¹¹³

139. The SOP provides for primary and secondary target areas where baton strikes are concerned. The primary areas are those with the minimum level of injury potential. Secondary areas as those with moderate to highest level of injury potential. When using force, officers should give consideration to the minimising injury to the person and should use the profiled offender behaviour (which was not available here) and impact factor to assess the amount of force they consider to be necessary to establish control.¹¹⁴

140. In essence, any force used by an officer should not be excessive. It must be explained by reference to the criteria of justification and preclusion, and it must be justified by reference to the confrontational continuum.

141. The use of baton and spray are defensive tactics in terms of the SOP.¹¹⁵

¹¹² PS 10933 section 4.5.1

¹¹³ PS 10933 section 4.5.1

¹¹⁴ PS 10933 Appendix N page 83

¹¹⁵ Use of Force SOP version 1.03 sections 18 and 19

142. In relation to justification, when PC Tomlinson used his spray on Sheku Bayoh, he was using Level 4 Defensive Tactics in terms of the SOP. Sheku Bayoh was ignoring commands and PC Tomlinson believed he had injured PC Walker. The Defensive Tactics deployed were justified by Sheku Bayoh's assaultive resistance.
143. The evidence was that PC Tomlinson had tried other methods in control. Prior to using his baton, PC Tomlinson had tried verbal commands and his incapacitant spray, both of which had proved ineffective. Sheku Bayoh, ignoring commands and after having been sprayed, punched Nicole Short before proceeding to stamp on her. Accordingly, the evidence was that the preclusion criterion was satisfied.
144. PC Tomlinson believed (from reports received from the public) that Sheku Bayoh was armed with a knife. His possession of a weapon had not been ruled out. The reports from the public were to the effect that he had been lashing out at passersby. Further, Sheku Bayoh was visibly well built and they were in a public place. All of these were relevant impact factors in terms of the SOP.
145. As set out in more detail above, it was the evidence of PC Tomlinson that he struck the head of Mr Bayoh with his baton after he had punched and stamped on Nicole Short. He then administered baton strikes to the arms.
146. In terms of the confrontational continuum, in punching PC Short, Sheku Bayoh was displaying Level 6 Serious / Aggravated Assaultive Resistance.
147. In terms of section 4.7.5 of the SOP, baton strikes are Level 4 – Defensive Tactics. Baton strikes to the head could be classified as Level 4 – Defensive Tactics or, Level 5 – Deadly or Lethal Force. The evidence before the Inquiry demonstrates that the use of baton strikes was

justified under both Level 4 and Level 5. That was as a result of the Serious / Aggravated Assaultive Resistance of Sheku Bayoh. The use of the baton was proportionate and justified in the particular circumstances prevailing at the time and in terms of PC Tomlinson's assessment of the threat. He believed that PC Short's life was in danger and that he was going to be attacked.

148. PC Tomlinson's response in defence of his colleague was a reasonable one in the context of the situation facing him at the locus. It was justified by the punch alone regardless of the stamp.

149. The baton strikes which followed to the arms were also justified by the attack on Nicole Short. In terms of the Use of Force SOP, arms, unlike the head area, are primary targets. These are areas of the body where force is not likely to use or cause serious injury. Any resultant injury tends to be temporary rather than permanent but there can be exceptions.¹¹⁶

150. According to Martin Graves, the resistance displayed by Sheku Bayoh was a minimum of level 5 and possibly level 6 depending on the perception of the officers.¹¹⁷

151. Mr Graves was clear that a Level 4 or 5 response was within the range of appropriate responses to Sheku Bayoh's behaviour.

*"...If they believed an officer had been stabbed, for example, and then that that officer was open to further, further attack by the subject, then again, you know, lethal force at that point could be, could be not just justifiable but in their minds applicable to the situation."*¹¹⁸

¹¹⁶ Use of Force SOP version 1.03 page 83

¹¹⁷ Martin Graves 28 November 2022 page 52 lines 3-11, "I think you'vethe floor"

¹¹⁸ Martin Graves 28 November 2022 page 54 line 4 – 9 "Yes. Very much.....applicable to the situation."

152. that the evidence supports the conclusion that the stamp to PC Short constituted level 6 Serious / Aggravated Assaultive Resistance justifying deadly force.

153. Mr Graves stated that, in that situation, there is serious risk to an officer on the floor and it would be a matter of doing anything within their capabilities to stop it.¹¹⁹

154. Mr Graves stated,

*“... officers are given a tool box, for want of better terminology and from that tool box they draw what they believe to be the best tactical option to deal with the situation they are faced with.”*¹²⁰

155. It is for the officer to explain why they used a baton and why they did not use other options available. There is a subjective element to all of this. The officer’s perception of the risk is relevant to the assessment of the level of risk.¹²¹

156. PC Tomlinson believed that PC Walker had been slashed by Sheku Bayoh. That was an honestly held belief.

157. According to Mr Graves, if an officer held such a belief, they would likely be considering any option available to them and that would include possibly causing serious or fatal injury to the individual to prevent the attack from continuing.¹²²

158. Joanne Caffrey was critical of officers including PC Tomlinson for failing to feed back on the radio to the ACR. However Mr Graves explained that in

¹¹⁹ Martin Graves 28 November 2022 page 60 lines 9 – 12 “ So if thatrecurring.”

¹²⁰ Martin Graves 28 November 2022 page 15 lines 10-14

¹²¹ Martin Graves 28 November 2022 page 18 lines 12-20

¹²² Martin Graves 28 November 2022 page 57 lines 4 to 18 “A. I think based on thecontinuing.”

that situation officers become focused on what they are dealing with right there in the moment and in reality it's very difficult for them to consider anything else.¹²³ Further PC Tomlinson was clear that he needed his hands in that situation to defend himself.¹²⁴ The timeline demonstrates how quickly matters were moving.

Conclusions on the evidence

159. In light of the evidence, it is submitted that PC Tomlinson's use of his baton was justified in the circumstances given his belief that Sheku Bayoh may have been armed with a knife and that PC Walker and perhaps Alan Paton also had been injured by him; the violent attack on Nicole Short and his belief that Sheku Bayoh intended to kill her; and his belief that Sheku Bayoh intended to harm him.

Chapter 9

Sheku Bayoh being brought to the ground

160. It was reasonable, proportionate and justifiable for PC Walker to bring Sheku Bayoh to the ground in the way that he did given that Sheku Bayoh had displayed level 5 and 6 resistance.

Chapter 10

Initial restraint

161. As set out above, the baton strikes administered by PC Tomlinson were justified in terms of the Use of Force SOP.

¹²³ Martin Graves 28 November 2022 page 58 lines 2 – 15 "Again I thinkparticular time"

¹²⁴ Evidence of PC Tomlinson 25 May 2022 page 42

162. The action by Craig Walker to bring Sheku Bayoh to the ground was necessary given the level of violence used towards Nicole Short. It was also justified in terms of the Use of Force SOP, set out more fully above, given that other methods of control (commands, spray and baton) had been utilised and proved ineffective.

Chapter 11

Continued restraint: involvement of other officers

163. It was reasonable for the officers to restrain Sheku Bayoh given the level of violence displayed.

164. PC Tomlinson delivered baton strikes to Sheku Bayoh's achilles area after he had been taken to the ground to prevent him from kicking out.¹²⁵ It is submitted that having regard to the Use of Force SOP referred to above, the baton strikes administered were justified. Other methods of control had failed. The legs are, in terms of the escalation of trauma chart, a primary target from which it is unlikely that serious injury will be caused.¹²⁶

165. The baton strikes had no effect and so PC Tomlinson discarded the baton and took up a position whereby he was straddling Sheku Bayoh's legs with his own weight on his knees and Sheku Bayoh's legs under him. He attempted to cuff Sheku Bayoh.¹²⁷ However a movement of Sheku Bayoh led to the cuffs falling and bouncing away out of the reach of PC Tomlinson.¹²⁸ PC Tomlinson moved from a position straddling Sheku Bayoh's legs to a position whereby his

¹²⁵ Evidence of Ashley Tomlinson 25 May 2022 page 116 to page 118

¹²⁶ PS10933 Appendix N, page 83

¹²⁷ Evidence of Ashley Tomlinson 25 May 2022 page 119

¹²⁸ Evidence of Ashley Tomlinson 25 May 2022 page 122 lines 2-9

legs were out to the side.¹²⁹ This is the position he was in when PC Alan Smith arrived at the scene.

166. PCs Smith and Good arrived at the scene together. PC Good was, at the time, a probationer and PC Smith was her tutor constable. En route to Hayfield Road, PC Smith became aware of the emergency button having been activated and received the message that an officer had been injured. His evidence was that this was a rare occurrence.¹³⁰

167. PC Smith's evidence was that it was only possible to make a very general assessment of the risk en route because they had limited information and had no idea of why the man was in the street with a knife.¹³¹ The fact there had been several reports made the story more credible which made him think the man was more likely to be there with the knife.¹³² PC Smith spoke in detail about the risks associated with knives, how they are dangerous and easy to obtain and conceal.¹³³

168. Upon attending the scene, PC Smith made an airways transmission at 07.21.38 to the effect that Mr Bayoh was secure on the ground.¹³⁴ It was his evidence that in making this transmission he was attempting to update the control but the assertion that Sheku Bayoh was "secure on the ground" was perhaps not entirely accurate given that when he took a closer look, PC Smith realised he was still struggling.¹³⁵ PCs Walker, Tomlinson and Paton were

¹²⁹ Evidence of Ashley Tomlinson 26 May page 36

¹³⁰ Evidence of Alan Smith 27 May 2022 page 11

¹³¹ Evidence of Alan Smith 27 May 2022 page 14

¹³² Evidence of Alan Smith 27 May 2022 page 15

¹³³ Evidence of Alan Smith 27 May 2022 pages 17 line 25 to page 18 line 9 "The risk with a knife is very significant.....extremely high."

¹³⁴ SBPI – 00047 page 5

¹³⁵ Evidence of Alan Smith 27 May 2022 page 78 – 79

attempting to restrain Sheku Bayoh and he was moving, trying to resist arrest and going from being face down to being on his right hand side.¹³⁶

169. The level of resistance displayed by Sheku Bayoh is shown by the airwaves transmissions which follow. At 7.23.13 DS Davidson makes a transmission in which she states

“Roger the males on the ground at the moment we’ve got several officers ‘ve taken a big restraint erm we’ll get back to you however we’re gonna need more control with leg restraints etcetera but he’s down on the ground so there’s no risk at the moment.”

170. When PC Smith attended Sheku Bayoh was on the ground, on his side with the officers at his back. PCs Paton and Walker were trying to get control of his arms. PC Tomlinson was trying to control his legs. However, the officers efforts had proved unsuccessful as Sheku Bayoh was managing to free his arms and pull himself up.¹³⁷ PC Paton was kneeling on the ground and reaching over trying to get control of Sheku Bayoh’s arms.¹³⁸ PC Smith was clear that PC Walker did not have all his weight on top of Sheku Bayoh.¹³⁹

171. At that point PC Smith was cognisant of the fact that the knife was unaccounted for. It looked to him as if Sheku Bayoh was going to imminently break free from those restraining him. He considered the risk of getting close to Sheku Bayoh with the still unaccounted for knife. He considered the use of CS or Pava but was told by another officer that Pava had been used and was ineffective. He then went to draw his CS spray but was told that had also been

¹³⁶ Evidence of Alan Smith 27 May 2022 page 79

¹³⁷ Evidence of Alan Smith 27 May 2022 page 81

¹³⁸ Evidence of Alan Smith 27 May 2022 pages 81-82

¹³⁹ Evidence of Alan Smith 27 May 2022 page 84 line 1-3

ineffective.¹⁴⁰ PC Smith spoke of the pressing need to control Sheku Bayoh's hands because of the unaccounted for knife and the reported behaviour.¹⁴¹

172. At that point he decided to try to take control of Sheku Bayoh's hands and apply a set of handcuffs. PC Smith and PC Paton applied the handcuffs, and the process took 20 to 30 seconds.¹⁴²

173. PC Smith assisted with gaining control of Sheku Bayoh's arms and applying the cuffs and leg restraints. Sheku Bayoh's position during the restraint did not change terribly much. At times he was closer to the prone position and at times he was fully on his side. These deviations in his movement were as a result of him struggling to get free. It is the evidence of PC Smith that he was never close to the prone position for more than a few seconds. Once he was handcuffed it was almost impossible for him to be in the prone position.¹⁴³

174. PC Smith was initially at Sheku Bayoh's front / right hand side, adjacent to his upper body. Once handcuffs were applied, PC Smith moved down to his lower legs and feet in order to apply the leg restraints. PC Smith was assisted by PCs Gibson and McDonough.¹⁴⁴ PC Good also assisted with applying leg restraints.¹⁴⁵ Once the restraints were applied, PC Smith moved away and stood up.

175. The leg restraints were applied to Sheku Bayoh's legs, one at the ankle and one above the knee.¹⁴⁶

¹⁴⁰ Evidence of Alan Smith 27 May 2022 page 86

¹⁴¹ Evidence of Alan Smith 27 May 2022 page 94

¹⁴² Evidence of Alan Smith 27 May 2022 page 96

¹⁴³ Inquiry Statement of Alan Smith SBPI-00042 para 28

¹⁴⁴ Evidence of Alan Smith 27 May 2022 page 92

¹⁴⁵ Evidence of Kayleigh Good 31 May 2022 page 160

¹⁴⁶ The Inquiry Statement of Alan Smith at paras 28-33

176. The handcuffs were applied around the wrists in a palm to palm position at the front.

177. PC Tomlinson was then able to search the right side of Sheku Bayoh for a knife, but was unable to locate one.¹⁴⁷

178. Senior Counsel to the Inquiry asked a witness, Christopher Fenton, to comment on the restraint.¹⁴⁸ It is respectfully submitted that although the evidence before the Inquiry was that he was a psychiatric nurse and therefore had experience in restraining patients, Mr Fenton's experience of restraint is within a clinical setting and therefore, is not comparable. Further, he is not an independent expert. He was present only at some distance from the scene, and for a very short time. As he himself acknowledged, he saw the event for 10 seconds as driving past.¹⁴⁹

179. The use of the handcuffs and leg restraints were entirely justified in the circumstances.

180. The relevant part of the Use of Force SOP is within section 17 on page 23 which provides as follows:

17.3 The use of rigid handcuffs falls into the categories of Control Skills and Defensive Tactics within the Use of Force Options. These types of handcuffs are only a temporary control and restraining device.

17.4 The primary reason for applying handcuffs is safety:

¹⁴⁷ Evidence of Ashley Tomlinson 26 May 2022 page 57

¹⁴⁸ Evidence of Christopher Fenton Day 21 page 31 lines 23-25 and page 32

¹⁴⁹ Evidence of Christopher Fenton Day 21 page 63 lines 12-19 " So, did you--10 seconds in total driving past."

1. *safety to the public;*
2. *safety of the Police Officer / Police Staff member or colleagues; and*
3. *safety of the subject.*

17.5 *The use of handcuffs will be at the discretion of the individual Police Officer / Police Staff member, based on his / her judgement, in often volatile and rapidly evolving circumstances. Officers should always be able to justify their actions. The following are examples of instances where applying handcuffs may be justified:*

1. *where a Police Officer / PCSO judges it necessary to prevent a subject from assaulting, injuring or offering violence to a member of the public;*
2. *where a Police Officer / PCSO judges it necessary to prevent a subject from assaulting, injuring or offering violence to him/herself or other Police Officers;*
3. *where a Police Officer / PCSO judges it necessary to prevent a subject from escaping detention or arrest;*
4. *where a Police Officer / PCSO judges it necessary to prevent a subject from self harming;*
5. *When transporting a subject in a police vehicle from a place of arrest or detention to a police station.*

181. It is submitted that the use of cuffs in this situation was justified, in particular, in terms of 17.5.1 to 17.5.3.

182. The use of leg restraints is dealt with in section 20 of the Use of Force SOP. In terms of that section, they are to be used to compliment the use of rigid handcuffs. Leg restraints are designed to restrict the ability of the custody to kick thereby reducing injuries to officers and the subject, and damage to surrounding property. They should only be used where the actions of the

subject present a risk to the safety of officers and the subject refuses to cooperate with being transported or detained.¹⁵⁰

183. In this situation we heard evidence that Sheku Bayoh was kicking out ferociously and so it is submitted the use of the leg restraints was justified.

Conclusions on the evidence

184. On the evidence before the Inquiry, it is clear that the restraint of Sheku Bayoh was necessary. That was particularly so in the context of a situation in which a knife reported to have been in Mr Bayoh's possession had not been recovered and he had been aggressive towards officers, and violent towards Nicole Short.

185. The evidence of DS Davidson and PC Smith corroborate the need for PC Tomlinson to deliver the baton strike to the Achilles of Sheku Bayoh in order to assist in gaining control. It illustrates that this was not a tactic deployed in the heat of the moment. It was a considered approach to the level of resistance and the real risk of escape when the knife was yet to be accounted for.

186. The evidence of PC Smith illustrates that careful consideration was being given to controlling the situation and the restraint methods.

187. The restraint involved officers senior to PC Smith. Those more senior officers did not take issue with the manner of restraint.

188. It was suggested that the officers involved in the restraint ought to have identified that Mr Bayoh was having a mental health crisis and called an ambulance at the point of restraint.

¹⁵⁰ PS10933 page 25 para 20

189. The term 'mental health crisis' is somewhat lacking in specification. Not only that, but the subsequent explanation for Mr Bayoh's behaviour appeared to be that he had taken drugs, and had become paranoid and aggressive as a result. That information was not known to officers prior to their attendance at the scene.

190. As PC Smith explained in evidence under reference to previous incidents which he had attended involving knives, officers are responding to the behaviour in front of them. They are not in a position, nor are they qualified, to make a medical diagnosis. They have to deal with the behaviour they witness in line with their training and the policies they are required to adhere to on use of force.

191. It is submitted that is what the officers did in relation to Sheku Bayoh.

Chapter 12

Position of Sheku Bayoh during restraint

192. We heard from Mr Graves that the prone or supine positions are not necessarily, in themselves, dangerous during restraint. The issue is whether the individual subject to the restraint is able to breathe.

193. It was the evidence of PC Walker that he shoulder charged Sheku Bayoh to the ground. Initially he was on his back but PC Walker moved him onto his left hand side.¹⁵¹ He was prone at the outset when PC Tomlinson delivered a baton strike to his Achilles as described above. He then went into a press up style motion.¹⁵²

¹⁵¹ Evidence of PC Walker Day 7 page 126 lines 21-25

¹⁵² Evidence of Ashley Tomlinson 26 May 2022 page 24

194. The evidence before the Inquiry, more fully described in the previous section, suggests that Sheku Bayoh was moving constantly during the restraint, struggling against the officers attempts to bring him under control. At times he was closer to the prone position and at times he was on his side. The officers faced significant resistance. Handcuffs were applied to the front in a palm to palm position and the leg restraints were applied one at the ankle and one above the knee.¹⁵³

195. The handcuffs were applied around the wrists in a palm to palm position at the front and once applied it was almost impossible for him to be prone.¹⁵⁴

196. PC Tomlinson searched the right side of Sheku Bayoh for a knife and was unable to locate one.¹⁵⁵

Conclusions on the evidence

197. In summary the evidence suggests that Sheku Bayoh was not in the prone position for the duration of the restraint. He was constantly moving and struggling against the officers involved. As a result, he may have been prone at points, but the evidence was that was never for more than seconds.

Chapter 13

Force applied to Sheku Bayoh during restraint

Evidence

198. During the restraint PC Tomlinson was in the area of Sheku Bayoh's legs.

¹⁵³ Inquiry Statement of Alan Smith SBPI-00042 para 28

¹⁵⁴ Inquiry Statement of Alan Smith SBPI -00042 para 28

¹⁵⁵ Evidence of Ashley Tomlinson 26 May 2023 page 57

199. We heard evidence that PC Smith assisted with applying leg restraints and was at the head of Sheku Bayoh.
200. There is no evidence before the Inquiry that the use of force was excessive. There was no medical evidence to support any such conclusion.
201. The evidence was that Sheku Bayoh was struggling violently and kicking with his legs. That necessitated the requirement for handcuffs and leg restraints.
202. The restraint itself was relatively brief in terms of its duration.
203. It was the evidence of PC Smith that the officers were not applying a prolonged level of downward force onto Sheku Bayoh. They were merely exerting sufficient pressure to stop him pushing himself up in order to get him into a safer position and prevent him from freeing himself.¹⁵⁶ PC Alan Smith applied no weight directly onto Sheku Bayoh.¹⁵⁷

Conclusion on the evidence

204. There was no evidence before the Inquiry that PCs Tomlinson, Smith or Good used excessive force during the restraint.
205. Furthermore, as will be addressed below, there were no findings at post mortem which supported any suggestion of excessive force having been used.

Chapter 14

The point at which Sheku Bayoh stopped breathing

¹⁵⁶ Evidence of Alan Smith 27 May 2022 page 118-119

¹⁵⁷ Evidence of Alan Smith 27 May 2022

206. It was the evidence of PC Alan Smith that at first Sheku Bayoh was unresponsive but breathing. He became unresponsive at the conclusion of the restraint at the point he was rolled onto his side.¹⁵⁸

Chapter 15

First aid by officers

207. Once the leg restraints and handcuffs were applied Sheku Bayoh was rolled onto his left hand side by PCs Walker and Paton.¹⁵⁹

208. At this stage it began to cross Alan Smith's mind that Sheku Bayoh might have been displaying signs of Excited Delirium (ED). He stated that the training in relation to ED was limited and he had no experience of it operationally.¹⁶⁰

209. It was PC Smith's evidence that a period of around one minute had elapsed between him standing up, thinking about ED and then turning his attention back to Sheku Bayoh and realising that he was unconscious.¹⁶¹ Other officers were also in attendance with Sheku Bayoh, however, at the time.

210. After PC Smith established that Sheku Bayoh was unconscious he monitored his breathing. He monitored his breathing by putting his face towards his mouth.¹⁶² At that point he was made aware that PC Tomlinson had struck him to the head with a baton. In response to receiving this information he checked Sheku Bayoh's head for signs of injury.¹⁶³

¹⁵⁸ Evidence of Alan Smith 27 May 2022 page 135

¹⁵⁹ Evidence of Alan Smith 27 May 2022 page 135

¹⁶⁰ Evidence of Alan Smith Day 11 page 138 lines 2 – 8 "As stated the training....contacted immediately.""

¹⁶¹ Evidence of Alan Smith Day 11 page 138 lines 20 -25 and continued on page 139 at lines 1 – 6 "Quite shortly afterwards....had a close look at him."

¹⁶² Evidence of PC Smith Day 11 page 146 lines 1-14 "to see if I got a response....yes."

¹⁶³ Evidence of Alan Smith Day 11 page 140 at lines 5-10 "Once I established....could not find any."

211. PC Tomlinson made PC Smith aware of the baton strikes at the first opportunity. There was no attempt to conceal them.

212. PC Smith continued to monitor Sheku Bayoh having confirmed he was breathing. This comprised watching Sheku Bayoh and checking for changes in his pattern of breathing. PC Smith was able to see that his chest was moving.¹⁶⁴ He also checked for a reaction by pressing his knuckles into the bone at the top of Sheku Bayoh's chest.¹⁶⁵ Once he realised Sheku Bayoh was unconscious but breathing, he summoned an ambulance. The transmission was made at 7.25.17.¹⁶⁶ PC Smith's evidence was that his sole focus was then on keeping an eye on Sheku Bayoh and monitoring his breathing. That continued for 3 to 4 minutes.¹⁶⁷

213. After 3 or 4 minutes of monitoring his breathing PC Smith was concerned that Sheku Bayoh had stopped breathing and so turned him onto his back and carried out a thorough check.¹⁶⁸ PC Smith heard DS Davidson voice a concern that Sheku Bayoh was not breathing suggesting that she had also been monitoring his breathing during this period.¹⁶⁹

Attendance at hospital

214. At this point Sheku Bayoh was on his back. PC Smith had left another officer to control Sheku Bayoh's head. PC Smith put his ear over Sheku Bayoh's

¹⁶⁴ Evidence of Alan Smith Day 11 page 141 lines 18-19

¹⁶⁵ Evidence of Alan Smith Day 11 pages 146-147 25 -21 "you talk about physical stimulus.....yes."

¹⁶⁶ SBPI 000149

¹⁶⁷ Evidence of PC Smith Day 11 page 153 lines 20-22 "I'm keeping an eye onthan that I don't know"

¹⁶⁸ Evidence of PC Smith Day 11 page 143 line 7-16 "So that would have been.....be my best guess."

¹⁶⁹ Evidence of PC Smith Day 11 page 144 lines 9 - 25 " "This said my main focus.....breathing...." "

mouth and was looking down the line of his chest. He was unable to see or hear breathing.¹⁷⁰ This was a technique learnt from First Aid training.¹⁷¹

215. At this point PC Smith told those around him that CPR should be started and PC Walker immediately started chest compressions.¹⁷²

216. It was the evidence of PC Smith that Sheku Bayoh was not turned onto his back initially when unconscious for two reasons. First of all, the correct position for an unconscious casualty is on their side. Secondly, he was concerned about the possibility of a head injury given the information provided by PC Tomlinson that he had struck Sheku Bayoh to the head with a baton.

217. At 7.29.20 Scott Maxwell made a transmission requesting that the ambulance be chased because Sheku Bayoh was not breathing.¹⁷³ PC Smith had little or no recollection of Sergeant Maxwell making that transmission.

218. The leg restraints and handcuffs were left in place while CPR was carried out. These made no difference to the CPR and, as explained by PC Smith, unfortunately those in police custody do, on occasion, fake unconsciousness. Officers have therefore to be mindful of that risk in such circumstances.

219. Sergeant Maxwell made a further call for an ambulance at 7.26.41. The ACR confirmed at that point that two ambulances had been called, one for Nicole Short and one for Sheku Bayoh.

¹⁷⁰ Evidence of PC Smith Day 11 page page 149 lines 17-25 "It was only after you noticed.....hear breathing""

¹⁷¹ Evidence of PC Smith Day 11 page 150 lines 4-6

¹⁷² Evidence of PC Smith Day 11 page 150 lines 12-15

¹⁷³ Evidence of PC Smith Day 11 page 152

220. There is to be a further hearing which will concentrate on training. However, it is worth noting at this stage that PC Smith's first aid training was, at least at that time, basic.¹⁷⁴
221. In terms of CPR, PC Walker was performing chest compressions. PC Smith attempted to administer breaths during CPR. However, there was difficulty in doing so. He attempted to fit a mouth shield but Sheku Bayoh's jaw was tightly clenched. He had to insert his fingers into Sheku Bayoh's mouth. The shield was ineffective. PC Smith's mouth became contaminated with bodily fluid and so the decision was taken to stop the breaths.
222. After the ambulance arrived, the paramedics began treating Sheku Bayoh. PC Smith drove the ambulance to the hospital to Victoria Hospital which was 3 or 4 minutes away which allowed the paramedics to continue to treat Sheku Bayoh on the trip.¹⁷⁵

Training of and role played by PC Smith

223. PC Smith's training record is PS00057.
224. In relation to the training of PC Smith, he was, at the time of the incident, an Officer Safety Training Instructor. In that role he instructed other officers during their annual officer safety training. He did not train OST Trainers, however. The training he had received did not confer authority to supervise in situations such as these no supersede the authority of senior officers.
225. All police officers undertake the Scottish Police Emergency Lifesaving Course (SPELS) which is, approximately, a 6 hour course and equivalent to the Emergency First Aid at Work Qualification.

¹⁷⁴ Evidence of PC Smith date 11 page 156

¹⁷⁵ Evidence of PC Smith day 11 page 165

226. SPELS covers Principles of First Aid, Infection Control, Unconscious breathing and non-breathing casualties, Bleeding, Choking and Cardiopulmonary Resuscitation (CPR).
227. All officers present at the scene had undertaken SPELS training.¹⁷⁶
228. In addition to SPELS training, PC Smith had obtained the HSE First Aid at Work qualification which covered all of the above elements and also anaphylaxis, shock, poisoning, burns, eye injuries, common and minor illnesses, asthma, fractures, head injuries, epilepsy, diabetes, equipment and record keeping. He was not the only officer present who had received this training and it was not designed for the sole purpose of assisting with operational policing.

Conclusions on the evidence

229. While PC Smith was taking the lead in responding to the developing aspects of the incident, this could have been undertaken by anyone at the scene.
230. Importantly, PC Smith was not the most senior officer at the scene.
231. Sergeant Maxwell and DS Davidson, who both outranked PC Smith and were in supervisory positions, arrived at the scene and observed PC Smith administering first aid to Mr Bayoh. DI Robson was also present. They did not intervene, nor did they instruct him to do anything differently nor take charge of the incident. They did not instruct the removal of handcuffs or leg restraints.
232. It is submitted that the first aid administered by PC Smith and the other officers was in line with their training and appropriate in the circumstances.

¹⁷⁶ PS00055; PS00057; PS00059; PS00061; PS00062; PS00063 ; PS00066 ; PS00067 ; PS00233

233. PC Smith provided appropriate first aid by placing Sheku Bayoh in the recovery position while he was unresponsive but breathing; by monitoring his breathing and turning him over when breathing stopped and commencing CPR.¹⁷⁷

234. In response to points raised by Joanne Caffrey it should be noted that PC Smith was not aware of baton strikes when he made the first transmission and that initially Sheku Bayoh was observed to be unconscious but breathing and so it would not have been appropriate to commence CPR at that point. There was no evidence before the inquiry that Sheku Bayoh was ever breathing abnormally. He went from breathing to not breathing.

235. It was not possible upon arrival at the scene for PC Smith to stop and talk to his colleagues in detail in what was an evolving situation. We have heard that at 7.21.38 Sheku Bayoh was still actively resisting arrest and his hands had not been secured. It was therefore not appropriate to call an ambulance at that stage.

Chapter 16

The knife

236. A knife fitting the description of the one carried by Sheku Bayoh was recovered by DC Connell on the north side of Hayfield Road across from the roundabout with Hendry Road. It was found on the grass a few feet from the pavement. The knife was photographed in situ.¹⁷⁸

Chapter 17

¹⁷⁷ Evidence of Martin Graves 28 November 2022 page 97

¹⁷⁸ Inquiry Statement of DC Connell SBPI-00107 at paragraph 14; image PS13559 and map PIRC-01058. See also images of knife at PIRC-01176

Cause of Death

Evidence

Drugs

237. Sheku Bayoh was conveyed to the Victoria Hospital in Kirkcaldy where resuscitation was continued. Ultimately, he died as a result of a cardiorespiratory arrest which is a fatal cardiac arrhythmia. Life was pronounced extinct at 9.04.¹⁷⁹

238. Sheku Bayoh had taken MDMA and Ecstasy.¹⁸⁰ The toxicology results revealed concentrations of MDMA, MDA and alpha-PVP.¹⁸¹

239. Alpha-PVP is relatively new synthetic cathinone stimulant drug with similar effects to other stimulant drugs such as cocaine, amphetamine and methamphetamine.¹⁸² In discussing its effects, Professor Eddleston drew on a study from the Russian town of Yekaterinburg, which study is referenced in his report and statement.¹⁸³

240. The concentration of alpha-PVP in Sheku Bayoh's blood was 70 mcg/L which is within the range of doses recorded as having proved fatal to other users.¹⁸⁴

241. Intense paranoia is a side effect of alpha-PVP. The person becomes overstimulated and often violent and aggressive. They start fighting against whatever they encounter.¹⁸⁵

¹⁷⁹ SBPI – 00304

¹⁸⁰ SBPI -00071

¹⁸¹ COPFS-02253(a) Toxicology Report and SBPI – 00317 para 85

¹⁸² SBPI – 317 para 12

¹⁸³ SPBI – 317 para 18

¹⁸⁴ SBPI -00317 para 88

¹⁸⁵ SBPI – 00317 para 82

242. It was the evidence of Dr Shearer and Professor Eddleston that the MDMA taken by Sheku Bayoh could also have killed him.¹⁸⁶ However, it was the opinion of Professor Eddleston that alpha-PVP is more likely to prove fatal as sudden death is not a common problem with MDMA.
243. The evidence before the Inquiry also made clear that the toxicity levels caused by such drugs is not necessarily dose dependent for either alpha-PVP or MDMA. Some people are likely sensitive and others are not.¹⁸⁷
244. It was the opinion of Professor Eddleston that Sheku Bayoh's exposure to alpha-PVP was more likely responsible for the drug induced psychosis.¹⁸⁸ Psychosis is present in around 60% of patients with alpha-PVP intoxication.¹⁸⁹
245. The most common effect of MDMA but also, and more particularly alpha-PVP, is tachycardia.¹⁹⁰ Restraint can cause hypoxia (a lack of oxygen in the body). When the tachycardia, arising from the drug taking, is added to hypoxia caused by restraint, that could well be sufficient to cause a cardiac arrest. The ultimate effect is on the operation of the heart, but it is the initial effect of the drugs on the brain and as a consequence the cardiovascular system as a whole which are particularly relevant here. The drugs drive the speeding up of the cardiovascular system. In someone who is hypoxic, through for example exertion or some other reason, there is then a risk of having a ventricular fibrillation or chaotic heart rhythm leading to death.
246. The anabolic steroid Nandrolone was also present in Sheku Bayoh's blood. A record in Sheku Bayoh's GP records from 2011 suggested that he had

¹⁸⁶ SBPI – 00304 page 178

¹⁸⁷ Professor Eddleston Statement para 118

¹⁸⁸ Professor Eddleston Statement pages 28-29

¹⁸⁹ SBPI – 00317 para 101

¹⁹⁰ SBPI – 00317 para 78 and Transcript of the Evidence of Professor Eddleston 20 May 2023 page 37-39

been taking Nandrolone for two years on a 6 week cycle.¹⁹¹ Nandrolone is an anabolic steroid commonly used by bodybuilders and associated with cardiovascular complications.¹⁹² It was the evidence of Professor Eddleston that the Nandrolone and MDMA could have increased the risk of developing psychosis albeit on the balance of probabilities he thought that unlikely.¹⁹³

Incapacitant Sprays

247. The evidence suggested that the Pava and CS sprays would have made no contribution to the death.

Rib fracture

248. Professor Anthony Freemont, Osteoarticular Pathologist, concluded that the isolated fracture to the first rib occurred in life, probably as a consequence of a fall onto an outstretched arm. He felt it was more likely to have occurred during the altercation with Mr Saeed, prior to the encounter with the police officers. However, he expressed caution regarding his timings due to the fact Sheku Bayoh had been regularly taking anabolic steroids.¹⁹⁴

249. Professor Freemont did not consider the injury had been caused by a direct external trauma such as a baton strike due to the absence of damage to other tissue.¹⁹⁵

250. None of the other experts who gave evidence before the Inquiry were in a position to contradict the findings of Professor Freemont. They were not qualified to do so.

¹⁹¹ COPFS – 02380

¹⁹² Evidence of Professor Eddleston 20 May 2023 at page 66 line 24-25

¹⁹³ Evidence of Professor Eddleston 20 May 2023 at page 69 line 21-22

¹⁹⁴ SBPI-00310 para 118 and Evidence of Professor Freemont Day 57 pages 27-28

¹⁹⁵ Evidence of Professor Freemont Day 57 page 87 lines 13-18 “I’m no expert....damage to other tissues.”

Restraint

251. It was the evidence of Dr Shearer that the struggle against restraint would have led to metabolic disturbances. The struggling was akin to exercise and with the body and muscles continually moving, the result would have been acid production in the muscles and a build up of lactic acid. An excess of acid can cause adverse effects on the heart. Sheku Bayoh's heart was already under stress as a result of his earlier drug taking. In such circumstances, all of the factors can work in combination.¹⁹⁶

252. Dr Shearer was clear that the petechial hemorrhages are not pathogenic for asphyxia and could be explained by the resuscitation. She was unable to say that asphyxia played a part in the death.¹⁹⁷

253. In relation to the contribution of the restraint, it is submitted that at most, the restraint may have contributed to the overall cause of death in so far as Sheku Bayoh's response to it was to struggle which, in turn, had an effect on his body.

254. However, it is respectfully submitted that the evidence does not support any conclusion to the effect that the restraint caused asphyxia. The evidence did not suggest that Sheku Bayoh was prone for any length of time. The restraint in its entirety lasted around 4 minutes. The petechial hemorrhages could be explained by the resuscitation.¹⁹⁸

¹⁹⁶ SBPI-00304 para 144

¹⁹⁷ SBPI-00304 para 175

¹⁹⁸ Evidence of Dr Shearer 9 May 2023 page 75 lines 8-13 "The third thing to consider...have to be considered."

255. Dr Shearer recorded minor lacerations and bruising during the post mortem. She did not record any injuries which suggested excessive use of force.¹⁹⁹
256. Dr Maurice Lipsedge is a Consultant Psychiatrist who has a special professional interest and expertise in Excited Delirium and acute behavioural disturbance. He explained that when an individual suffering from paranoia is restrained, they will struggle against restraint because they believe they are going to be harmed and this creates a vicious circle of struggling and fear on the part of the restrained person which causes the restraining officers to exert more pressure. He explained that from the patient's point of view it is a life and death struggle and from the restraining officer's point of view, it is a lack of co-operation.²⁰⁰
257. Dr Lipsedge discussed the merits of de-escalation but nonetheless, did acknowledge in his evidence that there are occasions when safety becomes the top priority such as when a person is armed with a gun or a knife or if they become a danger to themselves or others. He also acknowledged that when someone attacks then there can be no option but to restrain.²⁰¹
258. Mr Lipsedge also acknowledged that Mr Saeed felt his own life was in danger given the ferocity of the assault on him.²⁰²
259. Dr Lipsedge pointed out that sometimes the appearance of a person in a uniform exacerbates a paranoid state whereas a person appearing as a civilian might be potentially reassuring.²⁰³ His evidence was that there are well

¹⁹⁹ Evidence of Dr Shearer 9 May 20203 page 90 line 12-17 "Everything is down at the minor end here....any of these injuries."

²⁰⁰ Dr Maurice Lipsedge 11 May page 15 line 18 to page 16 line 7 "This might be an opportunity to explain what happens in theselack of co-operation."

²⁰¹ Dr Maurice Lipsedge 11 May 2023 page 25 lines 17-24 "Of course....physical restraint."

²⁰² Dr Maurice Lipsedge 11 May 2023 page 26 line 23 to page 27 line 2

²⁰³ Dr Maurice Lipsedge 11 May 2023 page 80

documented examples of black people in the United States who are not psychologically disturbed but who, when approached by police officers, are so terrified due to previous experiences of racism that a life and death struggle ensues.²⁰⁴

260. There is evidence before the inquiry in the form of the evidence of Collette Bell and the statement of Mr Saeed that Sheku Bayoh did have hostility towards police officers. The evidence of Collette Bell in that regard was put to Dr Lipsedge by Senior Counsel to the Inquiry and he acknowledged that was the type of thing he was referring to.²⁰⁵

261. It is submitted that the evidence of Mr Saeed, Collette Bell and Dr Lipsedge supports the proposition that Sheku Bayoh would have been highly unlikely to react in a positive manner to any police officer. It follows that de-escalation techniques were unlikely to be effective.

262. It is further submitted that Dr Lipsedge's evidence regarding the ferocity of the struggle which will ensue during such restraint supports the proposition that once the officers required to use restraint the resultant struggle was inevitable.

263. Professor Eddleston's evidence was that psychosis was a well recognised complication of stimulant drug use with a poor prognosis when public safety requires physical restraint without medical support.²⁰⁶ He explained that medical support is about having a clinician around, a paramedic, doctor or nurse who is able to give medicines that will calm a situation down.²⁰⁷ This is not funded, however. It is not the standard

²⁰⁴ Dr Maurice Lipsedge 11 May 2023 page 82

²⁰⁵ Dr Maurice Lipsedge 11 May 2023 page 83 line 16 – page 84 line 14 “you mentioned just a moment ago...with the police.”

²⁰⁶ Evidence of Professor Eddleston page 114-115

²⁰⁷ Evidence of Professor Eddleston page 114

approach.²⁰⁸ Professor Eddleston further explained that the prognosis was poor because Sheku Bayoh was not understanding what was going on and was fighting against the restraint. If there had been a doctor present to administer drugs then the prognosis would have been better but Professor Eddleston could not say how good.²⁰⁹

264. It is important, at this juncture to recognise once again that the officers, when attending the incident, had no information regarding Sheku Bayoh. They were not, nor could they have been, aware of his earlier drug taking nor his paranoia as regards his race and/or police officers and the potential impact thereof.

Sickle cell trait

265. It was discovered that Sheku Bayoh had Sickle Cell Trait (SCT).

266. Professor Lucas, Consultant Histopathologist, produced an opinion to the Crown on the part played by SCT in the death of Sheku Bayoh. He produced a supplementary report, an Inquiry statement and was called as a witness during the Cause of Death Hearing.

267. In his opinion to the Crown, Professor Lucas' view was that SCT contributed to Sheku Bayoh's death. Since then, has altered his view. He stated most recently that he now considered SCT was a less important factor than struggle against restraint and recreational drug abuse.²¹⁰

268. He was clear, however, that assessment of the amount of sickling is entirely subjective and is based upon the experience of the histopathologist.²¹¹

²⁰⁸ Evidence of Professor Eddleston page 114

²⁰⁹ Evidence of Professor Eddleston pages 113-114

²¹⁰ SPBI -00314 para 36

²¹¹ SBPI—00314 para 18

269. He changed his view on the importance of SCT in the whole episode as a result of a discussion with Nat Cary, the Pathologist originally instructed by the Bayoh Family. He referred to a discussion in which Nat Cary said to him “[t]here was a hell of a lot more restraint than that.”²¹²
270. He referenced discussion with Nat Cary in which Mr Cary said “it’s not so simple. There was an awful lot of restraint processes, and so on going on.”²¹³
271. When asked what further information would have been of benefit to him, Professor Lucas indicated that he would have benefited from more detail about the confrontation between Sheku Bayoh and the police.²¹⁴
272. It is submitted that the opinion of Professor Lucas should be treated with caution. He retreated from his first opinion regarding the significance of Sickle Cell Trait. It is submitted that he had everything he required to provide an opinion when instructed by the Crown. His evidence suggests that his change of opinion was due to influence exerted upon him by Nat Cary.
273. Professor Lucas was clear in his evidence that he was struck or impressed by the amount of sickling in all the organs.²¹⁵ In medical terms he justified his departure from his original opinion on the basis of the amount of sickling in the lungs. However, that was not new information but rather information available to him at the time he gave his original opinion.
274. Overall, it is submitted that the part played by sickle cell trait may have been greater than explained by Professor Lucas in his most recent expert

²¹² Evidence of Sebastian Lucas page 60 lines 22 -25

²¹³ Evidence of Sebastian Lucas page 68 lines 68-135

²¹⁴ Evidence of Sebastian Lucas page 71 lines 7-9

²¹⁵ Report of Professor Lucas COPFS -00084 page 3

opinion and the opinion expressed in his first report should be preferred on the basis it was provided absent from influence by others.

Conclusions on the evidence

275. There were no injuries identified at post mortem to suggest the restraint was excessive. The first rib fracture most likely occurred during the altercation with Mr Saeed.

276. It is submitted that the opinion of Professor Lucas regarding the sickling should be treated with caution due to his change of position which appears to have arisen in part at least as a result of influence from Nat Cary.

277. The evidence of Dr Lipsedge suggests that, given Sheku Bayoh's feelings regarding police officers, any police contact was unlikely to have yielded a positive result. There is therefore not only no evidence before the Inquiry that engaging Mr Bayoh in conversation, as has been suggested, or offering him a cup of tea, would have been successful in getting through to him, there was evidence to the opposite effect. In light of Dr Lipsedge's comments, it was highly unlikely such efforts from officers would have succeeded.

278. Both Dr Lipsedge and Professor Eddleston were clear that those with drug induced paranoia are likely to fight whatever they encounter and if they have a dislike of the police, they may feel as if they are in a life and death struggle.

279. Professor Eddleston was clear that restraint without medical staff on hand is far from ideal. His evidence was that once restraint was necessary, the prognosis was poor. It would have been better had medical professionals been present and able to administer drugs but he was unable to say how much better. However, there was no evidence before the inquiry that such a procedure is even available.

280. These officers did not have medics available to assist. The suggestion that they ought to have treated it as a medical emergency and called an ambulance is, respectfully, unrealistic. They were all asked if they had considered the possibility of a mental health crisis. Interestingly, that term has never been defined. Further, it fails to take account of the fact that the officers had none of the information regarding Sheku Bayoh's drug taking, paranoia or his earlier acts of violence towards his friends.
281. PC Smith was clear in his evidence that he was focused on the knife and the possibility Sheku Bayoh was armed. He described being focused on his hands during the restraint. It is submitted that given how quickly matters evolved and the level of resistance from Sheku Bayoh, they did not have an opportunity to call an ambulance.
282. It is submitted that any contribution of the restraint towards the death was limited to the physiological effects of Sheku Bayoh struggling against restraint. There is insufficient evidence before the Inquiry to draw the conclusion that the petechial haemorrhages were as a result of asphyxia.
283. It is respectfully submitted that the evidence before the Inquiry was that it was the drugs that resulted in Sheku Bayoh's death.
284. The expert medical evidence indicates that, but for the consumption of alpha-PVP, Sheku Bayoh would likely not have become paranoid and violent and had to be restrained. In addition, a further effect of the drugs was to make him struggle against the restraint which in turn led to metabolic disturbances.
285. In short, the expert medical evidence supports the conclusion that had Sheku Bayoh not taken controlled drugs, and in particular the alpha-PVP, he would not have died.

Chapter 18

Causation

286. The Inquiry has produced a law and practice note which makes reference to the principles of causation applicable in delictual actions for damages. It is submitted that the Inquiry should exercise caution when applying those principles, which have developed under reference to the specific legal tests applicable and underlying policy in such cases, in the present circumstances.

287. Further, the note refers to the “material increase in risk” test. The note makes passing reference to the limitations of that principle. It is submitted that the principle, derived from the case of *Fairchild v Glenhaven Funeral Services Ltd* [2002] UKHL 22, does not assist where there are a number of qualitatively different causal events. The principle has been applied largely in industrial disease cases where there have been a number of exposures to the same substance such as asbestos.

288. Accordingly, it is submitted that the application of that principle in these circumstances is particularly inappropriate, where a number of qualitatively different factors are under consideration.

Chapter 19

Race

289. The Inquiry is to have a separate hearing on ‘race’ at a later stage. Accordingly, officers Smith, Good and Tomlinson reserve the right to make further submissions on this subject at that stage.

290. However, on the evidence thus far presented before the Inquiry, so far as the officers, Smith, Good and Tomlinson are concerned, it is clear that race

played no part in their assessment of the risk or in their approach to the incident more generally.

291. Kayleigh Good was asked about why the terror level crossed her mind.
292. Her response was entirely reasonable. Memos regarding the terror threat were, at that time in the run up to the incident, common place.
293. A stay safe message from Ruaraidh Nicolson on 19 February 2015 highlighted that the threat to the UK from International Terrorism remained high. Safety was stated, in the message, to be a matter of a personal responsibility. The message directed officers to consider the actions they would take and to make a personal plan. Similar messages from DCC Livingstone and ACC Higgins.²¹⁶
294. There is nothing unusual or unreasonable about the evidence of PC Good around the issue of a terror threat.
295. The necessary conclusion to be reached from the evidence remained that race played no part in the response of officers Smith, Good and Tomlinson.

²¹⁶ PS01319; PS01314 and PS09749

