

## **Sheku Bayoh Public Inquiry**

### **Submissions to the Inquiry on behalf of Alan Paton**

**June 2023**

The position of retired officer Paton is as stated in the opening statement made on his behalf in May 2022.<sup>1</sup> At the time of the incident he had completed 14 years service. He was on duty on the 3 May 2015. He was first to attend to the call regarding the conduct of Sheku Bayoh.

He legitimately attended this incident, assessed the situation, and made tactical decisions which were justified in all the circumstances.

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

Alan Paton was faced with a dynamic set of circumstances where decisions had to be taken as a matter of urgency.

The areas that we intend to address within our submissions are as follows:-

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<sup>1</sup> 11 May 2022 page 54 line 2

## **The Initial Response**

- Information Police Scotland had on 3 May 2015, including the threat level and reports made by members of the public, including the information which was conveyed to PC's Walker and Paton
- The initial engagement of PC's Walker and Paton, including the risk assessment enroute, the risk assessment on arrival at the locus and the tactical options deployed
- The other tactical options available and why these options were not appropriate including information that we now have in relation to the background events of 2 and 3 May and in particular the movements and behaviour of Sheku Bayoh in the morning of 3 May 2015

## **The events immediately before and up to the initial restraint**

- The involvement of PC's Short and Tomlinson and whether Sheku Bayoh stamped on PC Short
- The take down and initial restraint.

## **The continued restraint**

- The continued restraint, when PC Paton became involved and his actions, the positions of both PC Paton and Sheku Bayoh and the force applied.
- The realisation that Sheku Bayoh had lost consciousness and first aid administered.

## **Cause of Death**

### **Race**

These issues will all be dealt with as to how they are directly relevant to the interests of Alan Paton.

It is our intention to highlight areas of the evidence available to the inquiry and in particular, to highlight that they support Alan Paton's position.

It is submitted from the outset that the complaints relating to his police service referred to during the evidence of Alan Paton<sup>2</sup> should have no bearing when considering issues before the inquiry. They are irrelevant to the matters at issue within this inquiry and serve no purpose in assisting the chair to fulfil the terms of reference. Statements have been disclosed relating to historical complaints against Mr. Paton arising from his time as a serving police officer with no attempt to balance these complaints with the many positive appraisals arising from that same service.

Alan Paton carried out his responsibilities as a police officer without fear or favour for many years. He carried out his duties diligently and properly. He was asked about various comments allegedly made by him after the events based upon statements given by disaffected members of his family who were themselves never called to give evidence and whose evidence was never tested.

It is further submitted that the adverse effects of events of 3 May 2015 continue to affect Mr Paton and his family. His evident ill health and the medical reports relating thereto should be taken into consideration by the inquiry when assessing his evidence.

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<sup>2</sup> 21 June 2022 page 148 line 11 – page 159 line 9

## **The Initial Response**

Evidence from expert witnesses Joanne Caffrey and Martin Graves will be referred to below. It is submitted that the expertise of Martin Graves should be preferred over that of Joanne Caffrey. This is based upon his level of experience and involvement in his area of expertise. It is submitted his CV speaks for itself.

From the point of view of his evidence this was evidence which took account of the real practicalities of decision making on the streets and the reactions thereto. He was open to dealing with all possible scenarios put to him and was in a position to give his opinion on what was reasonable or not having regards to the operational considerations in the real world. Joanne Caffrey on the other hand gave evidence of what could reasonably be described as a counsel of perfection ignoring the realities of the situation faced by the officers.

### *Information Police Scotland had on 3 May 2015*

#### *Threat Level*

On the 16 Jan 2015 the Police Personnel level was increased to severe. This meant that an attack on police service personnel was highly likely.<sup>3</sup> The threat level remained severe and was in place at the time of the incident in May 2015.

PC Paton recalled at the time of the incident posters highlighting the risk of terrorism were throughout the station.<sup>4</sup>

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<sup>3</sup> PS01314

<sup>4</sup> 21 June 2022 page 19 lines 14-16

He also confirmed that ACC Nicolson had issued a memo highlighting the terrorist level, what they were to do about it and making reference to Lee Rigby.<sup>5</sup> This message re-iterated that attack was highly likely and referenced recent attacks including the murder of Fusilier Lee Rigby on the streets of Woolwich.<sup>6</sup>

Also in his evidence, he stated that there was a 'Strong rumour going about that a female officer was going to get injured by a lone wolf' <sup>7</sup>...'it was common knowledge' <sup>8</sup> and although PC Ferrier<sup>9</sup> in her search of the Scottish Intelligence Database could not find anything relevant to the above, PC Geddes recollected that 'there was intelligence that a female police officer was going to be attacked'<sup>10</sup> and PC Good in her evidence when asked 'you've mentioned a briefing concerning intelligence about an attack on a female officer...do you recall?' to which she replied 'I can't remember, I think it's when I was at Tulliallan'.<sup>11</sup>

It would be fair to suggest to the inquiry that although not an official briefing or memo, it seems there has been at least a rumour circulating within Kirkcaldy police office about the potential attack on a female officer.

Martin Graves was able to provide further information in relation to this is so far as, there had been intelligence and circulations from the counter-terrorism command in relation to the possibility of officers being lured into situations whereby the primary objective was a lone wolf or a lone terrorist or a terrorist cell to actually attack and kill a police officer on the UK mainland. <sup>12</sup>

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<sup>5</sup> 21 June 2022 page 19 lines 16-19

<sup>6</sup> PS 09749

<sup>7</sup> 21 June 2022 page 26 line 24 – page 27 line 2

<sup>8</sup> 21 June 2022 page 27 line 10

<sup>9</sup> 17 May 2022

<sup>10</sup> 22 June 2022 page 168 12-13

<sup>11</sup> 31 May 2022 page 142 lines 19-25

<sup>12</sup> 28 Nov 2022 page 99 line 11-18

### *Reports from the Public*

The inquiry has heard evidence that within a period of 8 minutes, 6 separate calls had been made by members of the public<sup>13</sup> to the police reporting a black man, carrying a knife, thumping a car, trying to hit cars, jumping in front of cars and on one occasion approaching a car.<sup>14</sup>

These were graded level 1 calls by the ACR which applies to calls that involve immediate threat to life and are high risk.

### *Information Conveyed to PC's Paton and Walker*

Three airwave transmissions detailing the calls were made to Kirkcaldy.<sup>15</sup>

Airwave transmission at 07.16.32 'disturbance ongoing, male armed with a knife, African looking male chasing someone may be carrying a knife' description given. At this point PC's Paton and Walker were enroute to another call and on hearing the transmission did a U-turn and headed in the direction of the knife call.<sup>16</sup>

At 07.17.04 another transmission ' yeah...that's another grade 1 call coming in for Victoria Road Kirkcaldy. Male armed with a knife. Male in possession of a large knife. A black man wearing a white t-shirt and jacket walking along the street with a large knife in his right hand, about a 9-inch blade'.

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<sup>13</sup> Harry Kolberg PS0002 and PS0005, Alan Pearson PIRC 01383, Joyce Joyce PIRC 01388, Linda Limbert PS 0006 and Simon Rowe PS 0001

<sup>14</sup> 17 May 2022 page 57 lines 6-8 (although is not clear from the call if the word 'approach' was used)

<sup>15</sup> Detailed within audio and visual timeline SBPI 00047

<sup>16</sup> 21 June 2022 page 180 lines 13-14

At 07.19.54 transmission from PC Paton 'roger, that's us approaching locus'. Then at 07.19.58 ' that's another call saying he was seen walking in the direction of the hospital in the middle of the road'.

These three calls were all the information that PC's Paton and Walker had when they attended the locus. Given the information that they had, the actions of Sheku Bayoh could have resulted in offences under Criminal Law (Consolidation) (Scotland) Act 1995,<sup>17</sup> Criminal Justice and Licensing (Scotland) Act 2010<sup>18</sup> or common law offences such as breach of the peace and vandalism.

Any officer attending would have had lawful authority to detain and arrest on the basis that they had reasonable grounds for suspecting that he had committed a crime as described above.<sup>19</sup> All officers have a duty to prevent crime, maintain order and to protect life.<sup>20</sup>

### Engagement with Sheku Bayoh

#### *Risk assessment undertaken enroute to locus*

In his evidence<sup>21</sup> Alan Paton confirmed that it took him around one to two minutes to arrive at Hayfield Road. He travelled up Hendry Road and turned right at Gallaghers public house into Hayfield Road.

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<sup>17</sup> S49(1) or S47(1)

<sup>18</sup> S38(1)

<sup>19</sup> S14 Criminal Procedure (Scotland) Act 1995

<sup>20</sup> S20 Police and Fire Reform Act 2012

<sup>21</sup> 21 June 2022 page 11 lines 2 – 11

It was not so much of a concern that all units had been called, as that was what PC Paton 'had come to expect with knife incidents, incidents of threatening behaviour, calls that could get easily out of hand...all units, drop everything and go'.<sup>22</sup>

It is undoubtedly the position of all officers involved in this incident that the initial assessment of risk was that this was a high-risk incident.

*Risk assessment on arrival at locus*

At 7.20.13<sup>23</sup> Inspector Stewart makes a transmission 'Area control room to set attending...I am monitoring this from an ARV perspective...if you get sightings of the male you need to make an initial assessment yourself and feedback through straight away and I will listen on the channel'.

When this was put to Alan Paton in evidence he could not recall hearing that message but confirms even if he did, it was not clear what he was saying.<sup>24</sup> In so far as, they needed to know if an ARV would be attending or not.

In any event, it is likely from the audio and visual timeline<sup>25</sup> that both PC's Paton and Walker were already out of the vehicle at the time that radio message was transmitted and that this would in all likelihood not be heard as they would now be dealing with the suspect 'in the heat of the situation' <sup>26</sup>

It is accepted by PC Paton that he did not provide the control room with feedback, mainly due to the rapid nature with which the incident evolved and that there was no opportunity for him to feedback any information. It is clear from the above

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<sup>22</sup> 21 June 2022 page 20 lines 10-17

<sup>23</sup> SBPI 00047

<sup>24</sup> 21 June 2022 page 13 line 9-11

<sup>25</sup> SBPI 00047

<sup>26</sup> 21 June 2022 page 14 line 10



transmission that Inspector Stewart was depending upon an update before making a decision to deploy an ARV.

It is accepted that it might have been expected from a reasonable officer to feedback, however, it is submitted that PC Paton should not face criticism for his lack of radio contact, as Mr Graves pointed out 'in those sort of situations, bearing in mind the level of risk the officers perceived, that was probably one of the first things to go out the window because they become focussed on the incident rather than on the impact on others and the bigger picture...they will have become very focussed on what's in front of them'.<sup>27</sup>

He goes on to explain that this is very common, that the original officers will not feedback because they are dealing with a situation and the second or third unit will give the information to control room. Common sense would also suggest this to be a likely scenario.

When they approached, Mr Bayoh was on the roadside at the locus, facing toward Gallaghers pub. Alan Paton describes him as 'walking briskly'<sup>28</sup> at this time. His first thoughts were 'that's our man'<sup>29</sup> based on the description of his clothing, where he was at the locus, and he was black.

Terrorism was considered by PC Paton at this time, as he confirmed it is something he considers with every knife call<sup>30</sup> he does so until it can be ruled out. This risk assessment is based on the threat level as described above. Martin Graves was able

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<sup>27</sup> 25 Nov 2022 page 154 lines 1-7

<sup>28</sup> 21 June 2022 page 17 line 11

<sup>29</sup> 21 June 2022 page 18 line 23

<sup>30</sup> 21 June 2022 page 19 lines 10 -13

to opine that if this was in an officer's thought process then it may well impact on their decision-making process.<sup>31</sup>

He had the threat level in his mind as he approached the locus but his concern at that time was protection of the public. He explained in his evidence that 'this large guy using...not just carrying, but using a knife on innocent members of the public and their property...this needed drawn to a conclusion as soon as possible, without the attendance of an ARV or a dog...somebody had to deal with it. if it hadn't been dealt with it would have gone pear-shaped'.<sup>32</sup>

When they approached Sheku Bayoh, Alan Paton confirmed he could not see the knife in his hands (and that his hands were palms-out), but he did not know if he had the knife or not and that his view was that the situation needed controlled. It is his position that the knife could have been taken from a waistband, a sock...anywhere.<sup>33</sup> He could have planted the knife and then cause damage.<sup>34</sup> It would be a reasonable inference for the Inquiry to make that Sheku Bayoh threw the knife away when he either heard the sirens or saw the police vehicle moments before the first officers arrived having regard to where it was found subsequently.

The risk to the public was forefront in his mind. '...this situation was pressing to get control...protect the public, protect other officers, protect Bayoh...'.<sup>35</sup> Martin Graves in his evidence agrees with this assessment, in so far as ' it was a high across the board for all parties concerned'.<sup>36</sup>

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<sup>31</sup> 28 Nov 2022 page 99 lines 21- 25 and page 100 lines 1-3

<sup>32</sup> 21 June 2022 page 20 lines 23 – page 21 line 5

<sup>33</sup> 21 June 2022 page 24 lines 4-5

<sup>34</sup> 21 June 2022 page 89 lines 6-8.

<sup>35</sup> 21 June 2022 page 24 lines 12-14

<sup>36</sup> 25 Nov 2022 page 133 lines 4-5

Although it was put to him that there weren't many members of the public around, so what was your concern at that stage that he might stab someone? Mr Paton is able to explain that '...there are houses all along one side of the street and that it only takes 10 seconds and then you've got a family of five...' he could have, perhaps tried a car door, stabbed someone in a car, stabbed somebody through a window of a car...' <sup>37</sup> 'My main priority was to intervene before he ended up stabbing a member of the public'<sup>38</sup>. He was also concerned for officer safety, 'If they are prepared to use it on other members of the public and their cars...then he would use it on police officers' <sup>39</sup>.

This is echoed in the evidence of Martin Graves, who agrees with the assessment of risk being high, primarily because of the allegations in relation to a knife and the 'relevant level of force that may be required to meet that risk would likely be quite high'<sup>40</sup> and that 'there is a balancing act between sort of risk to the three...those three areas, but the predominant overview is that the police are responsible for the safety of the public, therefore they may have to act and may have to put themselves in a position of risk to mitigate risk to the public' <sup>41</sup>.

### *Sheku Bayoh's appearance*

PC Paton in his evidence was able to recall being 'aware he was on something...his eyes were bulging out of his head' <sup>42</sup> I noticed when I first saw him<sup>43</sup> he also observed that 'With a lot of synthetic drugs you don't feel temperature...it was pissing down with rain and blowing a gale...and he's wearing a wee t shirt'<sup>44</sup>

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<sup>37</sup> 21 June 2022 page 25 line 25 – page 26 line 13

<sup>38</sup> 21 June 2022 page 89 lines 2-3

<sup>39</sup> 21 June 2022 page 26 line 19-24

<sup>40</sup> 25 Nov 2022 page 133 lines 10-12

<sup>41</sup> 25 Nov 2022 page 165 lines 14-19

<sup>42</sup> 21 June 2022 page 30 line 25

<sup>43</sup> 21 June 2022 page 31 line 13

<sup>44</sup> 21 June 2022 page 31 lines 4-7

although he went on to explain later in evidence, he had no knowledge about Mr Bayoh's drug use at that particular time. 'I can only describe him as a zombie on that morning'<sup>45</sup> he had a one track mind. Staring...oblivious to what is going on.'

He also considered at this time, that this may be a mental health crisis but explained that that would not change things whether someone has a medical matter or not when someone has a big knife to stab at cars, kick things...you still have to deal with it promptly, with clear, concise commands.<sup>46</sup> It has to be acknowledged that Zahid Saeed, Sheku Bayoh's best friend, at no time considered an ambulance ought to be summoned despite his opportunity to observe him for some time. The neighbour Neil Morgan did not call an ambulance. It is in our submission not reasonable to expect PC Paton to deal with this incident as a medical emergency as opposed to the serious public order incident which it was.

#### *Tactical option deployed*

The tactical option deployed by PC Paton was one of verbal dominance, where an officer attempts to control the individual by verbal dominant communication. The purpose is to dominate the individual by getting them to comply with your instructions, to minimise risk or minimise the requirement to use force. Martin Graves describes this as 'verbal shock treatment...using very loud, simple, direct verbal commands to try and verbally dominate the individual into submission'.<sup>47</sup>

He goes on to explain this is the approach that would have been expected from armed response, if they had been deployed, 'that I felt it was the right decision to do, and I still do 100% feel it was the right decision to do'.<sup>48</sup>

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<sup>45</sup> 21 June 2022 page 87 line 12

<sup>46</sup> 21 June 2022 page 88 line 15 - 21

<sup>47</sup> 28 Nov 2022 page 3 lines 1-4

<sup>48</sup> 21 June 2022 page 24 lines 15 and 16

When asked about his eyes – ‘I still thought this situation needs to be taken control of, firmly taken control of as soon as possible and the fact he didn’t have a knife in his hands...I’ve got to take the opportunity to confront him and try and engage in conversation with him’.<sup>49</sup> It is submitted that PC Paton made that decision to engage on the reasonable basis that Sheku Bayoh was likely to cause danger. ‘Gave him a firm command, it wasn’t a situation asking what he had for tea last night...it was a situation for taking control’.<sup>50</sup>

Alan Paton describes telling him to stop, pointing to the ground and saying ‘get down on the ground’ he did this whilst holding his spray in his other hand.<sup>51</sup> He had taken the spray out once he got out of the van. Kevin Nelson confirms that he could hear shouting and there was lots of pointing...they were obviously shouting at him, but they were backing off because he was still walking’.<sup>52</sup>

Would the reasonable officer have taken this approach? It is our submission that yes, they would have. As will be discussed below, there were theoretically other tactical options available but the tactical approach that PC’s Paton and Walker adopted was reasonable and appropriate in all the circumstances.

Referring to the use of force SOP<sup>53</sup>, ‘the police service recognises an individual’s right to life and the maintenance of public order are paramount considerations when contemplating the use of force’<sup>54</sup> and that ‘any force used by a police officer...must be legal, proportionate and reasonable in the circumstances and the minimum

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<sup>49</sup> 21 June 2022 page 31 lines 17-22

<sup>50</sup> 21 June 2022 page 32 lines 9-10

<sup>51</sup> 21 June 2022 page 32 lines 11-13

<sup>52</sup> 31 May 2022 page 20 line 23-25

<sup>53</sup> PS10933 Version 1.03

<sup>54</sup> Ibid section 2.1

amount necessary to accomplish the lawful objective concerned'.<sup>55</sup> Martin Graves explains that 'this does not mean a minimum amount of force, it means a minimum amount to establish your objective'.<sup>56</sup>

Each and every incident is different, and the use of force required is very much dependent on the circumstances. Moreover, officers are not required to try each and every tactical option available to them (assuming they have time), they have to draw what they believe to be the best tactical option to deal with the situation that they are faced with.

Given the information that PC Paton had at this time, and the obvious risks to the public, to Mr Bayoh himself and to the other officers. This verbal dominance approach was assessed to be the best tactical option to utilise and is therefore justified. Although the approach was defined as being 'authoritarian',<sup>57</sup> it is a different form of communication, it is for the officers to decide what they think communication style is best suited to that individual and to that situation.<sup>58</sup>

At this time, officers will be focussed on the response from the individual against the commands that they are issuing. Each time a command is issued and a negative response or resistance by lack of response comes from the subject, they will factor this into the decision-making process... basically I'm telling them to do something, they are not doing it, therefore heightening the threat level and heightening their perception of risk.<sup>59</sup>

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<sup>55</sup> Ibid section 2.2

<sup>56</sup> 28 Nov 2022 page 12 line 25 and page 13 line 1

<sup>57</sup> 28 Nov 2022 page 21 line 10

<sup>58</sup> 28 Nov 2022 page 21 lines 14-17

<sup>59</sup> 28 Nov 2022 page 5 lines 13-21

Sheku Bayoh at this time did not react at all, he kept on walking toward PC Paton. Kevin Nelson observed 'the policeman was walking backwards still facing Mr Bayoh but trying to keep a bit of a distance'.<sup>60</sup> He did not say anything.<sup>61</sup> Officer Paton, at this time could see he was staring and continuing to walk. At this time, he emphasised his spray so Sheku Bayoh could see it and gave another verbal command 'get down on the fucking ground' he kept on walking toward PC Paton<sup>62</sup> again with no reaction. It was at this time PC Paton deployed his CS Spray. He was approximately 12 feet away at this time.

Martin Graves described Sheku Bayoh's behaviour at this point at level 3 in the profiled offending behaviour section of the use of force SOP,<sup>63</sup> this would justify level 3 'control skills' or level 4 'defensive tactics' A level 3 response from an officer would be physical restraint, by placing a hand on the offender up to placing handcuffs on him. In a situation where the person is thought to have a knife concealed on their person this response would be precluded as it would require the officer to be in close proximity to the individual. Due to this being the case in this situation officer Paton was justified in his use of level 4 response, using his CS Spray.

The use of spray at this stage is the least obtrusive option, the minimum amount of force and as Martin Graves describes 'a sensible option'.<sup>64</sup> Some of the spray hit Sheku Bayoh, it had no effect. 'He wiped it off like water and smiled',<sup>65</sup> but the majority caught the wind and hit PC Paton in the face.<sup>66</sup>

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<sup>60</sup> 31 May 2022 page 23 lines 9-11

<sup>61</sup> 21 June 2022 page 19 -20

<sup>62</sup> 21 June 2022 page 35 line 20-25

<sup>63</sup> PS10933 Version 1.03 section 4.6

<sup>64</sup> 28 Nov 2022 page 40 lines 15-16

<sup>65</sup> 21 June 2022 page 38 lines 2-3

<sup>66</sup> 21 June 2022 page 36 lines 16-22

The spray took immediate effect upon PC Paton, when he retreated to the back corner of the van and 'curled up'.<sup>67</sup> It was at this time that he pressed the red emergency button... 'I don't think I have ever actually used the red button...so it was something pretty serious'.<sup>68</sup>

It was at this time PC Paton thought he was going to die, 'I had visions of the Lee Rigby incident...just blood everywhere...I was waiting for something to come down on the back of my neck, or get stabbed in my neck...I genuinely thought I was a gonner'.<sup>69</sup>

He goes on to explain later in evidence that 'I genuinely thought I was going to die...it goes in slow motion...I had visions of and expected a meat cleaver or a knife in the side of the neck...am I going to get home from my shift? I just cannae get that out of my mind'.<sup>70</sup>

#### Other tactical options available

*Sit and observe from a distance.*

This was described as a tactical option where officers would sit in their van and observe Sheku Bayoh as opposed to exiting the vehicle to engage.

Alan Paton confirmed that he did not know if he had the knife or not and that his view was that the situation needed controlled and that this option was 'too big a risk to sit back and contain'.<sup>71</sup> Although Martin Graves suggests that this option was a

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<sup>67</sup> 21 June 2022 page 37 line 10

<sup>68</sup> 21 June 2022 page 96 lines 8-14

<sup>69</sup> 21 June 2022 page 40 lines 13-18

<sup>70</sup> 21 June 2022 page 94 lines 22-25 and page 95 lines 1-7

<sup>71</sup> 21 June 2022 page 24 lines 9-10



viable tactical option,<sup>72</sup> but again that has to be balanced with their perception of risk to the public and although no one is there, that could have changed at any time. It is submitted that this was not an option which was realistic in the particular circumstances of this situation. The officers had reasonable grounds to suspect that Sheku Bayoh continued to have possession of a knife. There were houses nearby. There was the prospect of vehicular traffic arriving which they knew Sheku Bayoh had been threatening already. They may not have been in any position to prevent harm to a member of the public or Sheku Bayoh himself. The geography of the area meant that it would be difficult to monitor him if he moved towards the open space in front of him. There was the danger of him running off and the situation getting out of control. The fact that this option would have been inappropriate is further referred to below.

*Engage, negotiate and de-escalate.*

This was another option for the officers to consider which will be discussed further below. This approach was referenced to in detail during the evidence of Joanne Caffrey.<sup>73</sup> She opined that time could be bought by way of communication, trying to calm, and build rapport and trust. The example of offering someone a cup of tea was suggested<sup>74</sup>

It is submitted that this approach was not a suitable option in the circumstances. Given the risk of the knife as above and as PC Paton put in evidence 'It wasn't the time or the situation for a conversation'.<sup>75</sup>

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<sup>72</sup> 25 Nov 2022 page 174 lines 3-4

<sup>73</sup> 30 Nov 2022 page 49-52

<sup>74</sup> 30 Nov 2022 page 50

<sup>75</sup> 21 June 2022 page 83 line 4

He stated further in response to a suggestion that he could have asked questions like 'are you okay?' – it is not the situation like that. The man was out of control, drugged up...had a big knife...he was using it, attacking cars. I needed firm control from the word go and then once he's in cuffs, then ask him if he is wanting a cup of tea, but not at that stage'.<sup>76</sup> Did try to communicate...if he's not engaging back with you...even telling you to 'fuck off'...but to say absolutely nothing at all, I'm trying to engage, he's not engaging with me...there is only so much you can do'.<sup>77</sup>

### *Rendezvous Point*

Alan Paton explains that he could have stood back if he knew an ARV was enroute, to muster somewhere and for them to go in. We could have kept eyes on him, but explains the potential risk to the public by waiting 10 minutes could have been death<sup>78</sup>. Joanne Caffrey spoke in her evidence about an incident she was involved in which when explored in questions by the Dean of Faculty she seems to accept that the delay of a minute in the police arriving at that time could have resulted in death. This is a practical demonstration of the danger in waiting without engaging.

This scenario was put to Martin Graves, who agreed that if the incident had been declared a firearms incident or ARV deployed that's what would have been expected. However, this would have required a marshalling officer, and somebody there to make decisions and the option is mitigated by the number of units that you have got.

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<sup>76</sup> 21 June 2022 page 83 lines 12-17

<sup>77</sup> 21 June 2022 page 86 lines 13-19

<sup>78</sup> 21 June 2022 page 92 lines 9-11

### *Mental health crisis identified*

The suggestion was put to Alan Paton - Did he consider that this was a mental health crisis? His response to that was 'Yes, definitely'.<sup>79</sup>

It is accepted that when someone is suffering from ABD it is time critical and would require transfer to an emergency department. As Alan Paton explained to the inquiry, that was not an option here when he was asked if he thought about stepping back and transmitting to ACR asking for an ambulance or medical support, 'if someone is walking to you, I tried to maintain a gap...if I had walked further back I would have been in the bushes'.<sup>80</sup> It happened too fast.<sup>81</sup>

Martin Graves explains this process that although at the time when they are issuing verbal commands, they still have observational skills although, they are starting to reduce because of the increased stress levels...you can factor in if they are under influence of drink and drugs or maybe mental health episode, but their main focus at this point is non-compliance...<sup>82</sup>

He goes on further to explain, that there were insufficient warning signs at this time. 'You have some in relation to behaviour, but the behaviour in itself, although unusual, is not particularly bizarre...you start to build those through conversation and more observation to consider whether that person may be having some sort of episode'.<sup>83</sup>

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<sup>79</sup> 21 June 2022 page 88 line 9

<sup>80</sup> 21 June 2022 page 89 lines 16-19

<sup>81</sup> 21 June 2022 page 89 line 22

<sup>82</sup> 28 Nov 2022 page 6 lines 2-21

<sup>83</sup> 28 Nov 2022 page 30 lines 24-25 and page 31 lines 1-10

'A reasonable officer' would be expected to try and verify that thought process and if it's their belief at that time, there's two things. One to try and verify through communication and observation...once that decision is made, then I would expect to go down the treating the individual as requiring medical assistance'.<sup>84</sup>

It is submitted that even in the event that PC Paton had made that decision, it would remain unsafe for Mr Bayoh to be approached by ambulance staff as the risk of the knife being hidden on his possession is too great. It is further submitted that he would still have to be brought under control and the knife located or ruled out before medical personnel would be able to assist. Knife risk outweighs the need to assess for ABD. It has to be taken into account that this was not a controlled environment such as a medical ward. It was a public place where the person potentially requiring medical treatment was believed to be in possession of a knife.

It is accepted that after the discharge of CS Spray, and it having no effect on Mr Bayoh, that would raise the potential that this may be a mental health episode and perhaps medical assistance should have been considered at this stage. However, almost immediately after discharging the spray Officer Paton is adversely effected by the spray and his state of mind would be effected by that.

*Why the alternative tactical responses were not appropriate in circumstances*

The inquiry has a vast amount of evidence before it regarding the events of 2 and 3 May 2015 and the subsequent behaviour of Sheku Bayoh on 3 May 2015 prior to his death.

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<sup>84</sup> 28 Nov 2022 page 31 lines 15-24

The inquiry has evidence before it that Sheku Bayoh was a regular user of steroids. Zahid Saeed in his statement 'I know that he did take steroids in the past...he said it was 6 months on 6 months off'.<sup>85</sup> Friends also speak to his recreational drug use, including using MDMA and ecstasy. 'Sheku had taken drugs before in my company. He would take them the same as everybody else'.<sup>86</sup> James Hume confirms that Sheku Bayoh had taken MDMA the weekend prior to his death, and that he had become paranoid and was overreacting<sup>87</sup>

Toxicology reports confirmed MDMA, MDA and Alpha PVP were all present in his system at the time of death. Urine samples also confirmed the presence of nandrolone and metabolites, consistent with the recent administration of anabolic steroid nandrolone.<sup>88</sup>

Professor Lipsedge provided the inquiry with information in relation to the effects of these drugs. 'MDMA is a stimulant and not generally associated with severe adverse psychiatric effects...some reports of it causing paranoia, but that's unusual...they may feel better disposed than usual to other people...its actually thought to generate a feeling on non aggression and friendliness'.<sup>89</sup> He goes on to say 'it is rare but it can be associated with acute paranoid psychosis'.<sup>90</sup>

In relation to Alpha-PVP, he explains 'this is a very powerful stimulant...has the potential to cause extreme paranoia fairly quickly...that is what I think happened to Mr Bayoh'.<sup>91</sup>

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<sup>85</sup> PIRC-00033

<sup>86</sup> SBPI-00071 Para 6

<sup>87</sup> SBPI 00021 Para 31

<sup>88</sup> PIRC-01445

<sup>89</sup> 11 May 2023 page 20 lines 6-13

<sup>90</sup> Ibid lines 21-22

<sup>91</sup> 11 May 2023 page 25 lines 4-13

Mr Saeed and Mr Dick have both provided evidence as to Mr Bayoh's behaviour that evening. Zahid Saeed stated that he met up with him on 2 May around 9pm. They attended a party for Sheku Bayoh's niece 'I saw him have at least one drink...he certainly wasn't drunk'.<sup>92</sup> They later went to ASDA, where he bought a bottle of Parrot Bay Vodka mixer drink. From there they attended Sheku's house and stayed there until 1am, when Zahid left and returned at 3am.

Arrangements had been made for Zahid Saeed and Sheku Bayoh to attend Martyn Dick's home address to watch a boxing match at 4am. Whilst there, Zahid states that he and Martyn 'were in the kitchen...we returned to the living room and we were just talking over each other having conversations between each other...within seconds Sheku's personality and mood changed dramatically...he thought we were taking the mickey...he was agitated, tense and continually mentioned that we had no respect for him'.<sup>93</sup>

In his statement to the inquiry Mr Saeed confirms that there were drugs on the evening of 2 May 2015. 'I am afraid there were drugs used. Sheku had taken MDMA and ecstasy. We were both taking substances.'<sup>94</sup> 'Martin was worried as he had never seen him like that before...I told him not to worry because I would deal with the situation as I had seen Sheku in this state of mind before...his mood kept switching'.<sup>95</sup>

Zahid Saeed then explains that Sheku Bayoh walks out of the house and when he left a few minutes later, he could not find him so drove back to Arran Crescent. When Sheku Bayoh arrived at his home address, Zahid Saeed recalls that he stood at the

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<sup>92</sup> PIRC-00033

<sup>93</sup> Ibid

<sup>94</sup> SBPI-0071 para 6

<sup>95</sup> PIRC-00033

door asking him what was worrying him, what was upsetting him, why the mood change...he replied 'this makes sense, you don't respect me'.

He also explained at this time Sheku Bayoh pulled out a bag containing white substance and purple tablets. 'His behaviour was erratic, going from alright to being aggressive to accusing me of all sorts...I decided to leave...when I was talking to him, he kept clenching his fists.'<sup>96</sup>

Mr Saeed then left his address and when in the back garden, describes how Sheku Bayoh then attacked and chased him. 'He attacked me...I decided to run...I was terrified...he threw a washing pole at me and missed, he chased me round the front...he caught me, I was on the ground...he was on top of me...he punched me probably 10 times...I was begging him to stop...I ran for my life'.

In his later statement, he describes Sheku 'sucker punched me from behind...he punched me on the head...I seen him charging toward me, I started running...he chased me all the way round the back of the house with the washing line pole'.<sup>97</sup> 'He pushed me onto the floor of a neighbours garden...he was on top of me...throwing punches into my head'.<sup>98</sup>

Hazel Sinclair provided a statement to inquiry and speaks to meeting Zahid Saeed after Sheku Bayoh's death and was surprised when he told her 'I was with him that night, drugs were consumed. Shek was acting like a bit of a looney'...I think in his words and you know 'it was inevitable that something was going to happen because of the way he was conducting himself and because he was under the influence of drugs'.<sup>99</sup>

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<sup>96</sup> ibid

<sup>97</sup> SBPI-00071 Para 19

<sup>98</sup> Ibid para 20

<sup>99</sup> SBPI-00023 Para 17

Ms Sinclair also recalled 'Zahid also said that they had an argument in the house about Shek's girlfriend, Collette...the argument got really heated and Shek had gone into the kitchen and got a knife and was kind of wielding it'.<sup>100</sup>

The attack on Zahid Saeed was witnessed by a number of Sheku Bayoh's neighbours.<sup>101</sup> One of those neighbours, Neil Morgan, gave evidence to the inquiry that on the morning of 3 May 2015. His daughter advised that she 'saw Chris<sup>102</sup> fighting someone in another garden...thought that someone was robbing it, so I went out to assist'.<sup>103</sup>

He further describes the encounter he had with Sheku Bayoh that morning ' I approached him and asked if anyone was trying to rob Bob and Helen's and he said 'no, nobody's trying to rob no one' that's when I noticed that he was carrying a knife'.<sup>104</sup>

His evidence goes on to explain 'I said 'what are you doing with that? You can't walk around with that, you're going to get done...come back to the house, something's upset you. Come back, have a cup of coffee, a cup of tea, you need to settle down'. He describes him tapping the knife on his leg then 'he did turn round to me and he says 'its not even sharp' and he sort of...poked it at my belly'.<sup>105</sup>

It is also relevant for the inquiry to take into account that Zahid Saeed provided information that when he spoke to Collette Bell on the morning of 3 May, she had

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<sup>100</sup> Ibid para 18

<sup>101</sup> Including Naomi Rhodes(SBPI-00070) and Amy Hutchison(PIRC-00131)

<sup>102</sup> Chris is the name they call Sheku Bayoh

<sup>103</sup> 13 May 2022 page 36 lines 18-23

<sup>104</sup> 13 May 2022 page 41 lines 6-11

<sup>105</sup> 13 May 2022 page 44 lines 15-20



found the house 'trashed' it hadn't been like that when he left. He told her it wasn't a safe place to be.<sup>106</sup>

It has been previously submitted above that the response of PC Paton on arrival at the locus on 3 May 2015 with the information he had available was a sound and justifiable one. Given the behaviours of Sheku Bayoh that are now known and detailed above it becomes more obvious that the approach adopted by PC Paton was the only sensible one and provides clear evidence why other potential responses would have been unlikely to have achieved anything and could have potentially caused greater harm.

Sheku Bayoh had been, on any view, unpredictable, violent, had already used a weapon (the washing pole), and subsequently armed himself with a knife. It is submitted that any of the other tactical options suggested above being deployed would not have been appropriate in the circumstances. This is clearly evidenced by the evidence of both Zahid Saeed and Neil Morgan, who both have given clear accounts of his violent behaviour and their attempts to communicate, calm and de-escalate the situation.

When this was attempted by Mr Saeed, he was chased and assaulted resulting in injury. When examined by Dr Norrie at 18.30 on 3 May 2015, he was found to have swelling and grazing to the face, a laceration to the top lip and bruising to the arms and left leg.<sup>107</sup>

When it was attempted by Mr Morgan, his neighbour, who asked him in for a cup of tea, he was 'poked in stomach' with the knife. It is accepted that Mr Morgan explained he was not frightened, and Sheku Bayoh was demonstrating how sharp

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<sup>106</sup> PIRC-00032

<sup>107</sup> PIRC-01319

the knife was or was not, the fact remains he used a weapon on another person who he knew and was friendly with.

The view taken by PC Paton in relation to the knife was also a sound one, although the knife was not found on his person, it was found discarded 20 metres from where the initial confrontation was. It would have been easily accessible to Mr Bayoh if he had not been controlled and restrained at the time that he was.

It is also known from the comments made to Mr. Saeed accusing him of being in the CID and the comments of his family indicating his mistrust of the police that there was no realistic possibility of the police being able to de-escalate the situation.

It is therefore submitted that the inquiry should discount the other tactical options as discussed above as realistic possibilities.

## **The Events Immediately Before and the Initial Restraint**

*The involvement of PC's Tomlinson and Short and the assault on Nicole Short by Sheku Bayoh*

After walking away from PC's Paton and Walker, Sheku Bayoh is further engaged with other officers. The inquiry has heard evidence that he chased PC Short and struck her on the back of the head causing her to fall to the ground. This has been categorised as level 5 or 6 on the profiled offender behaviour.<sup>108</sup>

A reasonable officer at this stage, 'faced with this threat would be considering any option that would be open to them to deal with the situation and that would include possibly fatal injury to prevent the attack from continuing'.<sup>109</sup>

The inquiry has heard evidence, although in dispute, that Mr Bayoh then stamped on Nicole Short. This could only be described as serious violent behaviour. A reasonable officer in response to that would be justified to do anything in their capabilities to prevent that from happening or to stop it reoccurring. This would include the baton strike by PC Tomlinson.

Alan Paton can offer no submission personally in relation to those events as it would be speculative on his behalf, however, what he did say in evidence was that approximately 15 seconds after retreating to the corner of the van 'I heard Nicole Short scream',<sup>110</sup> although he remained disorientated by the effects from the CS Spray. He then turned to see her on the ground, 'trying to get up...she kept falling

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<sup>108</sup> 28 Nov 2022 page 52 line 4

<sup>109</sup> 28 Nov 2022 page 57 lines 19-23

<sup>110</sup> 21 June 2022 page 41 line 3

back down'.<sup>111</sup> PC Paton was able to pick her up by the lapels of her vest and told her to go back to the van.<sup>112</sup>

It is submitted that the inquiry has heard evidence that would entitle it to conclude that the stamp did indeed occur. Firstly, the evidence of the officers who saw it happen. Secondly, Dr Crawford indicated that in his opinion Nicole Short's injuries were consistent with blunt injury being a stamp or a blow to the right lower chest,<sup>113</sup> although it was accepted there were no sign of any life-threatening injury. Thirdly, forensic analysis was carried out and although there was insufficient detail for a meaningful comparison, there was the possibility that one of the marks on PC Short's vest could correspond to one of the elements from the boot of Sheku Bayoh.<sup>114</sup> Fourthly, Professor Dawson during her evidence was able to conclude that the soil present on two separate areas of staining on PC Short's vest were consistent with originating from the boots worn by Sheku Bayoh based on the elemental composition and appearance. Professor Ryder also agreed, albeit potentially that something with a geometric pattern has had to have applied the mark on her vest, and could not exclude that the boots worn by Mr Bayoh might have contributed in some way.<sup>115</sup>

Accordingly, there is evidence available which taken together provides a compelling case that Sheku Bayoh stamped on PC Short. This evidence should be preferred to the evidence of Kevin Nelson who, on any view, missed significant parts of the incident possibly by moving from room to room. In particular, he missed the initial assault on PC Short which does not seem to be in any dispute.

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<sup>111</sup> 21 June 2022 page 41 line 16-19

<sup>112</sup> 21 June 2022 page 41 line 19-21

<sup>113</sup> 10 June 2022 page 16 lines 12-25 and page 17 lines 1-2

<sup>114</sup> 17 June 2022 page 148

<sup>115</sup> 8 Dec 2022 page 82 lines 10-12 and page 83 line 10

*The take down and initial restraint*

The inquiry has heard evidence of a 'take -down' by PC Walker. Alan Paton can offer no assistance in relation to that as it would be speculative. It would, however, given the behaviours described above of Mr Bayoh be justified in the circumstances.

After dealing with Nicole Short, Alan Paton could see what he described as a 'stramash',<sup>116</sup> and the inquiry have heard that once officers have him on the ground he continues to struggle. The restraint of an individual or the attempted control of an individual on the ground has been described by Martin Graves as very difficult.<sup>117</sup> Multiple officers are required to try and gain a level of control.

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<sup>116</sup> 21 June 2022 page 44 line 3

<sup>117</sup> 28 Nov 2022 page 66 lines 24 and 25

## The Continued Restraint

*When PC Paton became involved and his actions including the force applied and the position of PC Paton.*

On seeing what he described as a stramash, his first reaction was to assist<sup>118</sup> when he just 'went across to it'.<sup>119</sup> This would accord with how Martin Graves describes this phase in control, 'it can be messy and quite sort of frantic, as officers struggle to try and take hold of various limbs or try to prevent the individual regaining their feet, trying to use the ground as a stable platform to work against'.<sup>120</sup>

'I knelt down on I believed the left side...but having watched the inquiry it might have been the right side'.<sup>121</sup> His involvement from when he approached was that he remained at this side throughout. He was trying to get hold of his right arm to put a cuff on....his arm was down toward my left knee.<sup>122</sup> He was positioned at Mr Bayoh's head area.

It was at this time that Mr Paton used a baton by placing it across Mr Bayoh's left bicep, 'thinking if I can get control of his upper arm then he cannae use his lower arm to get a hold of any knife and it might also make it easier for handcuffs to be put on'.<sup>123</sup> He did this by putting his weight on his bicep. He also suggested to others to 'link the cuffs',<sup>124</sup> which would be appropriate for someone who is muscle bound as it can be difficult to get their arms close enough.

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<sup>118</sup> 21 June 2022 page 44 line 16

<sup>119</sup> 21 June 2022 page 44 line 18

<sup>120</sup> 28 Nov 2022 page 67 lines 8-12

<sup>121</sup> 21 June 2022 page 44 lines 23-25

<sup>122</sup> 21 June 2022 page 45 lines 15-25

<sup>123</sup> 21 June 2022 page 46 lines 18 - 23

<sup>124</sup> 21 June 2022 page 53 lines 9 - 10

Martin Graves explains that this is exactly what the 'reasonable officer' would be doing to control the limb, 'they are grabbing the limb and trying to prevent it from moving around. That could be used by using their body weight against the limb, lying across it or sitting across it, holding on to it with their hands, possibly wrapping their arms around it'.<sup>125</sup> He goes on 'they could be pinned by holding the arms and pushing down by using your upper body weight'.<sup>126</sup>

When questioned if the use of the baton in this way was a recognised technique. His response was 'you use anything available to you'.<sup>127</sup> Martin Graves explained that just the fact that a technique is not trained does not preclude it to whether it was reasonable in the circumstances and was necessary based on the perception of the officer.<sup>128</sup>

He goes on to explain that in a situation like the one they found themselves in, where someone is aggressively lashing out and resisting, the cuffs go on any in shape or form that you can get them on. Although, PC Paton did not place handcuffs on Mr Bayoh and has no recollection as to when that happened,<sup>129</sup> 'everyone was struggling to restrain him... it was four people involved and they were struggling ...this is a boy, let's face it, he had muscles, he took steroids...his shoulders were huge, his chest was huge ...the four guys that were trying to restrain him were struggling to control him'.

PC Paton's involvement throughout was in relation to the arm. At no time did he apply weight to the body of Sheku Bayoh.

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<sup>125</sup> 28 Nov 2022 page 69 line 7-12

<sup>126</sup> 28 Nov 2022 page 18-19

<sup>127</sup> 21 June 2022 page 50 line 16-17

<sup>128</sup> 28 Nov 2022 page 86 lines 6-10

<sup>129</sup> 21 June 2022 page 63 lines 11-12

It is submitted that given Sheku Bayoh's behaviour, the level of violence displayed and the fact that the knife was still not accounted for. The control of the subject was deemed a necessity and the only way to achieve that was to bring him to the ground and restrain him.

It is fair that consideration should be given to the state of Alan Paton throughout the restraint. He continued to suffer from the effects of the CS Spray, and as a result had to constantly wipe his eyes and could not see or hear particularly well, as he had no sense of his bearings and as a result he was panicking,<sup>130</sup> 'I was in complete shock because I thought I was going to be killed...I realised how close I had come to being killed... I was in complete and utter panic'.<sup>131</sup>

#### *The Position of Sheku Bayoh*

It was the perception of PC Paton that when he first went over to Mr Bayoh he was on his back, and remained on his back at all times, but accepted that he must have been wrong about that 'I'm disorientated and eyes streaming, not thinking straight...certainly, I am wrong'.<sup>132</sup>

He described Mr Bayoh as 'wriggling all over the place, his arms were sort of flailing and legs flailing...that's the best I can describe',<sup>133</sup> and that he was 'resisting a fair bit'.<sup>134</sup> He described the restraint as being dynamic. It seemed longer than it actually was, 'the restraint didnae go on for particularly long'.<sup>135</sup> The restraint from Sheku Bayoh being taken to the ground to losing consciousness was of relatively short

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<sup>130</sup> 21 June 2022 page 59 lines 22-25 and page 60 lines 1-5

<sup>131</sup> 21 June 2022 page 122 lines 5-8

<sup>132</sup> 21 June 2022 page 45 lines 5 - 9

<sup>133</sup> 21 June 2022 page 54 line 25 and page 55 lines 1 and 2

<sup>134</sup> 21 June 2022 page 55 line 5-6

<sup>135</sup> 21 June 2022 page 66 lines 12-14



duration. At 07.23.13, Sheku Bayoh is still struggling. At 07.25.17, he is reported as being unconscious.

Christopher Fenton, an eyewitness to the restraint gave evidence to the inquiry. Although not an expert witness, he is employed as a CPN. He was able to offer information that 'in my line of work, if people fall and they end up in a prone or face down restraint we try to get them onto their back, or into a seated position'.<sup>136</sup> This with the purpose not to compromise their breathing. He went on to say 'if someone is face down in a prone restraint we might utilise that position to administer medication'.<sup>137</sup>

It is submitted that this witness speaks of his experiences in medical, controlled environment which is a completely different context to this situation where the officers were dealing with a potentially armed subject in a public place.

*Sheku Bayoh losing consciousness and First Aid being administered*

Mr Paton has no recollection of when he noticed Mr Bayoh had lost consciousness. This again can be explained by his disorientation and panic due to the pain he was suffering.

Despite that, he attempted to fit a face valve into Mr Bayoh's mouth but was unsuccessful in doing so. He also checked the head area for swelling or bleeding, and then assisted in administering CPR by way of chest compressions. He did not feel impeded by the handcuffs and was happy that it was effective.<sup>138</sup> It appears that

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<sup>136</sup> 22 June 2022 page 26 lines 11-13

<sup>137</sup> 22 June 2022 page 26 lines 24-25 and page 27 lines 1 and 2

<sup>138</sup> 21 June 2022 page 65 lines 15-19

it was effective to some degree at least in that a pulse was found in the ambulance allowing further attempts by medical staff to resuscitate Mr Bayoh.

In relation to the 'slap' that Mr Paton has been asked about in evidence, he explains that he may have explained it that way in his statement but it 'was two part, like that' and indicated a tap to the left cheek,<sup>139</sup> and that it was done with the best intention to get a reaction.

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<sup>139</sup> 21 June 2022 page 76 lines 1-4

## Cause of Death

The inquiry has to determine whether, on the balance of probabilities, any fact or circumstance was causative in Sheku Bayoh's death and to determine what was his cause of death.

The inquiry has heard evidence from a number of medical professionals and from that can conclude that his death was multi-factorial. His sudden death is likely to have been due to a combination of the drugs, the fact that Sheku Bayoh struggled throughout, and the fact that he was being restrained at the time.

The post mortem examination of Sheku Bayoh was carried out on 4 May 2015, and it was concluded that his cause of death was 'sudden death in a man intoxicated by MDMA (Ecstasy) and Alpha-PVP, whilst being restrained'.<sup>140</sup>

'Given the circumstances provided, toxicological findings and lack of another cause of death at post mortem, the possibility of excited delirium syndrome has been considered...it is however a psychiatric and not a pathological diagnosis'. Dr Shearer explains that 'I can't relate anything to the cause of death unless I can prove it pathologically...so it's in the psychiatric community and not something I would diagnose'.<sup>141</sup> This was discussed given the drugs present in Sheku Bayoh's blood as often the syndrome is described with a background of someone who is intoxicated with drugs, particularly stimulant drugs.<sup>142</sup>

Dr Shearer provides a further explanation as to why excited delirium would not be involved in the cause of death, 'individuals suffering from this condition because

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<sup>140</sup> PIRC-01445

<sup>141</sup> 10 May 2023 page 10 lines 1-8

<sup>142</sup> 10 May 2023 page 10 lines 20-24

they are very agitated they become very aggressive, they are difficult to manage, they are often...come to the attention of medics and police have to be involved because they are a danger to themselves and other people....often involved in restraint...often find drugs in their system that may explain their behaviour...but would never have been involved in the cause of death'.<sup>143</sup>

She was able to explain that restraining these individuals can pose problems if it effects their airway, if that leads to positional asphyxia and went on to advise the chair that the whole circumstances have to be taken into consideration; the postmortem, the toxicology to support or exclude what may have happened with regards to the restraint.<sup>144</sup>

In relation to the restraint of Mr Bayoh, as previously submitted PC Paton played a limited role in the actual restraint. His involvement was with trying to gain control of the arm involving pinning the arm with a baton. When discussing asphyxia and the level of force required with Dr Cary, he was asked if 'so for example, someone was straddling legs...and another officer was applying some weight who was about 25 stone, and another officer had a baton being held over the arm, had pinned the arm of the person on the ground, would that combine in terms of force and pressure being applied?',<sup>145</sup> to which he responded 'yes, I would be more concerned about truncal pressure particularly, so the 25 stone, and also the pinning of the legs. The pinning of the arm I suspect would be little, if any, contribution'.<sup>146</sup>

Although not in the final postmortem findings, Dr Shearer commented on the struggle as well as the restraint being significant having read Dr Cary's report. She explains that during a struggle with the way in which the deceased moved and

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<sup>143</sup> 10 May 2023 page 17 lines 10- page 18 line 2

<sup>144</sup> 10 May 2023 page 20 lines 10-25 and page 21 lines 1-10

<sup>145</sup> 24 May 2023 page 48 lines 12-18

<sup>146</sup> 24 May 2023 page 48 lines 19 -22

behaved, they would have been using muscle strength which can lead to proteins breaking down and producing acid leading to 'acidosis'.<sup>147</sup> This can cause irritation to the heart and lead to cardiac arrest, however, again this would not be something that could be proven pathologically.

It is submitted that the inquiry should take into consideration when considering this section of evidence Mr Bayoh's behaviour prior to police contact. He was involved in a violent assault on his friend, whom he chased with a pole prior to punching him a number of times. He then 'trashed' his house before being described as walking 'like he was on a mission' to the locus whilst lashing out and attempting to kick vehicles. These actions may have involved him using muscles in such a way that would lead to 'acidosis' even prior to restraint by police.

Dr Shearer in her evidence detailed all of the injuries found externally on the body of Sheku Bayoh. Each one of them was classed as a minor injury. Most of them were abrasions or trivial bruising. None of these injuries contributed to his death in any way, and are likely to have been a result of either struggling on the ground during restraint or during the physical altercation he had with Mr Saeed prior to death.

Sheku Bayoh was later found to have a fracture to the first rib. This was in such a discreet place that it was not identified at the post mortem. The inquiry has heard evidence from Professor Freemont who analysed the fracture. It was found to be an unusual fracture, and does not seem likely to have been caused by a blow or by CPR. It is most likely to have been caused by a fall onto an outstretched arm and did not contribute to his death.

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<sup>147</sup> 10 May 2023 page 56 line 25

It is submitted that whatever caused the fracture it did not occur due to any contact that PC Paton had with the deceased during the restraint where he was attempting to control his arm.

## **Race**

Fuller submissions will be made after evidence has been concluded on this chapter of evidence.

However, in our submission the inquiry has heard no evidence whatsoever which would justify a conclusion that Sheku Bayoh's race or perceived race played any part at all in the actions of PC Paton. As the inquiry will well understand, questions are not evidence unless the proposal in the question is accepted. It is only the answers which are evidence. The words and expressions used at times by PC Paton in his evidence were subjected to intense scrutiny by Senior Counsel to the inquiry. This included the unedifying exchange about the use of the word "boy" the unspoken suggestion apparently being that PC Paton was using the word in the way it was once used in the Deep South of America by the owners of slaves. To each and every accusation PC Paton denied that race had anything to do with his actions that morning.

Not a credible shred of evidence has been led to contradict that position. Historical complaints are of absolutely no significance in this matter. The untested family disputes ought to have no bearing on the decisions to be made by the inquiry.

It should be noted that PC Paton continues to be subjected to vilification on social media. He continues to be the focus of attention from the representatives of Sheku Bayoh's family, and his involvement has been singled out falsely as being motivated by race. This has been the position for the past eight years. The inquiry has heard no evidence supportive of these wholly unfounded allegations.

It is submitted that race played no part in the decisions made or actions taken by PC Paton on the morning of 3 May 2015.

B. McConnachie KC

LA. Radcliffe, Advocate

23 June 2023