

Wednesday, 11 May 2022

(10.01 am)

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

Opening statement by MS GRAHAME

MS GRAHAME: Thank you very much.

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

Since his death, no evidence has ever been led about what happened to him before a criminal trial, a fatal accident inquiry or a civil proof, but his relatives, family and friends have tirelessly campaigned to find out the truth about what happened on that day.

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

1 On 21 May 2020, after consultation with key parties,
2 the Terms of Reference were announced. After further
3 consultation, two Assessors were appointed, Raju Bhatt
4 and Michael Fuller, and their expertise and experience
5 will be available to assist you and support you in this
6 Inquiry.

7 1. The Inquiry.

8 The Inquiry formally commenced on 30 November 2020
9 and work began to recruit a team of staff to assist you
10 and to secure suitable premises and to fit them out and
11 these premises include not only this hearing room, but
12 rooms for the family and the relatives of Sheku Bayoh,
13 the legal representatives of core participants and
14 members of the press and offices for the extended
15 Inquiry team.

16 Throughout 2020 and 2021, despite the challenges
17 faced by the Inquiry team due to the pandemic and
18 lockdown, 29,765 documents were gathered in and collated
19 by the team. These documents span material that covers
20 our full Terms of Reference. In preparation of this,
21 the first of a number of planned hearings, around 617
22 relevant documents have been identified, considered and
23 disclosed to the core participants to assist them in
24 their preparations.

25 The public continued to be updated by way of video

1 messages from you, along with public announcements,
2 press releases and rulings, all of which remain
3 available on the website.

4 At your invitation, a number of organisations and
5 individuals applied to be core participants, some are
6 represented in groups, others are separately
7 represented. Each application was considered and 11
8 core participants were granted that status and they are
9 all represented here today.

10 As noted by you in the first preliminary hearing on
11 18 November 2021, core participants have a key role in
12 the Inquiry. They may attend all or some of the
13 sessions of the Inquiry, either within the hearing room
14 itself or remotely in the building, or elsewhere via the
15 live links provided. They may make opening and closing
16 statements. They may suggest possible lines of enquiry
17 and questioning to Counsel to the Inquiry and they may,
18 where appropriate, and with your permission, ask
19 questions of witnesses through their legal
20 representative. Detailed guidance has been issued to
21 legal representatives on making an application to ask
22 questions, and a copy of that is available on the
23 website.

24 In addition, throughout this entire period, regular
25 engagement, meetings and contact has taken place between

1 the core participants' legal representatives and the
2 Inquiry team to address questions, to share information
3 and to allow the Inquiry team to consider any issues
4 brought to our attention for investigation.

5 There have been two preliminary hearings:
6 18 November last year and 22 February this year. These
7 were recorded and footage of both remains available on
8 the website and on the YouTube channel, which is
9 accessible through the website.

10 All core participants are aware that you wish this
11 Inquiry to be transparent, thorough and comprehensive
12 and you welcome any comments being drawn to our
13 attention and that remains the position.

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

17 A detailed chronology of those events was sent to
18 core participants on 19 January this year. The
19 chronology was accompanied by a note on law and practice
20 and a list of the issues, setting out the key events and
21 the questions to be explored, and in respect of which
22 evidence will be led at this hearing. Discrepancies,
23 inconsistencies and conflicts in the evidence were
24 highlighted. Core participants were invited to draw our
25 attention to any matters they considered had been

1 overlooked by the Inquiry team and this gave core
2 participants an opportunity, should they wish, to
3 contribute to our work in advance of this hearing. I am
4 happy to say that useful discussions have and continue
5 to take place and we remain open to any matters being
6 intimated to us at any stage, now and in the future.

7 Unlike a trial or a civil litigation, we have the
8 option of returning to matters at a later stage, in the
9 event that something unexpected comes to light during
10 the course of any of the hearings.

11 2. The approach to witnesses.

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

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

25 Conscious that the key events took place more than

1 seven years ago, and that memories are bound to have
2 faded to some extent, the Inquiry team has been
3 particularly careful to tie in witnesses present
4 recollections with the contemporaneous documents and any
5 statements taken at the time.

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

10 3. The request for undertakings.

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

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

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

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

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

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

22 4. Evidence at this hearing.

23 This hearing will be the first opportunity for the
24 public, friends, relatives and family members of
25 Sheku Bayoh to hear what happened to him on 3 May 2015

1 and they will hear this from individuals who witnessed
2 the events at first-hand.

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

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

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

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

22 There are also some witnesses who may be called back
23 at a later date to a later hearing and that's to give
24 evidence about subsequent events such as the
25 post-incident investigation after the death of

1 Sheku Bayoh, and this is to allow you to hear other
2 relevant aspects of their evidence in the proper
3 context.

4 We are grateful for the cooperation of those
5 witnesses, which includes a civilian witness and senior
6 officers, and we do appreciate the personal
7 inconvenience that this may cause. I have endeavoured
8 to keep those witnesses to the minimum possible. They
9 have agreed to this arrangement at my personal request
10 and for the benefit of the Inquiry.

11 For the purposes of hearing 1, insofar as we are
12 able, we will be focusing on the circumstances
13 surrounding the events in Hayfield Road leading up to
14 the death of Sheku Bayoh. I would simply add at this
15 stage that you may wish to defer consideration of
16 certain issues until you have all the evidence before
17 you, and I will remind you of the position regarding
18 these particular witnesses when I come to make my
19 concluding remarks at the end of hearing 2.

20 Not all witnesses will be called to give oral
21 evidence. Many have provided these written statements
22 to the Inquiry and they will be made available to the
23 public via our website at the appropriate time. These
24 statements will constitute evidence to the Inquiry in
25 terms of the Inquiries Act, and may be relied on by you

1 when considering matters and preparing your report.

2 We may also take the opportunity to read some
3 selected statements, including some taken by
4 Police Scotland and PIRC, into the transcript of
5 evidence for your consideration.

6 For the purposes of this hearing, I have selected
7 the available witnesses I consider best placed to tell
8 the story of what happened on that day: those who will
9 assist you in providing key evidence, those who will
10 assist you to allow you to consider the credibility and
11 reliability of key witnesses, and those who allow you to
12 consider the issues identified as relevant to our Terms
13 of Reference.

14 5. The website.

15 Public trust in the Inquiry is vital and we hope to
16 enhance this through increased openness. With this in
17 mind, our digital platforms are helping us to ensure
18 this Inquiry is accessible to as many people as possible
19 in Scotland and beyond.

20 Every public hearing session will be live-streamed
21 via our website and the YouTube channel, with all
22 recordings of the sessions and transcripts published on
23 the site as soon as possible. Barring any unforeseen
24 complications, evidence such as documents, statements,
25 maps and photographs led in public hearings will also be

1 published on the website by 10.00 am the following
2 morning. This evidence library will expand in the days
3 and weeks to come and will be easy to use and fully
4 searchable.

5 In due course we will also publish on the website an
6 evidence timeline. This innovative approach to the
7 digitisation of evidence will allow those visiting the
8 website to access a minute-by-minute record of how the
9 incident unfolded, using witness statements and media
10 evidence. We will continue to use the website and the
11 timeline during hearings to help maximise the
12 availability and public understanding of the evidence.

13 6. Digital evidence.

14 The Inquiry team intends to lead evidence relating
15 to the journey taken by Sheku Bayoh to Hayfield Road.
16 In order to do so, we have gathered in footage from
17 dash cams, CCTV, mobile phones, Snapchat footage, along
18 with photographs and stills from mobile phones. This
19 has been collated, along with audio recordings from 999
20 calls, 101 calls and Airwaves messages between
21 police officers and the control room at the relevant
22 time.

23 This footage has been collated by Advanced Laser
24 Imaging, or ALI. ALI have created and developed
25 different tools for the assistance of the Inquiry during

1 the oral hearings, and these tools will be used when
2 I take evidence from the witnesses.

3 The first is an Excel spreadsheet. It is a combined
4 audio and visual timeline and this has been
5 cross-referenced with the real time. It will be
6 a quick, ready reckoner when listening to evidence and
7 working out who said what on the Airwaves. I will be
8 using this during hearings and all core participants
9 will have access to this. A hard copy will be provided
10 to you and the Assessors for your use during the
11 hearings and I would invite you to have regard to this
12 document when we're listening to evidence.

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

22 The 3D scene shows Hayfield Road and provides the
23 ability to see bird's eye views, different angles,
24 perspectives, and accurately places cars into the scene
25 and allows us to place people into the scene. This will

1 assist as we listen to the eye-witness evidence of
2 witnesses and it may allow us to explore the versions
3 given and identify where differences arise and why. It
4 should allow us to explore what a witness was at least
5 capable of seeing.

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

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

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

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

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

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

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

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

24 This position has been identified using the
25 Gallaghers public house CCTV and the Snapchat footage

1 from Ashley Wise's(?) mobile phone. This information
2 will be used to place Mr Bayoh within the 3D scene and
3 the stills will show us different perspectives,
4 including that from Ms Wise's window.

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

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

14 Certain witnesses only arrived later during the
15 course of the events and will only give evidence about
16 the restraint. The stills of the restraint are simply
17 to be marked up by the individual witnesses and the
18 individuals are not to be placed into the scene by ALI,
19 unlike the position with the interactive 3D scene. ALI
20 will not require to be involved in this aspect of the
21 digital reconstruction and will not be present on those
22 days where such witnesses give their evidence.

23 We also have bespoke software available to the
24 Inquiry which will allow individual witnesses to mark
25 locations on the screen on which they are viewing the

1 image, that is the screen in front of everyone. Again,
2 their evidence will be captured by a screenshot and
3 later made available.

4 ALI will provide a detailed explanation and
5 demonstration of their work in their evidence tomorrow
6 and although ALI will be the first witnesses at this
7 hearing, they have also agreed to make themselves
8 available to return later for the purposes of
9 clarification should that be required.

10 7. November.

11 After the current hearing ends in June, a further
12 short evidential hearing will take place in November and
13 this will include evidence in relation to officer safety
14 training, use of force and forensic analysis of certain
15 items of evidence that were recovered on 3 May.
16 Deferring this evidence until November will permit any
17 expert to consider in detail the factual evidence led
18 during this hearing, prior to finalising forensic tests
19 and concluding their views. Further later hearings will
20 be fixed to focus on the cause of death, post-incident
21 management and race, amongst other things.

22 8. Race.

23 In this hearing we will begin the process of
24 exploring the extent to which actions of the officers
25 involved were affected by the actual or perceived race

1 of Sheku Bayoh. Race is a thread that will run through
2 all of the public hearings. The final hearing will draw
3 the evidence bearing on race together and place it into
4 context.

5 Although questions in relation to the impact of race
6 will be asked by me during each hearing, including this
7 hearing, it is my intention that the answers will be
8 collated and retained for use during the final hearing
9 on race. We will not at this stage explore the full
10 context. The context will not be fully addressed until
11 the final hearing, at which time I will invite you to
12 consider the factual evidence and to compare this with
13 evidence such as statistical evidence, evidence about
14 previous reports and findings of previous inquiries and
15 inquests. No submissions on the issue of race will be
16 required until after the evidence in the final hearing
17 has been considered and the full context can be
18 addressed.

19 In conclusion, debate continues about what happened
20 and whether the actions of the officers were lawful.
21 This Inquiry presents an opportunity to allow the
22 factual evidence to be aired and considered by everyone
23 with an interest. Relevant expert evidence will be led
24 in November. Any final determination regarding that
25 evidence, including whether any use of force was lawful,

1 will be yours and yours alone and, as I understand it,
2 will be presented in your final report.

3 Over the next few weeks and in the coming months,
4 myself and Ms Thomson and the entire Inquiry team will
5 do our best to present the evidence you need to allow
6 you to make those important determinations and to find
7 the truth about what happened to Sheku Bayoh on
8 3 May 2015.

9 That concludes my opening statement.

10 LORD BRACADALE: Thank you, Ms Grahame.

11 Ms Mitchell.

12 Opening statement by MS MITCHELL

13 MS MITCHELL: I am Claire Mitchell, I'm instructed by Aamer
14 Anwar and Co and assisted by learned junior counsel
15 Clare Connelly. This opening statement is made on
16 behalf of the family of Sheku Bayoh.

17 Sheku Bayoh died on 3 May 2015. He was 31 years of
18 age. He was the father of two sons. He was a loving
19 partner to Collette. He was a son, a brother,
20 a brother-in-law and an uncle. Sheku was a man loved by
21 his family and friends and was a respected member of his
22 local community in Kirkcaldy.

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

1 Sheku's family have endured distress and anxiety in
2 contemplation of his suffering before his death and
3 grief and sorrow caused by his death that continues to
4 be experienced daily.

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

8 The family have fought a hard battle and endured
9 a long wait for this Public Inquiry. The families of
10 Sheku Bayoh have experienced institutional failure which
11 began with a failure to preserve the life of Sheku and
12 thereafter properly to investigate his death. Following
13 his death, Sheku's families endured the media smearing
14 and stereotyping of Sheku and the use of racist
15 stereotypes in connection with the circumstances of his
16 death.

17 The Inquiry will hear evidence that about 7.14 in
18 the morning on 3 May 2015, Police Scotland responded to
19 reports of a man with a knife behaving erratically that
20 had been received from members of the public and were
21 called to attend in the area of Hendry Road and Hayfield
22 Road, Kirkcaldy.

23 Nine officers employed by Police Scotland attended
24 in five marked police vehicles and two police vans
25 within minutes of receiving the reports. The attending

1 police officers were Scott Maxwell, Alan Paton, Ashley
2 Tomlinson, Nicole Short, Craig Walker, Daniel Gibson,
3 James McDonough, Kayleigh Good and Alan Smith.

4 Within a period of about 40 to 50 seconds, officers
5 [Walker], Paton, Tomlinson and Short had all used force
6 against Sheku in circumstances the family believes were
7 not necessary, legitimate or proportionate.

8 About 7.21 minutes, approximately 46 seconds after
9 the first engagement with police, Sheku was on the
10 ground and at 7.23 was reported to Inspector Stewart(?)
11 as "secured on the ground".

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

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

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

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

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

23 Police officers, Police Scotland, the PIRC, the
24 Scottish Police Federation and Crown Office all have
25 difficult questions to answer. Now is the time for the

1 truth about Sheku Bayoh's death to emerge. Nothing that
2 this Inquiry can do will return Sheku Bayoh to his
3 family, but what it can do is be relentless in getting
4 to the truth about his death because without truth,
5 there can be no justice.

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

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

23 What could or should have been done to establish
24 whether Sheku was carrying a weapon at that time and
25 why, if it was believed that Sheku was carrying a knife,

1 was edged weapons training awareness not to approach and
2 to maintain a safe reactionary gap of a minimum of
3 21 feet not followed?

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

11 Following the use of incapacitant spray why did the
12 officers fail to take steps to ensure the health and the
13 safety of Sheku?

14 Interaction with PC Short. What is the explanation
15 for the conflicting accounts given in police statements
16 of the assault of Nicole Short and the contemporaneous
17 communication that took place with the control room and
18 the footage obtained viz the CCTV and the mobile phone
19 recordings?

20 Restraint. What consideration should have been
21 given prior to the use of physical restraint in this
22 case? Was the method of restraint in accordance with
23 training? Did the method of restraint used in this case
24 carry with it a foreseeable risk of death? Was the
25 method of restraint appropriately managed at the locus

1 and in accordance with training? In particular, was
2 an officer identified and positioned at Sheku's head to
3 monitor his breathing?

4 Post-event management. Why was the appropriate
5 crime scene management not employed at the scene of
6 Sheku's restraint to allow full and proper investigation
7 and recovery of evidence to take place? Why were
8 police officers allowed to remain together in the police
9 canteen for hours? Why were police officers not
10 separated and statements taken from them? Why were the
11 relevant forms not completed in respect of use of force?
12 What role did the Police Federation have in advising
13 police officers in giving statements? What clothing and
14 other items of evidence, for example, CS gas and PAVA
15 spray, were seized from the attending officers at the
16 station? If none, why not?

17 What action, disciplinary or otherwise, has been
18 taken against individual police officers for their
19 failure to follow instructions given on arrival at the
20 scene, their failure to complete the use of force forms
21 and any other breaches of duty? Were any of the
22 attending officers known to have racist sympathies or
23 alleged to have acted in a racially discriminatory
24 manner prior to this incident. Were any of the
25 attending officers previously investigated in respect of

1 suspected racist sympathies or racial discrimination
2 prior to this incident?

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

9 What the family want from the Inquiry. The family
10 want the whole truth from this Inquiry: how and why did
11 Sheku die? If there was wrongdoing on the part of
12 individuals or otherwise, that wrongdoing must be
13 identified, scrutinised and made public.

14 The Inquiry and the investigations that underpin it
15 should ensure that the full facts are brought to light.
16 That any culpable and discreditable conduct by
17 police officers is exposed and brought to public notice,
18 that suspicion of deliberate wrongdoing by
19 police officers if unjustified is allayed. That any
20 shortcomings in training or execution of duty by
21 police officers is exposed, that the role Sheku Bayoh's
22 race or perceived race played in his detention and death
23 is scrutinised. That the actions of Police Scotland,
24 PIRC, the Police Federation and Crown Office are
25 scrutinised. That there is scrutiny of whether

1 institutional racism existed and informed the actions of
2 the attending officers, Police Scotland, PIRC, Police
3 Federation and Crown.

4 To achieve the foregoing, the Inquiry must without
5 fear or favour identify and examine all the relevant
6 evidence and be prepared to ask difficult questions of
7 individuals and institutions who may not usually be the
8 subject of scrutiny and to be tenacious to get to the
9 truth. Sheku Bayoh and his family deserve no less.

10 This hard fought Public Inquiry is the final port of
11 call for these questions to be answered. For this to
12 happen, the Bayoh family wish to effectively participate
13 in the Inquiry by having the relevant questions asked.
14 This is not a request, but a right safeguarded by
15 Article 2.

16 The Bayoh family is concerned that racial
17 stereotyping may have been a contributory factor in the
18 death of Sheku Bayoh resulting from restraint and use of
19 force. The question of racism has from the very
20 beginning been the elephant in the room. The Inquiry
21 must scrutinise how this forms part of the investigation
22 process.

23 The family wish the Inquiry to scrutinise the use of
24 inappropriate language, unconscious racism, unwitting
25 racism by police officers and those from the authorities

1 that followed in their footsteps. Whilst this
2 undoubtedly adds to the burden the Chair and Assessors
3 carry, the legal team representing the Bayoh families
4 are here to assist wherever they can in supporting you
5 to fulfil the Terms of Reference of the Inquiry.

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

14 This Inquiry, having identified the centrality of
15 race, has an opportunity to ensure that this
16 is rigorously interrogated and to avoid the mistakes of
17 prior inquiries such as the Stephen Lawrence Inquiry and
18 that of the Chhokar Inquiry.

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

25 When the Inquiry was set up after years of

1 campaigning by the family, Humza Yousaf, the then
2 Cabinet Secretary for Justice stated:

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

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

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

1 this breed of racism. The police canteen can too easily
2 be the breeding ground."

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

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

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

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

23 We invite the Inquiry to consider the terms both of
24 this 2020 and 2021 report referred to above in the
25 context of the death of Sheku Bayoh.

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

9 This Inquiry is an opportunity to expose
10 institutional racism and hold those responsible to
11 account. The Inquiry must be fearless in investigating
12 the lack of accountability of our guardians of law and
13 order.

14 Following Sheku's death, the Bayoh family tried
15 desperately to keep an open mind on what happened on
16 Hayfield Road, Kirkcaldy, on 3 May 2015. They have
17 remained dignified but full of rage because they are not
18 asking for anything special, just the truth, because
19 without the truth there of course can be no justice.

20 The slogan that the family raised at the start of
21 their campaign was "The dead cannot cry out for justice,
22 it is the duty of the living to do so for them." To
23 fulfil that duty, this Inquiry must ensure that nobody
24 is allowed to evade accountability or frustrate the
25 inquisitorial process.

1 Sheku Bayoh's family will never rest until they have
2 truth.

3 LORD BRACADALE: Thank you, Ms Mitchell.

4 Ms McGuire.

5 Opening statement by MS MAGUIRE

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

10 I thank you, sir, for allowing me the opportunity to
11 make this opening statement on behalf of the
12 Chief Constable.

13 Yesterday we were privileged to hear from Mr Bayoh's
14 families who shared their memories of him. No one could
15 fail to be moved by the eloquence, courage and dignity
16 shown in that presentation, or fail to understand the
17 devastating loss they have suffered. The death of
18 a young person causes unimaginable grief and no mother
19 should have to suffer the loss of her son.

20 The presentation was a poignant reminder of what
21 this Inquiry is about. It is about the death of
22 Sheku Bayoh, a much loved son, father, brother, uncle,
23 cousin, nephew, partner and a good friend; a young black
24 man who was a member of the Scottish community, the
25 Kirkcaldy community, a fellow citizen, who died

1 following an interaction with officers of
2 Police Scotland.

3 The Chief Constable who is present here today has
4 asked that I address my first remarks to you, his
5 family. You are at the heart of this Inquiry. The
6 Chief Constable wishes to express his support for this
7 Inquiry to you in person and publicly. Today he offers
8 his condolences to you for the loss of your loved one.

9 The Chief Constable was powerfully affected by
10 Kadi's statement yesterday that she does not feel safe
11 in Scotland, that she fears for her children and for her
12 nieces and nephews. As Chief Constable, he leads
13 a police service whose purpose is to improve safety and
14 wellbeing of the people and communities of Scotland.
15 That mission is and must be for the benefit of all
16 citizens and, as Chief Constable, he is clear that
17 Police Scotland has a major role in ensuring that
18 Scotland is a safe, secure and welcoming place.

19 The Chief Constable has committed Police Scotland to
20 support the Inquiry's aims and objectives with absolute
21 candour. At his direction, extensive resources have
22 been applied and continue to be applied to assist in the
23 provision of material to the Inquiry and ensure the
24 fullest possible engagement with the Inquiry.

25 He agrees that it is essential to understand all

1 that happened in Kirkcaldy on 3 May 2015 and whether or
2 not race or perceived race played any part in the tragic
3 outcome or the subsequent events.

4 You can be reassured that any omissions or failures
5 on the part of the Police Service will be acknowledged,
6 that lessons have been learned and will continue to be
7 learned and that there will be a constant striving for
8 continuous improvement.

9 There is no doubt about the importance of this
10 Inquiry to you and your families, to the communities of
11 Scotland, the black community and other minority
12 communities.

13 The Chief Constable knows how vital it is to
14 maintain and build the confidence of all communities
15 served by the police. It is for that reason that what
16 he wishes the focus of this, his opening statement, to
17 be is on the issue of racism and policing in Scotland.
18 Whilst it is not a specific question for the first
19 hearing, it will be relevant to all aspects under
20 consideration as the Inquiry progresses. It therefore
21 has its place properly now, at the beginning of the
22 first hearing.

23 Sir, I turn now to address the Inquiry on that
24 chapter of the written statement: policing in Scotland
25 and the issue of racism.

1 Policing in Scotland is done with and by the consent
2 of the public. The Chief Constable has consistently
3 underlined that Police Scotland draws its legitimacy
4 from the consent of and bond of trust it has with its
5 fellow citizens. Effective policing is enabled and
6 enhanced by the trust and confidence of the public. The
7 main purpose of policing in Scotland is to improve the
8 safety and wellbeing of people and communities and that
9 purpose is of course to serve all people and all
10 communities.

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

19 The question of whether or not race or perceived
20 race played any part in what happened on 3 May 2015 to
21 Mr Bayoh and thereafter is a serious and grave matter
22 for policing in Scotland and its relationship with the
23 public.

24 The Chief Constable reaffirms his public position
25 that racism or discrimination of any kind is utterly

1 deplorable, completely unacceptable and should have no
2 place in society and no place in policing.

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

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

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

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

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

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

17 The Chief Constable has a duty and an opportunity to
18 strive for a change now which is unquestionably and
19 absolutely morally and ethically right. There is still
20 work to be done to strengthen public confidence in
21 the police. Recent events nationally across the
22 United Kingdom and internationally have demonstrated
23 that. The Chief Constable is listening to all
24 communities, is committed to understanding their issues
25 and is taking positive and effective action.

1 Disadvantage and injustice persist in society.
2 Discrimination by individuals through cultural norms and
3 in the structures of institutions remain.
4 Police Scotland is not immune from these challenges and
5 that was underlined by Dame Elish Angiolini's review of
6 police complaints in 2020.

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

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

15 Police officers take an oath of office, adhere to
16 a code of ethics and must adhere to the standards of
17 professional behaviour. Police officers are not simply
18 employees: they are the holders of the public office of
19 constable, subject to a strict regulatory framework
20 which is essential for the preservation of public
21 confidence and the proper discharge of their duties as
22 police officers. The standards of behaviour include the
23 obligation to report, challenge or take action against
24 the conduct of other officers which has fallen below the
25 standards of professional behaviour.

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

4 The Chief Constable has personally ensured that
5 there is renewed action on inclusion and diversity
6 within Police Scotland which is subject to external,
7 independent oversight, challenge and scrutiny.
8 Police Scotland has the benefit of an equality,
9 diversity, inclusion and human rights independent review
10 group with an independent chair. Diversity action plans
11 have been introduced after consultation with diversity
12 staff associations and working groups established to
13 deliver on these plans. In addition, leadership
14 development programmes have been reviewed to ensure
15 equality, diversity and inclusion sit at the heart of
16 them and there's a commitment to increase development
17 opportunities for underrepresented groups.

18 The Chief Constable and the Deputy Chief Constable,
19 Mrs Fiona Taylor, have led steps to direct and deliver
20 real change. They recognise that training and espoused
21 values are one thing, but to be really effective, what
22 is essential is that the necessary core values are an
23 integral part of the culture of the organisation at
24 every level.

25 There is an awareness that culture can be defined in

1 many ways and that there will be more than one level of
2 culture operating in any organisation. They understand
3 that it is a complex matter. It requires the
4 re-examination of the interrelationship between the
5 basic assumptions of individuals and the core values of
6 Police Scotland. It requires the embedding of core
7 standards of behaviour to ensure that the culture of
8 every division and department in Police Scotland is
9 anti-racist and that all behaviours and attitudes are in
10 line with that culture.

11 This will be achieved through action, leadership,
12 campaigns, empathy-building, positive narratives and
13 peer support, with a rigorous adherence to legal duties,
14 all of which will be continually assessed and evaluated
15 for effect. Each member of the organisation of
16 Police Scotland needs to think and act in accordance
17 with the shared core values in order to be anti-racist.

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

23 The Chief Constable is sending a very clear and
24 strong message that if you hold racist, misogynist or
25 discriminatory views, you are unwelcome in policing. It

1 is imperative that progress is made. Words and good
2 intent are not enough. There will be action, practical,
3 firm, progressive, visible action.

4 The Chief Constable declares that upholding the core
5 values of the Police Service of Scotland demands that it
6 be anti-racist, that Police Scotland will aim to become
7 a truly anti-racist service and that Police Scotland
8 will aim to act at all times in accordance with that
9 declaration.

10 Sir, I formally adopt the fuller written statement
11 on behalf of the Chief Constable which will be submitted
12 to the Inquiry today and I conclude by reaffirming that
13 this Public Inquiry has the full support of the
14 Chief Constable and Police Scotland. There is a shared
15 aim to understand the events and the causes and to
16 address matters as they arise. There will be absolute
17 candour from Police Scotland. The organisation will
18 continue to support the Inquiry in all its
19 investigations and aims.

20 Thank you, sir.

21 LORD BRACADALE: Thank you, Ms Maguire.

22 Mr Scullion.

23 Opening statement by MR SCULLION

24 MR SCULLION: My name is John Scullion and I represent the

25 Police Investigations and Review Commissioner, the PIRC.

1 Opening statement on behalf of the PIRC. The PIRC
2 is grateful for the opportunity to make an opening
3 statement at the outset of phase 1 of the public
4 hearings in this Inquiry. Before I say anything else,
5 I wish on behalf of the PIRC and those representing her
6 to express my sincere condolences to the Bayoh family
7 and to acknowledge the dignity and resilience they have
8 shown whilst waiting for these proceedings to commence.

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

23 As you are aware, the PIRC involvement in the
24 investigation of the death of Sheku Bayoh began with the
25 instruction from the Crown on 3 May 2015 to investigate

1 the interaction between the police and Sheku Bayoh at
2 the time of his arrest and the events thereafter.

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

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

20 On behalf of the PIRC, I wish to record my
21 appreciation of the hard work and helpful approach of
22 Senior Counsel to the Inquiry, the Solicitor to the
23 Inquiry and the whole Inquiry team.

24 Regular discussions between counsel and different
25 members of staff within the PIRC and the Inquiry team

1 have been key to ensuring good progress in addressing
2 the many complex issues, including those relating to the
3 sheer quantity of evidence.

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

8 Prior to 2012, there existed reciprocal arrangements
9 among the eight legacy forces to allow for the
10 independent investigation of the conduct of officers.
11 The introduction of a single service removed this
12 opportunity. In accordance with the European Convention
13 on Human Rights, with particular regard to Article 2,
14 right to life, and Article 3, freedom from torture or
15 inhumane treatment, there exists a requirement for an
16 investigatory body with no hierarchical or institutional
17 connection to those police officers under investigation.

18 To this end, the 2012 Act also established the
19 Independent Office for the Police Investigations and
20 Review Commissioner. The PIRC came into existence on
21 1 April 2013.

22 Role and responsibilities of the PIRC. Section 33A
23 of the Police, Public Order and Criminal Justice
24 (Scotland) Act 2006, as amended, sets out the general
25 functions of the PIRC. One of those functions is where

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

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

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

15 In carrying out an investigation on behalf of
16 the Crown Office and Procurator Fiscal Service, the PIRC
17 complies to comply with (a) any lawful instruction given
18 by the appropriate prosecutor who issued the direction
19 and (b) in the case of an investigation in which there
20 is an indication that a person serving with the police
21 may have committed an offence, any instruction issued by
22 the Lord Advocate in relation to reporting for
23 consideration of the question of prosecution of alleged
24 offences.

25 Referral by COPFS. Following the death of

1 Sheku Bayoh on 3 May 2015, the PIRC was instructed by
2 the Lord Advocate in terms of section 3, 33A(b)(ii) of
3 the 2006 Act to investigate the interaction between
4 the police and Sheku Bayoh at the time of his arrest and
5 the events thereafter.

6 Terms of Reference of the Crown instruction to the
7 PIRC were expanded on three occasions. Firstly, on
8 5 May 2015, the Terms of Reference were expanded to
9 include investigation of: 1, the circumstances leading
10 up to the incident, namely the movements of Sheku Bayoh
11 late on Saturday 2 May 2015 and during the early hours
12 of Sunday 3 May prior to contact with the police,
13 including his attendance at a house at Craigmount
14 Kirkcaldy, and events following his attendance there;
15 and 2, the incident in which the police became involved
16 with Sheku Bayoh shortly after 7.00 am on 3 May 2015.

17 On 12 June 2015, the PIRC was further directed by
18 the Lord Advocate to investigate concerns expressed by
19 Sheku Bayoh's family, namely 3, allegations by the
20 family that they were provided with misleading and
21 erroneous information concerning the death of
22 Sheku Bayoh by police and a concern as to why they were
23 provided with that information; 4, concerns that the
24 initial police investigations and attempts to secure
25 evidence were not thorough, meaning that crucial

1 evidence was lost to the Inquiry; and 5, that there was
2 inappropriate conferring between police officers.

3 Finally, on 2 July 2015 the PIRC was further
4 directed by the Lord Advocate to: 6, to investigate the
5 allegation of criminal conduct made by Zahid Saeed.
6 7(a) investigate issues of race and conduct, 7(b)
7 investigate allegations of potential contraventions of
8 the Data Protection Act 1998 and 7(c), investigate
9 miscellaneous other matters.

10 Investigation. The PIRC undertook an extensive
11 investigation. This included obtaining several hundred
12 witness statements, a total of 512 statements were
13 obtained, some taken by officers of Police Scotland, ten
14 were obtained by the PIRC from expert witnesses, the
15 investigation examined seven separate incident scenes
16 and recovered in excess of 903 productions.

17 Between May 2015 and the announcement of the
18 Public Inquiry in late 2019, it has assessed that in
19 excess of 10,954 hours were worked by PIRC staff in
20 relation to the investigation of the death of
21 Sheku Bayoh.

22 Findings. The PIRC provided two reports to
23 the Crown in relation to the investigation into the
24 death of Sheku Bayoh: the first on 10 August 2015 and
25 the second on 9 August 2016. The two reports considered

1 the original Crown-directed investigation and the
2 additional Terms of Reference provided by the Crown. In
3 addition to this, the PIRC provided three interim
4 situational reports to the Crown to provide updates on
5 the progress of investigations at 11 and 21 May 2015 and
6 30 October 2015.

7 PIRC. In May 2015, the PIRC was still a fairly new
8 organisation, having been in existence for only two
9 years. At that time, institutional learning within the
10 PIRC was still at an early stage. It is fair to say
11 that in the seven years since then there have been many
12 changes. The organisation has grown in response to
13 increasing demands, considerable experience has been
14 gained as a consequence of undertaking its statutory
15 roles in that period. Many opportunities have been
16 taken to learn and develop processes, policies and
17 practice. The current Commissioner, the third to hold
18 the position, has been in post since June 2019.

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

22 In May 2015, the PIRC's annual operating budget was
23 £2,971,000; today it is £5,824,000. Prior to the
24 investigation into the death of Sheku Bayoh, the PIRC
25 had investigated a total of ten deaths in custody; today

1 the number of deaths in custody investigated is 31.

2 While I do not plan to explore in detail at this
3 stage the lessons and changes already learned since
4 2015, I consider it appropriate to highlight key areas
5 that will fall to be considered in the first hearing
6 where there has already been considerable change. These
7 include the post-incident process, the manner and
8 timescales of referrals from Police Scotland, the
9 provision of witness statements, the investigative
10 processes, reporting procedures and how the PIRC deals
11 with allegations of discrimination in investigations and
12 complaint handling reviews.

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

23 Thank you.

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

1 (11.20 am)

2 (Short Break)

3 (11.47 am)

4 LORD BRACADALE: Now, Mr Duncan.

5 Opening statement by MR DUNCAN

6 MR DUNCAN: Good morning. I'm Alasdair Duncan and

7 I represent the Lord Advocate who you will be aware
8 represents the Crown. I'm assisted by Ms Bain who is at
9 the back of the room and Ms Aitken from the Procurator
10 Fiscal Service who is a few rows behind you.

11 There was an indication yesterday that condolences
12 were not particularly welcome or helpful from
13 organisations like the one I represent, and I have to
14 say I find that position entirely understandable, but
15 please be aware you do have those condolences.

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

1 her behalf and it focuses on hearing 1.

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

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

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

24 Further significant Inquiry was undertaken by
25 the Crown, including the instruction and analysis of

1 multiple expert reports covering a broad range of
2 medical and technical matters.

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

9 Senior crown counsel came to the view that there was
10 insufficient evidence to bring criminal proceedings.
11 That determination was the subject of an application for
12 review in accordance with rules made under section 4 of
13 the Victims and Witnesses (Scotland) Act 2014. A review
14 was undertaken by principal Crown counsel whose analysis
15 and conclusions were reviewed by the then
16 Solicitor General.

17 The outcome of the review was intimated by letter to
18 solicitors acting for the families of Sheku Bayoh on
19 11 November 2019. The letter advised that the Crown
20 considered there to be insufficient evidence to
21 establish criminality on the part of police officers,
22 whether individually or collectively, and that there was
23 insufficient evidence to bring proceedings in respect of
24 suggested wrongful acts and omissions by the Police
25 Service of Scotland.

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

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

14 These comments underline the dual role that the
15 Solicitor General requires to fulfil in relation to this
16 Inquiry. She must do what she can to assist the Inquiry
17 where that is appropriate, but she must also keep all
18 evidence emerging from the Inquiry's work under review
19 in terms of her role in the criminal justice system and
20 she must be seen to act fairly as regards that.

21 Now, this may mean that in hearing 1, although
22 seeking to assist the Inquiry team where we can, the
23 principal role of the Solicitor General's legal team
24 will be in listening to and analysing the evidence that
25 emerges. Co-counsel and Crown solicitors will be in

1 attendance for that purpose and I should add that none
2 of us was involved in the investigation into the death
3 of Sheku Bayoh or the subsequent review.

4 We will listen to all of the evidence with care and
5 that began yesterday with the moving accounts by and on
6 behalf of the relatives and families and friends of
7 Sheku.

8 Later phases of the Inquiry, hearing 3 in
9 particular, will look at post-incident management. The
10 Solicitor General and her team look forward to providing
11 whatever assistance they can in relation to that phase
12 of the Inquiry's work, but in emphasising that aspect of
13 the Inquiry's Terms of Reference, the
14 Solicitor General does not lose sight of another
15 important aspect, in particular the
16 Solicitor General keeps in mind that at the preliminary
17 hearing on 18 November 2021, and emphasised again this
18 morning, Counsel to the Inquiry emphasised the
19 importance of race to the questions before the Inquiry,
20 that at all times the Inquiry will ask whether race or
21 perceived race made a difference.

22 The Solicitor General and her team will proceed in
23 the same way.

24 Thank you, sir.

25 LORD BRACADALE: Thank you, Mr Duncan.

1 Mr McConnachie.

2 Opening statement by MR MCCONNACHIE

3 MR MCCONNACHIE: Thank you, sir.

4 This is an opening statement on behalf of Police
5 Constable Alan Paton, now retired. My name is
6 Brian McConnachie and I appear alongside Ms Radcliffe,
7 advocate on behalf of Alan Paton. We are instructed by
8 Paul Kavanagh of KM Law.

9 This opening statement is made on behalf of Alan
10 Paton. He has been granted core participant status in
11 the Sheku Bayoh Inquiry. This statement will explain
12 who he is and outlines what he is seeking from the
13 Inquiry.

14 Firstly, on behalf of Mr Paton we thank the Chair
15 for affording us the opportunity to make this opening
16 statement.

17 Alan Paton was a police constable with
18 Police Scotland based at Kirkcaldy police office. He
19 was on duty on 3 May 2015. At approximately 07.20 he,
20 along with a colleague, attended a call relating to
21 several reports of a black male in possession of a knife
22 on Hendry Road, Kirkcaldy.

23 They were the first officers to attend the scene.
24 On arrival he saw Mr Bayoh in the street directly in
25 front of the police vehicle. He was involved in the

1 subsequent restraint of Mr Bayoh. Thereafter, he
2 assisted in administering CPR until the paramedics
3 arrived.

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

7 Alan Paton understands that Mr Bayoh's death has had
8 a dramatic effect on the family. He also understands
9 that the family hope to obtain answers to the many
10 questions which they have surrounding the circumstances
11 of Mr Bayoh's death and the aftermath, questions which
12 remain despite the fact more than seven years have now
13 passed.

14 The aim of this Inquiry is twofold. First to
15 establish the circumstances surrounding the death of
16 Sheku Bayoh and make recommendations to prevent deaths
17 in similar circumstances. Secondly, the Inquiry will
18 assess the post-incident management process and
19 subsequent investigation, making recommendations, if
20 appropriate, and consider the extent, if any, to which
21 the events leading up to and following his death, in
22 particular the actions of the officers involved, were
23 affected by his actual or perceived race and make
24 recommendations to address any findings in that regard.

25 In this initial part of the hearing, the issues to

1 be addressed are set out in the document SBPI00003.
2 Primarily in relation to Mr Paton these would appear to
3 be (a) risk assessment, (b) initial contact with
4 Mr Bayoh, (c) the restraint, (d) the calling of the
5 ambulance, and (e) the completion of paperwork.

6 It is hoped that with the assistance and cooperation
7 of all core participants that the Inquiry will discover
8 the truth of what happened and offer the family closure,
9 that furthermore if there are lessons to be learned from
10 any part of the Inquiry's remit, that these are
11 highlighted and taken on board.

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

1 representatives of Mr Bayoh's family and his involvement
2 in matters has been singled out falsely as being
3 motivated by race. There has been extensive media
4 coverage naming him as being involved in the incident
5 and alleging racism and violence on his part. Mr Paton
6 denies all these various accusations.

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

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

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

1 the truth.

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

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

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

20 Thank you.

21 LORD BRACADALE: Thank you.

22 Dean of Faculty.

23 Opening statement by the DEAN OF FACULTY

24 DEAN OF FACULTY: Thank you, sir.

25 My name is Roddy Dunlop and I represent the Scottish

1 Police Federation, retired PC Nicole Short and PC
2 Craig Walker and in that regard, I am assisted by Euan
3 Scott, advocate, and by PBW Law.

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

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

22 The Federation likewise welcomes the Inquiry. It is
23 a statutory body whose purpose is to represent members
24 of the Police Force in Scotland in all matters affecting
25 their welfare and efficiency. It has a direct role in

1 representing members' interests, in the policies adopted
2 by Police Scotland, their members' training and the
3 resources available to them. It provides
4 representations on behalf of its members to the
5 government, Police Scotland and other related agencies
6 to ensure that the best interests of its members are
7 properly represented.

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

16 The Chair has indicated that he wants the family to
17 be at the heart of the Inquiry. That is clearly correct
18 and appropriate given what the Inquiry will consider and
19 the likely emotional toll on the family. It would,
20 however, be naive to think that the events of that day
21 have not had a material impact on the lives and families
22 of the officers who attended the scene that day.

23 As a representative body, the Federation did not
24 play a role in the restraint of Mr Bayoh; it
25 nevertheless has an interest in ensuring that lessons

1 can be learned from the matters to be addressed, for
2 example, in relation to the resources provided to
3 police officers or any changes to training. The
4 Federation is aware that changes have since been made to
5 training provided to police officers by Police Scotland,
6 particularly surrounding how to recognise and approach
7 individuals suffering from an acute behavioural
8 disturbance. The Federation is keen to explore what
9 further changes, if any, can be made. The Federation is
10 keen to explore the resourcing that was made available
11 to the officers who attended the scene that day and, in
12 particular, whether the provision of additional officer
13 safety equipment might have avoided the fatal outcome.

14 A representative of the Federation was involved in
15 the immediate aftermath when they provided welfare
16 advice to the officers involved upon request. As
17 a result of providing that advice and by making
18 arrangements for the officers to have the benefit of
19 legal advice, the Federation has been vilified in the
20 media. The Federation defended and will continue to
21 defend their members' interests in order to fulfil its
22 statutory obligation to represent its members on all
23 matters concerning their welfare. This includes the
24 provision of welfare advice, ensuring that its members'
25 fundamental legal rights are respected.

1 Since 3 May 2015 there has been intense media
2 speculation as to the circumstances surrounding the
3 death of Mr Bayoh. There has been an active campaign to
4 have the officers who attended criminally prosecuted.
5 There have been allegations of criminality from the
6 outset. This suggestion has persisted, notwithstanding
7 a complex and thorough investigation and subsequent
8 review determining that the officers would not face
9 criminal prosecution.

10 At every stage the decision not to prosecute has
11 been the subject of significant media attention and
12 adverse comment. There have been accusations of racism
13 directed against those officers, notwithstanding the
14 lack of any evidential foundation for such an
15 accusation. The officers have been individually
16 targeted on social media. Such vilification has
17 a lasting impact.

18 The human interest and the welfare of those officers
19 has largely been ignored since May 2015. Their
20 reputations have been tarnished. They will forever be
21 associated with the death of Mr Bayoh, the accusations
22 of racism, the accusations of brutality leveled against
23 them. Ms Short and PC Walker are confident that these
24 accusations are not fairly directed at them. They were
25 simply doing their duty in trying and traumatic

1 circumstances.

2 It will become clear from the evidence that the
3 events of that day and the aftermath have had
4 a significant impact on both the physical and mental
5 health of some of the officers, none more so perhaps
6 than Ms Short.

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

20 It is clear that this Inquiry will take some time.
21 Neither PC Walker nor Ms Short can move on with their
22 lives until the conclusion of this Inquiry. Until its
23 conclusion, the Inquiry will no doubt take its toll on
24 their health and mental wellbeing. They will continue
25 to be under intense media scrutiny. This should not be

1 viewed as a criticism of the Inquiry. Both are
2 pragmatists and acknowledge that the issues that this
3 Inquiry will explore are important and complex and that
4 a proper exploration of such issues will take time.

5 The reason for highlighting the impact is to stress
6 that the human interest and welfare of the officers
7 involved should not be forgotten as this Inquiry
8 progresses.

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

21 Presenting this Inquiry as a fight for justice
22 against a malign police force does not do the
23 circumstances justice. The unutterable tragedy of this
24 case should not cause us to ignore the bravery of the
25 individuals who responded to a rapidly unfolding

1 situation on the morning of 3 May.

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

9 I am obliged.

10 LORD BRACADALE: Thank you, Dean.

11 Mr Jackson.

12 Opening statement by MR JACKSON

13 MR JACKSON: Thank you, sir.

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

18 So I make this opening statement on behalf of those
19 core participants. In short, it is submitted they did
20 nothing wrong on 3 May 2015 and that race did not
21 influence their actions in any way. They are three
22 officers with good records who reported for duty that
23 day and found themselves responding to an evolving and
24 significant event. There had, we know, been several
25 reports by members of the public of a well built male,

1 around 6 feet, of muscular build, wielding a knife in
2 public, walking in the middle of the road and acting
3 aggressively towards passing cars.

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

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

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

20 PC Tomlinson arrived along with Nicole Short after
21 PCs Walker and Paton. PCs Smith and Good arrived
22 together thereafter. PC Tomlinson had about 17 months'
23 service.

24 From the moment of their arrival at the scene
25 everything those officers did was in line with the

1 standard operating procedure in place at the time, their
2 training and the law.

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

12 PC Tomlinson, when he arrived, was unable to see
13 PC Paton. He saw Mr Bayoh and PC Walker facing one
14 another, PC Walker had his hands covering his face.
15 PC Walker had in fact been contaminated by his own
16 incapacitant spray, but PC Tomlinson thought he had been
17 injured. His inability to see PC Paton gave him cause
18 to believe that too might be the case.

19 Officer Tomlinson tried verbal commands. Mr Bayoh
20 refused to follow them or engage with him and PC Short
21 and PC Tomlinson then tried incapacitant sprays but they
22 too had no effect.

23 Sheku Bayoh then chased and in fact attacked
24 Nicole Short. PC Tomlinson believed that there was real
25 danger to Nicole Short and in defence of her and himself

1 he used his baton and was then involved in the restraint
2 of Mr Bayoh on the ground. The force used was
3 reasonable, proportionate and necessary in the
4 circumstances. This was a high risk incident. Nothing
5 else could have been done in that situation.

6 Mr Bayoh displayed serious and aggravated resistance
7 and the officers were entitled to use the force they did
8 in the circumstances. It was, I repeat, proportionate
9 and reasonable.

10 Tragic the outcome undoubtedly was, and those
11 I represent acknowledge that, and would add to what
12 others have said, but the final position is that tragic
13 as the outcome was, the officers themselves did nothing
14 wrong.

15 PC Smith was at that time a qualified officer safety
16 trainer. He was delivering courses on that several
17 times a year and he went there with PC Good who was
18 a probationer. She completed her first shift on
19 6 April 2015 and had very little Police Service. She
20 was under the supervision of PC Smith who was her helper
21 in her training.

22 En route they heard the emergency Airwave button and
23 Nicole Short's voice. That's rare that button being
24 used, and they heard a further activation and a voice
25 say "Officer injured". PC Good was initially concerned

1 that Nicole Short had been stabbed. She was shaking,
2 injured. By that time, Mr Bayoh was on the ground.
3 PC Smith assisted with the restraint. PC Good assisted
4 Nicole Short at first and then too assisted with the
5 restraint.

6 At that stage PC Smith noted Mr Bayoh was
7 unresponsive and thereafter administered CPR. He was
8 unable to continue with breaths, but chest compressions
9 were continued and he then drove the ambulance to the
10 hospital, allowing paramedics to continue administering
11 medical treatment to Sheku Bayoh in the rear.

12 Mention has been made about what happened thereafter
13 at Kirkcaldy police office. When the officers got back
14 to Kirkcaldy police station they were in a state of
15 shock. PC Tomlinson arrived first; Good remained longer
16 at the scene to secure the locus and Smith had to make
17 his way back from the hospital after driving the
18 ambulance. They were directed into the canteen and
19 separated from others in the station, all of them
20 shocked and distressed and indeed visibly upset.

21 Any suggestion that there was collusion between the
22 officers at that stage is absolutely refuted, not only
23 by the officers themselves, but by all the other
24 evidence in the case. That evidence will confirm that
25 these officers told the truth.

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

5 PC Good in particular was asked about a comment in
6 a statement about a thought she had en route to Hayfield
7 Road upon hearing the emergency button. The thought was
8 that this might be an act of terrorism. She explained
9 that was merely a fleeting thought she had at the point
10 she heard the button and thought perhaps Nicole Short
11 had been stabbed. It was prompted by a previous
12 briefing on the level of the terrorist threat and
13 rumours circulating about intelligence and the
14 possibility of such attacks. It is clear what was
15 actually foremost in PC Good's mind was the fact that
16 a man was reported to be in possession of a large knife.

17 This was a very unusual call for a Sunday morning in
18 Kirkcaldy and the man was causing fear and alarm amongst
19 the public. It is only natural that the police officers
20 would have considered any number of possible scenarios
21 from the possibility it was terror-related to the
22 possibility it was just a hoax. Police officers are
23 trained to be aware, vigilant and professionally
24 curious. Policing doesn't operate in a vacuum.

25 At that time, officers were under instructions to

1 avoid wearing uniform when travelling to and from work
2 so as not to reveal that they were serving
3 police officers. Terrorism is something they are
4 trained to be aware of in the assessment of risk, an
5 ever-present danger, and they are told to be mindful of
6 that at all times. Not at all surprising that that
7 possibility -- no more -- that possibility was in
8 officers' heads when they were attending the scene.

9 In conclusion, the allegations which have been made
10 against these officers, particularly regarding the
11 import of race, are without foundation. They have
12 nevertheless had a significant impact on the officers
13 who have sought to continue in their duties in service
14 to the public.

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

23 Thank you, sir.

24 LORD BRACADALE: Thank you, Mr Jackson.

25 Could I ask the four senior counsel at the table to

1 return to their seats and once they have done that, if
2 Ms McCall, Mr Hamilton, Mr Macleod and Mr Moir could
3 make their way to the table, please.

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

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

17 LORD BRACADALE: Thank you, that's very helpful, Ms Grahame.
18 Ms McCall.

19 Opening statement by MS MCCALL

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

25 Scott Maxwell, Daniel Gibson and James McDonough

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

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

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

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

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

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

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

10 Each officer who attended that day was required by
11 their public duty as a constable to do so, no matter the
12 danger they may have faced. As well as the further
13 calls from the public corroborating the initial report
14 of a man with a large knife, once Sergeant Maxwell,
15 Constable Gibson and Constable McDonough were en route
16 they each heard a colleague's emergency button being
17 activated and the message communicated "Officer
18 injured". At that point they did not know what had
19 happened, which of their colleagues may have been
20 injured or how seriously, and on arrival they needed to
21 assess the situation and respond immediately. The
22 Inquiry should not lose sight of the fact that these men
23 were having to assess risk and make decisions in
24 real-time, in a dynamic evolving situation, often in
25 a split second.

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

13 It has taken a long time for this Inquiry to be
14 announced and to get underway and the passage of time
15 has weighed heavily on each of the three officers
16 I represent. They, along with their colleagues, have
17 been subject to much public and media comment and
18 speculation over the years, to which as serving officers
19 they cannot reply. Their hope now is that this will be
20 a thorough and transparent process. They want the
21 Inquiry to hear from all relevant witnesses to the
22 unfolding events of 3 May 2015 and for the full facts to
23 be aired.

24 All statutory public inquiries are set up because
25 there is a matter of public concern. It is therefore

1 important too that the public has the opportunity to
2 hear and see a full account of the evidence which will
3 be available to the Inquiry and upon which you, sir,
4 will ultimately reach your conclusions and
5 recommendations.

6 Everyone with an interest in this Inquiry now has to
7 place their trust in you as Chair. Sergeant Maxwell,
8 Constable Gibson and Constable McDonough are prepared to
9 accept the scrutiny. They have indicated from the
10 outset of the Inquiry that they want the Chair to get to
11 the truth of what happened and why and that they will do
12 whatever is properly asked of them to facilitate that
13 outcome.

14 Thank you.

15 LORD BRACADALE: Thank you, Ms McCall.

16 Mr Hamilton.

17 Opening statement by MR HAMILTON

18 MR HAMILTON: Thank you, sir.

19 My name is Duncan Hamilton and I appear on behalf of
20 two core participants, firstly, retired Chief
21 Superintendent Gary McEwan and secondly, Chief
22 Superintendent Conrad Trickett and I'm instructed by
23 Levy & McRae solicitors.

24 Chief Superintendent Gary McEwan retired from
25 Police Scotland in 2021 after 31 years' service. Chief

1 Superintendent Conrad Trickett has 23 years'
2 Police Service and remains a serving police officer.
3 Both men are grateful for the opportunity to contribute
4 to the work of this Inquiry today and in the months
5 ahead.

6 At the outset both retired Chief Superintendent
7 McEwan and Chief Superintendent Trickett wish to place
8 on public record their sincere condolences to the family
9 of Sheku Bayoh for their enduring loss. It is apparent
10 from the evidence already available, amplified by the
11 compelling contributions shared with the Inquiry
12 yesterday that he was a much loved man who came from
13 a close and caring family. These hearings will be
14 difficult for all involved but will be most painful for
15 the Bayoh family.

16 In the vast range of issues this Inquiry will cover,
17 the central tragedy remains that a young man lost his
18 life. That is at the core of why this Inquiry was
19 established and it is why Chief Superintendents McEwan
20 and Trickett are committed to assisting the Inquiry in
21 its vital work. Both have provided full statements and
22 answered every question put to them by the Inquiry team.

23 These officers have dedicated a significant part of
24 their lives to advocating policing which commands
25 community confidence. They share the desire of the

1 family and of the public to build the fullest picture of
2 events on 3 May 2015 in Hayfield Road. More widely,
3 there is a unity of purpose in ensuring that communities
4 across Scotland continue to trust and value their
5 Police Service.

6 It is important for those following this Inquiry to
7 understand from the outset that neither Gary McEwan nor
8 Conrad Trickett had any part in the events leading to
9 the death of Sheku Bayoh. Neither was present in
10 Hayfield Road or ever came into contact with
11 Sheku Bayoh. Rather their role involved with dealing
12 with the aftermath of the incident and the procedures
13 triggered by Sheku Bayoh's death.

14 On the morning of 3 May 2015, retired Chief
15 Superintendent McEwan was on duty in the capacity of
16 a strategic firearms commander overseeing a separate
17 operation. He was informed of the incident involving
18 Mr Bayoh and was responsible for declaring this to be
19 a critical incident.

20 At a meeting later that morning where the critical
21 incident was explained to other senior officers, the
22 decision was taken that a post-incident manager was
23 required. Conrad Trickett, who was then
24 a chief inspector and the on-call chief inspector for
25 operational support division, proactively offered to

1 assist and perform that role in light of his previous
2 training and experience. He was thereafter appointed as
3 post-incident manager by the Assistant Chief Constable.
4 His involvement was voluntary and driven by a desire to
5 help.

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

12 Both retired Chief Superintendent McEwan and Chief
13 Superintendent Trickett are clear that they will attend
14 the Inquiry and will give evidence if asked to do so.
15 The desire of the family for a definitive investigation
16 and clear conclusions based on evidence is one which
17 they share.

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

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

3 I'm obliged.

4 LORD BRACADALE: Thank you, Mr Hamilton.

5 Mr Macleod.

6 Opening statement by MR MACLEOD

7 MR MACLEOD: Thank you.

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

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

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

21 He is also providing a full statement based on the
22 material that the Inquiry has been able to give him
23 regarding his involvement in the subsequent police
24 investigation of events in Hayfield Road.

25 As a duty detective superintendent for the east of

1 Scotland on 3 May 2015, he set-off from Livingstone
2 police station to Kirkcaldy within minutes of being
3 instructed to do so by Detective Chief Superintendent
4 Lesley Boal.

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

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

17 Should it be established in the course of the
18 Inquiry that Mr Campbell, or indeed other officers, have
19 made mistakes or errors of judgment, then he is
20 committed to learning lessons from the process.

21 As an officer with over 25 years of experience,
22 Mr Campbell has always resolved to act with fairness,
23 integrity and respect, and he will assist this Inquiry
24 with these same values in mind. This way he can play
25 his part in ensuring that the Inquiry develops as clear

1 a picture as possible and fulfils its critically
2 important Terms of Reference.

3 Thank you, sir.

4 LORD BRACADALE: Thank you. Mr Moir.

5 Opening statement by MR MOIR

6 MR MOIR: Thank you, sir.

7 My name is Mark Moir. I represent the Coalition for
8 Racial Equality and Rights. I am assisted by Kevin
9 Henry, advocate, and instructed by Moir & Sweeney
10 Litigation, solicitors.

11 The Coalition for Racial Equality and Rights, which
12 I will herein after refer to as CRER, wishes firstly to
13 express its heartfelt condolences to the family and
14 friends of Sheku Bayoh.

15 CRER is mindful of the hurdles that this family have
16 faced from the day of his death to the opening of these
17 Inquiry hearings seven years later. As the Chair has
18 rightly stated, Mr Bayoh's family must be at the heart
19 of this Inquiry.

20 CRER welcomes the opportunity to make an opening
21 statement to the Inquiry. Before turning to the matters
22 which the Inquiry is concerned, I would like briefly to
23 set out who CRER are and what they do.

24 CRER is a Scottish strategic racial equality charity
25 and anti-racist organisation based in Glasgow. It is

1 focused on working to eliminate racial discrimination
2 and harassment and to promote racial justice across
3 Scotland.

4 Taking a rights and evidence-based approach to its
5 work, CRER aims to tackle structural racism at all
6 levels at which such racism occurs: personal, social and
7 institutional. Since its inception in 1999, CRER has
8 had a relationship of trust with key stakeholders and
9 public bodies across Scotland as a critical friend and
10 centre of expertise on race equality within
11 organisations in their roles as employers and service
12 providers, with its clear focus on tackling
13 institutional and structural racism.

14 CRER has been asked to undertake many projects
15 focused on assessing equality and performance and
16 supporting improvement in approaches. Its specialism on
17 race equality in relation to organisational practice,
18 theoretical and legal frameworks and in working
19 alongside grassroot community groups has enabled it to
20 support organisations to identify and take action on
21 these issues.

22 CRER thanks the Chair for his decision to appoint it
23 as a core participant to the Inquiry. This Inquiry will
24 be examining the circumstances leading to the death of
25 Mr Bayoh, in particular the actions of officers

1 involved, how the police dealt with the aftermath of his
2 death and the subsequent investigation into Mr Bayoh's
3 death.

4 The Inquiry team's Terms of Reference will require
5 the Chair to consider the extent, if any, to which those
6 events were affected by Mr Bayoh's actual or perceived
7 race. Put short, the Chair will require to ask himself
8 would it have made a difference if Mr Bayoh had been
9 white?

10 It is this question and the examination of the role,
11 if any, played by Mr Bayoh's race in the events
12 surrounding his death which led to CRER seeking
13 designation as core participant in the Inquiry. CRER
14 does not wish to speculate on or pre-judge the evidence
15 which may be led during the course of the Inquiry. It
16 is not CRER's intention in this opening statement to
17 make submissions on the impact, if any, of Mr Bayoh's
18 actual or perceived race. Rather, CRER intends to
19 critically and robustly examine all the evidence led
20 during the course of the Inquiry and consider whether
21 the actions of the various individuals and institutions
22 would have been different had Mr Bayoh been white.

23 CRER considers that the issue of race permeates all
24 aspects of the Inquiry's work. It welcomes the Chair's
25 decision to examine the possible role of race at each

1 hearing, culminating in a final hearing focusing on race
2 which will bring together and robustly examine the
3 evidence led in order for the Chair to reach his
4 conclusions and make any such recommendations as he sees
5 fit.

6 CRER is confident that the approach which Senior
7 Counsel to the Inquiry has proposed will allow the
8 Inquiry to understand the nuances of racism. Racism
9 does not just extend to overtly racist language and
10 behaviour. It is often indirect, and understanding it
11 requires consideration of how individuals, organisations
12 and societies behave, and the impact of that behaviour
13 on people from minority ethnic backgrounds, rather than
14 simply focusing on open expressions of prejudice.

15 In this regard, CRER will seek to provide whatever
16 assistance it can to the Inquiry in its consideration of
17 the role, if any, played by unwitting or institutional
18 racism.

19 While the Inquiry will no doubt, should such
20 evidence emerge during the course of the Inquiry, be
21 able to easily identify examples of overt racist
22 language or behaviours, examples of unwitting or
23 institutional racism may prove to be more difficult to
24 recognise. The question of both unwitting and
25 institutional racism were considered by Sir William

1 Macpherson of Cluny in his Inquiry into the death of
2 Stephen Lawrence. While these are of course matters for
3 the Chair, CRER would wish to raise at this stage
4 Sir William's definition of unwitting racism:

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

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

1 communities. This issue of institutional racism was
2 also considered by Sir William Macpherson who considered
3 that institutional racism was:

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

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

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

23 Scotland's black and minority ethnic communities
24 have high expectations of the Inquiry. This Inquiry is
25 the first such Inquiry in Scotland to consider a death

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

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

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

21 CRER seek to work with the Inquiry in a positive and
22 constructive manner to enable it to carry out
23 a thorough, critical and fearless examination of the
24 material available to it and to fulfil its Terms of
25 Reference. To ensure that we remain focused on this

1 task, we will not be making public comment outwith our
2 input to the Inquiry at this time.

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

11 Thank you, sir.

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

14 Ms Grahame.

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

17 LORD BRACADALE: Now, the first witnesses in the Inquiry are
18 the principals of Advanced Laser Imaging, is that
19 correct?

20 MS GRAHAME: Yes, that's correct. As I mentioned in my
21 opening statement, Advanced Laser Imaging are scheduled
22 to attend tomorrow. As originally scheduled, we
23 anticipated opening statements completing tomorrow
24 morning. We have obviously made much better progress
25 today than we had expected.

1 Advanced Laser Imaging are travelling to Edinburgh
2 this afternoon and will be available tomorrow. I would
3 wish a brief opportunity, if I may, to make sure that
4 the technology will work. There are a number of items
5 that will have to be played and demonstrated during
6 their evidence and I would welcome an opportunity to do
7 that perhaps tomorrow morning before we begin.

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

10 MS GRAHAME: That would suit me very well.

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

13 (12.50 pm)

14 (The Inquiry adjourned until 12.00 pm on
15 Thursday, 12 May 2022)

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