

Thursday, 18 November 2021

(10.30 am)

Lord Bracadale Opening Remarks and Assessor Introductions

LORD BRACADALE: Good morning and welcome to this

preliminary hearing in the Sheku Bayoh Inquiry. I am

Lord Bracadale, I am the chairman of the Inquiry, and

I am accompanied today by my Assessors, Raju Bhatt who

is on my right, and Michael Fuller who is on my left.

I shall introduce them more fully in a moment, but

before I do so, I would like to say this: that my

Assessors and I, and the Inquiry team, have throughout

been very conscious, and continued to be very conscious,

that the core subject of this Inquiry is the sudden,

unexpected and untimely death of Sheku Bayoh, who died

on 3 May 2015, aged 31 years.

We wish to take this opportunity to express in

public our condolences to all members of the family.

I want them to be at the heart of this Inquiry and,

in due course, before the evidence begins, I will give

an opportunity for members of the family to speak

publicly about the person that Sheku Bayoh was, what he

meant to them and the impact of his death on them.

I have already begun discussion with family members

about what form that might take.

I pause at this stage to mention two practical

1 matters in relation to today's hearing.

2 First, realtime transcription is available and the  
3 transcript will thereafter be placed on the website.

4 Second, the proceedings are being broadcast on the  
5 Inquiry's YouTube channel and again will be available  
6 later on the website.

7 Now, let me introduce the Assessors. I have the  
8 assistance of two Assessors appointed under section 11  
9 of the Inquiries Act 2005. Assessors are persons who  
10 have a particular expertise which will be of assistance  
11 to the Inquiry.

12 Raju Bhatt is a solicitor and a partner in the  
13 London-based solicitors firm Bhatt Murphy. He has  
14 a particular history of work with families who have lost  
15 members through death in custody. He has regularly  
16 represented such families at inquests. Over a long  
17 period, he has been responsible for many significant  
18 developments in this and related areas. His expertise  
19 and experience has regularly been drawn on by various  
20 organisations. In 2009, he was appointed special  
21 adviser to the Parliamentary Joint Committee on Human  
22 Rights, in relation to its scrutiny of the Coroners and  
23 Justice Bill. He is one of the founding members of the  
24 Police Action Lawyers Group and INQUEST Lawyers Group.

25 He was appointed to the Hillsborough independent

1 Inquiry panel, which reported to the Home Secretary in  
2 September 2012.

3 Mr Bhatt was a member of the reference group in the  
4 independent review of deaths and serious incidents in  
5 police custody, conducted by Dame Elish Angiolini QC,  
6 which reported to the United Kingdom Government in  
7 January 2017. And he represented the family of  
8 Daniel Morgan, whose murder in 1987 led to the  
9 establishment of the Daniel Morgan independent tribunal.  
10 The remit of the panel, which reported in 2021, included  
11 examining the conduct of the police.

12 Michael Fuller had a long and distinguished career  
13 in the Police Service. He rose to the rank of  
14 Deputy Assistant Commissioner in the  
15 Metropolitan Police, and in 2004 he was appointed  
16 Chief Constable of Kent Police Force.

17 During 26 years in the Metropolitan Police, he was  
18 instrumental in setting up the Racial and Violent Crime  
19 Taskforce. He drew up the Metropolitan Police action  
20 plan in response to criticism arising from the  
21 Stephen Lawrence Inquiry. This included recommendations  
22 as to how the Metropolitan Police should investigate  
23 racial hate crime and respond to critical incidents,  
24 along with race awareness training. All of Mr Fuller's  
25 recommendations were accepted and implemented.

1           He was the founding chairman of the Black and Asian  
2           Police Association and set up a support network in the  
3           Metropolitan Police to provide support to many black and  
4           Asian police officers who were victims of racism within  
5           the police.

6           Throughout his service as a chief officer, Mr Fuller  
7           chaired disciplinary panels and determined disciplinary  
8           sanctions in relation to charges brought against police  
9           officers. On retirement, he was appointed as  
10          Her Majesty's Chief Inspector of the Crown Prosecution  
11          Service and Serious Fraud Office. He currently runs his  
12          own criminal justice consultancy.

13          It will be clear that the combined expertise and  
14          experience of the Assessors has the potential to provide  
15          a formidable degree of assistance to my Inquiry. While  
16          I recognise that ultimately I must take responsibility  
17          for the decisions in the Inquiry, each of the Assessors  
18          has already given valuable assistance and I expect that  
19          support only to increase as the Inquiry progresses.

20          The purpose of this preliminary hearing is to allow  
21          me, with the assistance of senior counsel to the  
22          Inquiry, to make some general points in relation to the  
23          Inquiry, to identify the core participants and their  
24          legal representation, to update the core participants,  
25          members of the public and the media about the progress

1 of the Inquiry to date, and to outline the approach the  
2 Inquiry intends to take as it moves towards public  
3 hearings on evidence. In addition, the preliminary  
4 hearing provides an opportunity for the legal  
5 representatives of core participants to raise issues of  
6 a preliminary nature.

7 I shall begin with a few general points about the  
8 Inquiry.

9 The purpose of the Inquiry is spelled out in the  
10 terms of reference. The full terms of reference are  
11 available on the Inquiry's website. They are stated in  
12 broad terms, which will allow the Inquiry to follow the  
13 evidence and thoroughly explore the issues.

14 In summary, they allow the investigation of the  
15 immediate circumstances leading to the death of  
16 Mr Bayoh, how the police dealt with the aftermath of the  
17 incident, the conduct of the Lord Advocate and the  
18 Police Investigations and Review Commissioner of the  
19 investigation into the death, and whether the issue of  
20 race was a factor at any stage.

21 The terms of reference include a requirement to  
22 examine the post-incident management process and the  
23 investigation, in terms of compliance with any relevant  
24 convention rights.

25 Article 2 of the European Convention on Human Rights

1 provides that everyone's right to life shall be  
2 protected by law, and has been held by the European  
3 Court of Human Rights to impose a procedural requirement  
4 on the state to carry out an independent, adequate and  
5 effective investigation when a person dies in police  
6 custody, and that includes a requirement that the family  
7 of the person must be involved in that process, in order  
8 to protect their legitimate interests. I am also  
9 conscious that these Article 2 requirements apply to the  
10 Inquiry itself. So I am required to report to the  
11 Scottish Ministers on these matters and make  
12 recommendations.

13 The next general point is that in terms of section 2  
14 of the Inquiries Act, the Inquiry cannot make any  
15 determination as to criminal or civil liability. Its  
16 purpose is to seek to ascertain the truth, and to that  
17 purpose, I am fully committed. I am independent of  
18 government and have a responsibility to ensure that the  
19 Inquiry is carried out in an independent, impartial,  
20 fair and effective manner. Again, I am fully committed  
21 to fulfil that responsibility.

22 In that endeavour, I am supported by an Inquiry  
23 team, the members of which have already demonstrated  
24 commitment, dedication and efficiency in implementing  
25 the work of the Inquiry.

1           Next, I turn to the issue of core participants.  
2           I have designated a number of individuals and  
3           organisations as core participants. In general, having  
4           regard to Rule 4 of the Inquiries (Scotland) Rules 2007,  
5           core participants are likely to be individuals or  
6           organisations who played, or may have played, a direct  
7           and significant role in relation to the matters to which  
8           the Inquiry relates, or who may have a significant  
9           interest in an important aspect of these matters, or who  
10          may be subject to significant or explicit criticism  
11          during the proceedings of the Inquiry or in its report.

12          The full list of core participants is on the website  
13          and in a moment I shall ask senior counsel to the  
14          Inquiry to identify the core participants and their  
15          legal representatives. Before I do that, I wish to say  
16          something about the role of a core participant.

17          I would expect core participants to have a key role  
18          in the Inquiry, on the basis of their particular  
19          interest. Core participants and their recognised legal  
20          representatives may attend all or, depending on their  
21          particular interest, some of the sessions of the  
22          Inquiry. They may make opening and closing statements.  
23          They may suggest possible lines of enquiry and  
24          questioning to counsel to the Inquiry. They may, where  
25          appropriate, with my permission, ask questions of

1 witnesses through their own legal representatives.

2 In relation to that last issue, namely the  
3 examination of witnesses by representatives of core  
4 participants, it is important to bear in mind that the  
5 procedure is inquisitorial and investigative. It is not  
6 the adversarial procedure that is normal in the courts.  
7 I anticipate that, in the main, questioning of witnesses  
8 will be conducted by counsel to the Inquiry and there  
9 will not be routine cross-examination on behalf of core  
10 participants.

11 Core participants will have the opportunity to  
12 suggest lines of questioning for counsel to the Inquiry  
13 to pursue. Where a core participant does wish to  
14 examine a witness, it will be necessary to make  
15 an application under Rule 9.4 of the rules and, in due  
16 course, prior to the first hearing, I shall issue  
17 guidance in respect of the procedure for making such  
18 applications and for suggesting possible lines of  
19 questioning to counsel to the Inquiry.

20 I am now going to ask senior counsel to the Inquiry  
21 to identify herself and her own team, and thereafter the  
22 core participants and their legal representatives.

23 Ms Grahame.

24 Inquiry Counsel Introductions

25 MS GRAHAME: Thank you, sir.



1           My name is Angela Grahame. I am a Queen's Counsel  
2           and my role is senior counsel to the Inquiry.

3           In carrying out this function, I will be assisted by  
4           Laura Thomson, junior counsel to the Inquiry, who is  
5           joining us remotely this morning, due to Covid  
6           restrictions; but she will be in person for the hearings  
7           and will normally sit to my left.

8           Sitting to my left today is the solicitor to the  
9           Inquiry, Sadif Ashraf. On occasion her deputy,  
10          Ciara Pang, may be sitting in on the Inquiry.

11          We are supported by the Secretary to the Inquiry,  
12          Chris Crowther, who is sitting directly opposite me.  
13          His deputy is Pamela Beer, who may substitute for  
14          Mr Crowther on occasion. To his right is  
15          Gillian Wildgoose, evidence manager and head of our  
16          evidence team, who will assist by displaying, via the  
17          screens in front of everyone, each document to which we  
18          refer during hearings. In addition, we will be  
19          supported behind the scenes by our wider legal team,  
20          evidence team and other administrative staff.

21          Appearing on behalf of family members of Sheku Bayoh  
22          are Claire Mitchell QC and her junior, Clare Connelly,  
23          advocate. They are instructed by Aamer Anwar and  
24          April Meechan, solicitors. And Mr Anwar is sitting with  
25          Mr and Mrs Johnson, the sister and brother-in-law of

1 Sheku Bayoh. They are sitting in the public gallery  
2 today.

3 Other relatives and family members of Sheku Bayoh  
4 are joining us remotely this morning.

5 Appearing on behalf of the Chief Constable of the  
6 Police Service of Scotland is Maria Maguire QC. The  
7 Chief Constable will also be represented by  
8 Lisa Henderson QC and assisted by a junior, Vincent  
9 Williams, barrister. They are instructed by  
10 Erica Watson, solicitor, and also representing the  
11 Chief Constable and present today is Assistant  
12 Chief Constable Alan Spears.

13 Representing the Lord Advocate are Alistair Duncan  
14 QC and Leigh Lawrie, advocate. They are instructed by  
15 Karen Aitken, who is a solicitor with the Crown Office  
16 and Procurator Fiscal Service.

17 On behalf of the Police and Information Review  
18 Commissioner are John Scott QC and Simon Crabb,  
19 advocate. They are instructed by Michelle MacLeod,  
20 solicitor.

21 On behalf of the Scottish Police Federation, retired  
22 Constable Nicole Short and Constable Craig Walker are  
23 the dean of faculty, Roddy Dunlop QC and his junior,  
24 Euan Scott, advocate, and they are instructed by  
25 Peter Watson, solicitor.

1           Brian McConnachie QC and Laura Anne Radcliffe,  
2           advocate are representing retired constable Alan Paton  
3           and they are instructed by Paul Kavanagh, solicitor.

4           Representing Constable Ashley Tomlinson, Constable  
5           Kayleigh Good and Constable Alan Smith are  
6           Gordon Jackson QC and Carla Fraser, advocate, and they  
7           are both instructed by Robert Vaughan, solicitor.

8           Representing Sergeant Scott Maxwell, Constable  
9           Daniel Gibson and Constable James McDonough are  
10          Shelagh McCall QC and David Adams, advocate. They are  
11          instructed by Gordon McWilliams, solicitor.

12          Representing Chief Constable Garry McEwan,  
13          Chief Superintendent Conrad Trickett and  
14          Temporary Assistant Chief Constable Patrick Campbell is  
15          Duncan Hamilton QC. He is instructed by  
16          Callum Anderson, solicitor.

17          Finally, representing the Coalition for Racial  
18          Equality and Rights is Mark Moir QC. He is instructed  
19          by Ian Moir, solicitor, and present today from CRER is  
20          Jatin Haria, executive director of CRER.

21          These comprise the legal representatives of all the  
22          designated core participants and those attending in the  
23          hearing room this morning, sir.

24          LORD BRACADALE: Thank you, Ms Grahame.

25          May I ask you now to deal with the next two items

1           that I mentioned earlier, namely to update the core  
2           participants, members of the public and the media about  
3           the progress of the Inquiry to date and outline the  
4           approach the Inquiry intends to take in the future as it  
5           moves towards public hearings and evidence?

6           MS GRAHAME: Thank you, sir.

7                     In order to provide information to the public, on  
8           30 April this year, you gave an update of the work of  
9           the Inquiry, which is available online via the Inquiry's  
10          website. Both prior to and since that date,  
11          a considerable amount of preparatory work has been  
12          undertaken by the Inquiry team. My comments will add to  
13          the information given by you on 30 April.

14                    In covering both an update on progress and the  
15          approach we will take in the future, I would like to  
16          address eight areas.

17                    Number 1, gathering in documentation. On  
18          30 November last year, immediately upon the Inquiry  
19          commencing, the solicitor to the Inquiry issued  
20          section 21 notices to Police Scotland, PIRC and the  
21          Lord Advocate, seeking retrieval of documents related to  
22          the terms of reference. Further, section 21 notices  
23          have been issued since then seeking additional  
24          information.

25                    This year, the evidence team have gathered in over

1           21,000 items, as a result of this process, and we are  
2           continuing to do so. The evidence team are in the  
3           process of meticulously cataloguing every item and  
4           ascribing an individual identification number to each  
5           document. Much of this is done digitally and they are  
6           identifying duplicate items and items which cannot, for  
7           one reason or another, be opened and require engagement  
8           with the provider, to ensure that a working and  
9           accessible version is available, and this is  
10          a labour-intensive task.

11           At the same time, the legal team are examining the  
12          items retrieved to identify those that are material to  
13          the Inquiry's terms of reference.

14           Number 2, disclosure. There is no statutory  
15          obligation of disclosure on the Inquiry, but in order to  
16          further your aims that, first of all, this Inquiry act  
17          with transparency and openness and, secondly, to  
18          encourage core participants to engage with us and assist  
19          with the work of the Inquiry, we have started to  
20          disclose relevant and material documentation to the core  
21          participants at this very early stage.

22           Prior to commencing disclosure, it was clear that  
23          considerable work would be required to ensure that we  
24          have complied with our legal obligations, in terms of  
25          GDPR and data protection.

1           A protocol for redactions was prepared, together  
2           with a restriction order, and these are available on our  
3           website. This restriction order prevents items which  
4           are shared by the Inquiry with core participants and  
5           their legal representatives from being shared,  
6           published, revealed or communicated further. Every  
7           document which is disclosed must be checked and  
8           appropriate redactions made to ensure that data is not  
9           disclosed to others, unless necessary. That includes  
10          personal data and sensitive personal data. It also  
11          requires us to cross-reference multiple documents to  
12          ensure that jigsaw identification is not possible.

13          Complying with all of these obligations is  
14          an extremely complex and time-consuming task and  
15          involves careful consideration of thousands of pages.

16          In addition to GDPR and data protection, it has been  
17          necessary to seek the consent of the Lord Advocate to  
18          allow disclosure of certain documents. Much progress  
19          has been made as a result of the Inquiry team working  
20          together, and the process of disclosure has now started.  
21          This began on 7 October this year and is being rolled  
22          out on an ongoing basis as more and more documents  
23          become available.

24          In due course, we understand that it is your  
25          intention to make documentation available to the public

1 via the website and for this to be done at the time of  
2 the evidential hearings when witness evidence is being  
3 given. However, all of the documentation currently  
4 available to the Inquiry will not necessarily be led in  
5 evidence or disclosed to the public. This will be  
6 reviewed in due course.

7 Number 3, Article 2 and the framework document. As  
8 you have said, we understand that Article 2 of the  
9 European Convention on Human Rights is engaged, and from  
10 the outset of this Inquiry, we have taken practical  
11 steps to comply with those obligations. We have taken  
12 steps to ensure that the investigation carried out by  
13 the Inquiry is effective and steps have been taken to  
14 secure the evidence concerning the incident. This work  
15 has been ongoing since the date the Inquiry officially  
16 commenced, 30 November last year, and continues to date,  
17 and we have gathered in and considered substantial  
18 numbers of documents. We are now looking forward to  
19 taking witness statements, and I will come to that in  
20 a moment.

21 We have sought to ensure that those working in and  
22 engaged with the Inquiry are independent of the state  
23 bodies who are subject to investigation by the terms of  
24 reference.

25 As you have said, we also wish to ensure that the

1 investigation is public and accessible, particularly to  
2 the core participants. It is not necessary for anyone  
3 who is involved, or who wishes to view proceedings, to  
4 travel to Edinburgh and be present within the hearing  
5 room, due to the technology and facilities.

6 We have also made arrangements to accommodate the  
7 family members of Sheku Bayoh.

8 You have made clear from the outset that there must  
9 be a sufficient element of public scrutiny to secure  
10 accountability and family members should be involved and  
11 placed at the very centre of our work.

12 Another obligation, in terms of Article 2, is that  
13 the Inquiry must be reasonably prompt. With this in  
14 mind, I would like to provide a further update on the  
15 framework document which was discussed by you in your  
16 video statement in April. During the video, you spoke  
17 of the intention to prepare a framework document. At  
18 that time, our plan was to gather in all the documents,  
19 read everything and then provide core participants with  
20 a document which set out a summary of all events that we  
21 had identified from the terms of reference as requiring  
22 investigation.

23 For the six months of the Inquiry, we were gathering  
24 in documentation and followed the approach I have just  
25 outlined. As we gathered in more documentation and



1           assessed the rate at which our team was able to collate,  
2           identify and read each item, it became clear that,  
3           despite our best efforts, progress was too slow.  
4           Following a review, we calculated that we would not be  
5           able to complete our reading before the end of 2022. On  
6           that basis, disclosure would not begin until well into  
7           2023, and hearings would not start until after that.  
8           This was not considered an acceptable rate of progress  
9           for anyone involved. As a result, and with your  
10          guidance, we embarked on a review. We reviewed our  
11          methodology and we have adapted our approach.

12                 Number 4, the current approach and planned hearings.  
13          Rather than one framework document, we decided to  
14          refocus our preparation into a series of hearings. Each  
15          hearing will group parts of the original framework  
16          together to allow us to present the evidence in  
17          a chronological, cohesive and logical manner, and there  
18          will be no more than six hearings.

19                 The first hearing will cover the events leading up  
20          to the death of Sheku Bayoh and will include events at  
21          Kirkcaldy police office on 3 May 2015. It will also  
22          touch on issues regarding the actual training received  
23          by individual officers, their use of equipment and use  
24          of force.

25                 The second hearing will cover the cause of death and

1 will include expert medical evidence.

2 The third hearing will cover post-incident  
3 management, and this will cover post-incident management  
4 not just by Police Scotland but also the investigations  
5 of the PIRC and Crown Office, and will cover  
6 a considerable period of time. This will also cover  
7 liaison with the family, and it may be that this hearing  
8 will have to be split into two phases.

9 The later hearings will cover media engagement,  
10 investigations carried out in parallel to those carried  
11 out by Police Scotland, PIRC or the Crown Office.

12 And the final hearing will cover race.

13 Scoping documents were prepared, sketching out what  
14 topics would be covered and in which order. We then  
15 identified and prioritised the documentation required  
16 for hearing 1, and we prioritised redaction and  
17 disclosure of the documentation for this hearing.

18 Disclosing documents to core participants in stages,  
19 whilst prioritising the documents for hearing 1, has  
20 allowed us to make more progress at an earlier stage  
21 than would otherwise have been the case. By  
22 prioritising these measures for individual hearings, we  
23 are ensuring that the procedural requirements of  
24 Article 2 are complied with expeditiously.

25 Throughout each of these stages, we have had

1           discussions amongst the team, sought the advice and  
2           guidance of both yourself and the Assessors, and we have  
3           had meetings and communicated with the core participants  
4           and kept them up to date. We are taking a collaborative  
5           approach and intend to continue doing so as we approach  
6           the evidential hearings.

7           Instead of the framework document, in preparation  
8           for hearing 1, we have now prepared some specific  
9           documents, and these are a chronology of events, a paper  
10          covering the relevant law and practice, details of key  
11          individuals, including Sheku Bayoh and the police  
12          officers who attended the scene. This includes personal  
13          and medical information, but only insofar as is  
14          necessary for the work of the Inquiry, a document  
15          outlining key issues for consideration during the  
16          hearings, a list of the witnesses from whom we intend to  
17          take statements and who may be called to give evidence  
18          at hearing 1.

19          These documents will shortly be available for  
20          consideration by the core participants. They provide  
21          core participants with notice of the issues, which we  
22          expect will arise in evidence and in law, and which we  
23          shall be exploring in hearing 1. It is hoped that the  
24          core participants will assist us by considering these  
25          documents, identifying any further issues that they

1           consider significant and suggesting additional witnesses  
2           or other important documents we should cover. They will  
3           then have ample opportunity to comment on these matters  
4           in advance of the first hearing. We have placed no  
5           deadlines on their opportunities to engage with this  
6           Inquiry work.

7           At the conclusion of certain hearings, the core  
8           participants will be given an opportunity to make  
9           closing submissions to you on evidential and legal  
10          issues. These submissions will be made public on the  
11          website at the appropriate time.

12          This approach will be adopted in advance of each  
13          hearing. The exception to this will be the final  
14          hearing, which will focus on race.

15          The terms of reference require the Inquiry to  
16          consider the extent of any to which the events leading  
17          up to, and following, Sheku Bayoh's death, in particular  
18          the actions of the officers involved were affected by  
19          his actual or perceived race. At each evidential  
20          hearing, the Inquiry will consider the extent, if any,  
21          to which the events and actions of the officers involved  
22          were affected by his actual or perceived race.

23          Evidence will be sought at each hearing about this  
24          matter. In carrying out this task, particular regard  
25          will be had to any actions, steps, instructions,

1 behaviours or omissions that fell below, or were  
2 contrary to, any applicable guidance, practice, training  
3 or legislation.

4 Any and all evidence obtained from the hearings will  
5 then be collated and marshalled prior to the final  
6 hearing. In the final hearing, we will seek to draw  
7 together all the evidence heard at each hearing  
8 regarding race. For this reason, I do not anticipate  
9 that a traditional chronology or timeline will assist.  
10 We will instead identify any evidence of overt racism,  
11 any failures or inadequacies and evidence of any aspect  
12 of events which could potentially give rise to  
13 an inference that decisions and outcomes were based on  
14 race. This evidence will be put before you in the final  
15 hearing, together with evidence about the findings of  
16 previous reviews, other inquiries, expert opinion and  
17 statistical evidence. This will be done to allow you to  
18 consider whether an inference may be drawn that race was  
19 a factor in the death of Sheku Bayoh, the post-incident  
20 management or the subsequent investigations. These  
21 categories will be drawn from all the evidence and  
22 brought together in the final hearing, and evidence from  
23 experts and statistical evidence is likely to be heard  
24 at that time.

25 The Inquiry team are working at a careful and steady

1           pace that allows us to make progress towards the  
2           hearings and we will continue to liaise regularly with  
3           the Assessors and the legal representatives of the core  
4           participants prior to the hearings. Our approach is  
5           always flexible and may be adapted, subject to comments  
6           or concerns raised by the core participants. Any future  
7           alteration to this plan of action will be brought to  
8           your attention and your guidance sought.

9           Number 5, witness statements. No evidence has ever  
10          been led about the events of 3 May 2015 in any forum.  
11          So hearing 1 will be the first opportunity to hear that  
12          evidence. With this in mind, the Inquiry are now moving  
13          to the stage of seeking witness statements. While  
14          letters to the doctors and nurses from Victoria Hospital  
15          have already been sent out, most letters will be sent  
16          out shortly. They will be to the other witnesses that  
17          we are prioritising for hearing 1. We would invite and  
18          encourage those who received letters to contact the  
19          Inquiry team, to make arrangements, so that statements  
20          may be taken as soon as possible.

21          Number 6, experts. We have also started the process  
22          of considering what expert evidence will be required for  
23          hearings 1 and 2. Steps will be taken to secure experts  
24          who are independent and impartial. It is for the  
25          Inquiry to select appropriate experts and to instruct

1           them to give opinions on the issues identified by us.  
2           For that reason, we ask core participants to resist any  
3           temptation to obtain their own expert reports.

4           Within the past few months, we have identified  
5           digital reconstruction experts, advanced laser imaging.  
6           The contract to secure their services has been agreed  
7           and they are currently working with a view to preparing  
8           a digital reconstruction of the events at Hayfield Road,  
9           Kirkcaldy, and the nature of the restraint of  
10          Sheku Bayoh which we wish to be available for hearing 1.

11          We have provided them with the relevant  
12          documentation and other information we have, including  
13          photographs, CCTV footage, airwaves recordings, a Leica  
14          scan of the scene, mobile footage, maps and sketches.  
15          In turn, they have identified other information they  
16          would wish to have, and the evidence team are gathering  
17          in these items. They will prepare a 3D image of the  
18          scene, which we understand will provide aerial views,  
19          show different perspectives, lines of sight and  
20          viewpoints from different locations and angles around  
21          the scene. They will also create images which  
22          demonstrate the height of key individuals within the  
23          scene. They will not be creating one version of events,  
24          but will provide the Inquiry with the ability to view  
25          the scene as it existed at the time. This will allow

1 the Inquiry to hear evidence from individual witnesses  
2 who may in turn be helped to explain their actions or  
3 their position through the use of these 3D images.

4 Work is ongoing, but details of the reconstruction  
5 will be shared with core participants, once it is  
6 available and in advance of hearing 1.

7 Number 7, Capital House. Today is our first hearing  
8 in Capital House. You mentioned Capital House in your  
9 statement in April, but it was in August of this year  
10 that the Inquiry team were able to take control of the  
11 premises. Since then, the team, led by the Secretary to  
12 the Inquiry, Mr Crowther, has worked to ensure  
13 sufficient facilities are available for the smooth  
14 running of Inquiry hearings.

15 The office comprises private spaces for  
16 Sheku Bayoh's family, a waiting area for witnesses and  
17 consultation rooms to allow private discussion between  
18 legal teams and their clients. There are also two rooms  
19 for legal representatives with locker facilities, Wi-Fi  
20 and power points for laptop charging. Certain rooms  
21 have television monitors which permit live-streaming for  
22 those within the room.

23 The Inquiry has offered tours to all legal  
24 participants -- representatives, I should say, and core  
25 participants ahead of the evidential hearings. The same



1 will shortly be offered to witnesses with a view to  
2 ensuring that everyone is as prepared and as comfortable  
3 as they can be with these facilities before the  
4 evidential hearings begin. If any legal representatives  
5 or core participants have not yet had a tour and would  
6 like to take up the offer, would they please contact the  
7 Inquiry Secretary, Mr Crowther.

8 Similarly, any feedback in relation to the premises  
9 and services available should be directed to  
10 Mr Crowther.

11 The same applies to the legal representatives who  
12 are seated here today. This is the first time that they  
13 have had the opportunity to test the facilities, and any  
14 suggestions or comments they wish to make about their  
15 experience here today are welcome and again should be  
16 directed towards Mr Crowther.

17 Finally, if I may, I would like to turn to the use  
18 of language.

19 We are aware of the sensitivities of the use of  
20 certain language and we wish to avoid causing any  
21 offence. Equally, it is vital, if we are to get to the  
22 truth, that we use language that is basic, simple and  
23 understood by all witnesses when we are asking questions  
24 of them.

25 We have determined that Sheku Bayoh will be referred

1           to as a black man. We have discussed this matter with  
2           the legal representatives of the relatives and family of  
3           Sheku Bayoh and they have agreed that they are happy  
4           with that description for the purposes of the work of  
5           this Inquiry. For that reason, we will use the words  
6           and expressions "black" or "white" during questioning.

7           We do not want those engaged with the work of the  
8           Inquiry to shy away from asking probing questions or  
9           raising issues for fear of offending where particular  
10          terms may be used. So those engaging with the Inquiry  
11          should feel free to use the same terms during any  
12          discussions or questioning.

13          In this Inquiry, we will be carefully examining  
14          every choice made, every action and omission, and asking  
15          whether the fact that Mr Bayoh was a black man made  
16          a difference. We will be asking: had Mr Bayoh been  
17          white, would he and his family have been treated in the  
18          same way? Had Mr Bayoh been white, would the  
19          investigations have proceeded in the same way? Had  
20          Mr Bayoh been white, would different choices have been  
21          made about the appropriate course of action? At every  
22          stage, we will be making this comparison and asking  
23          ourselves that question.

24          Those complete my comments, sir.

25          LORD BRACADALE: Thank you very much, Ms Grahame.

1 I shall now deal with some of the practical  
2 arrangements for future public hearings on evidence.

3 I intend that during the evidential hearings, the  
4 Inquiry should sit on Tuesday to Friday each week,  
5 between 10.00 am and 4.00 pm.

6 I have already mentioned that realtime transcription  
7 will be available and the transcripts will be posted on  
8 the website.

9 Also that the hearings will be broadcast live on the  
10 Inquiry's YouTube channel and will be available for  
11 subsequent viewing on the website. And I shall, in due  
12 course, give guidance in relation to the broadcasting of  
13 evidential hearings.

14 The Inquiry will be working with electronic  
15 evidence. We do not plan to display evidence on paper.  
16 Evidence will be displayed on monitors on the desk of  
17 the witness who will sit in the seat opposite me in the  
18 U-shaped table. It will also be displayed on the desks  
19 of the legal representatives and the Inquiry team, and  
20 documents will also be displayed on the large screens  
21 which you can see placed around the room.

22 I intend to permit opening statements, together with  
23 written and oral closing statements.

24 In respect of hearings 1 and 2, I intend that there  
25 will be one set of closing statements covering both

1           hearings to be heard at the end of hearing 2. I shall  
2           take a flexible approach to later hearings.

3           Proposed witnesses, and the order in which they will  
4           give evidence, will be published on the website and any  
5           changes will be intimated with as much notice as  
6           possible.

7           Evidence will be given on oath or affirmation.  
8           While, where possible, I intend that witnesses should be  
9           called only once, the nature of the evidence is such  
10          that it may be necessary to recall witnesses.

11          There is provision for taking evidence and making  
12          submissions remotely.

13          The standard of proof that I intend to adopt, when  
14          considering evidence, with a view to making a factual  
15          determination, will be the civil standard of balance of  
16          probabilities.

17          Moving on now to the final purpose of the  
18          preliminary hearing which I mentioned earlier, which was  
19          to allow legal representatives of core participants  
20          an opportunity to raise any issues of a preliminary  
21          nature. When the preliminary hearing was announced, the  
22          solicitor to the Inquiry wrote to the legal  
23          representatives of the core participants, indicating  
24          that it would be open to them to give notice of any  
25          preliminary issue which they considered could usefully

1           be raised at this preliminary hearing.

2           A preliminary issue has been raised on behalf of the  
3           family. The solicitor for the family has lodged the  
4           following motion. On behalf of the family, it is  
5           submitted that the chair of the Sheku Bayoh public  
6           Inquiry should exercise his power to request core  
7           participants to produce position statements as part of  
8           the Inquiry process. The motion was accompanied by  
9           brief supporting submissions.

10          I consider that this is a matter worth exploring  
11          further and, accordingly, I shall allow time for fuller  
12          written submissions in support of the motion to be  
13          lodged, and thereafter give other core participants  
14          an opportunity to respond.

15          So written submissions in support of the motion  
16          should be lodged by the solicitor representing the  
17          family by 8 December 2021. These submissions will then  
18          be circulated by the Inquiry, and other core  
19          participants who wish to make submissions should lodge  
20          their written submissions by 12 January 2022.

21          Ms Grahame?

22          MS GRAHAME: I apologise, sir. Despite my best endeavours,  
23          I forgot to mention something.

24          LORD BRACADALE: Yes, certainly.

25          MS GRAHAME: If I may, the first hearing is scheduled to

1           commence on 10 May next year. I apologise for my  
2           omission.

3       LORD BRACADALE: Thank you very much. That is clearly  
4           an important matter which will be of interest to  
5           everyone. So the first hearing will begin on Tuesday,  
6           10 May.

7           Well, that completes the preliminary hearing and  
8           I am grateful to you all for attending today, and that  
9           includes those who attended remotely, and I bid you good  
10          day. The Inquiry will now adjourn.

11       (11.23 am)

12           (The Inquiry adjourned until Tuesday, 10 May 2022)

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