

## Transcript of the Sheku Bayoh Inquiry

Friday, 15 September 2023

(10.00 am)

MR RUARAI DH NICOLSON (continued)

(In the absence of the witness)

LORD BRACADALE: Good morning. Ms Grahame.

MS GRAHAME: Thank you. I'm grateful for the opportunity to reflect on any further questions overnight. I do not have any further questions for this witness and we may now proceed to the next stage in proceedings.

For your information the witness is not within the hearing space. We have one Rule 9 application -- or a Rule 9 application from Ms Mitchell KC and she is ready to address you if you're ready to hear from her.

LORD BRACADALE: Ms Mitchell, when you're ready.

Rule 9 application from MS MITCHELL

MS MITCHELL: I'm obliged.

Sir, there are a number of questions that I would like to ask of this witness. The first relates to the issue of the time it took for PIRC to become involved in the investigation. In particular he indicated that by 11.30 he had still had no contact with PIRC and he explained that it took time to put teams together. What I would like to explore with him is does he think it would be a good idea in future if, rather than waiting for teams to be put together and assembled to come

## Transcript of the Sheku Bayoh Inquiry

1           en masse, he had an immediate communication with whoever  
2           was going to be at the head of the investigation and  
3           that person attend all Gold Group meetings, even by way  
4           simply of telephone call so that they would be appraised  
5           of all the relevant information from the outset, so it's  
6           really to ask him whether or not he thinks that's a good  
7           idea.

8           The second matter I want to ask him about is  
9           Gold Command and how that works. Yesterday we heard  
10          evidence -- perhaps the day before -- where this witness  
11          said that if it things went awry he would step in. Now,  
12          put short, we have a catalogue of things that went awry,  
13          and for speed I won't list them here, but I will give  
14          the witness the opportunity to reflect on a number of  
15          things that it would respectfully seem quite obviously  
16          went wrong, but because of the way Gold Command appears  
17          to work he doesn't actually know about any of these  
18          things. For example, he didn't know -- and in  
19          particular I would like to highlight this issue with him  
20          as one of the failures -- he didn't know that the  
21          police officers hadn't been asked for operational  
22          statements.

23          So what I want to ask is in light of various things  
24          that went wrong and things that he admitted that should  
25          never have happened, whether or not he thinks

## Transcript of the Sheku Bayoh Inquiry

1 Gold Command needs to change either its structure or its  
2 meetings in order that if and when things aren't going  
3 right, those at the highest echelons understand that and  
4 do something about it.

5 The third issue I want to ask about was his position  
6 that one of the first and most important things he  
7 wanted to do was rule out that this was a terrorist  
8 incident in order that he could give comfort to the  
9 public.

10 The first thing that I want to ask him about in  
11 relation to that is that the issue of terrorism is  
12 flagged up, was it revisited at any time where he said  
13 to the command -- or in these command meetings, "The  
14 issue of terrorism has been ruled out", and what I want  
15 to do is put to him the evidence of Nicola Shepherd who  
16 said, "At no time was terrorism ruled out and that is  
17 why I didn't communicate it to anyone."

18 I also want to clearly ask him whether or not he  
19 realises that despite his saying that that was one of  
20 his first and most important issues, that it simply  
21 wasn't dealt with and that Nicola Shepherd said that she  
22 wasn't made aware it wasn't a terrorist issue, didn't  
23 pass it on and doesn't remember it ever being spoken  
24 about, other than being raised as a possibility in these  
25 meetings. So it's to explore that particular issue with

## Transcript of the Sheku Bayoh Inquiry

1           him.

2           The next issue, number 4, is also about the issue of  
3           terrorism matters. This Inquiry will know that sadly we  
4           have heard that knife crime is all too common and police  
5           are called out to attend such things with alarming  
6           regularity. What I want to know from him is are these  
7           sorts of cases considered possible terrorist matters,  
8           and also if it had been a white man with a knife on that  
9           day, would he also have been asking if it was  
10          a terrorist matter. And the Inquiry will remember that  
11          a question of that nature has already been allowed to be  
12          put to another witness and I would respectfully submit  
13          I think it would be important that, given his status as  
14          Gold Commander, this would be put to him.

15          The next issue I would like to raise with him is the  
16          recording of information. The recording of information  
17          on the minutes seems very sparse and it contains some  
18          information, for example information to suggest that the  
19          deceased had an argument with his partner,  
20          Collette Bell, but what it doesn't say is,  
21          "Police officers refusing to give statements". There  
22          was nothing about positional asphyxia but there was  
23          questions about whether or not this was terrorism. What  
24          I would be asking this witness to -- the question  
25          I would be liking to ask this witness is first of all

## Transcript of the Sheku Bayoh Inquiry

1           why were these things not there and, secondly, is there  
2           a better way of recording the information? For example,  
3           we all have phones that we can record things now, or  
4           videos that we can record these meetings. Is there  
5           a better way of recording these sorts of very important  
6           meetings so we know quite frankly we're getting the  
7           detail of what happened on that day, what was said and  
8           what happened, and it would certainly no doubt of course  
9           cut down inquiries greatly if we were simply able to  
10          play the video of what happened in these meetings.

11           The next thing I would like to ask this witness  
12          about was his strategy. The reason why I would like to  
13          do that is we have heard from this witness as the chief  
14          he was, in his own words, wanting to get a grip and then  
15          hold on until PIRC took over, two separate statements.  
16          What I want to know from him is how does that square  
17          with the very different approach we have seen the more  
18          junior police officers seem to be taking with the  
19          investigation. We have heard police officers give  
20          evidence about the golden hours of the investigation, we  
21          have heard about the speed at which the enquiries had to  
22          be carried out, possibly the most egregious being  
23          Collette Bell having to give a statement ten minutes  
24          after she was told that her partner was dead while she  
25          had her baby with her.

## Transcript of the Sheku Bayoh Inquiry

1           I want to ask him to reflect upon how his strategy,  
2           to hold everything together and just hand over to PIRC,  
3           was in evidence when we see these sorts of things  
4           happening.

5           The next question I would like to ask him about was  
6           the issues of compelling or ordering someone to give  
7           statements or fill out forms. Repeatedly this witness  
8           said in evidence that compulsion or ordering was an  
9           option that was available, a question for example asked  
10          by my learned friend:

11          "Question: As Gold Commander could you have  
12          influenced that or assisted with endeavours to obtain  
13          these use of spray forms?"

14          And he says:

15          "Answer: Well, short of ordering people to do  
16          that -- well, you know, you've got a reasonable  
17          expectation ..."

18          Etc. And what I want to know is given the  
19          importance of the use of force forms, given the  
20          importance of PAVA spray, given the importance of  
21          knowing what happened when the police met him, why did  
22          he not give that order? Why was that order made? Why  
23          was it that he didn't go down, for example, to -- he was  
24          in Kirkcaldy, why didn't he go down as the  
25          Gold Commander and say, "I'm ordering you, I am

## Transcript of the Sheku Bayoh Inquiry

1           compelling you as part of your job to give these -- to  
2           give operational statements and to fill out these  
3           forms"?

4           The next matter that I would like to ask this  
5           witness about is public confidence. The witness made  
6           the point that PIRC had to take over the investigation  
7           and become in charge of the investigation to give public  
8           the confidence that what was going on was a transparent  
9           enquiry led by them and it was important -- that was  
10          important for public confidence in what the police were  
11          doing.

12          Against that background what I would like to ask him  
13          to do is to reflect upon what we have seen quite frankly  
14          which seems like a gaping hole in circumstances where  
15          people may have committed serious breaches of their  
16          duty, but because something is being handed over to  
17          PIRC, unless PIRC tell them about it, or the Crown  
18          prosecutes, then it wouldn't be known -- for example, it  
19          wouldn't be known a lot of the things that have happened  
20          unless we had had this Public Inquiry. I'll ask him to  
21          reflect upon whether or not he thinks that would affect  
22          confidence in what the police are doing.

23          It is also to ask him whether or not there's any  
24          time limit on disciplinary issues if they come to light  
25          at a later stage, if he is aware of that. He made

## Transcript of the Sheku Bayoh Inquiry

1 reference to the senior officers that were sitting in  
2 the hearing and what I want to ask him was that if they  
3 had heard matters which constitute disciplinary  
4 meetings, could that be done now.

5 The 11th -- I think the 11th, I haven't counted them  
6 carefully. The next issue is the mosque letter. The  
7 Inquiry will remember that a letter was sent in respect  
8 of the complaint about how -- the way that the family  
9 were treated, Zahid Saeed's family was treated, when  
10 a complaint was thereafter made. The letter, the mosque  
11 letter does not identify, nor does anyone identify after  
12 that complaint was made, that in fact there was not  
13 a basis for the police to simply go in and tell these  
14 people to leave their house. So even after a complaint  
15 was made, that matter was not properly investigated and  
16 I would ask him does that surprise him and should that  
17 have happened?

18 The next matter I want to ask this witness about is  
19 the issue of retrospective warrants. I would  
20 respectfully suggest that this is important because  
21 there seems to be a distinct lack of clarity even at  
22 very high levels as to what the powers of the police are  
23 in relation to what they can do with and without  
24 a warrant at the relevant time.

25 At Martyn Dick's house an item was found and, as we



## Transcript of the Sheku Bayoh Inquiry

1 know, that was then seized by the police. My learned  
2 friend was exploring that and she was exploring that in  
3 terms of the question of whether or not a warrant was  
4 necessary and the officer said -- well, he was asked:

5 "Question: He was advised to a get a warrant, can  
6 you explain why that would be done if there is consent?"

7 And he said:

8 "Answer: Well, so the consent wouldn't be to search  
9 for drugs. So the consent was to search in terms of the  
10 incident that was being dealt with at the time. So if  
11 they go in and they find something that's unrelated to  
12 what they have already got consent for, so the sensible  
13 approach is that you approach the Fiscal, you explain  
14 the detail and the Fiscal will either agree to present  
15 the detail to a Sheriff and ask for a warrant for the  
16 property to seize the herbal material."

17 So he is saying that you need a warrant to seize the  
18 herbal material. And then my learned friend went on to  
19 say:

20 "Question: So if the Fiscal refuses a warrant, what  
21 would you expect the police to do?"

22 And he says:

23 "Answer: I would expect the police to seize it and  
24 take no other action."

25 So what I'm trying to explore there is the confusion

## Transcript of the Sheku Bayoh Inquiry

1           between thinking that a warrant needs to be obtained to  
2           seize that material and then if a warrant is refused his  
3           view as to what the police should do is to seize that  
4           material, so my question really is to explore what that  
5           problem is and why he thinks in those circumstances  
6           a warrant is necessary.

7           Going back on to a matter that was touched on  
8           earlier about recording and also about race, we heard  
9           about various hypotheses that were discussed and one of  
10          the most important and one of the ones he was  
11          considering was terrorism. What -- he wanted to get  
12          that dealt with because he felt that that would be  
13          a matter the general public would want to know about.

14          We have also heard evidence that other  
15          police officers were very concerned because a black man  
16          had died in police custody, that was a matter that he  
17          was concerned about for the general public. And what  
18          I want to know is in those circumstances, and the fact  
19          that it was so obvious that race was perhaps an issue  
20          that they should be thinking about, why do we see in  
21          minutes reference to, for example, the hypothesis of  
22          terrorism but not the hypothesis of race? Why is that  
23          not recorded? Why are people not speaking about  
24          positional asphyxia, a black man dying in police  
25          custody, and why is that not being noted down?

## Transcript of the Sheku Bayoh Inquiry

1           Finally, in relation to racism I want to ask him  
2           questions about complaints within the police. It seems  
3           that if complaints are made by police officers about  
4           other police officers it is dealt with in an informal  
5           manner with matters not -- with matters which can be  
6           raised with a more senior officer and be dealt with as  
7           it were internally or in-house, with nothing going on  
8           people's records unless the matter is escalated.

9           So what I want to explore with him is whether or not  
10          he thinks it would be a good idea if any form of  
11          complaint that was made required to be recorded in some  
12          way, even if it is resolved by the two police officers  
13          themselves, because without doing that there can be no  
14          security that any data that's been received about racism  
15          within the police force, intra police officers or with  
16          general members of the public, we can't have any  
17          confidence that those numbers are correct because the  
18          source is simply not being recorded. So I would like to  
19          ask him about that particular issue and those are the  
20          questions for this witness.

21        LORD BRACADALE: Thank you, Ms Mitchell. There is quite  
22          a lot of material there so I will take some time to  
23          consider the application. I will adjourn for that  
24          purpose.

25        (10.19 am)

## Transcript of the Sheku Bayoh Inquiry

1 (Short Break)

2 (11.22 am)

3 LORD BRACADALE: I have carefully considered each of the  
4 issues raised by Ms Mitchell. While many of the points  
5 raised are perfectly valid ones, I consider that they  
6 would best be developed in submissions.

7 In these cases there is a sufficient evidential  
8 basis in the evidence of this witness, taken along with  
9 the evidence that has already been led in the Inquiry,  
10 and the evidence which is likely to be led that will  
11 allow these points fully to be developed in submissions.

12 In relation to some of the points I consider that  
13 the questions would be more appropriately explored with  
14 another witness, particularly bearing in mind that this  
15 witness has been retired for a number of years.

16 In relation to some of the points I consider that  
17 this witness has covered the ground to the extent that  
18 he is able to do and that further exploration would  
19 simply be repetitive.

20 I have therefore come to the view that it would not  
21 assist the Inquiry to have further examination of the  
22 witness in relation to any of the points raised by  
23 Ms Mitchell.

24 Could we now have the witness brought back please.

25 (Pause).

## Transcript of the Sheku Bayoh Inquiry

1 (In the presence of the witness)

2 Good morning, Mr Nicolson. I'm sorry that you have  
3 been kept waiting but I'm now able to tell you that  
4 there will not be any further questions for you and that  
5 your evidence is completed.

6 Thank you very much for coming to give evidence to  
7 the Inquiry. Your evidence has covered a wide range of  
8 subjects and I'm very grateful to you for the time that  
9 you have taken to come and give evidence. You will be  
10 free to go when the Inquiry adjourns and I now adjourn  
11 the Inquiry.

12 (11.25 am)

13 (The Inquiry adjourned)

14

15

16

17

18

19

20

21

22

23

24

25

# Transcript of the Sheku Bayoh Inquiry

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## INDEX

MR RUARAIKH NICOLSON (continued) .....	1
Rule 9 application from MS MITCHELL .....	1