

Crown Office and Procurator Fiscal Service

Procurator Fiscal's Office
10 Ballater Street, Glasgow G5 9PS



CRIMINAL ALLEGATIONS AGAINST POLICE DIVISION

Kate Frame
Police Investigations and Review Commissioner
Hamilton House
Hamilton Business Park
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HAMILTON
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Your ref:
Our ref: LAB/JMCK

Date: 2 September 2015

COPY

Sent hard copy 4/9.

Dear Commissioner

DEATH OF SHEKU BAYOH

As you are aware, the Lord Advocate met with the family of Sheku Bayoh and their Solicitor at Crown Office on 26 August 2015. The meeting provided the Lord Advocate with an opportunity to update the family on the progress of the investigation and to respond to a number of issues that were highlighted by the family. The Lord Advocate confirmed that PIRC would be instructed to carry out investigations in respect of a number of matters in order that a properly informed decision be taken by the Crown as to the most appropriate way to proceed.

The following matters require further investigation in this regard

- A detailed analysis should be prepared covering the accounts given by all officers and civilian witnesses in relation to the restraint process from beginning to end. That analysis should compare and contrast firstly the evidence between the officers themselves highlighting and attempting to resolve any inconsistencies and that process should thereafter be repeated for the civilian witnesses. This should generate a full account of what actually happened from the arrival of the officers until the removal of Mr Bayoh to hospital.
- That account must thereafter be analysed and commented upon by an independent expert who is qualified to comment on restraint techniques that were employed. That person should be asked to provide an opinion as to

whether the techniques were in accordance with the training provided to the officers and whether those techniques were authorised and recognised and further more whether the use of them was reasonable and proportionate in the circumstances. In particular the expert should be asked to comment on the apparent decision not to remove the handcuffs and leg restraints from Mr Bayoh after he became unresponsive.

- An independent expert should be instructed to comment upon the circumstances of the deployment of CS and PAVA sprays including an examination of the guidelines and an opinion provided on their use and appropriateness of deployment. There should be a similar process followed so that an opinion is obtained from a suitable expert on the drawing and use of batons during the process of restraint. All of these witnesses should be provided with the evidence gathered from witnesses, including the civilian witnesses. It is particularly important that these experts are given the opportunity to comment upon all of the accounts given with the various witnesses. For example the witness Ashley Wise has indicated that she saw the deceased held on the ground by about 6 police officers for approximately 5 minutes with the officers crossing over him from both sides covering most of his body. She also states that it looked like one of the officers using a baton on the deceased's upper chest towards his throat to hold him down. She has described the deceased struggling with the officers and screaming and shouting for the officers to get off him. It is important that this account and all of the other accounts given by the witnesses are made available to these expert witnesses so that they are aware of all of the evidence that is available in relation to the restraint process.
- Independent evidence should be obtained to comment on the guidance for deployment of CS and PAVA sprays and in particular any guidance on the importance of monitoring the condition of a person upon whom such sprays have been deployed and an opinion on whether there is evidence of an appropriate level of monitoring of Mr Bayoh's condition after deployment of the sprays and restraint measures.
- A toxicology expert should be instructed who can comment upon the effects and prevalence of the drugs found in Mr Bayoh's body in particular Alpha PVP and its use, prevalence and effects with a UK context.
- It will be essential to establish precisely what information was conveyed and received to each individual officer in relation to the incident prior to their attendance. For the avoidance of doubt, this information is entirely separate from evidence that is now available in relation to Mr Bayoh's actions from various civilian witnesses and their respective accounts. The focus of this enquiry should be upon the precise nature of the information that was conveyed

- to the officers, primarily by way of police airwaves communications so that it can be established what each officers state of knowledge was on their attendance. In respect of the transcripts themselves that have been provided with the report, can you advise whether you can hear what is being said where the hashtags appear at various points.
- In respect of the various tablets seized, can you instruct a Pharmacist to comment on what these are and what these are commonly used for.
- I require sight of the terms of your instructions to the pathologists who have been approached to provide expert evidence on the cause and mechanism of death. I note that at page 54 of your report that there is confirmation that Mr Bayoh was handcuffed to the front and had leg restraints applied on his arrival at hospital. I require confirmation that all of the pathologists instructed have been advised of this fact and have been asked to comment upon the significance of this evidence and in particular whether such restraint could have contributed to any positional asphyxiation given the fact that these restraints continued to be applied after he became unresponsive and following resuscitation attempts. In respect of the pathologist, I require confirmation that each has been asked to comment upon the fracture to Mr Bayoh's rib that was detected and asked to comment upon the most likely mechanism as to how this injury was sustained.
- I would be grateful for an update on the forensic work instructed regarding comparison of the knife recovered with marks that were subsequently examined on one of the vehicles.
- I have corresponded previously in relation to potential involvement of the Health and Safety Executive in the investigation of this incident. I understand that John McSporran was going to facilitate a meeting with Health and Safety Executive officials in order to discuss the evidence that is available to date, in particular in relation to the restrain techniques employed. Whilst the Crown has no power to instruct the Health and Safety Executive to undertake an investigation, I wish the executive to be put in possession of all of the information that may be relevant to their decision as to whether or not to become involved. Some of the work instructed above will be relevant to this consideration, in particular the opinions to be obtained on the restraint techniques and deployment of sprays. In addition, the executive will no doubt wish to consider the opinions of the pathologists in respect of the continued application of handcuffs and leg restraints following upon the deceased becoming unresponsive. It may be of assistance for the Crown to be in attendance with HSE, possibly with input from Health and Safety Division.
- Previous correspondence instructed PIRC to examine whether there is any evidence of an unauthorised access to and interrogation of the information systems of the Police Service of Scotland, and if so, whether this could constitute

a breach of data protection legislation. This investigation should be carried out as expeditiously as possible. [REDACTED]

- I require confirmation from the Commissioner that issues of race and whether there is any evidence of racial motivation is a primary focus in the PIRC investigation. The investigation should examine whether there is any evidence that any of the offices involved has expressed any racist views or opinions in the past. In particular, [REDACTED] indicated that officers from within the Fife area had been investigated for texting racial slogans and that one of the officers was referred to him. The family have enquired as to whether any of those officers apparently involved in that enquiry were in the group of officers engaged with Mr Bayoh. [REDACTED]

Associated with this aspect of the enquiry, I have already been in correspondence with you regarding the investigations that have been instructed in relation to allegations of previous criminal conduct by Constable Alan Paton. The family of Mr Bayoh believe that [REDACTED] he has a history of racism.

- The family once again raised the question of whether there was evidence of officers inappropriately conferring prior to the provision of statements to PIRC. Please advise whether social media sites that may be linked to any officers involved have been considered for examination in this regard.

I understand that Constable Paton continues to refuse to provide his weight to investigators. I understand that investigators were approaching Police Scotland to request their assistance in obtaining this information. Please advise of the progress in relation to this.

You will be aware that the family of the deceased have expressed reservations regarding the expert pathologist who have been approached to provide an opinion. It may be that others will require to be approached in this regard and this issue will require ongoing discussion.

I appreciate that a considerable amount of work still requires to be undertaken in relation to this matter. However, you will no doubt agree that the investigation requires to be as thorough as possible and that concerns expressed by the family of the deceased have to be addressed. The Lord Advocate has indicated that it is his intention to meet with the family again towards the end of October and accordingly an update on the progress of these enquiries will be required prior to that meeting.

I am grateful to you for your assistance.

Yours sincerely

L A BROWN
Head of Criminal Allegations Against the Police Division