



**AAMER ANWAR & CO**  
SOLICITORS & NOTARIES

AA [REDACTED]

31<sup>st</sup> July 2015

**Police Investigations & Review Commissioner**  
Hamilton House,  
Hamilton Business Park,  
Caird Park,  
Hamilton ML3 0QA

**For the Attention of John McSporrán and Kate Frame**

Dear Sir/Madam

**Re: Death of Sheku Bayoh in Police Custody**

We understand that you are preparing a report for COPFS, however a number of concerns arise which, some of which we advised Lindsey Miller and Les Brown of last week:-

- 1) Over the course of the last 12 weeks various issues have been raised on behalf of the family, yet we have not received a full response to all of these matters.
- 2) In one instance you referred our questions to Les Brown, who accordingly advised us that he had responded to you, however you have failed to fully update us.
- 3) At several meetings with the family you have stated you did not have the information at hand and would revert to us, but have failed to do so.
- 4) The family have requested details several times of who within the Police provided details to the media on the morning of the 3<sup>rd</sup> May that a police officer had been stabbed.
- 5) Can you confirm if the PIRC interviewed the three politicians that provided press release statements that morning? MSP David Torrance, Councillor Kenney Selbie and MSP Claire Baker.
- 6) Can you confirm that PIRC was unaware of the dissemination between Police Scotland and COPFS on the issue of 'operational statements' until the 10<sup>th</sup> June when you were sent copies of two memoranda in relation to another matter and following a

question having been asked on our behalf from the Justice Secretary in the Scottish Parliament?

- 7) Could you advise what impact if any this memorandum has in relation to the investigation into the death of Sheku Bayoh?
- 8) We have been provided by variety of sources both in the community and the police with information in relation to the officers who 'engaged' with Mr Bayoh. We had previously requested that you look at the background of these officers; can you advise if that has happened?
- 9) We note that mobile phones were requested from and seized from a number of civilians in relation to this inquiry, however have you requested and analysed the mobile phones of the 11 officers, if not why not?

10) [REDACTED]

- 11) It is also has been alleged that this officer has a history of racism from a young age. Can you advise whether that has been checked and considered? For instance have family members such as his mother, father and sister been interviewed, in the same way as Mr Bayoh's family were to assist the investigation?

12) [REDACTED]

13) [REDACTED]

- 14) Can you confirm whether police officers can resign or retire without the consent of the Chief Constable, during an investigation into gross misconduct or after such an investigation has concluded that the officer has a case to answer for gross misconduct?

15) [REDACTED]

- 16) It was also alleged that Alan Paton and his colleagues regularly access the police data bases and other Crime file systems to check up on the personal data of individuals without the consent of the data controller namely the Chief Constable, without there being a policing purpose.

To do so would be a clear breach of the Data Protection Act 1988 and officers would be subject to criminal proceedings. Can you advise whether an audit has been carried out in terms of PC Paton along with the ten other officers from the incident or any other colleagues in accessing such systems and viewing personal data relating to any of the civilians connected to this case including the deceased?

The individual's names that immediately come to mind are Colette [REDACTED] Bell ([REDACTED]/1988), Lorraine Bell, Aminata Bayoh ([REDACTED]/1949), Zahid Saeed, Kadijatu Johnson ([REDACTED]/1977), Kosna Bayoh ([REDACTED]/1975), Adeyemi Johnson ([REDACTED]/1977), Adama Jalloh ([REDACTED]/1980), Mohammed Aamer Anwar, Martyn Dick, Kirsty Macleod, Jamie Hume, [REDACTED]. Albeit there may be many others whose details may have been accessed in relation to this investigation but who details we are unaware of.

- 17) We would submit that such an audit should be carried out for Alan Paton, [REDACTED] [REDACTED] and other officers for access to personal data as the allegation is made that they have done this regularly, [REDACTED].

- 18) The audit would of course be a simple process, as in order to access the police network and Crime file data base, the user has to enter their shoulder number (sometimes referred to as a user name or user number for IT purposes) and a password which should only be known by that individual. When logging onto the network and logging onto the data base, a footprint of the user's access is logged which through audits shows specific times, dates, locations and usage.

- i. A persons list on the Crime file for instance would bring up a list of all the persons involved and their status in the immediate aftermath of the death of Sheku Bayoh enquiry.
- ii. With regards to witnesses, suspects, complainers, accused persons; the persons list shows their surname, forename, sex and date of birth. The civilian witness page shows these details as well home address, business address, ethnicity, nationality, occupation, telephone numbers, driver number, CHS2 and PNC numbers (if applicable) and their nominal history

- 19) Can you provide a script of the questions that were provided to investigators as it would appear that there has been extensive leading of officers as well as civilians when taking statements, one example being the use of the words 'being on a mission'.

- 20) In relation to the CCTV, copies of the material that you prepared have now been provided, however a number of matters arise in relation to the footage taken through a

bedroom window. Can you advise whether this footage is complete and refer you to our last email dated 29<sup>th</sup> July 2015?

- 21) Can you advise if the CCTV footage has been edited and if so can a complete copy be provided, including the video taken by civilians.
- 22) In relation to the first footage of encounter with member of the public has this been enhanced? If so can you please provide the enhanced version and if not we would wish for our expert to arrange to enhance the original.
- 23) Can you advise whether PIRC has identified the primary, contentious features in this case including restraint and race? This would not be to prejudge the investigation or with the purpose of ruling those issues in or out, but to make clear the PIRC is aware of and has identified the primary concerns and issues that need to be examined.

To put on public record that the PIRC recognises the important questions and issues to explore and is there to conduct a robust investigation will go some way to satisfying the family as well as public interest and concern about this death.

- 24) Has PIRC investigated if any of the nine officers involved were involved in the race case investigated by Fife Police division between 2014 and 2015 regarding text messages?
- 25) An effective police investigation system must include rigorous consideration of discriminatory treatment and practices. In England and Wales the IPCC has documented how a disproportionate number of people from Black and Minority Ethnic communities have died following the use of force raising concerns about racism and discrimination by state agents.

It is well documented that issue of discrimination and whether the death can be linked to discriminatory attitudes and practices have never adequately been considered by the IPCC in its investigations. The Bayoh family's concern here in Scotland and an issue that Inquest have also raised with us is that you have failed to evidence any consideration of such an issue and in addition have no experience in these matters even if you wished to.

The family have raised concerns as members of the public have given them information about police officers involved talking about the incident and referring to Sheku as "We killed a black man today, We whacked him on the head then he fell".

- 26) As you will be aware that we are receiving assistance from 'Inquest' a charity that deals with deaths in custody. Many of the cases they have worked on have presented disturbing images of violence and racism – ascribing to black people stereotypical characteristics of extraordinary strength, dangerousness and criminality thus attempting to blame the victim for their own death either by their pathological condition or their personal choice.

Cases have revealed a use of violence on some occasions that is greatly disproportionate to the risks posed. In the Bayoh case officers claim severe threat level warnings and a terrorist threat as 'justification' for their actions, along with the above stereotypes raising questions about the attitudes and assumptions of the police officers and pre-conceived ideas about the propensity to violence of particular groups of people.

In the context of black deaths in custody the issue of race/racism has not been referred to by the PIRC or included in the terms of reference. Why not?

You will be aware that evidence of racial stereotyping by the Metropolitan Police led to a most damaging censure of the police when a public inquiry attributed the bungled police investigation into the racist murder of Stephen Lawrence to institutionalised racism.

The Bayoh family is concerned that racial stereotyping may have been a contributory factor in the death of Sheku Bayoh resulting from restraint/use of force. The question of racism has from the very beginning been the 'elephant in the room'; can you advise how this forms part of the investigation process?

- 27) It is important that the PIRC recognises the danger of using '*value laden*' language and separating the author of the report from those giving their accounts of what happened.

It is common in Terms of Reference, briefings and investigation reports to see references to '*violent*' and '*aggressive*' - behaviour as described by police officers – in many cases found subsequently to be language used to justify their actions that other evidence suggests is '*disorientation*' and '*agitation*'.

**As well as being offensive to family, such value laden language risks distorting the picture of events and the prejudging of evidence.**

It is of deep concern that such value laden language is replicated throughout the Expert Witness Package which we understand from Les Brown is not just for our experts but also for experts that you will instruct. The same concerns arise in relation to the information provided initially to the consultant pathologists.

- 28) Sensitive and thorough handling of the investigation in the '*golden hours*' following the death is critical to evidence gathering and setting the direction and quality of the investigation to follow. Can you please provide details of your guidance on the Mode of Investigation decisions following deaths in custody?
- 29) Can you advise if when PIRC were present at Kirkcaldy Police Office, whether your investigating officers shared accounts in the presence of senior management, the Police Federation and/or Fife Police Officers.

- 30) Can you advise if notes from any meetings were compiled? The initial PIRC response and timing is crucial. All initial action, evidence gathering, protection of records etc. flows from that decision.
- 31) We would assume there is clear guidance and protocols for the critical work done in the 'early hours' after a death and any action taken was noted in a log. Can you confirm whether or not this is the case?
- 32) Can you advise why PIRC and Police Scotland failed to treat the scene where force/restraint was used as a potential crime scene?
- 33) Can PIRC advise who was in control of Sheku Bayoh's house and for how long? Can they confirm what items they took from the house?)
- 34) The post-mortem examination took place without the family agreeing to or identifying the body, even when the family clearly stated that they wished to see him. Can you clarify why this was allowed to happen. As explained we had already advised the Lord Advocate on Tuesday 5<sup>th</sup> May that we would wish for the PM to be held back to allow our experts to be present.
- 35) Why was the family lied to about how Sheku died?
- 36) Did PIRC visit the homes of all nine police officers and check their computers and social media pages and messages, as we note from your last email that facebook pages are being monitored in relation to the family or civilians so why not the officers?
- 37) In England the case of Saunders<sup>1</sup> prohibits conferring between officers, albeit in that case following police shootings. This is essential to protecting the integrity and honesty of officer accounts following all deaths in custody and to prevent corruption of the evidence gathering stage. Can you advise as to what guidance or mechanisms exist on the ground in Scotland to ensure such protection and how they applied to the Bayoh case?
- 38) Can you advise whether PIRC issued instructions not to confer or collude from the moment you became notified of the death, with a description of the consequences?
- 39) Has every officer interviewed been asked whether they have discussed the case with anyone else? This would act as a protection both for the officer and the integrity of the investigation.
- 40) Are there written protocols that have set the framework for the way PIRC has approached this case? Without details being provided, increasingly the family's perception is that there is a chaotic system which appears to be directed by an individual rather than according to an agreed organisational method or structure.

- i. Can you confirm that the PIRC is working according to protocols, checklists etc.? The concern is if there have been basic failures, for example, in the collation and protection of key evidence at the outset.
- ii. Does a protocol exist which directed urgent initial steps, evidence gathering (audio, CCTV, 999 calls from public, radio airwaves, uniforms, equipment, records of vehicles involved etc.)?
- iii. To ensure a uniform approach, within which professional judgement is exercised on a case by case basis, can you advise if you are following an agreed basic protocol for the structure of the relationship between the investigating officials and all others in direct contact with Bayoh family?

41) The failure to interview the police officers in this case has been one of the most contentious issues concerning the death in custody of Sheku Bayoh. The perceived reluctance by PIRC to interview under caution for the Bayoh family families goes to the heart of the issue of independence and why police officers have been treated so differently to other citizens.

There is a current lack of understanding or reluctance by the PIRC to utilise its existing powers to interview under caution. Can you please clarify why there was a failure to use your powers to interview? Lack of clear guidance? Lack of training? Lack of confidence?

The family have raised worrying questions about whether the culture within the PIRC is such that it cannot countenance the idea of criminality or worse whether the said culture is illustrative of collusion between investigators and officers.

- i. Full and detailed first accounts should have been obtained immediately from all relevant officers. In Sheku's case all civilians appeared to have been interviewed within 7 days, and yet it was 32 days before any police officers were interviewed.
- ii. Can you advise whether the officers have provided fully completed notebooks or other full contemporaneous accounts? Of course in this instance all the officers were interviewed as witnesses. It is important there is full understanding and utilisation of powers that currently exist which enable officers to be interviewed as suspects (with due legal process and the safeguards that provides) where misconduct or a criminal act may have occurred. Do your interviewers have a detailed understanding of the evidence and/or their powers?
- iii. Can you advise whether any further interviews have taken place of the officers concerned once the evidence had been analysed to address gaps and conflicts and issues of credibility that clearly occur in the statements of officers. If this has happened why has the experts briefing pack not been updated?

- 42) Can you confirm that the PIRC unlike the IPCC has no powers to request the suspension of Police Officers in a death in custody or serious incident?
- 43) Does the PIRC have a checklist of issues that needed to be raised with Police Scotland following the death e.g., instruction not to confer, to complete EABs, to attend interviews, disclosure, crime scene, witness boards. Will these key issues be recorded in the report to show they have been considered and raised (including dates, parties involved etc.) together with the outcome/response recorded?
- 44) Why did PIRC allow Police Scotland officer to carry on interviewing civilians (Mr Bayoh's friends) on Sunday 3<sup>rd</sup> May 2015 as they were working from the same base i.e. Kirkcaldy Police Office?
- 45) The PIRC's initial contact with a family appears to have been ad hoc and chaotic suggesting a basic lack of systems and approach. On several occasions we have requested a meeting with the Commissioner without the courtesy of a response.

The Bayoh family you will appreciate is growing increasingly frustrated as they had expected a more challenging and robust review of the use of restraint.

- 46) The family are concerned that PIRC appeared to quickly form a fixed picture of events. Evidence can become selected and reviewed according to that fixed view; a view which is often sympathetic to, or informed by, the police account and an uncritical acceptance of their evidence.

This has helped contribute to a family belief that the PIRC lacks rigour and independence and has not been impartial in its approach.

There is also the danger that important evidence, lines of inquiry and witnesses can be overlooked and minimised. Poor quality of evidence gathering and analysis, the failure to robustly collate, analyse, review and challenge evidence could be suggestive of either a lack of will or a lack of skills and training.

- 47) There are we believe many instances of poor quality evidence gathering in the Bayoh case e.g. a failure to view critical CCTV evidence which for instance appears to show PC Nicole Short without her high visibility jacket standing over Sheku Bayoh in the aftermath of the incident.

We assume she is the officer with dark hair up in a bun, '*worn upwards tied in a bun*' her positioning clearly conflicts with her evidence (*where she states she moved away and sat in the police vehicle*) and that of the other officers. It is also illustrative of an uncritical acceptance of police accounts. We would assume she is not the female CID officer J or the uniformed officer E with blonde hair as there are only 9 uniformed in the CCTV footage and two plain clothes officers.

- 48) 



[REDACTED]

49) The question of the use of experts is fast becoming a highly contentious area. There needs to be greater agreement and discussion about how and when to use them. The PIRC should be utilising experts to help address any gaps in knowledge and to help inform the investigation and interviewing process e.g. around issues of mental health, drug misuse, restraint or race.

50) Before referring your preliminary report to the Crown, a meaningful consultation with the family would be helpful.

Although families should be updated throughout the investigation, can you advise if your initial draft/final report will be circulated and consulted upon before being finalised? In England and Wales this would be the norm and considered important in identifying any issues that the family do not think have been adequately explored.

This is would also be helpful to PIRC as the family could properly understand what the PIRC have been doing.

We have serious concerns with regards to any report being provided to the Crown at this stage if you have failed to address the above matters as well as below:

- Failure to test evidence or resolve conflicts and gaps in the evidence
- It would be better for the report to acknowledge evidential conflicts or gaps and acknowledge these have not been possible to resolve rather than leave them without explanation.
- Such conflicts or gaps in evidence could also help inform the conduct of any FAI as well as other possible legal proceedings.
- Breakdown and evidential analysis of every contentious aspect of the case would be helpful. The restraint and what took place when the police met Mr Bayoh are both enormously significant issues which appear to have been largely glossed over by the PIRC.
- Detailed time lines/chronologies. This would be a useful way of exposing evidential gaps or conflicts around timing between the individual accounts.
- Key disparities around timing of events which should have been exposed at the investigation stage cannot wait to come out until the FAI.

51) Policies/protocols: All relevant legislation, policies and protocols (national and local) should be identified and considered as a part of the investigation. Reports should show detailed consideration of police action against those documents.

Whilst we are in the process of preparing FOI requests on behalf of the family, it would be much more helpful if these materials are obtained and addressed by the PIRC.

Training: should be addressed with respect to all key features of the case e.g. mental health, restraint. This should include the identification of all training that has occurred, any refresher courses, a consideration of training materials, and an identification of any gaps or shortcomings.

- 52) PIRC Roles There is a need to clarify the roles and responsibilities of the PIRC team. To date the role of the commissioner is unclear apart from one interview given to the Sunday Mail.

One would assume that the Commissioner holds ultimate overall control and management of the investigation, little practical evidence of this has been provided so far.

The senior investigator appears to have taken the directing and presiding role. Given that the Commissioner is intended to bring the safety net of independence, their authority and management should be clear and visible throughout.

This is crucial for the family and public. They also need to assert their authority with both investigators and Police/Federation lawyers.

- 53) We are growing increasingly concerned at the breakdown of trust, poor communication which does not allow the family to raise important concerns and grievances with you.

The devastating experience of having a much loved relative die in custody is being made all the worse by the experience of the PIRC investigation process.

Without faith that the PIRC are capable of exposing the truth in a difficult and contentious cases like Mr Bayoh's, his family have been forced into the role of investigators, at great personal cost.

There is a need for the PIRC to properly recognise and value the personal insight the Bayoh family bring to the case and an investigation. There is a need for the PIRC to manage expectations without being obstructive.

The PIRC is uniquely placed to scrutinise policing methods, techniques, operational policies and practices, and to consider whether the treatment and care afforded to the deceased was in violation of Article 2 and 3.

PIRC's potential in the identification of dangerous practices and systems and individual and systemic problems can act as an important safeguard in the protection of vulnerable people and improve custodial health and safety.

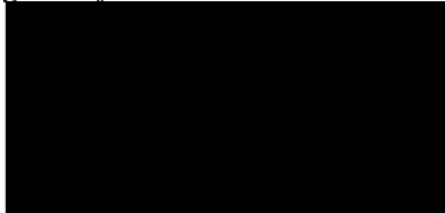
Its role as a robust investigator where a death has occurred and in the identification of any wrongdoing by police is vital in increasing family and public confidence and in ensuring that justice is both done and seen to be done.

To this end the guardianship role of the PIRC is crucial in promoting 'excellence' in policing.

We appreciate that the PIRC at this present time is under a great deal of pressure but we hope that the above matters can be resolved in same way to the satisfaction of the family. We look forward to hearing from you.

Yours Sincerely

Aamer Anwar



**cc. Frank Mullholland QC Lord Advocate; Kate Frame- Commissioner PIRC; Les Brown CAP COPFS, Lindsey Miller PF Organised Crime & Counter Terrorism**

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<sup>1</sup> R (on the application of Saunders) v IPCC [2008] EWHC 2372 (Admin), 10 October 2008  
<http://www.bailii.org/ew/cases/EWHC/Admin/2008/2372.html>