

Aamer Anwar & Co
Solicitors & Notaries

[REDACTED]
Glasgow
[REDACTED]

9 October 2015

Dear Mr Anwar

Death of Sheku Bayoh

I refer to your letter of 16 September and trust that the information contained in this letter outlines some of the additional work which has been undertaken since we met and reassures the family of my commitment to completing a thorough, independent and impartial investigation.

I note that your letter of 16 September reiterates some matters which have previously been discussed and other fresh matters. I will address those matters insofar as I am able to, whilst protecting the integrity of the investigation.

As you will appreciate, the investigation into Sheku Bayoh's death is one which has been directed by the Lord Advocate. It is an ongoing investigation and I have not yet submitted my final report to him. I can however advise you that many of the matters raised have already been addressed in my interim report to the Lord Advocate. On receipt of the full report, the Lord Advocate will undertake the standard precognition process and I understand that he has already advised you that he will brief the family at the conclusion of that process. I would anticipate that any outstanding issues may be addressed then.

As I advised you at our meeting on 3 September 2015, the PIRC investigation has been undertaken in accordance with the provisions afforded under Scots Law.

I note that you refer to the IPCC's power to require a police witness to attend at interview however I draw your attention to the fact that the IPCC itself, recognises their limitation of that power and indeed has advised the Home Office that "some officer witnesses choose to make no comment and in many cases, only provide written answers after consultation with lawyers and others. As we have said in a number of cases, this does not provide best evidence. At best, it can be a protracted process to follow up the supplementary issues raised in these written answers or those of others; at worst, it can leave key questions unanswered. This has the potential to damage investigations and undermine public confidence in the police".

It therefore appears that the power held by IPCC in this regard, does not necessarily advance matters further.

You will be aware that following the incident in Hayfield Road Kirkcaldy, most of the police officers returned to the police station, arriving there between approximately 0730 and 0800 hours; that COPFS was not informed of the death until about 0930 hours that morning and subsequently my office was contacted and instructed to investigate the incident which had taken place in Hayfield Road. PIRC investigators were called out and made their way to our offices in Hamilton where they were briefed and then travelled to Kirkcaldy police office, arriving there at 1330 hours. Throughout this period, the interaction of the officers involved in the incident was governed by Police Scotland's Post Incident Manager (PIM).

I note that you raise a series of questions regarding the status of the police officers following Sheku Bayoh's death. I can advise you that on a number of occasions commencing at 1022 hours onwards on 3 May 2015, a PIRC investigator verbally advised the Police Scotland SIO and other senior officers that from the information available at that time, the status of the officers was considered to be that of witnesses. This was communicated in the context of his request for operational statements. He was advised by the Police SIO that the officers involved in the incident had been advised by Scottish Police Federation representatives not to provide witness statements.

At 1405 hours, the PIRC Deputy Senior Investigator (DSI) met with the Police Scotland ACC and other senior officers at which time he again confirmed that, from the information available, the officers were regarded as witnesses and requested operational statements from them.

Thereafter, the PIRC DSI sought to meet with the officers involved in the incident in order to clarify their status as witnesses and personally request operational statements. This request was not progressed by Police Scotland's senior management and was repeated to Police Scotland's Senior Investigating Officer (SIO).

On 4 May 2015, following the post mortem examination, PIRC investigators again advised the Police Scotland SIO that, on the information available, the status of the officers was considered to be that of witnesses and again requested operational statements through him.

On 5 May 2015, the PIRC Director of Investigations contacted Professor Peter Watson, the legal representative acting on behalf of the officers involved to again request statements. Professor Watson confirmed that he had advised the officers to make “no comment” until full details of the post mortem results were known.

On 6 May 2015, PIRC investigators again requested the provision of operational statements via the Police Scotland SIO.

On 7 May 2015, correspondence was sent by PIRC to the Police Scotland SIO outlining that, notwithstanding Professor Watson’s advice to the officers involved in the incident, PIRC instructed that each officer be individually approached and their position in respect of the provision of a statement obtained. Again their status, at that time, as witnesses to the incident was confirmed. The Police Scotland SIO later that day informed PIRC that each of the officers had been seen, their status as outlined by PIRC confirmed, and that each had declined to give a statement based on legal advice.

Following the lack of provision of statements, PIRC investigators took the opportunity to secure numerous civilian witness statements and productions, arranged forensic examinations and reviewed CCTV footage and radio recordings, in order to be fully informed in advance of any interview of the police officers.

On 2 June 2015, the PIRC Director of Investigations emailed Professor Watson directly and again reiterated the PIRC request that the officers be interviewed and statements taken from them. On this occasion, the officers agreed to be interviewed.

I note your queries regarding TRIM procedures, I can advise you that PIRC investigators have not used this terminology or referred to such procedures during interviews with police officers.

Regarding your query as to how many occasions the officers have been interviewed, I can confirm that PIRC investigators carried out lengthy witness interviews with each of the officers involved, comprehensively covering all relevant matters.

You ask what information was provided by Police Scotland to PIRC regarding the death of Sheku Bayoh.

I can confirm that Senior Officers of Police Scotland provided PIRC Investigators with initial verbal briefings on the day of the incident, prior to the arrival of PIRC investigators at Kirkcaldy. PIRC was informed that: a number of members of the public had reported a man with a knife chasing cars; that police officers had subsequently intercepted him during which

PAVA and CS spray was discharged at him; that the male was struck with police batons; was handcuffed to the rear and had leg restraints fitted; that the male subsequently became unconscious, stopped breathing and was placed in the recovery position, where he was subsequently given CPR.

I note your queries regarding the obligations by police officers to complete various forms following use of force and CS/PAVA spray. As detailed above, the officers appear to have received initial advice from the Police Federation in this connection and declined to complete such forms.

With reference to your request for Police Scotland's Standard Operating Procedures relating to a death in police custody, these are productions and accordingly their disclosure is a matter for COPFS.

With regard to your query relating to the detention of police officers in terms of Section 14 of the Criminal Procedure (Scotland) Act 1995, as you know, from the inconclusive Scottish post mortem, it has not been possible to establish a precise cause of death or to establish meantime, that a crime has been committed. In terms of Scots Law, it is not lawful to detain any person (police officer or member of the public) unless it has been established that an offence punishable by imprisonment has been committed. In compliance with Scottish Criminal law, PIRC has not, to date, detained any police officer in respect of this case.

In relation to your queries about civilian witness statement, I can advise you that statements have been taken from numerous civilian witness throughout the course of the investigation.

Police Scotland obtained statements from seventeen witnesses between 3 and 5 May 2015 in relation to its investigation into the events that had occurred in the hours prior to Sheku Bayoh's death. As you may be aware, initially Police Scotland were instructed by COPFS to investigate the events prior to the incident, whereas the COPFS Terms of Reference to PIRC between 3 and 5 May 2015 were limited to 'investigating the interaction between the deceased and the police at the time of his arrest and the events thereafter'.

On 5 May, COPFS extended the Terms of Reference to PIRC to include "the circumstances leading up to the incident, namely Mr Bayoh's movements late on Saturday 2 May and during the early hours of Sunday 3 May, prior to his contact with police, including his attendance at a house at Craigmount, Kirkcaldy and events following his attendance there".

In this regard, during the period between 3 and 5 May 2015, Police Scotland had obtained seventeen statements from members of the public and, following examination of those statements by PIRC, ten of those witnesses were re-interviewed. I understand that none of the statements taken from civilian witnesses by Police Scotland were obtained by officers who responded to events in Hayfield Road.

I note your queries in relation to whether the police officers were considered as suspects or accused and in particular your questions as to whether PIRC viewed this death as a suspicious death and, if not, why not; whether it was not reasonable to suspect a crime may have been committed; and whether it was suspected that an assault had occurred and excessive force had been used. In this connection, I would refer you to my previous correspondence in which I highlight the inconclusive post mortem findings. These did not determine that the death was “suspicious” but rather indicated that further enquiry was needed in order to fully explain the cause of death. This means that so far, it has not been possible, in a legal context, to establish that a crime has been committed. This remains the position pending the outcome of further investigation by expert witnesses.

In addition to the foregoing, you had asked whether the refusal of the officers to complete a statement breached their duty and, if so, whether that would have given PIRC grounds to detain them as suspects. A breach of duty may constitute misconduct under police misconduct regulations, however, this is a civil matter and confers no powers of detention or arrest. As you may be aware, under current legislation, PIRC do not investigate misconduct by police officers of Federated or Superintendent ranks.

In relation to your specific questions regarding what enquiries were made with civilian witnesses and whether civilians were shown emulator boards with pictures of police officers to identify which officer was responsible for various actions, I can confirm that my investigators have interviewed 187 civilian witnesses. Where relevant, these witnesses were asked, in line with normal practice, to provide a description of officer or officers they witnessed. Emulator boards have not been used.

I note your comments in relation to detention, but consider that I have fully addressed this matter both in my previous letter and again in this letter in relation to the legal basis under Scots Law for detention.

PIRC continue to investigate the question of force applied by the officers involved and has specifically sought expert opinion regarding this matter and accordingly retains an open mind on that.

In relation to your two specific questions namely,

- How long did the officers involved remain at the scene on Hayfield Road?
- Did these officers have any role in the investigation into the death of Sheku Bayoh before returning to Kirkcaldy police office?,

I can confirm that five of the officers returned to the office arriving about 0740 to 0745 hours whilst two remained on scene protection duties, one drove the ambulance containing Sheku Bayoh to the hospital and a further officer attended hospital for treatment. None of these officers had a role in the investigation.

In relation to your queries regarding PIRC's contact with the Police Federation and their representative, I can advise you that on a number of occasions (see above) PIRC requested statements from the officers involved in the incident and also, during the course of the investigation, PIRC investigators took statements from those Federation officials who advised the officers on the day of the incident.

As regards the selection of experts, as requested by COPFS, PIRC investigators identified four potential expert witnesses. The curricula vitae for these witnesses were submitted to COPFS for consideration and selection of any suitable expert.

As part of the identification process, PIRC investigators consulted the IPCC, the College of Policing and the National Crime Agency and thereafter examined published papers by the identified experts, having regard to key attributions and references. A number of the published papers included attributions and references to Dr Steven Karch (MD, FFFLM, FFSSOC) who is a consultant in Cardiac Pathology and Toxicology.

As you may be aware, in order to facilitate the examination by your expert, Dr Nat Cary, of histology and other samples, a PIRC investigator travelled to Dr Cary's home with the samples and remained while he examined them. Dr Cary asked who the experts chosen by Crown were and was informed that they were Dr Karch and Dr Payne-James. Dr Cary expressed his professional regard for the significant expertise of both persons, considering Dr Karch to be one of the most eminent and expert practitioners in the world in the field of cardio pathology.

I understand that you have now received the redacted statements and would be pleased to receive Dr Cary's report from you in due course.

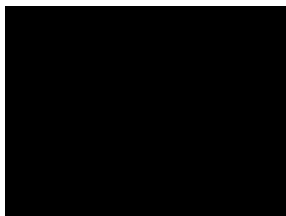
Thank you for your identification and recommendation for the instruction of three further experts. I am pleased to confirm that those experts have now provided their curricula vitae and the Lord Advocate will consider their instruction in early course.

With regard to the location of the knife, I understand that it was recovered by the police in the area of grass on the north footpath of Hayfield Road, near to the roundabout with Hendry Road.

In relation to the audio recordings of the calls made to the police on the morning of 3 May, I would be pleased if you could provide me with proposed dates when it would be suitable for the family to listen to these. In the meantime, I will seek direction from COPFS regarding access to recordings of police airwave material.

I trust that the information which I have provided highlights some of the challenges faced in this investigation, the determination of the PIRC investigation team to get to the truth of how Sheku Bayoh died and my commitment to delivering a thorough, impartial and independent investigation.

Yours sincerely



Kate Frame
Police Investigations & Review Commissioner