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6<sup>th</sup> November 2015

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

**For the Attention of Kate Frame**

Dear Ms Frame

**Death of Sheku Bayoh**

We refer to your email dated 6<sup>th</sup> November and the Bayoh family are disappointed at lack of a response to our letter dated 28<sup>th</sup> October, but were advised by you today that you were on holiday.

You will have been aware that we met with the Lord Advocate on the 5<sup>th</sup> November. On the previous occasion you met with the family, you were advised of serious concerns over the selection of experts as well as the conduct of PIRC investigators. Those concerns have been heightened by recent events.

The Bayoh family were horrified to read reports in the Scottish Sun on Sunday on the 1<sup>st</sup> November which related to Dr Steven Karch.

We highlight below some extracts of the article:-

*“Custody death dad Sheku Bayoh was suffering from heart disease before his fatal collapse, a forensic expert has claimed.*

*World-renowned expert Dr. Steven Karch discovered the potentially fatal defect after examining his corpse. The discovery came when police investigators turned to a range of experts to uncover exactly how Sheku, 31, lost his life after officers restrained him.*

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*Dr. Karch told The Scottish Sun on Sunday: "I can tell you that I saw evidence of heart disease. I am not at liberty to say anymore at this stage." It is also believed the victim's alleged use of steroids may have triggered a coronary condition.*

### *Ecstasy*

*And initial findings have also suggested he took a legal high and ecstasy on the night he died....."*

We also note that Lord Advocate advised that Dr Karch had sought the opinion of PIRC on whether he could speak to the media but this was declined. We would be obliged if details of this could be provided.

The family appreciated the Lord Advocate's intervention following Kenny MacKaskill's public statements and the appeal for calm, however to now find that a so called 'expert' instructed by the PIRC is speaking to a tabloid newspaper is beyond the pale.

On the basis of the above we would state the following:-

- 1) It is clear from the report in the Scottish Sun on Sunday of the 1<sup>st</sup> November that Steven Karch abused his position as a so called independent expert.
- 2) We are seriously concerned once again at the failure of PIRC failing to contact us with regards to this matter whether by telephone or in writing.
- 3) In the 'newspaper' article Dr Karch's claims to have examined the corpse which is a blatant lie.
- 4) Can you advise on what basis an expert instructed on the basis of his expertise in toxicology is now commenting on cardiology.
- 5) At this stage the family are calling for the dismissal of Dr Steven Karch and any reliance on his findings, the Lord Advocate was also advised of this.
- 6) The Bayoh family feel that a further failure of PIRC to take strong action would be seen as yet again another example of a partial and flawed investigation.
- 7) We request copies of your expert's reports in order that our experts may consider them and comment accordingly.
- 8) The allegations against the conduct of Steven Karch are extremely damaging to the integrity and credibility of this inquiry if his findings are relied upon and he continues to be instructed by the PIRC.
- 9) On this occasion the family advised the Lord Advocate that they did not expect to be dismissed with a soundbite from the PIRC simply reiterating your "*commitment to carrying out a thorough and independent investigation to get to the truth of the matter.*"

- 10) The family wanted to see concrete action but sadly note we note a PIRC spokesman stated:-

*“The ongoing investigation into the death of Sheku Bayoh is complex and wide-ranging and all relevant lines of enquiry are being objectively explored. The selection and instruction of expert forensic pathologists is a matter for the Lord Advocate. The commissioner is committed to delivering a thorough, impartial and independent investigation and a final report of our findings will be sent to the Lord Advocate in due course.”*

Should we take from the statement above that you will take no action over Dr Steven Karch or are you saying that if he is to be dismissed that you consider it to be a matter for the Lord Advocate.

- 11) We note that on the 1<sup>st</sup> September 2025 on the website the PIRC stated that:-

*“in order to assist the family in understanding what caused Sheku Bayoh's death, the PIRC identified a number of expert forensic pathologists to the Crown Office. The Lord Advocate then selected and instructed the Commissioner to approach the chosen experts and seek their opinion on the cause of death.*

*Both are entirely independent and Dr Payne-James has already said 'an expert's duty is to be completely independent, irrespective of who is instructing them. Once the experts' opinions are available they will be passed to the Crown Office and the PIRC would anticipate that, in accordance with standard practice in a serious case such as this, they will take the opportunity to precognosce them as witnesses along with other significant witnesses identified in the PIRC report.’”*

- 12) We since the beginning when Dr Steven Karch was instructed raised serious concerns with regards to his independence of Steven Karch. We noted that both Payne and Karch served on a panel which produced a report for the Weapons & Protective Systems Technologies Center on excited delirium. The report can be accessed [here](https://www.justnet.org/pdf/ExDS-Panel-Report-FINAL.pdf). (<https://www.justnet.org/pdf/ExDS-Panel-Report-FINAL.pdf>).

- 13) We also previously noted Dr Karch’s previous comments in relation to excited delirium (accessible [here](http://www.salon.com/1999/09/29/excited_delirium/): [http://www.salon.com/1999/09/29/excited\\_delirium/](http://www.salon.com/1999/09/29/excited_delirium/)) and his views in relation to positional asphyxia and deaths in custody ([http://www.researchgate.net/publication/280805832\\_Positional\\_Asphyxia\\_and\\_Death\\_in\\_Custody](http://www.researchgate.net/publication/280805832_Positional_Asphyxia_and_Death_in_Custody)).

These views in themselves raised concerns as to whether any report from Dr Karch could be seen as independent and uninfluenced as to the form or content by the party instructing the opinion.

- 14) We also note that in the past Dr Karch had been severely criticised by eminent cardiologists in American court proceedings for failing to take account of alternative explanations to deaths in police custody. It appears that in the case of police restraint

deaths it is for him usually only one of two propositions- excited delirium or cardiac arrest because of damage to the heart by drugs which do not allow it to function properly

- 15) The other issue is of course whether Dr Karch is actually capable of sticking to matters within his expertise. An expert witness should not provide a statement of unqualified conclusions about the question of fact on which his opinion is based. The fact that he appears to be doing so both on and off the record means the effect of any potential testimony or report may well be diminished.
- 16) We would submit that Steven Karch has violated the rules/guidelines that Crown Office has in relation to expert witnesses and also their obligations in relation to disclosure. So what action do PIRC intend to take?
- 17) We would assume that Dr Karch was asked to sign an undertaking in relation to disclosure? His recent statements to the Sun seriously undermine his credibility as an expert and consequently his fitness to be instructed. There appears to have been no appropriate management of the materials provided to him.
- 18) We note that all experts would usually be expected to comply with their own professional codes of conduct. One would have to hope and assume that Dr Karch's own medical code of conduct (as a forensic pathologist) would warn against disclosure of confidential sensitive material out with the proper channels? On that basis can you provide a copy of his CV and advise who would be his professional governing body, because if the Crown/PIRC do not view his actions as a serious breach of conduct then the Bayoh family would wish to report him to his professional body.
- 19) An expert witness as you will no doubt be aware from your extensive experience at Crown Office, has an overriding duty to the court albeit that there are no live proceedings as of yet, however the Lord Advocate has already stated publicly that there will be an FAI. At this stage we would wish to see the terms of instructions issued to all the experts by PIRC.
- 20) We would submit that Dr Karch's overarching duties apply regardless even at this early stage as he must have been informed by the Crown or PIRC that there is a possibility of his report being used in evidence in either a criminal trial or an FAI.
- 21) The general duties are as follows (these may be useful for reference in general terms as matters progress) as per *The Ikarian Reefer (no 1)* [1993] 2 Lloyd's Rep 68 & *R. v. Harris and others* [2006] 1 Cr App R 5. Whilst these are English cases we cannot detect any difference in approach in Scotland:-
  - To give objective, unbiased opinion in relation to matters within his expertise,
  - To produce an independent opinion, uninfluenced by the litigation context,
  - Not to omit material facts which could detract from it,
  - To stay within their area of expertise,
  - If insufficient data is available to state that the opinion is provisional; and
  - To state within the report any qualifications to the accuracy of it.

- 22) The 'briefing' of a tabloid newspapers by an expert must raise concerns over his integrity and independence as well as his ability to remain "*uninfluenced by the litigation context*".
- 23) For PIRC to continue to instruct a pathologist or rely on his findings is unacceptable and would once again cast serious doubts on the robustness and impartiality of the investigation into the death of Sheku Bayoh. At this critical stage of the investigation one would hope that PIRC would have had the courage to act on even the slightest hint of impropriety in their investigation rather than issuing the standard soundbite and avoiding responsibility for an expert that you instructed. Failure to act on this matter immediately and publicly will not raise the confidence of the family in PIRC being robust and impartial.
- 24) You will be aware that the Bayoh family in September stated that their confidence in the PIRC was shattered. This stems from the fact that family believe that the Police Federation have rushed to spin a story to the media which exculpated themselves of any blame and presented their involvement exclusively in a good light, before their officers had even given any witness statements, seen any CCTV, or had the conclusions of the experts as to the cause of death.

The situation was compounded by the stand-off attitude of the PIRC which has not provided any reaction to the Federation's actions, whilst being ready to issue press releases with an implied criticism of the family and our legal team.

- 25) Now it appears that a PIRC instructed 'expert' is briefing a tabloid, within the same article a source then promotes the very same expert :

*"Dr. Karch is the go-to guy in such cases. He is universally respected and will provide an impartial, professional opinion. This will form part of the PIRC report sent to the Crown."*

The purpose of the article is clear to the family, it is a deliberate attempt to produce an alternative explanation which conveniently excuses the police of any responsibility.

The family's perception of PIRC remains that your investigators have simply accepted the version of events as fed by the Federation and tried to fit in everything around a '*heart attack related to drugs*' or '*excited delerium*'.

- 26) Dr Cary is of course interested to know exactly what the nature of the heart disease by Dr Karch is said to be, he states

*"In many ways the fact that the deceased was able to struggle so vigorously and for so long rather illustrates an extreme level of exercise tolerance which would be rather surprising in someone with a heart suggested to be vulnerable, for instance, to a spontaneous heart rhythm disturbance."*

- 27) You may be aware of the case of Dr Freddy Patel who spoke to the press following a preliminary hearing relating to a death in custody some years ago and the then Home

Secretary reported him to the GMC which is an example of how seriously such behaviour is taken in England and Wales.

Freddy Patel was the pathologist who wrongly said the newspaper vendor, Ian Tomlinson died as a result of heart disease and was in 2012 struck off the medical register over a catalogue of errors dating back more than a decade.

At the inquest into Tomlinson's death, Patel's claim that he died of a heart attack was discredited by the jury in favour of the string of experts who said he died of internal bleeding. Patel was told "your integrity cannot be relied upon".

<http://www.theguardian.com/uk/2012/aug/23/tomlinson-pathologist-freddy-patel-struck-off>

We do not wish to be in a "Freddy Patel" situation hence why we flagged up our concerns right at the start when Mr Karch was instructed, yet these were ignored.

- 28) We noted that Les Brown in his letter of 4<sup>th</sup> November talked of the the need to pursue all lines of inquiry with regards to experts, however you will appreciate that we have not been provided copies of any subsequent expert reports on these issues. We had assumed that if additional matters arose then we would be provided them in order that they could be disclosed to our experts for further comment.
- 29) Dr Karch's inability to observe the rules pertaining to confidentiality, disclosure and expert witnesses is a serious breach and should be treated as such by his dismissal.
- 30) Furthermore you have not provided details of who within PIRC first suggested Dr Steven Karch despite our request for this information.

### **PIRC INVESTIGATOR- DSI HARROWER**

This now brings us to the key question of who chose Dr Karch. One would have hoped that in a sensitive case such as this that the PIRC would have picked experts with an unblemished record for professional competence and thoroughness.

We note that in response to our questions over the selection of experts you stated:-

*"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."*

We also note that the Lord Advocate advised us that he was told informally by the PIRC that Dr Karch came highly recommended by Dr Nat Cary.

In relation to the above matter and the role of PIRC we have the following comments to make:-

- i) On several occasions we have sought a response from the PIRC as to which individual it was that saw Dr Nat Cary but never received a response. However Dr Cary and his wife were present at the time and having checked their notes and provided the details of DSI Harrower. Why has PIRC to date chosen not to provide details of a simple request?
- ii) Can you explain why you stated that your investigator remained with Dr Cary with the samples when he examined them, according to Dr Cary the investigator actually leaves as the examination would take some time and went into Norwich for it is believed 'sightseeing' until the examination was carried out.
- iii) Can PIRC confirm whether DSI Harrower's time sheets reflect the fact that he leaves Dr Cary for some time when he is actually never supposed to leave the samples alone with an expert instructed by our firm?
- iv) Would you not agree that to leave the samples unattended would be a serious breach of rules in maintaining the integrity of samples?
- v) Dr Cary raised concerns that this individual was also responsible for taking statements from the police officers. This would have implications.
- vi) For avoidance of doubt we repeat below Dr Cary's total rejection of the above claims:-

*"For the avoidance of any doubt this case already has the benefit of two experienced Crown pathologists who have produced an appropriately balanced report.*

*I did not lend any support to the instruction of either Dr Payne-James or Dr Karch. My views on excited delirium syndrome are well known and widely reported in the media. Both doctors are proponents of this controversial diagnosis.*

*During the PIRC visit on the 20<sup>th</sup> August 2015 to bring me the histology slides I was asked to facilitate the viewing of microscope slides by an overseas visitor, who turned out to be Dr Karch. I simply stated that I knew him and had met him.*

*I was not told that he was to examine the slides for this case, but rather another matter. It was never explicitly stated which case he was helping the PIRC with. Out of courtesy I helped to make arrangements for the provision of a microscope. In order to help the PIRC I was happy to help facilitate the provision of a microscope somewhere in London.*

*It is extremely disappointing if this facilitation is now being used as a means of manufacturing my implied support for the instruction of Dr Karch. I wonder who is paying for all this....*

*The suggestion that I supported the involvement of Dr's Payne-James and Karch is completely untrue. Indeed I would not have suggested he be involved at all because of his well-known approach to deaths during restraint.*

*I regard it as duplicitous that I was asked to facilitate the examination of slides by a foreign visitor without being told that it was for this very case. Dr Karch should have made his own arrangements! In any case this case does not turn on the microscopic findings in the heart."*

- vii) The fact that Dr Cary refutes the claims by a senior PIRC investigator as to the recommendation of Dr Karch, means that the claims by the investigator are either a complete distortion of the facts and/or a deliberate attempt to steer the investigation in a specific direction.

We are sure that we do not require to spell out the potential impact of these allegations on this investigator's involvement up until now in the gathering of evidence as well as interaction with police officers and key civilian witnesses.

In conclusion the Bayoh family hope an investigation will actually take place into the matters discussed by Steven Karch as well as the allegations against DSI Harrower.



The family would at expect him to be suspended whilst the investigation into Sheku Bayoh is ongoing but at the very least to be removed from any further involvement in this case.

Yours faithfully



Aamer Anwar & Co.

cc. Lord Advocate, Les Brown, Head of Criminal Allegations Against Police Division,  
Lindsey Miller Head of Serious & Organised Crime Division, The Procurator Fiscal's Office,  
Michael Mathieson MSP Cabinet Secretary for Justice