

## Post Incident Management (PIRC) Hearing - List of Issues

### 1. Law and practice

- a. The extent and sufficiency of PIRC's statutory powers:
  - i. The nature and scope of PIRC's powers within investigations instructed by COPFS under section 33A(b) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (the 2006 Act);
  - ii. The differences, if any, in the nature and scope of PIRC investigations instructed by COPFS under section 33A(b)(i) and section 33A(b)(ii) of the 2006 Act, pertaining to alleged criminality on the part of a person serving with the police and deaths in police custody, respectively;
  - iii. Whether it is possible for COPFS to instruct PIRC to investigate based on both sections 33A(b)(i) and 33A(b)(ii) simultaneously;
  - iv. The differences, if any, in the scope of PIRC's powers for investigations instructed by COPFS under section 33A(b) and those investigations requested, or initiated, under sections 33A(c) and 33A(d) of the 2006 Act;
  - v. PIRC's understanding of the statutory basis upon which it was instructed to investigate the incident involving Mr Bayoh on 3 May 2015 and thereafter;
  - vi. PIRC's understanding of the instructions subsequently received from COPFS in relation to the investigation and the impact, if any, that these had on PIRC's investigation;
  - vii. PIRC's powers to obtain information from witnesses - specifically, the powers that PIRC had, if any, to compel Police Scotland officers to give statements to PIRC and complete notebooks, Use of Force forms and incapacitant spray forms, the limitations there may have been on such powers and PIRC's awareness of the requirements as at 2015;
  - viii. PIRC's obligations to comply with COPFS's directions within investigations instructed by COPFS;
  - ix. The nature and scope of the powers of PIRC investigators during an investigation instructed by COPFS;
  - x. PIRC's understanding of nature and extent of the obligation on Police Scotland, and/or its officers, to report the discharge of an incapacitant spray to PIRC, including whether PIRC considers it to be a legal requirement for Police Scotland, and/or its officers, to report such discharges; if there is legal requirement, to what extent this is monitored by PIRC; and to what extent PIRC able to compel Police Scotland, and/or its officers, to comply with same;
  - xi. PIRC's powers, if any, to enforce recommendations made to Police Scotland as a result of an investigation instructed, requested or initiated under the 2006

- Act, including, specifically, PIRC's actions, if any, to enforce its recommendations in relation to its investigation in relation to the use of CS Spray at Victoria Hospital on 18 October 2014; and
- xii. The sufficiency of PIRC's powers to carry out investigations instructed by COPFS.
- b. The extent and sufficiency of the standard operating procedures used and implemented by PIRC investigators during the investigation following the incident involving Mr Bayoh.
  - c. The extent of PIRC's guidance and protocols in relation to issues of equality and diversity and racial discrimination, including the investigation of such issues.

## **2. Effectiveness of procedures for gathering and analysing information**

- a. The effectiveness of PIRC in gathering evidence and approach to its investigation to include:
  - i. PIRC's approach to and conduct in obtaining witness statements, including the lines of questioning explored within those witness statements;
  - ii. The decisions made by PIRC to follow particular lines of inquiry and to decide whether or not to obtain statements, or supplementary statements, from witnesses in the course of its investigation;
  - iii. The degree to which inconsistencies between witnesses' statements were investigated and analysed by PIRC and the decision-making within PIRC on this point; and
  - iv. The accuracy, completeness and appropriateness of the collection and analysis of evidence obtained by PIRC during its investigation and the decision-making within PIRC on this point.
- b. The identification, selection and instruction of experts, the communication between PIRC and COPFS in this regard, and the collation and presentation of video and other expert evidence by PIRC.
- c. The instruction from COPFS to investigate the issue of race, how this was approached by PIRC, any additional instructions or clarification sought from COPFS. The effectiveness of the analysis undertaken by PIRC in this regard to include any PIRC guidance on investigating the issue of race. Whether this was considered prior to the COPFS instruction and if not, why not.
- d. The sufficiency of the resourcing of PIRC and any impact of this on their investigation, analysis and report.

## **3. Securing and preserving of evidence**

- a. PIRC's dealings with the officers present at the incident involving Mr Bayoh, to include:

- i. PIRC's liaison with Police Scotland on 3 May 2015 in relation to the treatment and management of the officers present at the incident involving Mr Bayoh, following the officers' return to Kirkcaldy Police Office;
  - ii. PIRC's consideration of the risk of conferral between the attending officers and whether measures were taken, or considered, by PIRC to avoid individual officers present at the incident involving Sheku Bayoh from discussing events;
  - iii. PIRC's communication and liaison with the officers at the incident involving Mr Bayoh following the PIRC investigators' arrival in Kirkcaldy;
  - iv. PIRC's involvement in, and responsibility for, the decision to categorise the officers present at the incident involving Mr Bayoh as witnesses;
  - v. PIRC's correspondence with Police Scotland, the officers present at the incident involving Mr Bayoh, and those officers' legal representatives in relation to the obtaining of statements, notebooks, Use of Force forms and incapacitant spray forms from the officers; and
  - vi. What involvement, if any, PIRC had in the instruction of the recovery of evidence and clothing from the officers present at the incident involving Mr Bayoh.
- b. PIRC's actions to secure and preserve evidence at the scenes at Hayfield Road and Victoria Hospital; PIRC's involvement, if any, in the search and securing of scenes at Arran Crescent, the Saeed family home address and Martyn Dick and Kirsty Macleod's home address.
  - c. The liaison and communication between PIRC and Police Scotland in relation to the seizure and preservation of evidence undertaken by PIRC and Police Scotland; PIRC's understanding of the division of roles and responsibilities between PIRC and Police Scotland in this regard.
  - d. PIRC's approach to seizing, handling and examining evidence and productions during the investigation.

#### **4. Roles and responsibilities of those involved**

- a. PIRC's actions on 3 May 2015 and throughout its investigation, to include:
  - i. The point at which PIRC began its investigation and assumed control of relevant evidence and witnesses on 3 May 2015 and the scope of their remit;
  - ii. PIRC's investigators' understanding of the nature of the incident involving Mr Bayoh at the outset of the investigation;
  - iii. Liaison between PIRC and Police Scotland during the period after PIRC were instructed to investigate by COPFS, but prior to PIRC's arrival in Kirkcaldy, and who was in charge of the investigation during this period;
  - iv. The impact of any delay in PIRC beginning their investigation and assuming control of aspects of the investigation from Police Scotland;
  - v. The procedures employed by PIRC to take over elements of the investigation from Police Scotland on 3 May 2015 and the effectiveness of that hand over of responsibility;
  - vi. The division of roles and responsibilities between PIRC and Police Scotland on 3 May 2015 and the days following the incident involving Sheku Bayoh and the

- impact, if any, that any lack of clarity as to these roles and responsibilities had on PIRC's investigation;
  - vii. PIRC's investigators' understanding of their own individual responsibilities on 3 May 2015 and throughout the investigation;
  - viii. PIRC's involvement, if any, in the decisions made surrounding the post-mortem and identification of Mr Bayoh's body; and
  - ix. The handover of responsibility for the investigation between PIRC staff in the days following 3 May 2015.
- b. The decision to contact the Sierra Leone High Commission and subsequent correspondence between PIRC and the High Commission.
  - c. Liaison between PIRC and the Health and Safety Executive.
  - d. PIRC's liaison with the media during its investigation.

## **5. Liaison with the family of Sheku Bayoh**

- a. The contact between PIRC and the family and their legal representatives on 3 May 2015 and the days following the incident involving Sheku Bayoh, to include liaison with the family and their legal representatives concerning the timings of the post-mortem and identification and any religious or cultural sensitivities pertaining thereto;
- b. PIRC's liaison with Sheku Bayoh's family and their legal representatives across the PIRC investigation, including the effectiveness of PIRC's disclosure of information to enable Sheku Bayoh's family to participate in the investigation;
- c. Family Liaison Officers (FLOs):
  - i. The nature and scope of the role and responsibilities of a PIRC FLO;
  - ii. The qualifications, training or experience required to become a PIRC FLO;
  - iii. The division of responsibilities between PIRC FLOs and Police Scotland FLOs during a PIRC investigation;
  - iv. The actions of PIRC in relation to the appointment and deployment of FLOs in response to the incident involving Sheku Bayoh;
  - v. The liaison, handover and division of responsibilities between PIRC and Police Scotland in relation to family liaison following the incident involving Sheku Bayoh.
- d. PIRC's involvement, if any, in the delivery of the death message by Police Scotland to members of Sheku Bayoh's family.

## **6. Training**

- a. The training and experience of PIRC staff to include:
  - i. The training received by the PIRC investigators involved in the investigation, including any training in relation to the identification, selection and instruction of experts;

- ii. The training received by the FLOs involved in the investigation;
- iii. What training, if any, had been received by the PIRC investigators and FLOs in relation to issues of equality and diversity and racial discrimination with particular reference to any such training received after the instruction from COPFS to investigate the issue of race;
- iv. What steps, if any, were taken by PIRC to learn lessons from the investigation in relation to the incident involving Mr Bayoh, or to improve or expand on training provided to PIRC investigators and FLOs, including training in relation to issues of equality and diversity and racial discrimination; and
- v. The experience of PIRC staff, including their experience of leading, or participating in, PIRC investigations and any relevant experience prior to joining PIRC.

## **7. Compliance with any relevant Convention rights**

- a. PIRC's compliance with its obligations under Articles 2 and 14 of the European Convention on Human Rights, including:
  - i. The independence of PIRC as it relates to Police Scotland; the independence of PIRC's investigators in relation to the principal attending officers and the officers involved in Police Scotland's investigation;
  - ii. The adequacy of PIRC's investigation and the final report provided to COPFS;
  - iii. The promptness of PIRC's investigation;
  - iv. The participation of Mr Bayoh's family in the investigation; liaison between PIRC and the family; and
  - v. Whether anything was done or not done in the course of PIRC's investigation on the basis of Mr Bayoh's race.

Many issues will be explored within written statements, which will be published on the inquiry website in due course. Others will be explored in oral evidence with witnesses.

This list of issues is not exhaustive or prescriptive and further issues may emerge as the inquiry progresses.