

# Transcript of the Sheku Bayoh Inquiry

Thursday, 29 February 2024

(10.00 am)

Decision by LORD BRACADALE

LORD BRACADALE: Good morning. As Ms Grahame is unwell, we are going to continue the evidence of Mr Mitchell until Friday, 8 March and the intention is to begin the evidence of Kate Frame tomorrow. I shall now give my decision in the matter raised by Ms McCall yesterday.

Beginning with the statutory background, section 17 of the Inquiries Act 2005 allows a wide discretion to the Chair in the conduct and procedure of the Inquiry. In making any decision as to the procedure or conduct of the Inquiry, the Chair must act with fairness.

The discretion provided in section 17 is subject to Rule 9 of the Inquiries Scotland Rules 2007 which makes specific provision in relation to the examination of witnesses.

The Inquiry has produced guidelines in respect of the operation of Rule 9. The guidelines stipulate that the calling of witnesses, the leading of evidence and the questioning of witnesses will be informed by two overarching principles.

First, the Inquiry is inquisitorial in nature, requiring an approach that differs from the conventional adversarial approach employed in the Civil and Criminal

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1 Courts.

2 Second, the test for receiving evidence and allowing  
3 lines of questioning will be whether doing so will  
4 assist the Inquiry in fulfilling its terms of reference.

5 Turning to the events on 27 February 2024, at the  
6 conclusion of the examination of John McSporran by  
7 senior counsel to the Inquiry Ms Mitchell made an oral  
8 application to be permitted to examine the witness. She  
9 raised ten issues, some of which had subsidiary issues.  
10 After hearing submissions, I permitted her to examine  
11 the witness in respect of a limited number of these  
12 issues.

13 In the course of her examination, Ms Mitchell  
14 embarked on a line of questioning in respect of which  
15 I had refused permission. It was immediately clear to  
16 me that Ms Mitchell was under the misapprehension that  
17 I had allowed this line of questioning. I recalled that  
18 the basis for the refusal in respect of this line of  
19 questioning was not that the evidence was inadmissible  
20 but that the subject matter had already been canvassed  
21 by counsel to the Inquiry and I reflected that it might,  
22 after all, assist the Inquiry. Taking these  
23 considerations into account, I decided not to interrupt  
24 and allowed the examination to proceed.

25 Ms McCall submitted that, by allowing Ms Mitchell to



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