

# **MINUTE**

From: L A Brown  
Head of Criminal  
Allegations Against Police

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TO: Lindsey Miller  
Liam Murphy  
Stephen McGowan  
Erin Campbell  
Alasdair MacLeod  
Ashley Edwards, Advocate Depute

## **Meeting at Crown Office re Sheku Bayoh**

### **Purpose**

To identify key issues to be explored at precognition of relevant eye witnesses to actions of police officers engaged in the restraint of Sheku Bayoh

### **Background**

The final report on the investigation into the death of Sheku Bayoh was submitted to the Crown by PIRC in August 2016. Following consideration of its contents, the attached Minute was submitted to Law Officers setting out a framework and timescale for investigations by the Crown. At the time of writing, this Minute remains under consideration.

### **Discussion**

An incremental approach to the investigation and decision making process has been proposed. Essentially the first part of the investigative process will be focused upon reaching a decision as to whether there is any basis for taking criminal proceedings against any individual police officer involved in the restraint of Mr Bayoh.

Before any approach is made to expert witnesses, it has been agreed that the Crown should precognosce all civilian eye witnesses who observed the arrival of the police at the locus and the restraint process together with ambulance personnel who were involved in the transportation of Mr Bayoh to hospital in Kirkcaldy. Thereafter the evidence obtained at precognition will be disclosed to expert witnesses for comment. In my view, it is likely that the precognitions themselves, or at least the relevant parts

that are disclosed to the experts, will also require to be disclosed to Aamer Anwar in relation to his own expert witness instruction.

Mr Anwar has been critical of the investigative approach taken by PIRC in relation to obtaining statements from civilian witnesses, observing that similar distinct phraseology appears to have been adopted by a number of independent witnesses, and indicating concerns in this regard. Against that background, it is suggested that an “old fashioned” approach to precognition should be adopted with the eye witnesses, allowing them to describe events in their own words which should be noted verbatim and that the role of the precognoscer should be limited to seeking clarification by the use of open and non leading questions.

During the precognition of the eye witnesses, areas of potential conflict with the statements provided by the police officers in attendance should be fully explored. Clearly one of the main purposes of this initial precognition exercise is to ascertain the extent to which the account given by the civilian observers coincides with the accounts given by the police.

Without wishing to be prescriptive I would suggest that the following critical issues require to be explored during the precognition process

- The actings of Sheku Bayoh prior to the arrival of the police including the question of whether police could see that Mr Bayoh was not holding a weapon.
- The discharge of PAVA and CS sprays including the duration of discharge and the reaction of Sheku Bayoh.
- The use of batons by officers including the manner of deployment, where the deceased was struck and by whom.
- The actions of Sheku Bayoh towards police officers including the circumstances surrounding his interaction with Constable Nicole Short.
- The restraint process including the actions of the police officers involved and the number of officers engaged. This should include in particular an explanation of how Sheku Bayoh was brought to the ground. His position on the ground will be of crucial importance, particularly periods of time where he was lying either face down or up, and if face down, how long he was in this position for and what officers were doing at that time. There should also be an exploration of whether there was any continued struggle on the ground and whether there were apparent difficulties in controlling him.
- An exploration into whether any observed actions of the officers involved in the restraint could account for the injury to the ribs of Sheku Bayoh outlined in pages 9 and 15 of the post mortem report. The evidence will have to be explored in the light of the observation by Professor Crane in his report at page 7 that “asphyxia could have been a contributory factor in the death if at the time of his cardio respiratory arrest, restraint of the type described was taking place”. Professor Crane has focused particularly on kneeling or sitting on the deceased.
- Explore the evidence from the witness Wyse that a baton was used across the chest of Mr Bayoh near to the throat and whether there is any support for this from other witnesses. Witness Wyse has also indicated that the deceased was struggling and shouting for officers to get off him and this requires to be fully explored with that witness and other relevant eye witnesses.
- Obviously in assessing the potential for criminal proceedings against any officer, identification of individual officers will be of critical importance and

therefore descriptions including physical descriptions of the officers involved should be obtained from all witnesses.

There should also be precognition of the ambulance personnel who attended, including their actions on attendance and the subsequent transportation of Sheku Bayoh to hospital. In addition, during this initial investigative stage, all recordings of airwave, broadcasts should be listened to and checked for accuracy with the transcripts provided by PIRC so that the Crown can be satisfied as to the state of knowledge of the officers attending. Similarly, all video footage should be viewed and compared with the accounts given.

### **Conclusion**

The forthcoming meeting will provide all of us with an opportunity to discuss the most effective approach to this initial stage of the precognition process. Once that is finalised, it is likely that members of the team will advise Aamer Anwar of the approach being taken by the Crown so that the family of Sheku Bayoh can be engaged in the process. The Lord Advocate has indicated that he intends to meet with the family of Sheku Bayoh and it is likely that this meeting will be arranged in early October.

L A BROWN  
Head of Criminal Allegations Against Police