

Assistant Solicitor to the Inquiry

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Ms Fiona Carnan  
Crown Office and Procurator Fiscal Service

By email only:

[REDACTED]

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9 January 2024

Dear Ms Carnan

### **RULE 8 REQUEST**

I am writing on behalf of the Chair to the Sheku Bayoh Public Inquiry (“the Inquiry”).

The Crown Office and Procurator Fiscal Service (“COPFS”) have written to us to confirm your preference for your statement to be prepared under Rule 8 procedure.

The Inquiry issued a Rule 8 request to you on 29 August 2023 and you provided a statement to the Inquiry on 11 October 2023. As explained previously, until now it has not been possible to provide you with a copy of the Crown Precognition. The position has now changed and this Rule 8 request is in respect of your involvement in preparing the Crown Precognition.

Under Section 21(2)(a) of the Inquiries Act 2005 the Chair may, by notice, require a person to provide evidence in the form of a written statement. Rule 8 of The Inquiries (Scotland) Rules 2007, provides that the Inquiry may send a written request to any person for a written statement of evidence. I hereby request you provide a written statement to the Inquiry by **5pm on 13 February 2024**.

It is a criminal offence to fail to comply with this request without reasonable excuse. I refer you to Section 35(1) of the Inquiries Act 2005.

The Annex to this letter sets out the areas to be covered in your written statement. The documents for you to read referred to in the Annex will be available on our online

database "Objective Connect". A link for you to access this system will be emailed to you separately.

Please provide your written statement by email to [REDACTED].

Section 22(1)(a) of the Inquiries Act 2005 states that a person may not be required, under section 21, to give, produce or provide any evidence or document if you could not be required to do so if the proceedings of the Inquiry were civil proceedings in a court. If you are of the view that Section 22 applies to your evidence please advise the Inquiry of this and the reasons why you believe Section 22 applies.

Your statement may be disclosed to the Core Participants in the Inquiry and may be published on the Inquiry's website. Any personal information not relevant to your evidence will be redacted prior to disclosure.

The Inquiry may issue a further Rule 8 request or Section 21 notice to you at a later date if further evidence is required.

The written statement will form part of the evidence of the Inquiry. For that reason it is important that it is in your own words. In addition, you may be asked to attend a hearing to give oral evidence to the Inquiry. The Inquiry will contact you in future to confirm.

If you have any questions regarding this letter or the content of your written statement please contact the legal team by email at [REDACTED].

Yours sincerely

[REDACTED]

## ANNEX

### COPFS PIM

#### AREAS FOR WITNESS STATEMENT

#### MS FIONA CARNAN

Please provide your **full name, date of birth, personal or business address.**

Please provide as much detail as you can in relation to each of the following questions. Please mark on your statement the number of which paragraph of questions you are answering.

If you refer to any document in preparing your statement, please provide a brief description of the document and which page you have referred to.

1. What involvement did you have in drafting the Crown Precognition Narrative and Analysis of Evidence?<sup>1</sup> Please explain this process.
2. Were you involved in drafting the Crown Precognition Supplementary Report?<sup>2</sup> Please explain this process.
3. What is the interaction between the matters covered in the Narrative,<sup>3</sup> Analysis<sup>4</sup> and Supplementary Report<sup>5</sup> sections of the Crown Precognition? Do you require to offer analysis of all matters in the Narrative? How did you decide what to include in the Narrative, Analysis and Supplementary Report?
4. In the Crown Precognition Supplementary Report,<sup>6</sup> to what extent was consideration given to whether Police Scotland had risk-assessed the techniques they taught during Officer Safety Training? Please explain why. Was this a relevant factor in determining whether there was an offence under Section 3 of the Health and Safety at Work etc Act 1974?
5. At paras 63 to 66 of your Rule 8 statement dated 11 October 2023<sup>7</sup> ("Rule 8 Statement") you answered questions relating to liaison with the Health and Safety Executive ("HSE"). Did the outcome of liaison with HSE affect the quality of the reporting of the case to Crown Counsel? Was this raised with

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<sup>1</sup> COPFS-06360 COPFS-06361

<sup>2</sup> COPFS-00003

<sup>3</sup> COPFS-06360

<sup>4</sup> COPFS-06361

<sup>5</sup> COPFS-00003

<sup>6</sup> COPFS-00003

<sup>7</sup> SBPI-00379

Crown Counsel and, if so, what advice was given and what further actions taken?

6. To what extent was race a factor in your analysis of the actions of the police officers in the Crown Precognition?<sup>8</sup> In your view, was this sufficient to inform Crown Counsel of the impact, if any, that Mr Bayoh's race had on the actions of the police officers who engaged him? At para 45 of your Rule 8 Statement<sup>9</sup> you refer to race being a matter to consider in your analysis in the event that criminality was identified in respect of any of the officers; did you take account of how the officers' perception of Mr Bayoh's race would be a factor in their decision-making and the reasonableness of their actions?
7. Within the Crown Precognition Analysis of Evidence<sup>10</sup> at pages 15 and 16, PC Short's account is summarised in parts and analysed:-

*Short herself claims that her actions were confined to drawing her spray and baton and using them in tactical communication with the now deceased, ordering him to stop. At one point she used her baton to "double strike" towards the male's torso but did not strike him. She justifies taking this stance because Sheku Bayoh was "out of control" and "too aggressive" as he was walking away from them. He was "not the type of person whom you like to allow to walk the streets" and that she felt he was "hell bent on hurting somebody, anybody who came into contact with him"... She found the now deceased to be an "intimidating figure" of very muscular male about 6' tall with hands clenched as if he wanted to fight... Her assessment of the demeanour of the now deceased [REDACTED] fits with the impressions of other witnesses, particularly those who had reported him to the police that morning. It also assists in understanding the nature of the perceived threat to these officers.*

Please explain how PC Short's account assisted you "in understanding the nature of the perceived threat" to the officers, and the significance of the perceived threat to your assessment of the reasonableness of the actions of the police? To what extent did you consider the reasonableness of the officers' perception of threat? To what extent did you consider whether their perception of threat was influenced by Mr Bayoh's race?

8. At the time of your involvement in the Investigation, were you aware of any racial tropes being used by any of the response officers in their statements? Are you aware of any racial tropes now? Would the use of these tropes be relevant to your analysis in any way? Would these racial tropes factor into the perceived threat to the officers from Mr Bayoh?
9. PC Paton in his statement dated 4 May 2015 states: "For a number of months checks have also been getting carried out by officers at a number of identified locations in Kirkcaldy due to increased terrorist risk. It also ran through my

<sup>8</sup> COPFS-06360 COPFS-06361

<sup>9</sup> SBPI-00379

<sup>10</sup> COPFS-06361

*mind that this male could be part of a terrorist plot.*"<sup>11</sup> PC Kayleigh Good in her statement of 4 June 2015 states: "*I was also thinking at that point of the Lee Rigby incident in London, mainly due to the fact of the coloured male and the potential terrorist connotations.*"<sup>12</sup> To what extent did you consider the views of these officers that a terrorist incident was a possibility and how did you scrutinise this in the evidence and analysis? To what extent did you understand and assess that these views were held by all the officers involved in potentially unlawful actions? Please explain your reasoning.

10. What is the interaction between the matters covered in the Narrative<sup>13</sup> and Analysis<sup>14</sup> sections of the Crown Precognition? Do you require to offer analysis of all matters set out in the Narrative? How did you decide what to include in the Narrative and Analysis?
11. In the Narrative<sup>15</sup> at pages 2 to 7 a profile of each of the attending officers is set out, including allegations of racism [REDACTED] by PC Alan Paton [REDACTED].  
What was the purpose of including the complaint history of the officers and what is the relevancy of the matters set out?
12. Are the profiles of any of the officers covered in the Analysis?<sup>16</sup> Why? To what extent is it normal to include analysis of the subject officers' profiles?
13. What was your understanding of how PCs Walker and Paton interpreted the incident that they were attending? Was this understanding set out in the Crown Precognition?
14. Prof Eddleston in his report<sup>17</sup> opines on the circumstances of the incidents and how it relates to the Police Scotland Use of Force Framework:-

*21) The situation in Kirkcaldy on the morning of the 3<sup>rd</sup> May was stressful for the police officers. They believed that it might be a terrorist attack targeting them during their work. SB had already attacked ones of his friends and been seen with a large knife while attacking cars.*

*However, SB is not reported to have been aggressive towards, or attacked, any of the police officers until he had been sprayed three times (a level 5 response to level 3 resistance, Use of Force Framework, p 13)) and had three police officers facing him in a group. At that point, he seemed to believe that he was being threatened and then unfortunately attacked Officer D. He was not seen to be bearing a*

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<sup>11</sup> PIRC-00262 at page 4

<sup>12</sup> PIRC-00274 at page 7

<sup>13</sup> COPFS-06360

<sup>14</sup> COPFS-06361

<sup>15</sup> COPFS-06360

<sup>16</sup> COPFS-06361

<sup>17</sup> COPFS-00038

*knife, although it was not possible for the police to exclude the possibility that he had it hidden on his body.*<sup>18</sup>

This section of Prof Eddleston's report is copied into the Supplementary Report<sup>19</sup> at page 3. To what extent is this consistent with your understanding of PCs Walker and Paton's views when approaching Mr Bayoh?

15. Please read the Analysis<sup>20</sup> at pages 53 and 54 as it relates to intelligence about a terrorist attack. Page 54 concludes: "[The "stay safe" memo] could be what the subject officers are referring to when they talk about their anxiety over a potential attack on the police." What impact, if any, did the officers' anxiety of an attack on police have on the analysis of [REDACTED] their decision-making and actions?
16. Is there a difference between the analysis of the decision-making and actions of an officer who is attending a terrorist knife attack compared to attending any other knife incident? Was it accepted in the Analysis that there was a risk of a terror attack and the officers were entitled to act accordingly in this incident? Was the connection between PCs Walker and Paton's approach to Mr Bayoh and their perception of him as a terrorist explored in the Crown Precognition? Would analysis of the complaints and allegations against PCs Paton [REDACTED] have been appropriate to consider in relation to their position that they believed they were attending a terrorist incident? Please explain your reasoning.
17. On page 54 of the Analysis<sup>21</sup> a "stay safe" memo by ACC Ruaraidh Nicolson dated 19 February 2015 is referred to, including the threat level being severe and referring to Islamic extremist groups or individuals; what was it about the incident involving Mr Bayoh that related to Islamic extremist groups or individuals? Was the analysis that, because he was a black man and was reported with a knife in public, the police officers were entitled to draw a connection to Islamic extremism and approach the incident accordingly? Was there a concern that the attending officers were associating a black man with a knife in public as being a terrorist incident?
18. Please read the summaries of PIRC's investigation into racism covered in the Narrative<sup>22</sup> at pages 123 and 124. [REDACTED] Was this explored in the Analysis? Please explain your reasoning.
19. Was the reason race was covered in the Crown Precognition because it was raised by Mr Bayoh's family? Would it have been covered at all if Mr Bayoh's family had not raised it as a concern?

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<sup>18</sup> COPFS-00038 at page 7.

<sup>19</sup> COPFS-00003

<sup>20</sup> COPFS-06361

<sup>21</sup> COPFS-06361

<sup>22</sup> COPFS-06360

20. Mr Zahid Saeed's allegation of assault is covered in the Narrative<sup>23</sup> at page 123. What was the purpose of including this matter in the Crown Precognition?
21. At para 71 of your Rule 8 Statement<sup>24</sup> you explained how Dr Karch's opinion was considered in the context of the other expert opinion. [REDACTED]  
[REDACTED]<sup>25</sup> Please read the comments attributed to Dr Karch reported in the Sun newspaper on 1 November 2015;<sup>26</sup> how, if at all, did this factor into the analysis of Dr Karch's evidence in the Crown Precognition?
22. With reference to the Crown Precognition Analysis of Evidence at pages 13 and 14,<sup>27</sup> to what extent was the opinion of Prof Eddleston, noted in the analysis as being that "*the police ought to have considered the possibility that [Mr Bayoh] may have been suffering from excited delirium*", taken into consideration by you in your analysis of the evidence? To what extent did you defer to the opinion of Mr Graves to understand what had occurred in the minds of the officers in relation to their assessment of Mr Bayoh on arrival?
23. Why was Prof Eddleston provided with a copy of the Use of Force SOP? Was Prof Eddleston a suitable expert to opine on officers' use of force? Did you query his expertise in this regard? What was the basis for considering Prof Eddleston's opinion on these matters in the Crown Precognition?
24. In the Crown Precognition Analysis of Evidence<sup>28</sup> at pages 50 and 51, under the chapter headed "*Addressing Concerns Raised by the Family*" the following point is made relating to post incident management:-

*Beyond doubt the officers did confer in the aftermath of this event. While this might be an entirely natural thing to do, officers ought to have been separated and a debriefing exercise carried out so that their initial positions were captured at the earliest opportunity. This was frustrated at the outset by the position of PC Walker who immediately on his return to Kirkcaldy PO sought out the Police Federation Rep and insisted that he would not be providing any statements. His lead on this seems to have been followed by the others and the PIM process was not put in place as it should have been.*

What is the basis for the statement that it was beyond doubt that the officers did confer in the aftermath of the incident? What is the basis for the assertion that the officers ought to have been separated? What PIM process did you understand should have been put in place? What impact, if any, did the officers not being separated have on your understanding of the incident and

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<sup>23</sup> COPFS-06360

<sup>24</sup> SBPI-00379

<sup>25</sup> See COPFS-06360 at page 78.

<sup>26</sup> See a copy of the Sun article under reference SBPI-00216.

<sup>27</sup> COPFS-06361

<sup>28</sup> COPFS-06361

the assessment of the credibility and reliability of the officers as set out in the Crown Precognition?<sup>29</sup>

25. In the Crown Precognition Analysis of Evidence<sup>30</sup> at page 53 the following is noted:-

The rib fracture

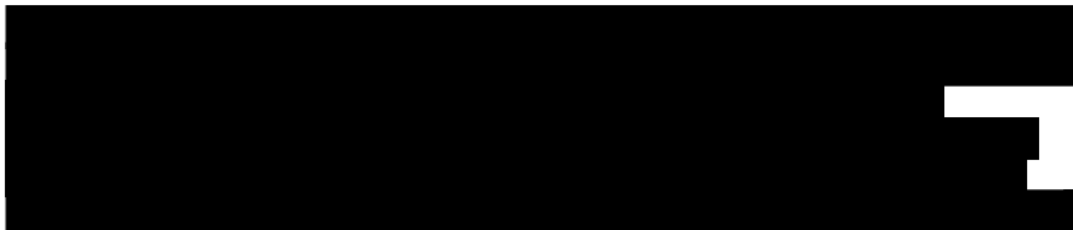
*In the statement of PC Walker provided on 4<sup>th</sup> June 2015, he mentions hearing the sound of what he thought was a crack of a rib during CPR. Notably there is no reference to hearing a crack when carrying out CPR in his self-prepared statement that he handed over to PIRC. It is odd that information only made known to PIRC by the Head of CAAPD on 29<sup>th</sup> May 2015 about the discovery of the fractured rib was somehow potentially explained away by not only Walker but also PCs Paton and Tomlinson when they came to provide statements on 4<sup>th</sup> June 2015.*

*That said there is insufficient evidence to make any more of it than to say that it is suspicious, and potentially calls into question the integrity of the PIRC investigation at that point.*

What is meant by the paragraph at the end of this excerpt? What concerns did you have as to the integrity of the PIRC investigation? What was done about this issue and how did it factor into the analysis of the officers' credibility and reliability? Was the issue regarding the integrity of the PIRC investigation raised with the PIRC? If not, why not? Did Crown Counsel make any comment about the issue?

26. In your notebook<sup>31</sup> at page 37 you list a series of letters from Mr Anwar dated 27 May, 3, 17 June and 31 July 2015. At para 21 of your Rule 8 Statement<sup>32</sup> you explain that, to the best of your knowledge, any issues raised by Mr Anwar relating to potential criminality were addressed in the precognition report. To what extent were the issues summarised in your notebook addressed in the Crown Precognition?<sup>33</sup> If a matter was not covered, please explain why.

- 27.



<sup>29</sup> COPFS-06360 ; COPFS-06361 If relevant, please refer to the entries in your notebook (COPFS-05221) at pages 11 and 12.

<sup>30</sup> COPFS-06361

<sup>31</sup> COPFS-05220

<sup>32</sup> SBPI-00379

<sup>33</sup> COPFS-06360 ; COPFS-06361

<sup>34</sup>



[REDACTED]

28. At para 27 of your Rule 8 Statement<sup>37</sup> you explain your analysis of Mr Kevin Nelson's account. To what extent was this analysis, including contradictions in the officers' accounts and your assessment of the officers' credibility and reliability, considered in the Crown Precognition?<sup>38</sup> Please explain what was covered and why. Please note the conclusions relating to conferral amongst the officers at pages 6 and 50 of the Crown Precognition Analysis of Evidence.<sup>39</sup>

29. At para 28 of your Rule 8 Statement<sup>40</sup> you explain your analysis of Mr Kevin Nelson's account. To what extent was Mr Nelson's full account considered in the Crown Precognition?<sup>41</sup> Please explain what was covered and why.

30. [REDACTED]

31. Please state the following in the final paragraph of your statement:-

"I believe the facts stated in this witness statement are true. I understand that this statement may form part of the evidence before the Inquiry and be published on the Inquiry's website."

32. Please sign and date your statement.

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<sup>35</sup> [REDACTED]  
<sup>36</sup> [REDACTED]  
<sup>37</sup> SBPI-00379  
<sup>38</sup> COPFS-06360 ; COPFS-06361  
<sup>39</sup> COPFS-06361  
<sup>40</sup> SBPI-00379  
<sup>41</sup> COPFS-06360 ; COPFS-06361