

Assistant Solicitor to the Inquiry

[REDACTED]

[REDACTED]



James Wolffe KC

By email only:

[REDACTED]

4 January 2024

Dear Mr Wolffe

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.

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 8 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 matters and issues to be covered in your written statement. The documents for you to read referred to in the Annex will be available on the Inquiry’s online database “Objective Connect”. A link for you to access this system will be emailed to you separately.

[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.

Please provide your written statement by email to [REDACTED]

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.

You may wish to take independent legal advice in relation to this letter and at any stage of the Inquiry's proceedings. I would also draw your attention to the [Protocol for Core Participants](#), which sets out the criteria to apply to be designated as one of the Inquiry's Core Participants.

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]
Assistant Solicitor to the Inquiry

ANNEX

COPFS POST INCIDENT MANAGEMENT MATTERS AND ISSUES FOR WITNESS STATEMENT MR JAMES WOLFFE KC

Please provide your full name, date of birth and 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. You may wish to copy the question into your statement for context and provide your answer beneath.

The Crown Precognition has been made available to you to assist in answering the below questions as they relate to the COPFS investigation and reporting process. The decision not to prosecute, the decision-making process and the Victims' Right to Review process are not relevant to the Inquiry's Terms of Reference. Please do not address these aspects of your involvement in the matter.

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.

Role and experience

1. Please explain the duties and responsibilities of the office of Lord Advocate as it relates to your involvement in the post incident management and investigation into the death of Mr Sheku Bayoh including the reporting of the case to Crown Counsel (the "Investigation")?
2. What do you understand to be COPFS' role in the investigation of sudden, suspicious, accidental and unexpected deaths in Scotland as of the date you became involved? What do you understand COPFS' duties and responsibilities to be in this regard?
3. Prior to the date you became involved, what experience did you have in investigations of deaths in police custody, or deaths during or following police contact? Please provide details and the outcome of the cases. Was race a factor to consider in any of these cases? If so, please provide examples.
4. Prior to your involvement, what experience did you have in relation to family liaison in deaths cases? Was race a factor to consider in family liaison in any of these cases? If so, please provide examples.
5. What were the circumstances in which you first became involved in the Investigation? When did your involvement end? Did you receive a briefing or

“handover” in relation to the Investigation from the previous Lord Advocate? If so, what was covered and what was your understanding of the Investigation up to the point you became involved? What did you understand COPFS required to do in order to bring the Investigation to its conclusion? Please refer to the summary of the Investigation in the Minute by Mr Les Brown dated 27 June 2016.¹

6. What was the interaction between the role of Lord Advocate and Crown Counsel appointed to the Investigation?
7. To the best of your understanding, to what extent was your predecessor Lord Mulholland’s involvement in the Investigation consistent with normal practice? To what extent was your involvement in the Investigation consistent with normal practice? Please explain any departures from normal practice.

The Police Investigations and Review Commissioner (“PIRC”)

8. What experience did you have in COPFS-directed PIRC investigations prior to the date you became involved in the Investigation?
9. What was your involvement, if any, in COPFS’ instruction of PIRC in relation of the Investigation?

Police officers’ status

10. What is COPFS’ role, if any, in determining if a person’s status is that of witness or suspect in an investigation into a death in custody or a death during or following contact with the police? What is the significance for the Investigation of a person’s status? In the event that there is no reasonable suspicion in respect of any person(s) in an investigation, what is COPFS’ role in identifying a suspect?
11. When was the police officers’ status decided? Why was it decided at that time? Was it subject to change? When would it be reconsidered, if at all? What was your involvement in any reconsideration of the police officers’ status?
12. To what extent is it normal for PIRC to conduct an investigation and prepare a report of findings when there is no reasonable suspicion in respect of any person? To what extent is it normal for the Crown Precognition to be drafted and submitted where there is no reasonable suspicion in respect of any person? In light of your answers and to the extent that you were involved, please set out why the Investigation and precognition process was conducted in the way it was standing the status of the police officers.

¹ COPFS-02327

Ingathering of evidence and analysis

13. What is your understanding of COPFS' role in investigating a death in custody or death during or following contact with the police? How does COPFS' role interact with the role of Police Scotland and PIRC in investigating?
14. What was your role in fixing timescales for the Investigation? What considerations were relevant for this? Please note Mr Les Brown's Minute to you dated 3 April 2018² which explains you indicated recommendations in respect of the individual officers should be provided by the end of the financial year.
15. What is your recollection of how race was investigated by PIRC and COPFS? How did this change or develop over the course of the Investigation? Were you satisfied that race was explored fully in the Investigation?
16. Mr Brown in his Minute to you dated 27 June 2016³ states: "*PIRC were also instructed to enquire into and to report on whether there was evidence of racism associated with the death of Mr Bayoh or evidence of racism within the former Fife Constabulary.*" What did you understand this aspect of the investigation to involve?
17. Mr Brown further states in his Minute to you dated 27 June 2016⁴ the following: "*The [Bayoh] family and their solicitor have raised directly allegations that one of the arresting officers, PC Alan Paton has expressed racist views in the past and in relation to the death of Mr Bayoh. These allegations have been the subject of media interest including broadcast by the BBC and the allegations are being investigated by PIRC with their findings to be incorporated in the final report.*" What did you understand these allegations to be and how would they be incorporated into the final report? Did you understand this to be an investigation of a separate offence in respect of these allegations? Was race to be a factor in relation to PC Paton's actions and decisions in engaging with Mr Bayoh?
18. Please read Mr Stephen McGowan's Minute to you dated 7 February 2016.⁵ Mr McGowan sets out the progress in the Investigation following receipt of the PIRC report. There is no mention of race, racism or further investigation in this regard; were you cognisant of this at the time and did this, or does this now, cause you any concern in relation to the Investigation?

Expert witnesses

19. What involvement, if any, did you have in the instruction of expert witnesses? Please include your involvement in the instruction of experts by both PIRC and COPFS separately. Please include your involvement, if any, in the following aspects of the instruction:

² COPFS-02160 (a)

³ COPFS-02327

⁴ COPFS-02327

⁵ COPFS-05119(b)

- (i) the identification and choice of experts (including consideration of their qualifications, expertise and independence), and ensuring they had no conflict;
 - (ii) preparation of the letters of instruction, and
 - (iii) the information and documentation provided to experts to assist in framing their opinion.
20. Were you aware of any issues relating to Dr Steven Karch that were apparent from a time prior to your involvement in the Investigation? Were you aware of Mr Bayoh's family's views of Dr Karch? Were you aware of any media statements attributed to Dr Karch? What were the previous Lord Advocate's views of Dr Karch, as far as you were aware? How, if at all, did any of these matters affect your understanding of Dr Karch and his opinion?

The Health and Safety Executive ("HSE")

21. Prior to your involvement in the Investigation, what experience did you have in COPFS investigations involving HSE?
22. What difference, if any, would it have made for HSE to have become involved in the Investigation?

Data protection offences

23. What was your involvement in the aspects of the Investigation relating to the possible offences by Police Scotland and/or their officers in respect of data protection? Please note Mr Brown's Minutes to you dated 22 August⁶ and 25 September 2018⁷ on the matter of Police Scotland retaining intelligence records in respect of Mr Anwar.
24. What is COPFS' interest, if any, in the legality of Police Scotland's intelligence gathering beyond the detection and prosecution of criminal offences perpetrated by Police Scotland?

Family liaison

25. What involvement did you have in family liaison in relation to Mr Bayoh's death? What was your involvement, if any, in deciding what to disclose to Mr Bayoh's family?
26. Please read Mr Aamer Anwar's letters to you dated 7 March⁸ and 12 October 2017⁹ and your letters in response dated 22 March¹⁰ and 16 October 2017.¹¹ What was your understanding of why the Crown had exceptionally provided

⁶ COPFS-04029 (e)

⁷ COPFS-00532

⁸ COPFS-05103 (j)

⁹ COPFS-01423

¹⁰ COPFS-03221b

¹¹ COPFS-01353 (a)

information for the purpose of instructing expert witnesses? What was it about the nature and stage of the investigation that meant further disclosure to Mr Bayoh's family was not appropriate? Why would it be appropriate to disclose the expert reports obtained by PIRC under the direction of COPFS but not those instructed by COPFS? In a prosecution or Fatal Accident Inquiry ("FAI"), what difference is there, if any, between the expert evidence provided under instruction by PIRC and by COPFS? Please refer to Mr McGowan's Minute to you dated 7 February 2017¹² and his email to you dated 8 February 2017¹³ if relevant to your decision-making.

27. In your experience and understanding, in what circumstances does the Lord Advocate meet with the family of a deceased person as part of a COPFS investigation? To what extent is it normal practice for the Lord Advocate to meet with the family of a deceased person?
28. Please explain your involvement in meetings with Mr Bayoh's family. Which meetings did you attend? Who was present? What was your recollection of these meetings? What was the outcome of these meetings and what, if anything, did you undertake or promise to do and why?
29. What promises or undertakings were made to Mr Bayoh's family by your predecessor Lord Mulholland? How were you made aware of these? Were these promises or undertakings binding on you? Please explain your reasoning.
30. Please read your letter to Mr Aamer Anwar on 17 August 2018.¹⁴ Who were the officials who briefed you of the case and what did they explain to you? What did the letter mean by: "*I... wish to assure all of you that I will continue to take a close personal interest in this case*"? What did the letter mean by: "*...a decision in this regard will be made as expeditiously as possible and thereafter I intend to have a meeting with you and the family to outline the next steps*"?
31. Please read the emails between Mr McGowan and Ms Ashley Edwards QC dated 7 February 2017.¹⁵ Do you agree with the position set out in the emails? Why would it not be appropriate for Crown Counsel to be present in the meeting with you and Mr Bayoh's family at that time? At what stage would you be involved with Crown Counsel and why?

32. [REDACTED]

33. [REDACTED]

¹² COPFS-03252a

¹³ COPFS-04513

¹⁴ COPFS-03444a

¹⁵ COPFS-04515

¹⁶ [REDACTED]

¹⁷ [REDACTED]

[REDACTED]

34. [REDACTED]

35. What is your understanding of the role of COPFS' Victim Information and Advice service ("VIA") in family liaison in a death investigation? Were VIA involved in this case? Insofar as you are aware, what was the basis for VIA involvement or non-involvement with Mr Bayoh's family?

Crown Precognition

36. Please explain the process of reporting a COPFS investigation to Crown Counsel. What is the role of Crown Counsel and the Lord Advocate in the Precognition process?

37. Who decided what to include in the Crown Precognition?¹⁹ What was your role in this?

38. To what extent was Mr Bayoh's race considered in the Crown Precognition?²⁰ Did you have any involvement in deciding the extent to which race should be a matter to address in the Crown Precognition? Did the extent to which race was covered in the Crown Precognition reflect your understanding of how it would be investigated and the evidence analysed? In particular, were you expecting race to be covered to some extent in the Analysis section?²¹ Would you have expected race to have been covered to a greater extent in order to assess the reasonableness of the officers' decision-making and actions in engaging with Mr Bayoh?

¹⁸ [REDACTED]
¹⁹ COPFS-06360); COPFS-06361 COPFS-00003
²⁰ COPFS-06360 COPFS-06361 COPFS-00003
²¹ COPFS-06361

Investigation into the purported leak to the Mail on Sunday of the decision not to prosecute

39. When did you first become aware of the Mail on Sunday newspaper article dated 23 September 2018²² reporting the decision not to prosecute any of the officers, prior to Mr Bayoh's family being informed? If you were notified prior to its publication, please explain these circumstances. Were you provided with a copy of the article and did you read it at the time?
40. What was your role and involvement, if any, in the investigation within COPFS into the source of the information in the Mail on Sunday's article? What is your understanding of how the investigation into the possible leak was conducted?
41. Please read [REDACTED] email to Ms Miller on 24 September 2018²³ where he states:-

Thanks Lindsey, the source is allegedly within the Justice System, but I believe that I would be able to give you a report that would cover the COPFS side with enough to say that checks have been made and we are satisfied that the leak did not come from us. Obviously we can only work with what we have.

If you are in agreement, I can do some background on the reporters social media presence, I would need the names of all our staff who were in both the discussions and the E Mail chain with their desk phone numbers. To start I will check if there has been any traffic either by E Mail or telephone to the reporter or the News desk at the paper. I will check on any friends within social media for any connections.

Whilst I appreciate this is a lot of ticking the boxes it may give the LA a bit of reassurance

Further, please read Mr Logue's email to you dated 7 December 2018²⁴ where he states:-

I have now concluded such enquiries as are possible and proportionate in light of the nature of the original article. The enquiries did not amount to a formal "leak inquiry", which could involve interviewing on a formal basis relevant members of staff, because the nature of the Mail on Sunday's reporting could not be shown conclusively to amount to a "leak" in the sense that confidential documents or detailed information known only to certain people was published. Rather, the essential element of the reporting was the Crown's purported decision in circumstances where it had to be one of two options - to prosecute or not to prosecute. In those circumstances, we cannot rule out the possibility, based on the reporting alone, that the Mail on Sunday simply "guessed" and claimed to have obtained the information (this

²² PS18106

²³ COPFS-03988

²⁴ COPFS-03939

has happened before in long running high-profile investigations). In addition, the essence of the decision was clear to officials and ministers in the Scottish Government as well as in COPFS.

For those reasons, I concluded that it would only be appropriate to interview a member of staff where I could obtain information from COPFS systems which indicated contact with the journalist or newspaper. I have therefore reviewed all COPFS communications data to establish whether COPFS emails or telephones were used to send or receive information to or from the journalist or newspaper during the short window between the decision being taken and the story being printed. There is no evidence of any such contact in the relevant COPFS systems and I am therefore satisfied that the information held in relation to the decision has been processed appropriately and consistent with the Service's data protection obligations. I do not see any appropriate basis to interview formally the members of staff and Crown Counsel involved in the decision making.

Was this approach consistent with your understanding of the how the inquiry would proceed? Did you, or do you now, have any concerns about how this inquiry proceeded? In particular, did you understand that this would be “a lot of ticking the boxes”? Do you agree that it should not be a normal leak inquiry? In light of the terms of the article stating the source was a “well-placed source in the justice system” and the detail of the reasons for the decision not to prosecute, would this not be a sufficient basis for conducting a normal leak inquiry? Did you share Mr Logue’s view that the journalist may have guessed the outcome?

42. Please read your email to Ms Miller and her response dated 23 and 26 September 2018.²⁵ You state: “Subject to your advice... we will need immediately to commence an investigation into this leak”. Ms Miller replied to you stating: “At the very least Law Officers will require reassurance that this is being taken seriously by COPFS and that they can have confidence in the discretion of officials and counsel.” In light of the above emails by [REDACTED] Ms Miller and Mr Logue, were you, and are you now, content that this inquiry was robust enough to give you this reassurance?

43. [REDACTED]

²⁵ COPFS-03571

[REDACTED]

[REDACTED]

44. What was the outcome of this inquiry? Did you make any decisions or take any further action in light of its findings?
45. What was the impact of this information being published in the media to the Investigation? How did you and your colleagues think this would be received and interpreted by Mr Bayoh's family? What was done to address these concerns?

Meeting Mr Bayoh's family at the conclusion of the Investigation

46. [REDACTED]

47. Please read the email chain dated 22-28 August 2018.²⁷ Ms Miller writes:

I had a chat with Graham Shields yesterday and we were both of the view given the regular meetings with the family thus far, facilitated by both the previous and the current LA, there has been an understandable expectation created that just as the family were kept updated on progress of the investigation, they should have a meeting where the outcome of that investigation should be communicated to them. On that basis it is difficult to see how the Lord Advocate could extricate himself from that and not end up the focus of any story thereafter.

...

Graham and I discussed the "How, where, when and who". We anticipate recommending a structured meeting where we would hand over the detailed decision letter and then take the family through it. It would be a scripted, prepared meeting, setting out the messages to convey with the Lord Advocate advising of the decision and reasons, and opens up to others more immersed in the detail to offer further information. That is where I would welcome a steer from you - should you be there or should we leave it that Les and I (and perhaps Alasdair) would be there in support to provide that detail?

...

²⁷ COPFS-04249

We would have an "extraction plan" as Graham terms it for the LA - it would be in the conference room rather than his room and on a Thursday afternoon. That proposed timing is for two reasons - it is too late for the First Minister to get ambushed at FMQs and means that the inevitable press conference is covered in Friday's media rather than over the weekend.

To what extent, if at all, were you involved in this planning? Were you informed of this approach prior to the meeting? Is this an accurate summary of how the meeting with Mr Bayoh's family proceeded? Did you, or do you now, have any concerns about any aspect of the approach being planned?

48.

[REDACTED]

49.

[REDACTED]

Accounts by Mr Bayoh's family

50. Ms Adama Jalloh is Mr Bayoh's sister. Do you recall meeting her? Please provide your recollection. She gave the following account in her statement to the Inquiry at para 16:-³¹

I am asked how I felt after those meetings [with the Lord Advocate] and whether I had trust in the process. With the very first Lord Advocate, Frank Mulholland, we met, yes. That changed with the other Lord Advocate, James Wolfe. We had a meeting with him, and, again, he gave us his word that he would do his best for the family and make sure we find out the truth,

[REDACTED]

Do you recall giving your word that you would do the best for the family and make sure they found out the truth? What did you mean by this? Why did you think Ms Jalloh felt let down and could anything more have been done to prevent or mitigate this?

28

29

30 COPFS-04140

31 SBPI-00233

51. Ms Kosna Bayoh is Mr Bayoh's sister. Do you recall meeting her? Please provide your recollection. She gave the following account in her statement to the Inquiry at para 12:-³²

He [Lord Mulholland] had to step down and then there was a new one. I am asked about my views on the next Lord Advocate, James Wolffe. He was not on our side. We felt that it was a waste of time. We were upset, gutted with his actions. We never got any support from him. We thought that as a family he never dealt with it accordingly, the way Frank dealt with it before he left. We didn't get any support from him, I think he was more the police side than our side.

What is your comment on Ms Kosna Bayoh's above account? Do you agree that you did not give any support to Mr Bayoh's family? What support was given and what further support could have been given? Do you know why she thought you were more on the police side and why it was a waste of time?

52. Mr Ade Johnson is Mr Bayoh's brother-in-law. Do you recall meeting him? Please provide your recollection. He gave the following account in his statement to the Inquiry at para 48:-³³

With Frank Mulholland, things were moving fast. When he moved away, James Wolffe came into place. Then we saw the other side of the Crown: the nastiness of the crown. I think we had at least two meetings with him, at the first one in which he talked about himself and his history and what he's done. Then we asked him some straightforward questions like, had he watched the CCTV? He said, "No." What does he know about the case? He said he "had not read much about it." He said he was depending on Lindsay and the other guy to give him feedback and, once he's up to speed, then he will get back to us, and that never happened.

What is your comment on Mr Johnson's above account? Does it accord with your recollection?

53. Ms Kadi Johnson is Mr Bayoh's sister. Do you recall meeting her? Please provide your recollection. She gave the following account in her statement to the Inquiry at para 25:-³⁴

When James Wolffe became involved, the first time we met him it was like he was not interested. It was as if he didn't even have a proper knowledge of the case. I felt that maybe they had briefed him a few minutes before we got in the room because there was no interest at all; there was nothing.

[REDACTED]

³² SBPI-00231

³³ SBPI-00248

³⁴ SBPI-00236

[REDACTED]

What is your comment on Ms Johnson's above account? Do you recall promising Mr Bayoh's family that they would be involved before you made any decision? Was this promise adhered to?

[REDACTED]

54.

[REDACTED]

[REDACTED]

[REDACTED]

55. Ms Collette Bell was Mr Bayoh's partner and mother of his child. Do you recall meeting her? Please provide your recollection. She gave the following account in her statement to the Inquiry at para 53:-³⁷

I am asked about any meetings I attended with the Lord Advocate. I remember a lot of those meetings where I was very angry because they would always talk about the restraint being proportionate, or the right amount of violence and the right amount of restraint was used.... I just remember being really angry,

[REDACTED]

³⁵ [REDACTED]
³⁶ SBPI-00236
³⁷ SBPI-00247

[REDACTED]

What is your comment on Ms Bell's account? Do you recall her becoming angry in any meetings? [REDACTED]

[REDACTED]

European Convention on Human Rights ("ECHR")

56. During the Investigation, what discussions in any form were you involved in relating to COPFS' obligations under Articles 2 and 14 of the ECHR in respect of Mr Bayoh and his family? If so, what was your understanding of these obligations and how, if at all, did this affect your approach to your work?
57. To what extent was Article 2 of the ECHR considered in the Investigation in respect of the duties of Police Scotland and PIRC?
58. To what extent did you consider your own, and COPFS', compliance with Article 2 of the ECHR in the course of the Investigation? Did you, or anyone else, consider COPFS' compliance with Article 2 at the conclusion of the Investigation?
59. In your letter to Mr Anwar dated 22 March 2017³⁸ you explain that the impact of Article 2 of the ECHR can only be assessed at the conclusion of the ongoing investigation into the circumstances of Mr Bayoh's death and any subsequent proceedings. What effect, if any, did this position have on ensuring that you and COPFS were conducting and overseeing an Article 2 compliant investigation?

Learning from other investigations

60. Prior to and during your involvement in the Investigation, what awareness did you have of investigations by the police and/or the CPS into race in England and Wales? What learning did you derive from these investigations? Did anything you learned from these investigations result in any change in approach to your involvement in this case compared with your involvement in prior investigations?
61. Insofar as not covered above, to what extent did you consider the approach of the CPS in cases of deaths in custody or during or following contact with the police in which restraint was used? What were you interested in understanding or learning from the approach of CPS?

³⁸ COPFS-03221b

Race

62. Do you have any experience of racism being a factor to investigate in an investigation relating to:

- (i) a death in custody or death during or following police contact; or
- (ii) the actions of on-duty police officers?

If so, please provide details of the year(s) you were involved, how race was a factor, how you investigated the race aspect and the outcome.

63. Insofar as not already covered, to what extent, if any, was Mr Bayoh's race a factor in any of your decisions and actions?
64. Prior to your involvement in the Investigation, in your experience, did COPFS routinely consider the role of race when dealing with a death in custody or death during or following police contact?

Training

65. At the time of your involvement in the Investigation, what training had you completed that was relevant for your role in the Investigation? Please provide details of the type of training and explain what you can recall from the session.
66. Insofar as not already covered, what training had you completed at the time of your involvement in the Investigation in relation to the matters relevant to your role?
67. Insofar as not already covered, what training had you completed by or during the time you were involved in the Investigation in relation to equality and diversity issues? Which aspects of this training, if any, were applicable to your role?
68. What guidance or reference materials in relation to race were you aware of being available to you in the time you were involved in the Investigation? Over the course of your involvement, did you make use of any of these materials?
69. What, if any, training do you consider would have assisted you in your involvement in the Investigation? This may be training you have carried out since, training you are aware of but have not completed or training that is not, as far as you're aware, provided by COPFS.

Records

70. Is there a requirement for you to take contemporaneous notes or any other record of your involvement in an investigation? Is there a requirement to retain them? Are there any forms that you must complete in the course of the Investigation for internal record-keeping?

71. What records did you keep in relation to the Investigation? Were these retained and archived? To what extent was your record-keeping consistent with normal practice? Please confirm the basis for any departures from normal practice.

Miscellaneous

72. In your experience, was the Investigation lengthy? Was it unduly lengthy? What is the reason for the length of time required for the case to be reported to Crown Counsel? Are you aware if anything could have been done differently to reduce the length of time from Mr Bayoh's death to reporting to Crown Counsel?
73. What was your position in respect of whether a FAI would take place at the conclusion of the Investigation? Did this position have any effect on the way the Investigation was conducted? In the event that a FAI would follow the Investigation, would this be before or after the prosecution and why? What was the status of your predecessor, Lord Mulholland's, position in this regard? Please refer to Mr McGowan's letter dated 23 October 2017³⁹ which states a FAI would be held.
74. When did you become aware of the possibility that a public inquiry would be commissioned to examine Sheku Bayoh's death and the Investigation? Was anything done or not done in light of this? Was this a factor in relation to the issue of whether a FAI should take place?
75. Please read Mr McGowan's email to Ms Fiona Carnan dated 12 February 2020⁴⁰ relating to a request from the SPA for the redacted statements of the police officers who engaged Mr Bayoh. Were you aware of this issue at the time? What was the basis for not giving them the statements under GDPR etc? [REDACTED] ? Is the suggestion that disciplinary action against the officers by the SPA would be encroaching on the Lord Advocate's powers under the Scotland Act? What is your position on this? What was the outcome of this issue?
76. Insofar as not already covered, to what extent was your involvement, decisions and actions in the Investigation consistent with normal practice? If there were any deviations from normal practice, please explain your reasoning. In your view was race a factor in any departures from normal practice you have identified?
77. Insofar as not already covered, what significant difficulties or challenges did you encounter during your involvement in the Investigation? Would any changes to practice or procedure would have assisted you in overcoming these difficulties or challenges? To what extent were these difficulties or

³⁹ COPFS-01542

⁴⁰ COPFS-00336

challenges normal or expected in your role? To what extent was race a factor in these difficulties or challenges?

78. 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.”

79. Please sign and date your statement.