

## **THE SHEKU BAYOH PUBLIC INQUIRY**

### **LIST OF ISSUES**

#### **FOR HEARING ON RACE IN JUNE 2024**

The Inquiry's terms of reference require it: "to establish the extent (if any) to which the events leading up to and following Mr Bayoh's death, in particular the actions of the officers involved, were affected by his actual or perceived race and to make recommendations to address any findings in that regard".

The Equality Act 2010 defines race as including colour, nationality and ethnic or national origins.<sup>1</sup> Religion is a characteristic accorded separate protection, but if race is the cause of assumptions being made about someone's religious beliefs, that could result in race discrimination.

This aspect of the terms of reference has been considered at each of the evidential hearings held to date.

The purpose of the race hearing will be to draw together the evidential threads from earlier hearings and set out the contextual framework under which the Chair will consider what findings and inferences can be made in relation to the question of the influence of Mr Bayoh's actual or perceived race on the events under scrutiny.

This will include consideration of the following issues:

- 1. Whether Mr Bayoh's treatment by the police officers who attended Hayfield Road was affected by his actual or perceived race?**

---

<sup>1</sup> Section 9 Equality Act 2010.

This includes consideration of whether Mr Bayoh's treatment was affected by direct or indirect discrimination, dealt with in turn in the following paragraphs.

(a) Is there evidence on the basis of which the Chair could conclude on the balance of probabilities that the police officers who attended Hayfield Road treated Mr Bayoh less favourably than they would have treated a white man in materially similar circumstances, and that the reason (or part of the reason) for the treatment was Mr Bayoh's actual or perceived race? The Inquiry will consider:

- (i) Descriptions of Mr Bayoh in 999 calls and radio communications;
- (ii) Any connections made by attending officers between the call-out to attend Mr Bayoh and a potential terror threat, both generally and specifically with regard to the recent murder of Lee Rigby;
- (iii) Perceptions of Mr Bayoh's size, strength and level of threat presented;
- (iv) Whether racialised or stereotypical language was used by attending officers to describe Mr Bayoh or others;
- (v) The attending officers' approach to identifying whether Mr Bayoh presented as a medical emergency on arrival at the scene;
- (vi) Perceptions of the attending officers in relation to the need for force and the nature and degree of force required;
- (vii) The response to Mr Bayoh presenting as a medical emergency during or following restraint;
- (viii) Any differences between the treatment of Mr Bayoh and the management of other knife incidents and incidents involving suspected ABD, mental health issues, intoxication or substance misuse;
- (ix) Any differences between the treatment of Mr Bayoh and training on response to such incidents,
- (x) Any differences from what would usually be expected in relation to the immediate post-incident management, including in relation to lines of management responsibility, which may cast light on whether race played a part in the incident itself;
- (xi) Any evidence regarding the 'canteen culture' in Kirkcaldy at the time.

(b) Is there evidence on the basis of which the Chair could conclude on the balance of probabilities that the police officers who attended Hayfield Road applied ostensibly neutral provisions, criteria or practices which would put those of Mr Bayoh's race, and did put Mr Bayoh on this occasion, to a particular disadvantage? The Inquiry will consider:

- (i) The training provided to attending officers at the time (including training on race, which is covered in detail at paragraph 4 below);
- (ii) Lines of accountability and disciplinary practice regarding use of spray and use of force;
- (iii) Lines of accountability and disciplinary practice regarding race discrimination;
- (iv) Protocols, data collection practice and monitoring in relation to use of spray and use of force;
- (v) Protocols, data collection practice and monitoring in relation to race; and
- (vi) Any of the matters listed at paragraph 1(a) above found not to relate to a difference in treatment because of race.

**2. Whether the post-incident management process and investigation was affected by Mr Bayoh's actual or perceived race?**

This includes consideration of whether the post-incident management process was affected by direct or indirect discrimination, dealt with in turn in the following paragraphs.

(a) Is there evidence on the basis of which the Chair could conclude on the balance of probabilities that the post-incident management process was conducted less satisfactorily than would have been the case in relation to the death of a white man in materially similar circumstances, and that the reason (or part of the reason) for the unsatisfactory management was Mr Bayoh's actual or perceived race? The Inquiry will consider:

*In relation to Police Scotland:*

- (i) Securing and preserving of evidence;

- (ii) The contact and communications with Collette Bell, Kadijartu and Adeyemi Johnson; and Connie Barcik;
- (iii) The treatment of Zahid Saeed;
- (iv) The seizure and searches carried out at the homes of Ms Bell and Mr Bayoh, Martyn Dick and Kirsty Macleod, and the Saeed family;
- (v) The taking of clothing and DNA from Martyn Dick and Kirsty Macleod;
- (vi) The steps taken in relation to Mr Bayoh's identification;
- (vii) The steps taken or not taken by police officers to record the details of the incident including in relation to Use of Force forms, Use of Spray forms, notebooks and witness statements, and the steps taken or not taken by senior officers to ensure completion of the same;
- (viii) The steps taken or not taken to prevent post-incident conferral;
- (ix) Any differences in the treatment of police and civilian witnesses;
- (x) Approach to community policing and reputation management following Mr Bayoh's death;
- (xi) Database searches undertaken relating to the family and friends of Mr Bayoh and their legal representatives;
- (xii) Management of any disciplinary issues that may have arisen; and
- (xiii) Media handling and briefing.

*In relation to PIRC:*

- (xiv) Reliance on Police Scotland's initial accounts;
- (xv) Securing and preserving of evidence;
- (xvi) The steps taken in relation to Mr Bayoh's identification and post-mortem;
- (xvii) Lines of inquiry followed;
- (xviii) Approach to gathering witness evidence;
- (xix) The decision to categorise the officers present at Hayfield Road as witnesses and approach taken to their witness evidence;
- (xx) Approach to investigating whether Mr Bayoh's race influenced his treatment and analysis of evidence obtained;
- (xxi) Approach to family liaison;
- (xxii) Approach to identifying, selecting and instructing expert witnesses;
- (xxiii) Notification of the Sierra Leone High Commission;
- (xxiv) Language used by PIRC's investigators to describe Mr Bayoh; and

(xxv) Media handling and briefing.

*In relation to COPFS:*

(xxvi) The steps taken in relation to Mr Bayoh's post-mortem;

(xxvii) Advice and directions given to Police Scotland;

(xxviii) The decision to categorise the officers present at Hayfield Road as witnesses and approach taken to their witness evidence;

(xxix) Advice and directions given to PIRC, including instructions given to PIRC in relation to the investigation of race issues;

(xxx) Approach to investigating whether Mr Bayoh's race influenced his treatment and analysis of evidence obtained;

(xxxi) Approach to family liaison including the meeting of 3 October 2018 and response to the family's concerns;

(xxxii) Consideration of excited delirium;

(xxxiii) Approach to identifying, selecting and instructing expert witnesses;

(xxxiv) Approach to the parallel investigation instructed by the SPF;

(xxxv) Instruction of SPA (including destructive testing of Nicole Short's vest);

(xxxvi) Media handling and briefing; and

(xxxvii) Apparent leak of the decision not to prosecute to the Mail on Sunday and response to the same.

(b) Is there evidence on the basis of which the Chair could conclude on the balance of probabilities that ostensibly neutral provisions, criteria or practices were applied in relation to post-incident management which would result in a particular disadvantage in relation to the investigation of the death of a black man in such circumstances, and did result in such a disadvantage in Mr Bayoh's case? The Inquiry will consider:

*In relation to Police Scotland:*

(i) The protocol and practice in relation to notifying family members of a death;

(ii) The protocol, practice and approach in relation to interviewing family members;

(iii) The protocol and practice in relation to seizing and searching properties, including lines of responsibility and accountability for this;

- (iv) Whether the issue of race was treated in the same way as any other line of inquiry in an investigation, and if so whether this was appropriate;
- (v) The identification of a Critical Incident and the Critical Incident Management deployed;
- (vi) Lines of accountability and disciplinary practice regarding post-incident management; and
- (vii) Any of the matters relevant to Police Scotland listed at paragraph 2(a) above found not to relate to a difference in treatment because of race.

*In relation to PIRC:*

- (viii) The approach to scrutinising the actions of Police Scotland;
- (ix) The protocol and practice in relation to conducting identification and post-mortem;
- (x) The protocol, practice and approach in relation to family liaison;
- (xi) Whether the issue of race was treated in the same way as any other line of inquiry in an investigation (including in interview briefing), and if so whether this was appropriate;
- (xii) Lines of accountability, data monitoring and quality assurance regarding investigations; and
- (xiii) Any of the matters relevant to PIRC listed at paragraph 2(a) above found not to relate to a difference in treatment because of race.

*In relation to COPFS:*

- (xiv) The protocol and practice in relation to conducting a post-mortem;
- (xv) Whether the issue of race was treated in the same way as any other line of inquiry in an investigation, and if so whether this was appropriate;
- (xvi) Lines of accountability, data monitoring and quality assurance regarding investigations; and
- (xvii) Any of the matters relevant to COPFS listed at paragraph 2(a) above found not to relate to a difference in treatment because of race.

### **3. The background context in relation to race and policing in Scotland**

- (a) The background context to race discrimination in Scotland, including:
- (i) Similarities and differences between the Scottish and English contexts;
  - (ii) Similarities and differences in the experiences of race discrimination in Scotland between members of the black community and the Asian and other minority ethnic communities;
  - (iii) Racial stereotyping, including any established tropes which may have affected perceptions of Mr Bayoh;
  - (iv) The effectiveness of “treating everyone the same” as a means of avoiding race discrimination; and
  - (v) What is meant by “anti-racism”; how that is to be distinguished from non-discrimination and what it might require to be achieved.
- (b) The picture in relation to race and policing in Scotland in 2015 and (insofar as is relevant to the Inquiry’s jurisdiction to make recommendations) in the present day, including:
- (i) Research literature on race and policing;
  - (ii) Protocols and practice in 2015 in relation to monitoring and addressing discrimination in policing, including lines of responsibility and accountability for this;
  - (iii) Previous reports on race and policing including those relating to earlier deaths;
  - (iv) The extent to which research and reports from England (or other countries) are applicable to the Scottish context, and the nature of any differences;
  - (v) Statistical evidence insofar as available in relation to the proportionality or otherwise of policing in relation to black and other minority ethnic communities in Scotland;
  - (vi) Research on the experience of policing from the perspective of black and other minority ethnic communities in Scotland;

- (vii) Research on the experience of black police officers in Scotland, and those from other minority ethnic backgrounds;
- (viii) The situation in 2015 in relation to domestic terrorism and the policing response to this issue;
- (ix) An understanding of the journey to the Chief Constable's statement on 25 May 2023 that Police Scotland was an institutionally racist organisation, including any documents, reviews etc which informed that conclusion; and
- (x) Police Scotland's current approach to race under its Policing Together strategy.

#### **4. Organisational culture and training**

- (a) Equality policies and impact assessments:
  - (i) Their purpose and what they should cover;
  - (ii) Policies in place in Police Scotland, PIRC and COPFS in 2015 and how they applied in practice.
  
- (b) The nature and effectiveness of training on:
  - (i) Non-discrimination and anti-racism, including accountability mechanisms;
  - (ii) Concepts of equality and equity;
  - (iii) Cultural and racial awareness in policing;
  - (iv) The concept of unconscious bias and how to identify and address it; and
  - (v) Lessons learned from earlier deaths.
  
- (c) How the effectiveness of such training to achieve improvements in organisational culture can be monitored and evaluated.
  
- (d) The training relating to race provided by Police Scotland in 2015 and (insofar as is relevant to the Inquiry's jurisdiction to make recommendations) in the present day, including:



- (i) What training relating to race had been provided to the officers who attended Hayfield Road in 2015.
  - (ii) Whether a lack of training relating to race had an impact on the events at Hayfield Road.
  - (iii) What training relating to race had been provided to officers involved in the post-incident management.
  - (iv) Whether a lack of training relating to race had an impact on the post-incident management.
  - (v) The training and guidance relating to race provided to officers by Police Scotland now, which may include consideration of training as part of the Policing Together strategy.
- (e) The training relating to race provided by PIRC in 2015 and (insofar as is relevant to the Inquiry's jurisdiction to make recommendations) in the present day, including:
- (i) What training relating to race had been provided to the PIRC investigators and FLOs involved;
  - (ii) Any guidance and protocols in place at the time on investigating potential discriminatory treatment;
  - (iii) Any steps taken to seek training, guidance or expertise relating to race from outside the organisation;
  - (iv) The training and guidance relating to race provided by PIRC now, including any lessons learned from Mr Bayoh's death.
- (f) The training relating to race provided by COPFS in 2015 and (insofar as is relevant to the Inquiry's jurisdiction to make recommendations) in the present day, including:
- (i) What training relating to race had been provided by COPFS to those involved;
  - (ii) Any guidance and protocols in place at the time on managing cases raising issues of potential discriminatory treatment;
  - (iii) Any steps taken to seek training, guidance or expertise relating to race from outside the organisation;

- (iv) The training and guidance relating to race provided by COPFS now, including any lessons learned from Mr Bayoh's death.

## **5. Compliance with legal duties**

### (a) Police Scotland's compliance with:

- (i) The Equality Act 2010, including the duties not to discriminate directly or indirectly and its Public Sector Equality Duty; and
- (ii) Article 14 of the European Convention on Human Rights, prohibiting discrimination, in conjunction with the Article 2 right to life,<sup>2</sup> as implemented by the Human Rights Act 1998.

### (b) PIRC's compliance with:

- (i) The Equality Act 2010, including the duties not to discriminate directly or indirectly and the applicability of and compliance with its Public Sector Equality Duty; and
- (ii) Article 14 ECHR, prohibiting discrimination, in conjunction with the Article 2 right to life, as implemented by the Human Rights Act 1998.

### (c) COPFS's compliance with:

- (i) The Equality Act 2010, including the duties not to discriminate directly or indirectly and its Public Sector Equality Duty; and
- (ii) Article 14 ECHR, prohibiting discrimination, in conjunction with the Article 2 right to life, as implemented by the Human Rights Act 1998.

---

<sup>2</sup> Article 2 ECHR, the right to life, will be considered throughout the Inquiry, but this hearing will focus on the ancillary anti-discrimination provision at Article 14 ECHR.