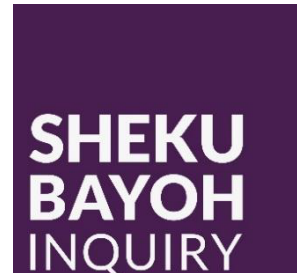


Assistant Solicitor to the Inquiry

[REDACTED]

E: [REDACTED]  
T: [REDACTED]



Mr David Green  
Crown Office and Procurator Fiscal Service

By email only: [REDACTED]

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1 December 2022

Dear Mr Green

### **RULE 8 REQUEST**

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

As you may be aware we had previously written to the Crown Office and Procurator Fiscal Service (“COPFS”) to try to arrange to take a statement from you. COPFS has 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 22 December 2022**.

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.

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 to you at a later date in relation to matters dealt with by COPFS.

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. I 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

### HEARING 3a

#### AREAS FOR WITNESS STATEMENT

#### MR DAVID GREEN

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. These questions will focus on your involvement insofar as it relates to Police Scotland post incident management.

For the purposes of this statement, please consider Police Scotland post incident management to include all matters dealt with by Police Scotland following Sheku Bayoh's death, including but not limited to the investigation into the circumstances of his death, the procedures used to manage the response officers and engagement with the media.

#### Your role on 3 May 2015

1. What was your position in COPFS on and around 3 May 2015? How long had you been in this position prior to 3 May 2015? What were your duties and responsibilities in this position? What training did you have for this position?
2. What do you understand to be COPFS' role in unexplained deaths in Scotland as of 3 May 2015? What were COPFS' duties and responsibilities in this regard?
3. What is COPFS' role in Police Scotland post incident management? What was your role in dealing with Police Scotland in respect of post incident management?
4. What were your duties and responsibilities in your role?
5. What training did you have for your role?
6. How many times had you carried out this role in dealing with Police Scotland prior to 3 May 2015? Please provide an estimate if required.
7. Prior to 3 May 2015, what experience did you have in investigations of deaths in police custody, or deaths during or following police contact?
8. Prior to 3 May 2015, what experience did you have in deaths in custody or deaths during or following police contact in which race was a factor to investigate?

9. What training had you completed by 3 May 2015 in relation to equality and diversity issues? Which aspects of this training, if any, were applicable to your role?
10. What guidance or reference materials in relation to race were you aware of being available to you as at 3 May 2015? Over the course of your involvement in the Sheku Bayoh case, did you make use of any of these materials?

#### PIRC's role

11. What experience and training did you have in dealing with PIRC prior to 3 May 2015?
12. What was PIRC's role in Police Scotland's investigation into the death of Sheku Bayoh?
13. What involvement did COPFS have in liaison between PIRC and Police Scotland?
14. Police Scotland were involved in the initial investigation into the death of Sheku Bayoh with a full handover to PIRC taking place over a period of time. What was your understanding of this relationship? What was your involvement in the handover? Was this normal practice? Did you have any concerns relating to this process?

#### Records

15. Is there a requirement for you to take contemporaneous notes of your involvement in an investigation? Is there a requirement to retain them?
16. What notes did you take in the course of the matter? Please compile the full terms of your notes insofar as they relate to Police Scotland's post incident management.

#### Instructions to Police Scotland and PIRC

17. How were your decisions and instructions communicated to Police Scotland and PIRC? What is normal practice for this?
18. Please provide full details of all decisions taken and instructions given to Police Scotland and PIRC, insofar as it relates to Police Scotland post incident management.

#### Understanding of the incident

19. When did you first become aware of the incident between Sheku Bayoh and Police Scotland's officers?

20. What was the first account provided to you of the incident? Who provided it and when? What further information did you require about the incident at that stage and why?
21. When were you told that the person involved with the police was black? What difference, if any, did this have on your understanding of the incident and your decisions and actions?
22. In relation to Police Scotland post incident management, what decisions and actions did you take following the incident being reported to you? Why did you do this? Was this normal practice?
23. To what extent, if any, were any of your actions or decisions in relation to Police Scotland post incident management influenced by Sheku Bayoh's actual or perceived race?
24. On 3 May 2015, were you aware of any media coverage surrounding the incident? Were you aware of any details of the incident on social media? Were any community impact issues considered by you at that stage? Did any of these factors influence your actions or decision making in relation to Police Scotland post incident management?
25. How did your initial understanding of the incident affect your decision making? What is the interaction between accuracy of information and decisions taken? What steps did you take, if any, to verify the accuracy of the information that was being given to you? Were your actions in this regard normal practice?
26. Were you provided with any further information about the circumstances of the incident throughout the day? Please provide details of what and when you were told and the source of the information.

#### Death in police custody

27. What is the difference between a suspicious and a non-suspicious death? How do COPFS deal with each?
28. Is a death in police custody or during or following police contact treated as a suspicious or non-suspicious death at the outset? Are any assumptions about the circumstances of the death made in the initial stages of a death in police custody?
29. Was the death of Sheku Bayoh being treated as a suspicious or non-suspicious death and why?
30. What was the role Police Scotland's Professional Standards Division in a death in police custody or during or following police contact?
31. What liaison did you have with Police Scotland's Professional Standards Division in respect of Police Scotland's post incident management? What did you understand to be PSD's involvement? Was this what you expected?

### Status of the response officers

32. What does it mean for Police Scotland and separately COPFS to treat a person as a suspect or a witness? What are the circumstances in which a person is treated as a suspect? What is the significance of treating a person as a suspect?
33. What was your role in deciding if any of the officers involved in the incident were suspects or witnesses? Did you make any decisions in this regard?
34. What impact did the account of the incident have on your involvement in the decision as to whether the officers were suspects or witnesses?

### Statements of the response officers

35. What is the importance, if any, of COPFS being in receipt of operational statements of police officers involved in the death of a person?
36. What is the role of COPFS in police officers providing operational statements of their involvement in an incident? What was your role in this process?
37. Can police officers be compelled to provide an operational statement? What would COPFS' role be in this process?
38. What did you understand the position of the officers involved in the Sheku Bayoh incident to be in respect of providing operational statements? What was COPFS' position on the officers providing operational statements? Is this normal practice?
39. What decisions or actions did you take to obtain operational statements from the officers and why? Did you or any colleagues in COPFS make any efforts to compel the officers to provide statements?
40. What involvement do COPFS have in disciplining or prosecuting any breaches of any duties incumbent on the officers in respect of providing statements? Did you or, as far as you're aware, did any of your colleagues follow up with Police Scotland regarding any breaches?

### Other paperwork of the response officers

41. As a matter of normal practice, do COPFS recover any subject officers' notebooks, daybooks, Use of Force forms or Use of Spray forms? Why or why not for each?
42. Did you seek the recovery of any of the aforementioned paperwork in the initial stages of the Sheku Bayoh investigation? Why?
43. What involvement, if any, do COPFS have in ensuring that police officers complete any mandatory paperwork?

44. What involvement, if any, do COPFS have in disciplining or prosecuting any breaches of any duties incumbent upon police officers in respect of the aforementioned paperwork? What is the process for this? Did this happen in this case?

#### Engagement with family and friends of Sheku Bayoh

45. What is COPFS' role in family liaison in deaths cases?

46. What decisions and actions did you take in relation to COPFS' family liaison and why?

47. Do COPFS have any duties or responsibilities to the deceased's family? If so, how did you fulfil these duties or responsibilities?

48. What involvement did you have, if any, in the liaison of PIRC and Police Scotland with the Bayoh family?

49. What was your understanding of the relationship between the family and friends of Sheku Bayoh and Police Scotland and PIRC? Was there any basis for concerns at any stage? What was your involvement in dealing with any concerns?

#### Media engagement

50. What is the interaction between the roles of COPFS and Police Scotland in media engagement? What is the interaction between the roles of COPFS and the Scottish Police Federation in media engagement?

51. What involvement did you have, if any, in Police Scotland's media engagement?

#### Police Scotland Gold group

52. Were you aware that Police Scotland declared a critical incident on 3 May 2015? What impact, if any, does this have on COPFS' involvement? Were COPFS consulted on this decision? Would you have been expected COPFS to have been consulted?

53. What is COPFS' role, if any, in Police Scotland Gold group meetings? In what circumstances, if any, would COPFS attend a Gold group meeting?

54. Does the information provided in a Gold group meeting have any influence on COPFS' decision making in respect of Police Scotland post incident management?

55. Were you present in any of the Gold group meetings on 3 May 2015? Why did you attend? Did you have any input into the meeting? Did you provide any advice, guidance or instruction and why? Was this normal practice?

56. Was race discussed in any Gold meetings you attended? How did any discussions relating to race affect your understanding of the incident and what actions to take?

#### Forensic examination

57. What is the interaction between COPFS and SPA in a Police Scotland or PIRC investigation? How does this relate to Police Scotland's post incident management?

58. Did you provide any instructions to SPA in relation to the Sheku Bayoh incident? Please provide full details and the rationale for these instructions. Did you seek any input from Police Scotland and/or PIRC for these instructions? Did you notify Police Scotland and/or PIRC of the terms of these instructions?

59. What is the interaction between Police Scotland and SPA at the initial stages of an investigation into a death in police custody? How does the Police Scotland forensic strategy interact with the work of SPA in such an investigation?

60. What involvement, if any, did you have in Police Scotland's forensic strategy? Were you involved in drafting the forensic strategy? Did you attend any forensic strategy meetings?

#### Securing and searching property

61. What is COPFS' involvement in the securing and searching of property by Police Scotland or PIRC in an investigation into a death in police custody?

62. In what circumstances is a warrant required for Police Scotland securing property? What is COPFS' involvement in obtaining a warrant?

63. What does it mean for something to be an "operational matter" for Police Scotland? What is COPFS' role in "operational matters", if any?

64. What was your understanding of the role of Police Scotland and PIRC in securing and seizing property?

65. What property was secured on 3 May 2015? What was the legal basis for the property being secured by police? What involvement did you have in this process?

66. What property was searched on 3 May 2015? What was the legal basis for any searches by police? What involvement did you have in this process?

67. Are you aware of any of Police Scotland's officers consulting COPFS in respect of any secured property? What was discussed and what was the outcome?



### Sheku Bayoh's body

68. What is COPFS' role in dealing with the body of a deceased person, including the post mortem examination? What is the involvement of Police Scotland in this process?
69. What was the extent of Police Scotland's involvement in the post mortem examination in May 2015? Was this normal practice for COPFS?
70. Do you recall having any discussions with DSU Patrick Campbell about the post mortem examination? What was discussed?
71. What role does COPFS have in repatriation issues in respect of a deceased person's body? Were you involved in dealing with repatriation of Sheku Bayoh's body? What is the involvement of Police Scotland in this process?
72. What is the involvement of COPFS in identification of a deceased person?
73. What was your involvement in identification of Sheku Bayoh? When did you become aware of his identification?

### Further involvement with Police Scotland

74. Beyond the above matters, were you involvement in any other aspects of Police Scotland's post incident management? What was the full extent of your involvement? Who else from COPFS was involved, to your knowledge?

### Race

75. Was anything you have stated above done or not done because of Sheku Bayoh's race?
76. In hindsight was there anything you have stated above that you would have done differently were you presented with the same situation again? If so, was race a factor in what you would have done differently?
77. Do you have any experiences of racism being a factor, in any way, in a death in custody or death during or following police contact? If so, please provide details of how racism was a factor, your involvement in dealing with it and the outcome.
78. On and before 3 May 2015, did COPFS routinely consider race when dealing with a death in custody or death during or following police contact? Has that changed between then and now?

### Miscellaneous

79. 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.”

80. Please sign and date your statement.