

Assistant Solicitor to the Inquiry

[REDACTED]

[REDACTED]



Mr Ross Stewart

By email only: [REDACTED]

15 January 2024

Dear Mr Stewart

### 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 have liaised with the Police Investigations and Review Commissioner ('PIRC') to arrange the provision of your Inquiry statement. PIRC has confirmed to the Inquiry your preference for your statement to be prepared under the 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 31 January 2024**. Please provide your written statement by email to [REDACTED]. If you feel further time to complete your written statement would be beneficial, please contact the Inquiry to agree a revised deadline.

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](#).

Annex A to this letter sets out the areas to be covered in your written statement. Annex B contains a copy of the Inquiry's Terms of Reference. The Inquiry will shortly be in a position to share a Connect workspace containing a copy of the documents referred to in Annex A. The documents provided via the Connect workspace remain subject to the Inquiry's general [restriction order](#) and may not be shared by you with any other person.

You may wish to take independent legal advice in relation to the contents of this letter and the questions contained within Annex A prior to providing your written statement. Should you decide to take independent legal advice prior to providing your written statement, and you wish

to share the documents provided to you via the Connect workspace with your solicitor in order to do so, please contact the Inquiry's legal team in advance by email at [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 that is not relevant to your evidence will be redacted prior to disclosure.

Every effort has been made to ensure this request is as comprehensive as possible, however the Inquiry may issue an additional request under Rule 8 to you if it is considered that there is further evidence from you that would assist the Inquiry. Providing more detailed answers at this stage should reduce the possibility that the Inquiry will require a further Rule 8 statement from you.

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. You may be asked to attend a hearing to give oral evidence to the Inquiry. I will contact you in the coming weeks to confirm this.

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 A**

### **AREAS FOR WITNESS STATEMENT**

#### **MR ROSS STEWART**

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 role at the Police Investigations and Review Commissioner (PIRC) and your involvement in PIRC's investigation following the death of Mr Bayoh.

#### **Your professional background and experience**

1. Please provide a summary of your professional career including the job titles, dates held and a short summary of your duties. Please include details as to any further or higher education you have undertaken.
2. Please expand on any professional experience you consider relevant to your role within PIRC. This could include previous employment or training.
3. Prior to 3 May 2015, what, if any, contact had you had with the following Police Scotland officers: Craig Walker, Alan Paton, Nicole Short, Ashley Tomlinson, Alan Smith, Kayleigh Good, Daniel Gibson, James McDonough and Scott Maxwell?
4. Prior to 3 May 2015, had you had any contact with the Police Scotland officers you encountered in the course of the PIRC investigation? Please include detail as to how and when you met them, and your relationship as at May 2015.
5. As at 3 May 2015, was there any policy or guidance for PIRC staff who were acquainted with a Police Scotland officer that they encountered in their role, or who was the subject of a PIRC investigation? If so, please can you identify the policy or guidance in question.
6. Has PIRC ever investigated police officers with whom you were acquainted? What process would be followed if you had a personal or professional relationship with an officer investigated by PIRC?

#### **The Police Investigations and Review Commissioner**

7. What was your position at PIRC on 3 May 2015? What were your duties and responsibilities in this position?
8. Did you line manage or supervise any employees? If so, please provide their names and roles. Please provide details as to how you supervised these employees – i.e., did you have periodic one-to-one conversations, if so, were notes taken? Did you conduct yearly reviews? Did your role in this investigation involve supervising the work of any PIRC staff members? If so, whom did you supervise and how did you carry out that supervision?
9. Who was your line manager or supervisor? Please provide details as to how you were supervised by them. Did you have an annual appraisal? If so, were notes taken?
10. Between May 2015 - August 2016, do you feel that there was adequate resourcing for PIRC to comply with its statutory obligations in terms of:

- (a) Funding;
- (b) Staffing numbers;
- (c) Training opportunities; and
- (d) Expertise of staff.

If not, why not?

11. In what ways do you regard the role of a police officer and the role of a PIRC investigator to be similar or different? Do you feel that your background as a police officer has any advantages or disadvantages for your work at PIRC? If so, please provide full details.
12. In 2015-2016 PIRC had various staff members who had previously held roles within the police. Do you feel that PIRC as an organisation was impacted positively or negatively by staff having held roles within the police? Please explain why you hold this view.
13. Was PIRC sufficiently independent from Police Scotland? How was this independence ensured?
14. As a police officer, you achieved the rank of detective sergeant (PIRC-04221). When involved in a PIRC investigation, you may be required to liaise with and direct police officers of a rank senior to that which you achieved. What impact, if any, does this have on your ability to participate in a PIRC investigation and provide direction to officers from Police Scotland?
15. Prior to 3 May 2015, what experience, if any, did you have of PIRC investigations of deaths in police custody, or deaths following police contact? In what ways were these investigations similar or different to the investigation following the incident involving Mr Bayoh on 3 May 2015?

## **Training**

16. What training have you received during your time as a PIRC investigator? What training had you received prior to 3 May 2015?
17. How do you record the training that you receive as a PIRC investigator? Is the training that you have completed in your role at PIRC covered in full within the training records received by the Inquiry (PIRC-04577)?
18. What, if any, training have you received in relation to the taking of statements during your time at PIRC?
19. When you commenced your role at PIRC, to what extent was reliance placed on the training that you had previously received as a police officer?
20. In 2015, how was it identified that investigators and staff required, or would benefit from, training? Was it necessary for investigators and staff to request training, or were training needs identified by line managers and other senior members of staff at PIRC? Who was responsible for ensuring that PIRC's investigators were sufficiently well trained?
21. During the investigation following the death of Mr Bayoh, did you feel adequately trained to carry out your role at PIRC? Please explain why, or why not. What, if any, additional training would have assisted you in your involvement in the investigation?
22. Is there any process within PIRC to assess "lessons learned" from investigations? If so, what does this process entail? Did any "lessons learned" exercise take place following the

investigation following the death of Mr Bayoh? If so, what did this involve? If not, why did this not take place? Do you think PIRC would have benefited from such a “lessons learned” exercise following that investigation?

## **Your involvement with the PIRC investigation**

### **5 May 2015**

23. On this day, your first PIRC statement (PIRC-00329), at page 1, identifies that you were briefed by DSI William Little in relation to the incident involving Mr Bayoh. Do you remember what was said? If so, please provide details.
24. Was DSI Little in charge of the investigation at the point this briefing took place? If not, who was in charge? At what point was SI John McSparran put in charge of the investigation alongside DSI Little?
25. Beyond the briefing that you received from DSI Little, what, if any, further handover or information did you receive from the investigators who were involved in the investigation on 3 May 2015? Were you content with the amount of information that was provided to you in relation to the investigation when you first became involved? If not, why not?
26. A briefing note was prepared for PIRC’s Director of Investigations in relation to the events of 3 May 2015 (PIRC-03694). Did you have sight of this briefing paper as part of the handover you received on 5 May 2015?
27. The briefing paper (PIRC-03694), at page 2, states:

*It was reported that as the officers drove into Hayfield Road they saw the now deceased coming towards them as the vehicles came to a halt. They could clearly see he was in possession of a knife and was making his way towards them.*

Would you regard this account of events as accurate? Was it your understanding on 5 May 2015 that Mr Bayoh was in possession of a knife when he came into contact with the police officers at Hayfield Road? If so, what, if any, impact did this understanding of events have on your approach to the investigation?

28. What, if any, hypotheses did PIRC have in relation to the incident on 5 May 2015? On 5 May 2015, did you give consideration to whether race could be a factor in the incident? If so, in what way? If not, why not?
29. At this stage, what was your understanding of the legislative basis upon which PIRC were instructed to investigate the incident by the Crown Office and Procurator Fiscal Service (COPFS)? Was your understanding that the investigation was instructed under section 33A(b)(i) or section 33A(b)(ii) of the Police, Public Order and Criminal Justice (Scotland) Act 2006? Were you aware of the legislative basis upon which PIRC were instructed to investigate changing during the investigation? If so, how did the legislative basis for the investigation change? What difference, if any, does the legislative basis upon which PIRC are instructed to investigate by COPFS make to a PIRC investigation?
30. What was your understanding of the scope of PIRC’s investigation at the point the briefing was held on 5 May 2015? What was Police Scotland’s involvement in the investigation at this point?

31. At this stage, what was your understanding of the status of the officers involved in Mr Bayoh's arrest? Were they witnesses or suspects? How did you come to be aware the officers' status on 5 May?
32. What are the circumstances in which a person is treated as a suspect by PIRC? Do you consider that it is PIRC's responsibility to decide whether to categorise a person as a witness or a suspect during an investigation? What is the significance of treating a person as a suspect?
33. An extract from DS Patrick Campbell's evidence to the Inquiry (day 49, page 73, line 5) is as follows:

*A. I think -- sorry, I think the problem with the PIRC deployment at that stage, other than the resources, is that over the course of 24, 36 hours they changed the lead investigator. So Keith had --*

*Q. What issues did that cause?*

*A. Just obvious challenges, the fact is you're bringing someone on fresh into the investigation when you've been there for 12, 13 hours at that stage, you know what I mean, before that ... before Billy Little's appointed around that. So again, there was challenges with the fact that the change of a senior investigator from PIRC at such an early stage of a critical investigation would undoubtedly cause challenges.*

Do you agree with DS Campbell that the handover of responsibility for the investigation to DSI Little caused "challenges"? If so, what were these challenges and what did PIRC do to mitigate them? If not, why not?

34. On 5 May 2015, what role were you assigned within the investigation team? What does this role involve? Why were you assigned this role in this investigation? How many times had you carried out this role previously? Had you performed this role in a death in custody investigation prior to the incident involving Mr Bayoh?

## **6 May 2015**

35. Your first PIRC statement (PIRC-00329), at page 2, identifies that you met with Zahid Saeed on 6 May 2015. What was the purpose of meeting with Mr Saeed on this day?
36. Your first PIRC statement (PIRC-00329), at page 2, states, with reference to the meeting with Mr Saeed:

*Whilst within the PIRC vehicle Zahid spoke freely of his association with the deceased and to his involvement in and knowledge of the period immediately leading to the incident. However he refused to commit himself to a written statement.*

Your notebook (PIRC-04187), at page 2, states:

*1625 Uplifted Zahid Saeed from O/S Kirkcaldy Bus Station. Drove to car park, Esplanade, Kirkcaldy.*

*1735 Zahid Saeed exited car after refusing to confirm info into statement.*

Why is no detail of your conversation with Mr Saeed recorded within your statement or notebook? Why did you drive to a car park with Mr Saeed? During the course of the conversation with Mr Saeed, did you or Investigator Victoria Karran, who was also present,

ask questions in relation to the events prior to the incident involving Mr Bayoh at Hayfield Road on 3 May 2015? If so, what questions did we ask?

37. What approach does PIRC take to conversations with witnesses outwith the environment of an interview? What evidential value do such conversations have? Is there any requirement to warn the witness that what they say may be reported back to Police Scotland and is not “off the record”?

### **7 May 2015**

38. Your first PIRC statement (PIRC-00329), at page 2, identifies that you met again with Mr Saeed on 7 May 2015 to return his bank card and motor vehicle to him. What discussions did you have with Mr Saeed when you met with him on this day? What, if any, observations did Mr Saeed provide in relation to the condition of his motor vehicle?
39. An Incident Message that you are noted to have been completed on 7 May 2015 at 1700 hours (PIRC-03715) states:

*Whilst interviewing Zahid Saeed on 7/5/15 he stated that a family member, NFD, who had previously viewed the body of Sheku, was spreading information that the body was severely bruised and face almost unrecognisable. He also stated that the PIRC didn't appreciate what we were dealing with 'black man murdered by white police'. He further stated that there was 'likely to be repercussions' [sic]. He did not elaborate on this threat.*

This notes that these comments were made “whilst interviewing” Zahid Saeed, although his interview did not take place until 8 May 2015. When did Zahid Saeed make these comments? Why did you consider it necessary to record Mr Saeed’s comments in this way, rather than within your notebook or, if they were made during his interview, within his statement? What is the purpose of an Incident Message?

40. Within the minutes from a Police Scotland Community Impact and Reassurance Group meeting held on 8 May 2015 (PS10329), page 1, reference appears to be made to the details contained within the Incident Message you completed on 7 May 2015 (PIRC-03715) and notes that “*this intelligence was forwarded to MIT via PIRC at 1425hrs on the 8<sup>th</sup> of May*”. Did you provide this intelligence to Police Scotland? Why was this information provided to Police Scotland?
41. Following Mr Saeed’s reference to PIRC dealing with a “*black man murdered by white police*”, what, if any, consideration did you give to whether race could be a factor in the incident? If so, in what way? If not, why not? What, if any, discussions did you have with colleagues at PIRC in this regard? What, if anything, resulted from those discussions?

### **8 May 2015**

42. Investigator Victoria Karran took a statement from Robson Kolberg in your presence (PIRC-00016). When a statement is taken “in the presence of” a PIRC investigator, what is that investigator’s role within the interview? May that investigator ask questions of the witness?
43. During this interview, Mr Kolberg provided his mobile phone for it to be forensically examined. Within his statement, Mr Kolberg gives permission for the forensic examination of his mobile phone. When relying on the consent of the owner to carry out an examination of a mobile phone, how does PIRC ensure that the owner understands what they are permitting PIRC to do by providing their consent? How does PIRC ensure that the

examination of a mobile phone does not go beyond the level of examination to which the owner has consented?

44. On this day, you took a statement from Zahid Saeed (PIRC-00033). How different, if at all, was Mr Saeed's account of events within his interview to the account provided to you and Investigator Karran on 6 May 2015? Did you ask questions of Mr Saeed about the matters referenced in the Incident Message dated 7 May 2015 (PIRC-03715)? If not, why not?
45. What reference, if any, did Mr Saeed make during his interview to the seizure of the Saeed family home by Police Scotland on 3 May 2015? What reference, if any, did Mr Saeed make to his treatment by police officers at Kirkcaldy Police Office on 3 May 2015? During his interview, did Mr Saeed allege that he had been assaulted by police officers at Kirkcaldy Police Office on 3 May 2015?
46. Your first PIRC statement (PIRC-00329) identifies that you obtained a number of statements from witnesses during the investigation. How did you gain an understanding of the lines of questioning to be explored with particular witnesses? With whom did you discuss proposed lines of questioning prior to obtaining statements from witnesses? What preparation did you carry out prior to obtaining statements from witnesses?
47. Having obtained a statement, what process was followed to ensure that material information contained within the statement was shared with other members of the investigations team and incorporated into the lines of questioning to be explored with other witnesses? How were statements checked to ensure that all relevant lines of questioning had been explored with a witness?
48. In May 2015, what process did PIRC follow in preparing a typed witness statement following a witness interview? How did witnesses confirm that their statements were a "true and accurate record"? In 2015, how did PIRC ensure that typed witness statements accurately reflected the terms of the associated handwritten witness statements? How has this process changed, if at all?

#### **14 May 2015**

49. You took a statement from Danny Robinson (PIRC-00117). You were also present when DSI Brian Dodd took a statement from Sean Mullen (PIRC-00120). On 3 May 2015, Mr Mullen and Mr Robinson were travelling in a silver Vauxhall Astra which can be seen in the CCTV from Gallaghers Pub travelling down Hayfield Road before coming to a stop close to the roundabout around 07:20:32, shortly after the first police vehicle arrives at the scene (SBPI-00046). Mr Mullen and Mr Robinson's vehicle remains in the vicinity of Hayfield Road until it leaves the scene at around 07:22:06, around one minute after the restraint of Mr Bayoh commenced. Whilst Mr Mullen and Mr Robinson were present at the scene during the initial engagement between the police and Mr Bayoh, when PC Short was struck and Mr Bayoh was taken to the ground, and during part of the restraint of Mr Bayoh, their statements are relatively short, amounting to under a page and a half of substantive text for Mr Mullen and under two pages for Mr Robinson. Why were matters not explored in greater detail with these witnesses when they were eyewitnesses to significant aspects of the incident involving Mr Bayoh? Were there areas that you and Investigator Stewart were unable to cover in detail with these witnesses in their statements? If so, what were these areas and why could you not cover them in detail? What consideration, if any, was given to obtaining further statements from Mr Robinson and Mr Mullen to cover these, or other, areas in greater detail?
50. What steps, if any, were taken to compare Mr Mullen and Mr Robinson's accounts with the CCTV from Gallaghers Pub? If no such comparison took place, why not?



51. What steps, if any, were taken by PIRC to assess Mr Mullen and Mr Robinson's lines of sight from their vehicle's positions in the vicinity of Hayfield Road?
52. Within his statement (PIRC-00120), at page 2, Mr Mullen speaks to returning to Hayfield Road after dropping Mr Robinson at his home. What consideration, if any, was given to asking Mr Mullen to identify his vehicle within the CCTV from Gallaghers to confirm when he returned to the scene?
53. At the point that statements were obtained from Mr Mullen and Mr Robinson on 14 May 2015, were you aware that Mr Bayoh had allegedly stomped or stamped on PC Nicole Short? As they were at the scene when Mr Bayoh struck PC Short, what consideration, if any, was given to asking Mr Mullen and Mr Robinson questions about the alleged stomp?

#### **21 May 2015**

54. Your notebook (PIRC-04187), at page 6, identifies that you seized a number of officers' notebooks on this day. How did you go about this process? Were you content with the level of cooperation provided by Police Scotland in this regard? If not, why not?
55. What powers, if any, does PIRC have to compel officers to complete paperwork after an incident including, but not limited to, notebooks, use of force forms or CS/PAVA spray forms? How soon after a death in police custody would PIRC expect to receive notebooks, use of force forms or CS/PAVA spray forms from Police Scotland?

#### **26 May 2015**

56. You took a statement from Alan Finlayson, a paramedic involved in the response to the incident involving Mr Bayoh on 3 May 2015 (PIRC-00220). The statement was taken in the presence of DSI Dodd. Within Mr Finlayson's Inquiry statement (SBPI-00007), at paragraph 110, he states:

*In my PIRC interview things didn't start off very well. Technically we're not supposed to print off the PRF [Patient Report Form] because of data protection. Because David had done it PIRC were quite uppity with me. They said my colleague had done it so why couldn't I do it. I felt under duress. They'd come from Glasgow or wherever to come and see me and I'm saying to them I don't have the PRF and we're not supposed to have a copy of it. They were really quite snippy and quite arrogant about the whole thing. It really didn't start off well that meeting. There was a lot of bad feeling. I was under duress to provide evidence from a statement that technically I shouldn't even have had in my hand at that time. I don't think I was as helpful to them because of the way they spoke to me and what they were asking me to do. They should have went through appropriate channels to get the PRF. It should be recorded on secure channels.*

How would you respond to Mr Finlayson's characterisation of his interview with PIRC and the approach taken by you and DSI Dodd? Did Mr Finlayson express any unhappiness with the approach taken by you or DSI Dodd during this interview? Were you subsequently made aware of any criticism of PIRC's approach during this interview? If so, what was the nature of this criticism and how were you made so aware? What did you do in response?

57. Within a statement obtained from Kirstin Mullan (PIRC-00178), it is noted that on 19 May 2015 you and DSI Dodd obtained the Patient Report Form (PRF) relevant to the incident involving Mr Bayoh. Why was it necessary to request that Mr Finlayson print off the PRF during his interview on 26 May 2015 when the PRF was already held by PIRC?

58. Your notebook (PIRC-04187), at page 6, identifies that on this day you “*handed over letter from John Mitchell to Chief Constable at Randolphfield, Stirling*”. What did this letter relate to?

## **27 May 2015**

59. On 27 May and 25 June 2015, you took statements from James Hume, a friend of Mr Bayoh (PIRC-00231 and PIRC-00232). The statements were taken in the presence of DSI Dodd. Within Mr Hume’s Inquiry statement (SBPI-00021), at paragraphs 54 – 57, he states:

*54. They started asking when I'd last seen Shek and I told them I didn't see him on the weekend of his death, I saw him the week before. They asked if he was drinking, was he taking drugs, how much drugs did he take, how often did he take drugs and did he take steroids. A couple of times I said to the guy I'm not happy with this. They said they needed to build up a picture of the type of person Shek was. I said they were trying to build their own picture of how they wanted Shek to be. They were trying to lead the conversation and lead me on the type of person Shek was.*

*55. They also wanted to know if he was aggressive and if he got involved in fights. I just felt really uncomfortable. It was definitely leading questions and it felt like accusatory rather than fact-finding. It was like they had a picture built up and they were just confirming what they already thought with me.*

*56. They said to me they knew he took drugs. They asked where he got them from. They asked if Shek ever got drugs for me, or friends or other people. I didn't know why this was relevant. I think they were trying to get at the question "Did Shek sell drugs?".*

*57. After they left I was quite upset. It was like they were trying to smear his name. I answered their questions but I felt like I'd let him down, betrayed him a bit, because it was like I never got a chance to say what type of person Shek was. It built up a wee bit mistrust towards PIRC and the police just because of the way that went.*

How would you respond to Mr Hume’s characterisation of his interview with PIRC and the approach taken by you and DSI Dodd? Did Mr Hume express any unhappiness with the approach taken by you or DSI Dodd during this interview? Were you subsequently made aware of any criticism of PIRC’s approach during this interview? If so, what was the nature of this criticism and how were you made so aware? What did you do in response?

60. Within this or any other investigation, have you ever been made aware of any criticism of your approach to taking statements from witnesses? If so, what was the nature of that criticism? How were you made so aware? What was done in response to that criticism?

61. Within a Clue Action allocated to you and dated 22 June 2015 (PIRC-03169), it is noted that Mr Hume was to be questioned about the “*potential supply chain*” associated with Mr Bayoh’s use of alpha-PVP and MDMA. Why was PIRC seeking to identify where Mr Bayoh obtained his drugs as part of the investigation? Was this line of inquiry instructed by COPFS?

## **2 June 2015**

62. You took a statement from DC Andrew Mitchell (PIRC-00026). Within his statement (PIRC-00026), at pages 2 – 3, DC Mitchell refers to the seizure of Collette Bell’s home at Arran Crescent. Was DC Mitchell asked within his interview to clarify the legal basis upon which

this property was seized? If not, why not? What was your understanding of the legal basis upon which the property was seized?

63. Within the statement provided by Ade Johnson to PIRC on 13 May 2015 (PIRC-00106), on pages 2 and 3, Mr Johnson describes meeting with DC Mitchell and DC Wayne Parker on the afternoon of 3 May 2015. Mr Johnson describes being told by the officers that:

- (i) Mr Bayoh had been pronounced dead in the ambulance on the way to the hospital;
- (ii) They did not know how Mr Bayoh died;
- (iii) The police were looking for “two guys”; and
- (iv) There was a warrant out for the arrest of Mr Bayoh.

It does not appear that DC Mitchell was asked whether he or DC Parker provided this information to Mr and Mrs Johnson when he provided his statement to the PIRC. Why was DC Mitchell not asked about Ade Johnson’s recollection of events at that time?

64. On 12 June 2015, the terms of reference for PIRC’s investigation were expanded by COPFS (COPFS-04010(a)) to include:

*Allegations by the family that they were provided with misleading and erroneous information concerning the death of Mr Bayoh to family members and a concern as to why they were provided with that information.*

After PIRC’s terms of reference were so expanded, what consideration, if any, was given to taking a further statement from DC Mitchell in relation to information he and DC Parker passed to Mr Bayoh’s family on 3 May 2015? Why was no further statement taken from DC Mitchell in relation to these matters?

#### **4 June 2015**

65. You took a statement from Sergeant Scott Maxwell (PIRC-00266). In the process of this statement being taken from Sgt Maxwell, what, if any, contact did you have with your colleagues from PIRC who were taking statements from other officers on 4 June 2015 to allow the accounts received from the officers who attended Hayfield Road to be compared and contrasted for any gaps or inconsistencies? If you did have such contact with your colleagues, in what way did that influence the lines of questioning that were put to Sgt Maxwell when taking his statement?

66. Was Sgt Maxwell’s statement obtained in line with PIRC’s witness interview strategy (PIRC-04182)? If so, what involvement, if any, did you have in the preparation of the witness interview strategy? Was it standard practice for PIRC to obtain statements from witnesses using a document of this nature? Prior to Sgt Maxwell’s statement being taken, did you have any discussions with other PIRC staff in relation to the lines of questioning to be explored with Sgt Maxwell and/or the other officers that attended Hayfield Road? If so, what was discussed?

67. The questions contained within the witness interview strategy (PIRC-04182) largely focus on the “what”, “when”, “who” and “where” of the circumstances of the incident. Only two questions ask the officers “why” certain actions were taken – why use of force and CS/PAVA forms were not completed and why there are no entries in the officers’ notebooks in relation to the incident. When preparing to take the officers’ statements, was consideration given by PIRC to asking the officers why they took certain decisions or chose particular tactical options in responding to the incident involving Mr Bayoh? If not, why not?

68. The Police Service of Scotland (Conduct) Regulations 2014, within Schedule 1, identify that as part of the Standards of Professional Behaviour with which officers require to comply:

*Constables use force only to the extent that it is necessary, proportionate and reasonable in all the circumstances.*

How important is understanding why officers took certain decisions or chose particular tactical options to a determination as to whether or not a use of force was necessary, proportionate and reasonable in all the circumstances?

69. There are no questions relating to the impact that Mr Bayoh's race may or may not have had on the officers' response to the incident. What consideration, if any, was given to including questions within the witness interview strategy in this regard?
70. The minutes from PIRC's morning briefing on 3 June 2015 (PIRC-04156, page 40), with reference to an update that DSI Little provided, state:

*A generic interview plan has been completed by IO Sinclair. Everyone has to do their own individual reading for their specific officers to add to the generic plan.*

What material did investigators require to read in addition to the witness interview strategy when preparing to interview the officers? What material did you read before you obtained Sgt Maxwell's statement?

71. The minutes from PIRC's morning briefing on 3 June 2015 (PIRC-04156, page 40), identify that there would be a "*further meeting this afternoon to discuss tomorrow's interviews*". Did you have any discussions with other PIRC staff in relation to the lines of questioning to be explored with the officers? If so, what was discussed? With whom did you have those discussions?
72. On 2 June 2015, a statement was taken from DI Colin Robson by DSI Keith Harrower in your presence (PIRC-00223). Your first PIRC statement (PIRC-00329), at pages 4 – 5, identifies that during his interview DI Robson was shown a video clip taken from the CCTV from Gallagher's Pub. Was Sgt Maxwell asked to speak to the footage contained within the CCTV obtained from Gallagher's Pub during his interview? If not, why not?
73. A separate version of the witness interview strategy (COPFS-05955) contains Investigator Stuart Taylor's notes in relation to the interview of Sgt Maxwell. What was the purpose of Investigator Taylor taking these notes? Did you also take similar notes? If so, where can they be found? Were PIRC's investigators encouraged to add their own questions to the witness interview strategy prior to or during the interview? Were PIRC's investigators encouraged to ask "why" the officers took certain decisions or actions during the incident, despite questions in that regard not being explicitly set out within the witness interview strategy?
74. Following a death in custody or a death following police contact, was it common for officers to be re-interviewed by PIRC after they had already been interviewed by PIRC? After Sgt Maxwell's PIRC statement had been obtained (PIRC-00266), did you consider that there were any matters that required to be clarified with Sgt Maxwell? If so, what were these matters?
75. In the course of Sgt Maxwell's interview on 4 June 2015 (PIRC-00266, page 10), you received the document "*My Description of Events*", that Sgt Maxwell had prepared in the days following the incident (PIRC-00267). What, if any, comparison did PIRC carry out

between the accounts contained within Sgt Maxwell's PIRC statement and the document "My Description of Events" to identify areas of consistency and inconsistency? What, if any, involvement did you have in this process?

76. Did PIRC compare and contrast the statements received from the officers that attended Hayfield Road to identify areas of consistency and inconsistency? What involvement, if any, did you have in this process?
77. What consideration, if any, was given to taking further statements from the officers to question inconsistencies between their respective accounts? Why were further statements not taken from the officers to clarify inconsistencies between different witnesses' accounts?
78. After Sgt Maxwell provided his statement, PIRC's terms of reference were expanded by COPFS to look at whether there was inappropriate conferral between police officers and to investigate issues of race and conduct. What consideration, if any, was given to obtaining further statements from the officers that attended Hayfield Road to explore these areas with the officers? Why was it decided that further statements did not require to be obtained? Whose responsibility was it to decide if further statements required to be obtained from any of PIRC's witnesses?
79. Had you dealt with a situation prior to May 2015 in which officers did not provide statements for several weeks after an incident? What was the outcome? Have you dealt with such a situation since May 2015? What was the outcome?

#### **8 June 2015**

80. The minutes from PIRC's morning briefing on 26 June 2015 (PIRC-04156, page 44), state:

*IO Taylor provided an update on ARL:*

*- More or less completed and IO Stewart has corroborated it*

What work in relation to Automatic Resource Location (ARL) data did you require to corroborate? How did you go about this process? How did PIRC use ARL data to plot the officers' movements on 3 May 2015? What involvement did you have in this process? To what extent was PIRC able to use the ARL data obtained during the investigation to corroborate or challenge the accounts of the officers within their statements?

81. How was investigators' work corroborated and checked throughout the investigation to ensure that it was accurate and complete? Who was responsible for checking investigators work?

#### **11 June 2015**

82. You took a statement from DS Graeme Dursley (PIRC-00137). Within DS Dursley's statement, he speaks to the delivery of three death messages to members of Mr Bayoh's family on 3 May 2015. With reference to the death message provided to Collette Bell, DS Dursley states (PIRC-00137, page 2):

*When Collette Bell was within Kirkcaldy Police Office, I spoke to DI Colin Robson, and whilst I did think it was Sheku Bayoh who was dead, at that time there was no formal identification so between me and Colin Robson we delegated Wayne Parker to tell Collette Bell, words to the effect that, "a black male had been found dead and we suspected that it may be her partner". We based this on the fact that there was a black*

*male dead and that a gold coloured mobile phone was found at the locus. Collette Bell had previously that morning told DC Wayne Parker that Sheku had an unusual gold coloured mobile phone. The wording of the death message is not recorded anywhere in any format.*

Mr Bayoh came into contact with police officers on Hayfield Road, before later being pronounced life extinct at 0904 hours in Victoria Hospital. What, if any, consideration was given to questioning DS Dursley further about DC Parker being delegated to tell Collette Bell: “*words to the effect that, ‘a black male had been found dead...’*”? Did you consider that this form of words had the potential to be misleading? If so, what did you do in response to this?

83. PIRC’s terms of reference were expanded on 12 June 2015 to cover allegations that the family were provided with misleading and erroneous information concerning Mr Bayoh’s death (COPFS-04010(a)). After PIRC’s terms of reference were so expanded, what consideration, if any, was given to taking an additional statement from DS Dursley to explore further his involvement in the provision of information to members of Mr Bayoh’s family on 3 May 2015 and to consider his evidence alongside that of members of Mr Bayoh’s family and the officers involved in delivery of the death messages?

#### **16 June 2015**

84. Two Clue Actions identify that you were involved in tracing the owners of vehicles during the investigation (PIRC-03144 and PIRC-03165). What was the nature of your work in this regard? How did you go about this task? Were you successful in identifying all vehicles relevant to the investigation? If not, why not, and what impact did this have on the investigation?

85. Within one Clue Action (PIRC-03165), it is identified that one vehicle identified:

*Appears...unconnected to the PIRC investigation, with the possibility that the registration number of the vehicle may have been incorrectly noted by a Police Scotland officer on 03/05/2015.*

What impact, if any, did this have on PIRC’s investigation? What, if any, further steps were taken to identify the vehicle and owner in question?

#### **24 June 2015**

86. On 24 June 2015, you were present when DSI Dodd took a statement from Chief Superintendent Garry McEwan (PIRC-00181). A PIRC action (PIRC-02938) refers to Chief Supt McEwan’s operational statement (PS03136):

*Chief Supt McEwan refers to PIRC in his statement.  
Adverse comments to be addressed.*

At the point that Chief Supt McEwan’s PIRC statement was obtained, were you aware of PIRC considering comments made, or concerns expressed, within Chief Supt McEwan’s operational statement? If so, to which “adverse comments” within Chief Supt McEwan’s statement did this action refer?

87. The Action is marked as “complete” on 26 June 2015, two days after a statement was obtained from Chief Supt McEwan (PIRC-00181). No reference is made with this statement to any “adverse comments” previously made by Chief Supt McEwan within his operational statement. What consideration, if any, was given to discussing Chief Supt

McEwan's adverse comments with him when he provided his PIRC statement on 24 June 2015? Why were these concerns not discussed with Chief Supt McEwan?

88. Chief Supt McEwan met with Mr Bayoh's family on 3 May 2015. A statement was obtained from Chief Supt McEwan after PIRC's terms of reference were expanded on 12 June 2015 to cover allegations that the family were provided with misleading and erroneous information concerning Mr Bayoh's death (COPFS-04010(a)). During his interview, what, if any, questions were put to Chief Supt McEwan in relation to the information that he provided to Mr Bayoh's family on 3 May 2015? What, if any, questions were put to Chief Supt McEwan about the family's allegations that on 3 May 2015 they had been provided with misleading and erroneous information concerning Mr Bayoh's death? If no such questions were put to Chief Supt McEwan, why not? What consideration, if any, was given to taking a further statement from Chief Supt McEwan to cover these areas?
89. A Clue Action dated 20 May 2015 and allocated to DSI Dodd with the subject "Re-interview Chief Supt Garry MCEWAN" (PIRC-02946), at page 1, states:

*Witnesses Adeymi JOHNSON S069, Kadijatu JOHNSON S174 and Lorraine BELL (Mother of Collette BELL) S179, state that when they met with CH SUPT MCEWAN on the evening of Sunday 3 May 2015, he referred to the deceased being in possession of a "Machete". Can CH SUPT MCEWAN confirm this version of events.*

...

*Prior to interview full briefing on content of interview will be provided by Incident Room/DSI Little/SI McSporran.*

90. At the point that Chief Supt McEwan's PIRC statement was obtained, what awareness, if any, did you have that PIRC was considering Chief Supt McEwan's alleged references to Mr Bayoh being in possession of a machete?
91. There is no reference to "machete" within Chief Supt Garry McEwan's PIRC statement (PIRC-00181) and it does not appear that Chief Supt McEwan was asked questions in this regard. Why was Chief Supt McEwan not asked about this point and asked to confirm his version of events? What, if any, briefing did you receive before the statement was obtained from Chief Supt McEwan? From whom did you receive the briefing? What was discussed?
92. What involvement, if any, did you have in the analysis of evidence in relation to whether the family were provided with misleading and erroneous information concerning Mr Bayoh's death?

### **1 July 2015**

93. Within your first PIRC statement (PIRC-00329), at page 7, you note that you corroborated the "transcription of Police Scotland Airwave traffic" produced by Investigator Stuart Taylor. Did you corroborate the document titled "Combined Airwave Call Activity Data (Kirkcaldy 01) and Transcription" (PIRC-01396) and/or the "Transcript of Police Scotland Airwave Talkgroup 'Kirkcaldy 1' on 3<sup>rd</sup> May 2015 between 0600 and 0800 GMT" (PIRC-01399)?
94. How did you corroborate the transcription produced by Investigator Taylor? What data and information did you use? How did you attribute the Airwave transmissions to particular officers within the transcription? What, if any, changes did you make to the transcription initially produced by Investigator Taylor?

95. What steps, if any, were taken to compare and contrast the officers' accounts within their statements with the Airwave transcription you corroborated, both to review the accuracy of the Airwave transcripts themselves and to corroborate or challenge the officers' accounts of the incident? What involvement did you have in this process? Who within the investigations team was responsible for instructing analysis of this nature?
96. The minutes from PIRC's morning briefing on 2 June 2015 (PIRC-04156, page 37), with reference to an update that Investigator Taylor provided regarding the completion of Airwave transcripts, state:
- *A few anomalies, but working through them.*
  - *A draft transcript document is available for the interviews, however it has not been corroborated, so cannot be used as a production yet.*

What anomalies were identified in relation to the Airwave transcripts? How were these anomalies clarified or resolved? How was the draft Airwave transcript used by investigators in the officers' interviews?

97. Later in the investigation, within a letter dated 27 April 2017 from DSI Little to Alasdair MacLeod, COPFS (PIRC-02069(a)), it is identified that within the Airwave transcripts (PIRC-01396, page 5 and PIRC-01399, page 6) the transmission "*Officer down. PC Short, male*" was wrongfully attributed to PC Alan Smith and should instead have been attributed to PC Alan Paton. Were you informed at this time that COPFS had identified this error? How did this error occur? What impact did this have on PIRC's investigation? Following the identification of this error, what steps, if any, did PIRC take to confirm that the other transmissions noted within the transcripts were accurately transcribed and attributed to the correct officers?

#### **9 October 2015**

98. A statement was taken from Inspector Steven Stewart by Maurice Rhodes, in your presence (PIRC-00395). Inspector Stewart was the duty officer within the ACR at the time of the incident involving Mr Bayoh. Why was a statement obtained from Inspector Stewart at this point in the investigation? What consideration, if any, was given to obtaining a statement from Inspector Stewart earlier in the investigation?

#### **10 December 2015**

99. On this day, you sent an email to Mr Kevin Nelson (PIRC-02543). This email was in response to an email Mr Nelson sent to PIRC on 8 December 2015 (PIRC-02542), in which he stated:

*I was approached today by two men who claim to be lawyers representing the Police Union. I recognise one of the men as he has asked me before if I would talk to him but at that point I declined. He has also tried to make contact with my neighbour at [REDACTED] on several occasions.*

Within your email dated 10 December 2015, you stated in response:

*With regards to your concerns re representatives from the "Police Union" making an approach to you, I am aware that PWB Solicitors, the firm of solicitors representing the Police Officers have been in your area conducting their own enquiries, which they are entitled to do.*



What discussions, if any, were there within the investigations team regarding the investigation carried out by PBW Law? What, if any, impact did PBW Law's investigation have on PIRC's investigation?

100. What, if any, steps did PIRC take to dissuade PBW Law from continuing with its investigation? Could PIRC have taken any such steps? If not, why not?

### **Investigation overall**

101. On 10 August 2016, PIRC submitted its report to COPFS. Did you have any involvement in writing the report? If so, what was your involvement?

102. Were you content with the support and direction that you received from your colleagues at PIRC, including colleagues in positions senior to you, throughout the investigation? If not, why not?

103. What roles did Irene Scullion (Head of Investigations), John Mitchell (Director of Investigations) and Kate Frame (Commissioner) play in the management of the investigation? What level of oversight did they have over the investigation? How was that oversight maintained?

104. Who at PIRC do you consider was ultimately in charge of the investigation following the incident involving Mr Bayoh? Please explain why you hold this view.

105. Did you consider that the police officers with whom you had contact during the investigation had an awareness and understanding of PIRC as an organisation and PIRC's role within the investigation? If not, what, if any, steps did you take to address this? What impact, if any, did the officers' awareness, or lack thereof, of PIRC's role have on the investigation? Following the establishment of PIRC on 1 April 2013, and prior to the incident on 3 May 2015, what steps had been taken to raise awareness and understanding amongst police officers of PIRC as an organisation and PIRC's role within an investigation?

106. Were you content with the support that you received from Police Scotland in relation to PIRC's investigation? If not, why not? What impact did this have on PIRC's investigation?

107. Were you aware at any point of any concerns expressed by staff or officers from Police Scotland about PIRC's management of the investigation? If so, how were you made so aware, and what did you understand those concerns to be? Did you share knowledge of these concerns with others at PIRC? What did you do, if anything, to address those concerns?

108. Did you consider that you and your colleagues, as PIRC investigators, had sufficient powers to progress the investigation? If not, why not? What additional powers would you and your colleagues have benefited from to progress the investigation?

109. Beyond the points covered above, what further involvement, if any, did you have in the investigation?

### **Equality and diversity**

110. How diverse was PIRC as an organisation in 2015? How has the level of diversity at PIRC changed between May 2015 and now, if at all?

111. Who was responsible for diversity and inclusion matters at PIRC in 2015? Who is responsible for such matters now?

112. Has any PIRC policy or practice relating to equality and diversity changed following the Bayoh investigation? If so, which policy or practice has changed and in what way?

### **Race**

113. Was anything you have stated above done or not done because of Mr Bayoh's race?

114. Prior to 3 May 2015, what experience, if any, did you have of investigations of deaths in custody or deaths following police contact in which the deceased was someone from an ethnic minority? Since 3 May 2015, with the exception of the investigation following the death of Mr Bayoh, what experience do you have such investigations?

115. Prior to 3 May 2015, what experience, if any, did you have in deaths in custody or deaths following police contact in which race was a factor to investigate? As at 3 May 2015, had you ever acted in a PIRC investigation in which the issue of race was within your terms of instruction?

116. Prior to 3 May 2015, had PIRC ever considered the issue of race within an investigation? If so, in what way was race a consideration? With the exception of the investigation following the death of Mr Bayoh, has PIRC considered the issue of race within an investigation since 3 May 2015? If so, in what way?

117. When PIRC's terms of reference were expanded by COPFS to include issues of race, what involvement, if any, did you have in this aspect of PIRC's investigation?

118. Prior to the instruction from COPFS to investigate issues of race, had you or anyone at PIRC given consideration to race being a factor in the incident? If so, in what way? If not, why not?

119. Is the race or ethnicity of a deceased person automatically considered by PIRC as part of an investigation following a death in custody or a death following police contact? If so, in what way? If not, is the deceased's race or ethnicity only considered when directed by COPFS?

120. As at 3 May 2015, did PIRC record the race or ethnicity of the deceased person who was the subject of an investigation following a death in police custody or death following police contact? If so, how was such information recorded? If this information was not recorded, why was this? Have PIRC's procedures for recording a deceased person's race or ethnicity changed since 3 May 2015? If so, in what way?

121. What training had you completed by 3 May 2015 in relation to equality and diversity issues, or in relation to unconscious bias? What did this training involve? Which aspects of this training, if any, were applicable to your role? Would you have benefited from additional training in this regard? If so, in what way?

122. What areas were covered within the "Equalities" training that you received in October 2014 (PIRC-04577)? How much of this training was focused on race? Who provided this training and how was it delivered? In what ways, if at all, did this training assist you within your role as an investigator at PIRC? Have you received similar training since 2014? If so, please provide details.

123. The iHasco online training that you completed in April 2014 (PIRC-04577) is noted to have included a module covering “unconscious bias for employees”. What areas were covered in this training? How much of this training was focused on race? In what ways, if at all, did this training assist you within your role as an investigator at PIRC? Have you received similar training since 2014? If so, please provide details.
124. During the Bayoh investigation, did you receive any training in relation to investigating an allegation that race had been a factor in an incident? Would you have benefited from additional training in this regard? If so, in what way?
125. What guidance or reference materials in relation to race were you aware of being available to you on 3 May 2015, had you wished to consult these? Would you have benefited from additional materials being available to you? If so, in what way?
126. What guidance, if any, do you recall receiving from senior members of staff at PIRC in relation to PIRC’s investigation of issues of race? From whom did you receive this guidance?
127. Do you think you and PIRC were sufficiently equipped to investigate issues of race relating to deaths in police custody or deaths following police contact on 3 May 2015? Please confirm why this is your view.
128. With particular reference to the issue of race, is there anything you have stated above that, knowing what you know now, you would have done differently?

### **Record keeping**

129. In addition to your notebook (PIRC-04187), what, if any, other notes did you take during the investigation? Were the notes within your notebook completed contemporaneously? For what purpose do you use your notebook within your role? What were PIRC’s requirements for you to take contemporaneous notes of your actions and decision making during an investigation?

### **Miscellaneous**

130. Knowing what you know now, is there anything you would have done differently within this investigation?
131. Knowing what you know now, is there anything you feel PIRC as an organisation should have done differently within this investigation?
132. Since PIRC’s investigation was completed what, if anything, have you discussed with your colleagues at PIRC in relation to Mr Bayoh’s death and the subsequent investigation? Do you think your recollection has been affected at all by these discussions?
133. What, if anything, have you seen or read about Mr Bayoh’s death, the subsequent investigation and the Inquiry within the media? Do you think your recollection has been affected at all by what you have read in the media or have seen in the Inquiry evidence? If so, in what way?
134. You completed two PIRC statements covering your involvement in the investigation (PIRC-00329 and PIRC-00330). Please confirm that the content of these statements is true and accurate. Was your recollection of events better when you completed your statements than it is now? Should there be any discrepancy between the content of your PIRC statement and this statement to the Inquiry, which account should be preferred?

135. The Inquiry's Terms of Reference are contained within Annex B. If there is anything further that is relevant to the Terms of Reference which you are aware of, but you have not included in your answers to the above questions, please provide detail as to this.

136. Please include the following wording 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."

## ANNEX B

### Public Inquiry into the Death of Sheku Bayoh

#### Terms of reference

The aim of this Inquiry is twofold: firstly, the Inquiry will establish the circumstances surrounding the death of Sheku Bayoh in police custody on 3 May 2015 and make recommendations to prevent deaths in similar circumstances, as would have been required under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.

Secondly, the Inquiry will assess and establish aspects of the case that could not be captured, or fully captured through the FAI process, namely (a) the post incident management process and subsequent investigation and make any recommendations for the future in relation to these; and (b) 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 remit of the Inquiry is accordingly:

- to establish the circumstances of the death of Sheku Bayoh, including the cause or causes of the death, any precautions which could reasonably have been taken and, had they been taken might realistically have resulted in the death being avoided, any defects in any operating models, procedures and training or other system of working which contributed to the death and any other factors which are relevant to the circumstances of the death;
- to make recommendations, if any, covering the taking of reasonable precautions, improvements to or introduction of any operating models, procedures and training, or other system of working, and the taking of any other steps which might realistically prevent other deaths in similar circumstances;
- to examine the post-incident management process and the investigation up to, but not including, the making by the Lord Advocate of the prosecutorial decision communicated to the family of Sheku Bayoh on 3 October 2018 (and the Victims' Right to Review process that was undertaken by the Crown Counsel in 2019), including: (i) the effectiveness of procedures for gathering and analysing information, (ii) the securing and preserving of evidence, (iii) the roles and responsibilities of those involved, (iv) liaison with the family of the deceased and (v) compliance with any relevant Convention rights; and make recommendations, if any, for the future in respect of these matters;
- 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; and
- to report to the Scottish Ministers on the above matters and to make recommendations, as soon as reasonably practicable.