

## ANNEX

### COPFS PIM

#### AREAS FOR WITNESS STATEMENT

#### MR GRAHAM SHIELDS

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

Graham [REDACTED] Shields  
DOB: [REDACTED] 1971

Crown Office and Procurator Fiscal Service  
25 Chambers Street  
Edinburgh  
EH1 1LA

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

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

#### Role

1. What was your position in COPFS during your involvement in COPFS' post incident management and investigation into the death of Mr Sheku Bayoh ("the Investigation")? How long had you been in this position prior to the date you became involved?

I joined COPFS in April 2018 in the position of Head of Strategic Communication and Engagement. From joining the organisation I became involved in providing communication and engagement advice across a broad range of work including the investigation into the death of Mr Bayoh.

2. What were your duties and responsibilities in this position? What were the circumstances of you being involved in the Investigation?

My duties and responsibilities were to provide the Law Officers and COPFS officials advice on communication and engagement. My involvement was in drafting statements and media responses, seeking approval for those statements from senior officials and Law Officers, and then issuing the approved statements to media on behalf of COPFS. I also provided advice on engagement matters such as meetings.

- 2 Were you involved in any discussions relating to the Scottish Police Federation or their representatives' media engagement, for example press releases? Were

you aware of what COPFS' position was on this media engagement by the SPF or their representatives?

I was not involved in discussions about the Scottish Police Federation or their representatives' media engagement. I had no awareness of a COPFS position on that subject.

Family liaison

3 What involvement, if any, did you have in dealing directly with Mr Bayoh's family and their solicitor during the course of your involvement in the Investigation?

I had no direct dealings with Mr Bayoh's family or their solicitor.

4 What involvement did you have in advising others in COPFS who liaised with Mr Bayoh's family and their solicitor?

I gave advice to senior officials and Law Officers on the provision of information to Mr Bayoh's family and their solicitor. I was involved in conversations about the planning for a meeting and preparation of responses to media questions around that event.

5 What was your strategy or approach in liaising with Mr Bayoh's family and their solicitor or advising your colleagues of how to liaise with Mr Bayoh's family?

In advising on liaising with Mr Bayoh's family my approach was to encourage respect, compassion and propriety at all times. It is the approach of COPFS that those directly affected by a development in an investigation, for example as victims or next of kin, should be informed of those developments directly and before the public or media.

6 What was your understanding of the tenor of the relationship between Mr Bayoh's family and COPFS? Did this relationship change at all over the course of your involvement in the Investigation?

Before the intimation of the initial decision not to prosecute I had little personal experience of the tenor of the relationship between Mr Bayoh's family and COPFS. I had some awareness of the family from seeing media coverage.

Following the initial decision not to prosecute I was aware that the family were very unhappy with the decision. They had also been very unhappy with media reporting which indicated that the Lord Advocate was close to making a decision, and that there was not going to be a prosecution.

7 [REDACTED]

[REDACTED]

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Mail on Sunday article dated 23 September 2018

- 8 What involvement did you have in media management following the publication of the decision not to prosecute any of the officers as reported in the Mail on Sunday on 23 September 2018?<sup>1</sup>

I was not working on the Friday and Monday around the Sunday that news story was published. I know that the Media Relations team gave the approved COPFS comment to news outlets who asked for confirmation if the Mail on Sunday story was correct. The line was that there would be a meeting with the family, and that there was no comment at that time. We held that line until after the meeting.

- 9 When did you first become aware that the decision not to prosecute had been leaked?

I became aware that the Mail on Sunday (MoS) planned to do a story on Friday 21 September. I was not working that day. Contact from MoS to COPFS was made requesting a comment via a colleague within the Media Relations team but email traffic went to the shared inbox. I routinely keep an eye on the shared mailbox on days off. When I saw the media query from the MoS, I emailed advice to officials that we should alert the Bayoh family's legal representative straight away to allow him to inform the family that we were aware of this media interest and to help them prepare for potential news coverage.

- 10 What was your involvement in investigating whether a source within COPFS leaked the decision not to prosecute to the Mail on Sunday?

None

- 11 In your email to Ms Miller dated 27 September 2018 at 16:03<sup>2</sup> you state:

*"Following FMQs today I gave the LA further reassurance that we should not be drawn in to any dialogue, on or off the record, with anyone about the speculative media coverage aka 'the leak'." What is meant by "speculative media coverage"? Does this mean there was no "well-placed source within the justice system"<sup>3</sup> as the Mail on Sunday had reported? Are you familiar with any other instances where there has been speculative media coverage? Please confirm if your position is that the Mail on Sunday were fabricating the source and the quote in the following line in their article: "The source said: 'The decision has not yet been formalised, but the Lord Advocate is now confident there will be no criminal proceedings against the police officers involved'".<sup>4</sup>*

I had discussed the story with colleagues in Crown Office. Among possible explanations for the basis of the story that we discussed were that it could be a guess, an assumption, or the adding two plus two to make five. Each of those possibilities would make 'speculative' a reasonable description. I have no knowledge on the existence or otherwise of a source claimed by the Mail on Sunday (MoS) or the possible identity of such a source. I do not believe that the MoS would fabricate a story

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<sup>1</sup> PS18106

<sup>2</sup> COPFS-00678

<sup>3</sup> PS18106 at page 1

<sup>4</sup> PS18106 at page 2

in its entirety, but as indicated above there were alternative explanations to how they arrived at a publishable story which could not be ruled out and would not involve a COPFS leak. I was using the phrase out of an unwillingness to concede that there had been a leak from COPFS, and to reflect one of the possible explanations that was being discussed in Crown Office.

Were you certain by 27 September 2018 that there was not a leak from within COPFS of the decision not to prosecute? If so, on what basis?

When the media query came in from the MoS on Friday 21 September I had no suspicion of a leak from within COPFS of a decision not to prosecute. As far as I was aware no such decision had been confirmed and I could not see an advantage for anyone in COPFS revealing in definite terms what a decision would be. The phrasing of the request for comment did not make me think MoS had information from a COPFS source.

When I then saw the published article, I still had no reason to suspect that there was a leak from COPFS.

12 In Ms Miller's email to the Lord Advocate dated 2 October 2018<sup>5</sup> she advises:

*"In terms of the focus on the "leak", I think that we should push back quite hard on that. I think that there has to be a recognition in the meeting that we have had discussion with other parts of government for the purpose of paving the way for planning for every eventuality, including the holding of a public inquiry, and that while you have asked for certain work to be carried out internally for reassurance in terms of the potential for inappropriate information sharing, we should be careful not to characterise it as a leak or an investigation and if there is the opportunity then we should confirm that the feedback from the media is that they are aware that the information did not come from Crown office or Crown officials."*

Is this an accurate account of the position at that time? Did you discuss the feedback from the media with Ms Miller? Was any consideration given to explaining this position to the family? Do you know which "other parts of government" knew about the decision not to prosecute prior to the outcome being leaked/the family being advised?

I have no reason to think this is not accurate. I remember discussing with Ms Miller that COPFS is not viewed as a 'leaky' organisation among the media, that the only media outlet who knew for sure the provenance of the story was the MoS, and that it would be my impression that the rest of the media did not think it would have originated from within COPFS. The media know COPFS is responsible for making a large number of important and potentially newsworthy decisions on a daily basis. These are never shared inappropriately with the media.

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<sup>5</sup> COPFS-04140

This was very shortly before the meeting with the family. There was discussion of how our view of the MoS article should be conveyed to the family. The points I felt that may be made were: that the Crown was disappointed that the story had been published; that the Crown was not the source and had not briefed on the subject; and that, while we did not know the origins of the story, discussions to pave the way for eventualities had been had with Scottish Government.

I do not know which parts of government were involved in those discussions.

13 In your emails to the Press Association<sup>6</sup> and the National<sup>7</sup> dated 3 October 2018 you include the following media line:

*“The Crown has conducted this investigation with professionalism, integrity and respect. It is committed to ensuring that the facts and circumstances surrounding the death of Sheku Bayoh are fully aired in an appropriate legal forum and, to that end, it has discussed possible next steps with a small number of colleagues in the justice system.”*

What is the purpose of mentioning discussions with colleagues in the justice system?

The line was drafted to reflect the COPFS position as I understood it to be. The line was then approved by officials and Law Officers for issue.

14 Was an apology to the family considered in any of your discussions following the publication of the Mail on Sunday article?

I have no recollection of a discussion of an apology, but I would have considered if that should be done to make sure all bases had been covered. But ultimately, we were sure that the MoS story had not arisen because of any inappropriate actions on the part of COPFS and therefore a meaningful apology did not seem able to be made.

### Race

15 Insofar as not already covered, to what extent, if any, was Mr Bayoh’s race a factor in any of your decisions and actions in the Investigation?

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Mr Bayoh’s race was not a factor in any of my decisions or actions.

17 Prior to your involvement in the Investigation, in your experience, did COPFS routinely consider race in any way when managing the media following a death in custody or death during or following police contact? Has that position changed between the time you were involved in the Investigation and now?

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<sup>6</sup> COPFS-00737

<sup>7</sup> COPFS-00736

I was not aware of race routinely being considered in engaging with the media following a death in custody. COPFS is necessarily limited in the communications it shares with media around its deaths investigations. The information we issue only confirms outline of the circumstances – sex, age, general address of where person died or where body found. No other details are provided about the deceased person. This has been a consistent approach and is unchanged.

### Training

18 At the time of your involvement in the Investigation, what training had you completed that was relevant for your role in the Investigation? Please provide details of the type of training and explain what you can recall from the session.

As indicated, my involvement was to issue media lines and offer communications and engagement advice. Before joining COPFS I had worked as a journalist for over 20 years including in senior roles. In that time had received a wide range of editorial and management training. Among the management techniques I had been taught was preparation for high-value meetings. I recall being told that having a structure and script could be valuable in ensuring that messages were conveyed accurately and sensitively.

19 Insofar as not already covered, what training had you completed by or during the time you were involved in the Investigation in relation to equality and diversity issues? Which aspects of this training, if any, were applicable to your role?

In May 2018 and as part of by COPFS induction, I completed a full day training course entitled "Valuing and managing difference". The training covered equality and diversity issues including race, mental health and disability awareness, and unconscious bias. I think all aspects of this training would be applicable to any role.

20 What guidance or reference materials in relation to race were you aware of being available to you in the time you were involved in the Investigation? Over the course of your involvement in the Investigation, did you make use of any of these materials?

I was aware that COPFS staff have a wide range of training materials relating to diversity, equality and inclusion available as online Civil Service Learning. I had done the training as part of my induction in May and did not refer to it during the period you ask.

21 What, if any, training do you consider would have assisted you in your involvement in the Investigation? This may be training you have carried out since the Investigation, training you are aware of but have not completed or training that is not, as far as you're aware, provided by COPFS.

I am not aware of any training that I consider would have assisted me in my work in relation to this investigation.

### Records

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

I am not required to keep notes or a record of my work. When there is a public statement made, it receives official or ministerial approval in an email chain which forms the record of that action.

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

Email chains would be my main reference point for any case or issue rather than separate records. As far as I am aware these are all retained and archived by COPFS, but the policy around that is an area that others in COPFS would be better placed to explain.

### Miscellaneous

24 At what stage in the Investigation, if at all, were you aware of the possibility that a public inquiry would be commissioned to examine Sheku Bayoh's death and the Investigation? Was anything done or not done in light of this?

In the final stages of the initial decision process on prosecution I became aware that, should there be a decision of no prosecution, and if that was upheld in a possible review, that there may be a public inquiry. The creation of the public inquiry would be a matter for Scottish Ministers, with input from the Lord Advocate, and as such it would not be a COPFS announcement, and I had no actions to take.

25 Insofar as not already covered, to what extent was your involvement, decisions and actions in the Investigation consistent with normal practice? If there were any deviations from normal practice, please explain your reasoning. In your view was race a factor in any departures from normal practice you have identified?

As far as I am aware my involvement, decisions and actions were wholly consistent with normal practices, or my understanding of them at that time.

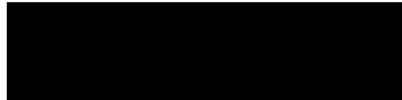
26 Insofar as not already covered, what significant difficulties or challenges did you encounter during your involvement in the Investigation? Would any changes to practice or procedure would have assisted you in overcoming these difficulties or challenges? To what extent were these difficulties or challenges normal or expected in your role? To what extent was race a factor in these difficulties or challenges?

I did not encounter significant difficulties or challenges that were unique to this case in the processes which needed to be applied in communication and engagement. The subject matter of media requests to COPFS are often tragic and very complicated. That is due to the nature of the work of the organisation in prosecuting crime and investigating deaths. However, the practices and processes used in formulating media



responses are well established and understood and I do not think that race is ever a factor.

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.



Witness signature

September 8, 2023 | 10:43 AM BST

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Date