

Assistant Solicitor to the Inquiry

[REDACTED]

E: [REDACTED]

The logo for the Sheku Bayoh Inquiry, featuring the words "SHEKU BAYOH INQUIRY" in white, bold, sans-serif capital letters on a dark purple rectangular background.

Ms Michelle Macleod

By email only: [REDACTED]

5 April 2024

Dear Ms Macleod

Rule 8 Request

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

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 Thursday 25 April 2024**. Please provide your written statement by email to [REDACTED]. If you require further time to complete your written statement, please contact the Inquiry as soon as possible 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 to this letter contains a copy of the Inquiry's Terms of Reference.

Should you decide to take independent legal advice prior to providing your written statement, 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 set out how section 22 applies.

Your statement may be disclosed to the Core Participants in the Inquiry and may be published on the Inquiry's website.

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.

If you have any questions regarding this letter or the content of your written statement, please contact the legal team by email at [REDACTED].

Yours sincerely

[REDACTED]
Assistant Solicitor

ANNEX A

AREAS FOR WITNESS STATEMENT

MICHELLE MACLEOD

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

Michelle Macleod

██████ 1964

c/o Police Investigations and Review Commissioner

Bothwell House

Caird Park

Hamilton ML3 0QA

Professional background

- 1. Please briefly summarise your professional experience prior to your current role.**

Crown Office and the Procurator Fiscal Office

I joined the Crown Office and Procurator Fiscal Service as a trainee in 1992. Upon qualifying, I remained in the Service as a Procurator Fiscal Depute. In 2003, I was appointed to the Senior Civil Service as Assistant Procurator Fiscal at Edinburgh. Following my appointment as District Procurator Fiscal at Linlithgow and interim District Procurator Fiscal at Edinburgh, I was promoted to the position of Area Procurator Fiscal for Central. I subsequently held the post of Head of Policy where I developed departmental policy and practice; provided support and advice to Law Officers and senior officials on criminal justice policy matters and finally I held the post of Procurator Fiscal High Court East where I was responsible for the investigation, prosecution, and management of all High Court cases in the East of Scotland.

Procurator Fiscal, High Court, East Federation 2012 - 2013

I was responsible for the investigation, prosecution, and management of all High Court cases in the East of Scotland.

Head of Policy Division. 2010 - 2012

I led and developed departmental policy and practice; provided support and advice to Law Officers and senior officials on criminal justice policy matters including appearances before Parliamentary Committees.

Area Procurator Fiscal, Central - 2010

I was responsible for delivering effective investigation and prosecution in respect of serious and organised crime; appropriate use of court proceedings and direct measures; delivering effective investigation of all sudden, accidental, or unexplained deaths; developing community engagement, ensuring diversity and the investigation of complaints against the police.

Interim District Procurator Fiscal for Edinburgh

I had responsibility for the operational effectiveness of the Edinburgh Procurator

Fiscal Office.

Procurator Fiscal, Linlithgow

I was responsible for all prosecutions and deaths investigations in West Lothian.

Assistant Procurator Fiscal, Edinburgh Procurator Fiscal Office (Senior Civil Service). I had responsibility for the operational effectiveness of the Edinburgh Procurator Fiscal Office.

Trainee solicitor, Procurator Fiscal, Depute Principal Procurator Fiscal Depute, Legal support to the Crown Agent and Chief Executive of COPFS. (1992- 2003)

Her Majesty's Chief Inspector for the Inspectorate of Prosecution in Scotland (August 2013- 2019): I had the overall responsibility for the inspection of key areas of the operation of COPFS and to make recommendations to deliver clear and measurable improvements regarding service delivery. The aim was to make COPFS more accountable thus enhancing public confidence. I published a number of thematic reports on various subjects including, the investigation and prosecution of sexual crimes, organ retention and fatal accident inquiries.

2. Please detail when you were appointed Commissioner of PIRC and provide any context as to this time period.

I was appointed Commissioner on 17 August 2019. On taking up post, I required to familiarise myself with a new organisation, its remit, and staff. In that period, there were ongoing civil proceedings which had been raised against the organisation in respect of a historic matter from before my tenure. This was the first action of its kind the organisation had faced and it took up much of my time in the early stages of being in post.

The Angiolini preliminary report – which was published in June 2019 - was critical of various aspects of the organisation. It referred to PIRC being overly bureaucratic with excessive layers of quality assurance which caused delays and disempowered staff. It proposed that PIRC would benefit from a more outcome focused approach and more outward looking engagement with key partners. The report was particularly critical of the relationships between key stakeholders, which was characterised by an absence of constructive engagement. The report had a significant impact on the morale of PIRC staff and it was, therefore, imperative to respond positively to the criticisms expressed and assist with requests for evidence from Lady Angiolini and her team.

Very early into my tenure in office, the Covid-19 Pandemic took hold, and this had a significant impact upon the work of the organisation and upon our strategic priorities.

On 25 March 2020, due to the Scottish Government response to the pandemic, all staff were instructed to work from home unless there was an essential operational requirement to attend at the office. Working from home in early 2020 did not look like it does now. At that time, PIRC was limited in terms of the technology we had to support this type of working. For example, we did not have video conferencing facilities and a number of staff did not have laptops or business mobile telephones. While these were ordered as a priority, any business had to be conducted using teleconferencing

facilities. By mid to end April 2020, 'Skype for Business' was in place for internal video conferencing, but it was not until the end of 2020 that MS Teams was rolled out across the Scottish Government estate and video and telephone meetings became available for both internal and external contacts.

Further, and tragically, during the first month of the pandemic, two experienced and well-respected members of PIRC staff died of Covid-19. The impact of this cannot be overstated. PIRC was, and remains, a small organisation where all staff know each other and work together within small business areas. While dealing with personal loss, there was, understandably, also a great deal of anxiety among staff and, as such, my focus during my first 18 months in post was to prioritise the safety and wellbeing of all staff while working with the Senior Management Team to implement continuity plans to enable PIRC to continue to provide its core statutory duties under very challenging circumstances.

It should also be highlighted that on 26 June 2020, during the pandemic, PIRC was instructed by the COPFS to investigate the fatal shooting of an asylum seeker in a Glasgow hotel by police officers. This was the first fatal shooting by Police Scotland since the establishment of the single force and required a significant PIRC response. On being notified of the shooting, the PIRC had teams deployed within 3 hours. The initial post incident procedures were implemented under the supervision of PIRC investigators and concluded by 01.00 hours on 27 June 2020. By 29 June 2020, all stage 4 statements from the key police witnesses had been obtained.

I assumed the role of PIRC Gold Commander. As we did not have video conferencing facilities at that time, communication with all involved – from the PIRC team, to Police Scotland, to COPFS, required to be by telephone. This was an extremely time consuming and labour-intensive investigation with approximately 900 witness statements taken and in excess of 140 hours of CCTV footage viewed and considered. Taking a period of four months to investigate and report (the final report being submitted to Police Scotland on 9 October 2020) this also had a substantial impact upon PIRC resources and priorities during that early period.

As a result of the impact of the above, I was two years into my tenure as Commissioner before I could properly address priorities for the development of the organisation which I may have otherwise done at a far earlier stage. It undoubtedly changed the trajectory of my leadership of the organisation.

HM Inspectorate of Prosecution in Scotland (HMIPS)

3. Please detail when you held the position of HM Chief Inspector of HMIPS.

I held this position from August 2013 – August 2019.

4. Whilst in your role as Chief Inspector, what was your experience of the Inspectorate's powers of recommendation monitoring and enforcement?

The Inspectorate of Prosecution in Scotland (IPS) was established in December 2003. Its remit was "to introduce a measure of accountability for the COPFS, which is essential for public confidence."

The Inspectorate was subsequently placed on a statutory footing with the enactment of sections 78 and 79 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. Section 79 requires the Inspector to secure the inspection of the operation of COPFS and make recommendations that will contribute to the improvement of COPFS and enhance public confidence.

Similar to other Inspectorate bodies in Scotland, HMIPS does not have any statutory basis to enforce compliance with recommendations. However, during my tenure, the COPFS generally accepted the recommendations made or proposed alternative solutions to resolve the issue/deficiency identified.

To ensure that the recommendations were implemented, I effected a rolling programme of follow-up reports to monitor the progress of COPFS implementation of the recommendations and to evaluate the effectiveness and outcomes of measures implemented.

Lines of accountability, data monitoring and quality assurance

5. Please explain current PIRC policy and practice in terms of data monitoring as relating to the race of the parties involved in cases referred to PIRC.

Equality Monitoring

PIRC records data regarding ethnicity; race and other 'protected characteristics' - as defined under and in terms of section 4 of the Equality Act 2010 - in Equality and Diversity Monitoring Forms. This data capture is used across all PIRC's functions: in investigations for complainers; in reviews for complaint handling review applicants; and in corporate services for recruitment purposes.

Data capture relating to matters of equality and diversity has been ongoing within corporate services since 2013. Following amendments to the form in July 2021, whereby the monitoring form and the application form were combined in one document, we have - for 2021-2022 – seen a 100% return of all equality, diversity, and inclusion monitoring forms.

Data capture relating to matters of equality and diversity has been ongoing within reviews since 2013. Since the introduction of the new PIRC website in 2023, which allows complainers to submit online applications for complaint handling review, we have seen a significant increase in the use of the online form and a 70% return of data monitoring forms.

Within the Investigations function, data capture relating to matters of equality and diversity in investigations has been ongoing since September 2021. This coincided with PIRC receiving a standing instruction from the Crown under section 33A(b)(i) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 to investigate all allegations made against police officers falling under the terms of Article 3 of the ECHR (more commonly known within PIRC and COPFS as 'Article 3 referrals') which caused a review of, among other things, what data was being ingathered.

Historically, the data capture was undertaken in different formats across the three business areas, however, following the establishment of the in-house Equality, Diversity, and Inclusion group (EDI Group), work has been undertaken by that group to align all the EDI forms. The use of identical forms by PIRC staff across all business areas will ensure a consistent approach to recording ethnicity, race and other protected characteristics which is compliant with data protection legislation. Such equality evidence is anonymised and considered for statistical purposes with a view to identify themes and trends; whether complaints or allegations come disproportionately from groups with protected characteristics; and further, to assist in consideration of PIRC's compliance with the public sector equality duty (PSED) on the impact our policies and practices have – or are likely to have – on our service user groups.

In March 2022, following consultation with representatives from the Equality and Human Rights Commission, we revised the PIRC Statutory Guidance for Handling Complaints about the Police to emphasise the requirement for policing bodies to have regard to the PSED and the importance of capturing and recording equality evidence from complainers when they engage with the police complaints system.

6. Please explain current PIRC policy and practice in terms of quality assuring PIRC investigations.

PIRC categorises investigations into 4 categories: Categories A+, A, B and C.

Major Case Status (A+)

In exceptional circumstances where a case is very complex and it is evident from the outset that the investigation/review will be protracted, the Head of Investigations may ask the Director of Operations and the Commissioner to designate a case with major case status (A+).

Category A

Investigations into deaths in police custody or following police contact; or major investigations with complex lines of enquiry where the securing of evidence requires significant resource allocation over a protracted period; or an investigation which generates high levels of public/political interest, placing additional demands on the organisation in relation to completion times.

Category B

An investigation where the lines of enquiry are apparent from the outset but where the securing of evidence can only be achieved through prolonged investigation.

Category C

A routine investigation where the lines of enquiry are apparent from the outset and the gathering of all relevant evidence can be achieved without placing great demands on the investigation team.

Quality Assurance (QA)

There is a robust QA process for all PIRC investigations. This is increased in Category A+ and A investigations. Reports in these categories must be quality assured by the relevant Senior Investigator, the Head of Investigations, and the Director of Operations prior to being submitted to the Commissioner. All Category A and A+ reports are issued in the Commissioner's name.

Reports in category B cases must be quality assured by a Senior Investigator and the Head of Investigations and approved by the Director of Operations.

Reports in category C cases must be quality assured and approved by a Senior Investigator or the Head of Investigations

PIRC has also recently employed a Reports Manager, who has a legal background and is also involved in the QA process for certain cases.

Equality issues and impact assessments

- 7. Please set out lines of accountability within PIRC in terms of equality, diversity and inclusion policies and confirm who holds operational responsibility for this area.**

Overall, accountability rests with the PIRC. Corporate responsibility for equality, diversity and inclusion policies sits with the Head of Corporate Services, Sharon Smit.

- 8. Please explain current PIRC policy and practice in terms of impact assessments.**

Equality Impact Assessments were introduced in PIRC in October 2019. All new policies have an EQIA. They are also undertaken as part of any policy review.

The PIRC internal guidance was reviewed in 2021 and 2022. A copy of the guidance is attached.

Staff and managers can access training on completing EQIA's at any time.

Training

- 9. Please explain the current PIRC training policy and strategy in relation to the following matters:**

- (i) equality, diversity, and inclusion insofar as relating to race;
- (ii) investigating race as a factor in an incident;
- (iii) instruction of expert witnesses;
- (iv) investigation of deaths in custody.

As stated, the first two years of my tenure were impacted by the pandemic: this included any plans for training. Since then, training has resumed and developed significantly.

The overall responsibility for training sits within PIRC's Corporate Services function. Each year, a budget is allocated for training. The PIRC Head of Corporate Services (who is also the accountable officer) will engage with the relevant department heads to identify organisational and departmental training and development needs for the year. This allows planning for the year to ensure necessary skill sets are maintained and allows for horizon scanning across the business areas for specific training needs. This may include training regarding new legislation or in themes and trends identified by the business areas as emerging and requiring further development. Based upon this, training providers are identified and costed.

Regarding the more specific areas identified:

- (i) equality, diversity, and inclusion insofar as relating to race

Obtaining effective training relating to equality, diversity and inclusion has been a high priority of mine since taking up the post of Commissioner. We have sourced training from different providers. More recently, feedback from such training has identified a common theme among the staff of a fear of 'saying the wrong thing' and being reticent to engage for that reason. While I was at COPFS, I had the benefit of very effective and impactful training from a trainer, who was seconded from Police Scotland to set up a diversity training programme for COPFS. He delivered equality, diversity, and inclusion training from the perspective of 'lived experience.' He asked insightful questions regarding the possible impact of different statements and scenarios on him as a person from a minority ethnic group which were thought-provoking and resulted in discussion amongst delegates. Despite attempts, we have been unable to source that type of training. We did approach a trainer in the IOPC who had delivered this type of training, however, before it was organised, the staff member moved on.

The strategy has been to continue to try to source such lived experience training, however, in the interim, we have acquired other courses and developed in-house packages to deliver to staff. These are specified in my response to questions 10 (i) and 11 below.

- (ii) investigating race as a factor in an incident

This links into the above response. Staff have access to the Discrimination Guidelines and part of their training involves ensuring awareness of this important resource. The importance of referring to the Guidelines when investigating matters where race may be a factor is emphasised through staff messaging.

- (iii) instruction of expert witnesses

PIRC has not provided specific training on how to instruct expert witnesses. Many of the investigators have previous experience in identifying expert witnesses. For medical matters, assistance is often obtained from pathologists; for other matters, assistance is sought via liaison with the National Crime Agency, Specialist Operations Centre, and the College of Policing.

For example, in a recent investigation, we obtained an expert opinion on training relating to searching for missing persons from the National Search Centre in ██████ which is part of the College of Policing.

Expert witness instruction is generally undertaken in consultation with the Crown. This includes the identification of witnesses and information that should be made available to the expert. Ultimately the decision on whether to instruct a particular expert is a matter for the COPFS.

From recent disclosures to the Inquiry, I am aware that the COPFS has produced an aide memoire¹ to assist in the consultation with expert witnesses. I think this would be a useful addition to our guidance and will adopt this practice and arrange for a PIRC aide memoire to be created.

(iv) investigation of deaths in custody.

Our strategy is to provide an independent, effective, prompt, and transparent investigation, which is ECHR compliant, with specific reference to Article 2 and, where appropriate, other Articles including Article 14.

10. Please detail any training opportunities specifically for investigators and 'front line' staff that relate to 10(i)-(iv) above.

(i) Equality, diversity, and inclusion insofar as relating to race;

Since 2019, I am aware of the following training opportunities:

- In December 2019, each member of PIRC staff undertook online training via Civil Service Network entitled 'Equality Diversity and Inclusion'.
- Since September 2020, all members of the PIRC staff must undertake annual 'Unconscious Bias for Employees' training via iHasco online training platform.
- In June 2022, the training co-ordinator undertook training provided by ACAS titled 'Equality, Diversity and Inclusion'. The training explained the sources of discrimination law, the protected characteristics, the types of discrimination, good practice to ensure compliance with the Equality Act 2010 and future planning. It also contained scenarios for the staff to consider².
- The training co-ordinator thereafter adapted the training for PIRC employees in October 2022, and delivered an internal PIRC Equality, Diversity, and Inclusion mandatory training course. The course explained the sources of discrimination law, the difference between equality, diversity and inclusion, the protected characteristics, and good practice in line with the PIRC policy.

¹ COPFS- 05688

² A copy of the handout from this training is produced within Tranche 21 disclosure.

- In March/April 2024, a mandatory EDI training programme was delivered by Police Scotland. It is a series of modules totalling 4 hours 30 minutes including sessions on 'What is EDI', 'Unconscious Bias' and 'Being an Ally'.
- A mandatory session on "Let's talk about Race in the Workplace" is currently ongoing. This is being delivered by two internal PIRC employees. The module was purchased from Marshall e-learning. It covers a variety of topics including micro aggression, tokenism, and intersectionality.
- In May 2024, a mandatory training course is to be delivered by ACAS - Behaviours at Work – Understanding the Unacceptable. This will cover bullying/harassment/impact of inappropriate behaviours/link between harassment and discrimination and ways of tackling unacceptable behaviour.

(ii) investigating race as a factor in an incident;

In addition to the training on EDI issues discussed above, there is guidance available on investigating discriminatory allegations. The requirement for PIRC to ensure that discrimination issues are considered as an integral part of the work of PIRC was a recommendation of the Angiolini report³. The Guidance on investigating discriminatory allegations (the Guidelines) were prepared taking account of similar guidelines in the IOPC. The Guidelines were issued in November 2021. Prior to publication, the Guidelines were shared with Police Scotland Professional Standards Department's equalities forums and the SPA for review and comment. They were published on the PIRC Intranet with a staff message. An operational instruction was issued in April reminding all investigators of the importance of referring to the Guidance when dealing with any allegations of discrimination.

(iii) instruction of expert witnesses;

See reply to a question 9 above.

(iv) investigation of deaths in custody;

There are many training courses that are available and have been undertaken by investigators relevant to the investigation of deaths. The PIRC position statement on training dated 23 January 2023 provides an extensive list of training courses undertaken by investigators at Annex B⁴. Some of the more common training courses directly relevant to the investigation of deaths include:

- Family Liaison Officers (FLOs) are trained to a national standard. It is an accredited national training course. There are currently 11 accredited FLO officers in PIRC.
- Crime Scene Management. There are currently 14 PIRC officers who are CSM qualified.
- Officer Safety Training. Three investigators have recently completed basic training. This is the first time that PIRC investigators have completed this training.

³ Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing

⁴ PIRC-04577: Annex B

- Sexual Offences Liaison Officers (SOLOs). There are currently 2 SOLOs.
- A bespoke internal Report Writing training course was rolled out for all investigations staff in 2023.
- In addition to the bespoke training course, PIRC has a wealth of guidance relating to various aspects of investigations of deaths. Many documents have been provided to the Inquiry. Some of the most commonly used have been disclosed to the Inquiry, including:
 - PIRC SOP – Scene Management⁵
 - PIRC SOP – Family Liaison Officer v1⁶
 - PIRC SOP – Productions 010420⁷
 - PIRC SOP – Productions v2⁸ 18042
 - PIRC Scene Management Procedures v2 29042016⁹
 - Deaths PowerPoint Presentation¹⁰
 - Investigations flowchart¹¹
 - [REDACTED] [REDACTED]¹²
 - PIRC Slideshow – Investigations Department (listing the 5 Principles for the effective investigation of complaints against the police that engage Article 2 or 3 of ECHR – referred to as Death or Serious Injury (DSI)¹³ incidents (Independence, Adequacy, Promptness, Public Scrutiny, Victim Involvement)

11. Please detail any training opportunities specifically for senior management within PIRC that relate to 10(i)-(iv) above.

Equality, diversity and inclusion insofar as relating to race;

- In January 2021, all Heads of Departments and the PIRC Senior Management team undertook joint training with Police Scotland Professional Standards Department (“PSD”) on unconscious bias and equalities delivered by SEMPER Scotland.
- The Commissioner and Head of Corporate Services attended a session on Deconstructing Institutional Discrimination session delivered by Police Scotland on 17 April 2024.
- The Head of Corporate Services is a member of the Scottish Government Cross Justice Working Group Race Data & Evidence.

12. What, if any, steps have been taken, or anticipated, to seek training, guidance or expertise in relation to race from outside PIRC?

⁵ PIRC 03873

⁶ PIRC 03885

⁷ PIRC 04449

⁸ PIRC 04450

⁹ PIRC 04451

¹⁰ PIRC 04628

¹¹ PIRC 04631

¹² PIRC 04641

¹³ PIRC 04749

See my response to questions 10 and 11. PIRC has sourced external guidance from Police Scotland, Scottish Government Civil Service, SEMPER, ACAS, and Marshall e-learning.

13. What, if any, aspects of training strategy and policy have changed in light of lessons learned following the conclusion of the PIRC investigation into the death of Sheku Bayoh?

Training has evolved since I took up post in 2019. As I was not involved in the investigation into the death of Mr Bayoh, I cannot comment nor attribute this evolution to a single investigation but rather to the growth of the organisation; the increased volume and type of referrals received; and legislative changes. The training strategy in place is to ensure that the training sourced and delivered ensures PIRC staff have the relevant skill sets to meet our statutory obligations.

A major change has included the creation, in 2019, of the role of Training Coordinator. This is a standalone post which is not subsumed into the duties of another staff member. The focus and purpose of the role is to work with the Human Resources Officer, department heads and managers to identify training needs within each business area and develop a training plan for each year.

In addition, a single point of contact (SPOC) has been nominated within each business area who has responsibility for liaising with the Training Coordinator. The department training SPOCs are the link between staff in the business areas and the training coordinator to ensure needs are identified at all levels and to encourage staff engagement in the process.

In 2023, PIRC training procedures were the subject of an audit by our internal auditors. The audit identified a small number of actions (which have now all been concluded). The outcome of the audit was instrumental in strengthening our processes for identifying, requesting, and approving training. It also reinforced the links between sharing development needs and opportunities across the business areas and increased the role undertaken by the training SPOCs in each business area. A training plan for the year ahead is in place which, will be supplemented by training requested by staff in their end of year appraisals.

Contribution to reviews and reports

14. What was PIRC's role in the Report produced by Lady Angiolini titled 'Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing'?

I was not in post during the early stages of Lady Angiolini's review; however, I understand that several PIRC employees, including the former Commissioner, were interviewed by Lady Angiolini and her team. Once in post, I was interviewed on two occasions by Lady Angiolini (September 2019 and August 2020). I provided further written submissions in relation to specific questions / areas raised by Lady Angiolini's team regarding my views on the initial findings and the recommendations of her preliminary report.

15. What was PIRC's response to the Report, including its findings and recommendations?

PIRC welcomed the report. Following its publication, I submitted a written submission to the Justice Sub-Committee on Policing in which I acknowledged that the recognition by Lady Angiolini of a sea-change in the relationships among all the justice and policing agencies with significant improvements in interactions, joint learning and co-operation since the preliminary report was particularly pleasing.

Similarly, the recognition by Lady Angiolini that "the PIRC has the people, the skills and the values of integrity, impartiality, and respect that .. will allow the organisation to ably fulfil a set of new statutory powers that she recommends in the report" was a confidence and morale boost to the staff.

As Commissioner, I was one of the partners of the Strategic Oversight Group along with Police Scotland, the SPA and COPFS. We were tasked with progressing the recommendations at a strategic level and I was part of the Ministerial Group which had oversight of the progress of the recommendations.

16. Are you aware of whether the recommendations arising from this Report have been implemented? Do you have any views on the effectiveness of the implementation?

Where we are the lead partner, PIRC has implemented all recommendations (not requiring legislation). We are confident that the recommendations implemented have achieved the intended outcomes.

For example:

The standing Crown instruction in October 2021 that **all** allegations of assault and unlawful detention made against Police officers and staff be transferred to PIRC was undertaken to ensure the independence of such investigations. It has also led to a substantial increase of such referrals to PIRC. In 2019-20 there were 460 referrals and 76 investigations. In 2023-24 there were 911 referrals and 136 investigations.

The first joint audit (undertaken by PIRC and the Scottish Police Authority) of aspects of Police Scotland's complaint handling arrangements has also now been completed and was published in March 2023. Implementation of our recommendations will be overseen by the Commissioner and SPA, and publicly reported thus increasing accountability and transparency.

Overall, I consider that there has been a distinct benefit in implementing the recommendations which has resulted in greater collaboration, consultation and partnership working between the key stakeholders.

17. In your time as Commissioner, has PIRC contributed to any other reviews that have touched on PIRC's remit? If so, please provide full details.

Yes. We are currently involved in assisting the Scottish Government Bill team responsible for the drafting and implementation of the Police Ethics and Scrutiny (Scotland) Bill. In addition to providing a response at the statutory consultation stage, we continue to meet with the Bill team to discuss relevant matters regarding the extent of the Bill as it affects the role and remit of the PIRC and have provided additional submissions to the Bill team on various aspects of the provisions, its impact, and financial implications.

Legal duties

18. Does the Public Sector Equality Duty apply to PIRC as an organisation?

Yes, Section 149(1) of the Equality Act 2010 which introduced a public sector equality duty ("the equality duty") applies to PIRC.

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 applies to authorities listed in the Schedule of the Regulations and imposes additional duties upon them. As the PIRC is not listed within the Schedule to the Regulations, the organisation is not subject to the specific duties contained therein.

Following significant engagement with the Equality and Human Rights Commission, in October 2022 we reviewed our Statutory Guidance on the Handling of Complaints about the Police in Scotland to provide detailed guidance to policing bodies regarding the importance of the capture of equalities data in the complaints sphere as a mechanism to enable policing bodies better understand the effects of policies and decisions upon service users.

19. In her evidence, the former Commissioner Kate Frame stated (day 89, 06/03.2024):

Q. I want to ask you particularly about the public sector equality duty. Can we look at paragraphs 80 and 83 of your Inquiry statement. Let's start with 80: "I have been asked what steps PIRC took to comply with the public sector equality duty during my tenure. I discussed that with the Head of Corporate Services shortly after I took up post and he advised me that it did not apply to the organisation."

Can you tell us who the head of Corporate Services was at that time?

A. Yes, it was Mr Mackay.

Q. Did you check independently whether it applied to PIRC or did you rely on Mr Mackay's assurance?

A. I think -- I am trying -- no, he seemed to be fairly confident that it didn't apply, and it wasn't a matter that he required to go away and check, he was able to respond immediately to me.

Q. Did he explain to you why he thought it didn't apply to PIRC?

A. No.

Q. So were things arranged on the basis that that particular duty didn't apply to the organisation at all?

A. That was my understanding from him, yes

What are your comments on her evidence in this regard?

As stated above, I am clear that the public sector equality duty applies to PIRC. As such, I do not agree with the evidence given by the former Commissioner in this regard, however, I appreciate that there may have been some confusion between the general duty, which applies to PIRC, and the specific duties which do not, but that is speculation on my part.

20. Who within PIRC has operational responsibility for PIRC's compliance with the Equality Act 2010?

Overall, accountability rests with the PIRC. Sharon Smit, Head of Corporate Services, holds responsibility for day-to-day operational matters.

21. Who within PIRC has operational responsibility for PIRC's compliance with the European Convention on Human Rights, as implemented by the Human Rights Act 1998?

Overall, accountability rests with the PIRC. Corporate responsibility sits with the Senior Management Team.

22. Who within PIRC has overall responsibility for PIRC's compliance with the Equality Act 2010 and the European Convention on Human Rights, as implemented by the Human Rights Act 1998?

Overall, accountability rests with the PIRC.

Diversity within PIRC

23. How diverse is PIRC as an organisation?

PIRC is a small organisation with only 96 staff. In terms of ethnicity, predominantly our staff are white Scottish. In terms of gender balance, I believe we have successfully achieved a good gender balance and the organisation is relatively evenly split between male and female. This is also reflected in the make-up of our Senior Management Team.

The lack of diversity of the organisation, particularly as regards ethnicity, is something I am conscious of and is discussed further in response to questions 26 and 33.

24. In your view, how has diversity within PIRC changed between 2015 and the present?

The main change is in relation to the gender balance within PIRC.

There has been an increase in the percentage of female to male staff. On 31 March 2015 – 40% staff were female; 60% were male (47 total staff – 19 female and 28 male) and on 31 March 2024 (94 total staff - 48 female and 46 male) – 51% staff were female; 49% were male.

The gender representation within the SMT in 2015 was 33% female and 67% male and is currently 50% female and 50% male.

25. Is there currently an equality, diversity and inclusion group in place at PIRC? When was this group established, and what led to the establishment? What is their current role and remit? What is the membership of this group?

Yes, at my request the Head of Corporate Services established the EDI Group. It had its first meeting on 1 April 2021. The terms of reference are attached. It is chaired by the PIRC Head of Corporate Services. The EDI group consists of staff members of various levels from each of the 3 business areas.

There are sub-groups on training and data collection and monitoring who are tasked with actions and to report back to the EDI group.

26. What is PIRC's current policy and strategy in relation to monitoring and reviewing recruitment and retention of black and minority ethnic members of staff?

There is a general recruitment and retention policy in PIRC. Vacancies are advertised on sites that cover all Scotland. As discussed above data monitoring forms are attached to all applications. At present, this body of data is limited and not sufficient to predict any trends.

The absence of any members of staff from an ethnic minority background in PIRC is of concern.

Consideration has been given to the best way to recruit black and minority ethnic members of staff. I consider that the re-introduction of the Trainee Investigator Programme is the most favourable option to maximise our reach into a more diverse pool of candidates. Historically, PIRC has attended college / university career fairs to seek to attract students from all backgrounds to apply for the traineeships.

The Trainee Investigator Programme encompasses a five-day induction programme which includes an introduction to investigative duties and awareness of the PIRC policies and procedures. Trainees must complete trainee investigator portfolios which track training and essential competencies over the course of their traineeship. Trainees must also complete Scottish Qualification Authority courses in Criminal Law and Science and Crime, and they further receive 3-days training from Police Scotland covering core investigative skills. Previous trainees have come from different backgrounds including nursing, healthcare, the charitable sector, and graduates in Criminology and Criminal Justice.

The programme was paused during the pandemic and due to increasing workload, recent recruitment has required to focus on posts requiring specialist skills. However, the Senior Management team has agreed that the programme should be re-introduced as a priority when it becomes financially viable.

27. Beyond what has been detailed in PIRC's position statement of 21 September 2023, what do PIRC do to analyse data in relation to race? Please include reference to race data in investigations and in relation to PIRC recruitment and retention of staff.

Please see responses to questions 5 above and 30 below.

Resourcing

28. In your view, how has the resourcing of PIRC changed between 2015 and the present?

PIRC has grown in terms of staff complement and budgetary provision since 2015. In 2015 we had (on average) 47 members of staff. We now have 96 members of staff.

In terms of budgetary provision:

In 2015/16, the allocation was £2,731,000.

In 2018/19, PIRC received an uplift of £1,068,000 which was primarily to increase the investigations complement.

In 2020/21, PIRC received a further uplift of £442,000 to assist with the transfer of Article 3 cases.

In 2021/22 PIRC received a further uplift of £778,000 to assist with some of the recommendations arising from the Angiolini Report.

In 2023/24 PIRC received a further uplift of £492,000 which was primarily for legal costs associated with attendance at this Inquiry.

This budget allocation for the current year is £7,116,000.

29. Do you have any further comment to make as to the resourcing of PIRC?

We have regular quarterly meetings with the Scottish Government Sponsor team where we share data on our operational workload and keep them apprised of operational pressures. We received an uplift of £800,000 this year. This essentially enabled PIRC to meet the costs of the pay increases and increments only. There was no extra resource for additional staff.

Given the increasing demands on PIRC, I would obviously wish to alleviate pressure by obtaining additional resource and, in particular, to re-introduce the Trainee Investigator programme, but I am aware from discussions with our Sponsor team at the Scottish Government that there are considerable financial constraints and, at this

time, little prospect of additional resource unless there is any new requirements or responsibilities acquired by the PIRC. However, we do have regular liaison and they have been supportive of previous business cases so we will continue to engage and, if appropriate, submit business cases for consideration.

CLUE Application system

30. In the PIRC position statement dated 22 September 2023, it was explained that the current iteration of the system CLUE (CLUE 3) “records ethnicity by way of a standardised pre-populated drop-down selection as follows:

- *White European;*
- *Dark European;*
- *Afro Caribbean;*
- *Asian;*
- *Oriental;*
- *Arab/ Middle East; and,*
- *Other.”*

Do you have any comment to make as to the pre-populated drop-down selection?

As set out in a Position Statement previously submitted to the Inquiry¹⁴, this selection is not a PIRC-created system. It was populated by the provider ‘CLUE.’ As PIRC has not historically recorded such information, the pre-populated drop-down selection was not used and as such its contents would not have been considered.

As also advised, CLUE 2 (which is the version of the system in place during 2015) contained no specified field to record ethnicity.

Following internal discussion, I requested work to be undertaken to ascertain whether the ethnicity of a person could be a field added to CLUE. In terms of changes to the CLUE 3 system, certain fields are system dependant values that cannot be deleted or amended without reference to CLUE but there are some changes which can be undertaken by PIRC without requiring assistance from CLUE. As a result, in-house work has been ongoing to revise the drop down selection for the recording of, among other things, ethnicity. This PIRC specific list has been taken from the UK Census Categories and is presently in the process of being built into a testing area of CLUE 3 used by PIRC. It is anticipated that we should be in a position to go live from 1 May 2024.

31. It is understood that work has been ongoing within PIRC to revise the drop-down selection for the recording of ethnicity and that the implementation date for this is 1 May 2024. At any time, has there been a communication to staff within PIRC about these descriptors?

We are still at the testing stage in terms of the new functionality. Simultaneously, an operational instruction and guidance for staff regarding how and when to use the drop-

¹⁴ Position statement submitted to the Inquiry on 22.09.2023 (not yet disclosed)

down selection is being prepared. This operational instruction and guidance will be issued to all staff prior to the go live date.

32. What guidance or training was given to staff about usage of these descriptors? Please include an explanation of how staff have applied descriptors “Dark European” and “Oriental”, and whether any caveats have been issued to staff regarding such descriptors.

No guidance was ever issued because the descriptors were never used.

Institutional racism

33. To your knowledge, has PIRC held any internal discussions about institutional racism? Please outline the context, content and any outcomes of these discussions.

As referenced at questions 2 and 14, one of the major pieces of work that was ongoing when I took up post was the engagement with Lady Angiolini and her team in respect of the Review she was conducting of Complaints Handling, Investigations and Misconduct in relation to policing. The final report highlighted a range of concerns regarding cultural values within Police Scotland. In that context it made specific reference to the report by Sir William Macpherson¹⁵ and made a number of recommendations for Police Scotland that directly related to inclusion, diversity, and discrimination.

The Report highlighted the need for all organisations, including PIRC, to be more diverse.

The report prompted wide ranging discussion in PIRC and it was clear that we needed to do more in relation to training, monitoring, and recruitment. It also promoted discussion on such matters at the Strategic Oversight Group. As stated, work in this area was hampered by the pandemic, however, following a return to the workplace, initiatives to mainstream inclusion, diversity, and equalities, such as those outlined in response to question 34, have been a priority for PIRC.

The work undertaken was not specifically discussed in the context of institutional racism, but more generally to meet the criticisms highlighted in the Lady Angiolini report.

Most recently - following the announcement of the former Chief Constable in May 2023 that acknowledged that institutional racism, sexism, misogyny, and discrimination existed within Police Scotland – my mind was focussed on the issue of institutional racism and there was internal discussion between myself and other members of senior staff. In this context, consideration was given to the definition of institutional racism set out by Sir William Macpherson namely:

“The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or

¹⁵ Paragraph 9.10 of the final report

detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness, and racist stereotyping which disadvantage minority ethnic people.”

I have reflected upon the data or evidence I have available and considered the position for PIRC.

The absence of any members of staff from an ethnic minority background in PIRC is an evident difficulty and one that must be addressed.

As discussed at question 26, we have considered how this can be achieved and, in the first instance, the re-introduction of the Trainee Investigator Programme is the most likely option to maximise our reach into a more diverse pool of candidates. Historically, PIRC has attended college / university career fairs to seek to attract students from all backgrounds to apply for the traineeships. Re-introducing the trainee programme will provide an opportunity to seek applicants from learning establishments and other forums where there is a diverse community.

We have considered other aspects, including our processes and policies. We had commenced a programme of review for many of the PIRC policies that relate to protected characteristics. I have extended this to include all policies relating to all of the protected characteristics, including race, to ensure they are fit for purpose; raise staff awareness of their existence and content and ensure that a relevant EQIA has been completed for each. This programme is currently ongoing.

We have embarked on a series of initiatives and EDI training referred to at questions 10,11 and 34. All of these actions are designed to mitigate and challenge institutional discrimination.

The announcement also caused us to review our Discrimination Guidelines as the main tool provided to staff on how to investigate allegations of discriminatory behaviour, and guidance on considerations when engaging with members of the public with protected characteristics, and to ensure reference was being had to these as an invaluable resource for staff.

34. What, if any, are the training strategies or policies that relate to preventing or eliminating institutional racism at PIRC?

There are a number of policies/strategies that seek to raise awareness of EDI and challenge unacceptable behaviours and all forms of discrimination. These include:

- EDI training and awareness;
- Discrimination Guidelines;
- All staff have a mandatory diversity performance objective as part of their appraisal (since March 2020);
- All recruitment exercises explore the topic of equality and diversity at interviews. (since April 2022);
- On 17 April 2024, the Head of Corporate Services and I attended a specific Police Scotland training course on how to address institutional discrimination and barriers to overcoming it;

- Upcoming - Unacceptable actions training to on how to create an environment where it is safe to challenge;
- There are also a number of forums for staff to raise concerns: Staff Representative Group, Trade Unions and Well-being Advisors.

Miscellaneous

35. Do you have any knowledge as to if PIRC completed a lessons learned exercise following the conclusion of the investigation following the death of Sheku Bayoh?

I am advised that there was no specific debrief at the conclusion of the investigation following the death of Sheku Bayoh. The reason provided was that throughout the COPFS investigation, the case remained active. Lessons learnt exercises are normally undertaken at the conclusion of receiving an instruction from COPFS or at the conclusion of an FAI. There was never any official correspondence from COPFS that the case had concluded. At the time of my appointment, there was already discussion regarding convening a Public Inquiry.

That said, there have been developments and lessons learnt. See response to question 36 below.

36. Do you feel PIRC has learned lessons following the conclusion of the investigation following the death of Sheku Bayoh? If yes, please provide full details.

Yes, PIRC has learned lessons and there are various aspects of the investigation which have influenced training and policies.

Post Incident Procedures

- In September 2019, the PIRC provided training to Investigations staff on Post Incident Procedures. The training included consideration of the PIRC's duties under Article 2, the criteria for PIM, the role of the post incident manager, key police witnesses, non-conferring reminders, and the PIRC's response to a PIM.
- Further guidance to staff on PIM and how it is to be utilised is contained within the Memorandum of Understanding on collaborative working between Police Scotland, the PIRC, and the Scottish Police Authority dated August 2020 (PIRC-04436).
- On 6 December 2022, the PIRC Investigations department held a Continuous Professional Development Day. The course material included a session on Post Incident Procedures.
- Post Incident Procedures were discussed at the PSD and PIRC liaison day at PIRC offices on 17 January 2024.
- PIRC input to Police Scotland Post Incident Managers Conference at Tulliallan Police College – Tuesday 19 March 2024.

Drafting reports and consideration of evidential requirements

- A bespoke internal Report Writing training course was rolled out for all investigations staff in 2023.
- In November 2023, PIRC advertised for a reports manager. Following the conclusion of the vetting process, the candidate commenced in March 2024. The purpose of the post is to support and mentor investigators with conducting an analysis of evidence and evidential considerations.

Status of witnesses /Provision of Statement

Arrangements for the provision of statements are set out in Memorandum of Understanding on collaborative working between Police Scotland, the PIRC, and the Scottish Police Authority dated August 2020 (PIRC-04436).

Liaison arrangements between COPFS and PIRC

There is regular communication and engagement between COPFS and PIRC. In particular:

- PIRC has liaison meetings with SFIU and CAAP-D every 6 weeks. The attendees include senior members of the PIRC, the Head of SFIU, Head of the Health and Safety Investigation Unit; the Head of the Custody Deaths Unit and the Head of CAAP-D.
- There is an operational practitioners' group held between Senior Investigators and senior deutes from CAAP-D on a bi monthly basis.

Race and Discrimination

While the training strategies or policies referred to at question 34 all post-date the investigation following the death of Sheku Bayoh, the publication of the Angiolini Report and the specific recommendation that PIRC should ensure that discrimination issues are considered as an integral part of their work was a catalyst for some of these initiatives.

37. Annex B contains the Inquiry's terms of reference. With reference to these, is there anything else you would like to include in your witness statement?

Whilst I do not wish to comment on the evidence which is a matter for the Chair there is a procedural matter which I would comment on in relation to who has responsibility for attendance at a post-mortem examination. COPFS has the contract with Pathology Services, and they consult with the pathologists to make arrangements for the date and time of the post-mortem. PIRC are advised when and where to attend. The post-mortem report is sent directly and solely to COPFS. COPFS provide PIRC with a copy of the post-mortem report as happened in this case. My understanding both from being a Procurator Fiscal and as the PIRC is that all arrangements for the post-mortem rest solely with COPFS including who should or should not be in attendance.

I have raised this with the current Head of SFIU for clarification. Going forward, I have asked for the MOU to be revised to reflect that COPFS has responsibility for all aspects associated with the PM.

38. 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.”

39. Please sign and date your statement.



25th April 2024

ANNEX B

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.