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Date: 25th March 2022

Our Ref:

The Right Hon.
Lord Bracadale
Chair,
The Sheku Bayoh Inquiry

By e-mail only



**POLICE
SCOTLAND**

Keeping people safe

POILEAS ALBA

Fiona Taylor QPM

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Professionalism, Digital and Transformation

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Dear Sir,

UNDERTAKING FROM THE DEPUTY CHIEF CONSTABLE

I refer to your Ruling, sent under cover of the letter of 1st March 2022 from the Solicitor to the Inquiry (on your behalf), directed to me in my capacity as the Deputy Chief Constable Designate in terms of the Police Service of Scotland (Conduct) Regulations 2014 ('the 2014 Conduct Regulations'), to give an undertaking, that, in any future disciplinary proceedings against an individual serving officer arising out of the events at Hayfield Road on 3 May 2015 and the post-incident management, I will not seek to rely on evidence given to the Inquiry by that officer. I also refer to your Supplementary Ruling, of 21st March, intimated under cover of an email from the Solicitor to the Inquiry, dated the same day.

Your Rulings follow applications made by Sergeant Scott Maxwell, PC Daniel Gibson and PC James McDonough that you request such an undertaking. In response to a request from Senior Counsel to the Inquiry in your initial Ruling you extended the request to include other officers, namely, PC Kayleigh Good, PC Alan Smith, PC Ashley Tomlinson and Chief Superintendent Conrad Trickett. You also included Temporary Assistant Chief Constable Patrick Campbell (but it should be noted that his correct rank is Detective Chief Superintendent). Your Supplementary Ruling followed upon a written application – dated 18th March 2022 – to you made by the solicitors acting for Constable Craig Walker. In that application you were invited to make the same request of me (for an undertaking) as you had made in

your initial Ruling. You have acceded to that application and extended that original request. All these officers are serving officers, albeit Detective Chief Superintendent Patrick Campbell is currently suspended.

The request made of me is contemporaneous with a request made of the Solicitor-General as regards future prosecution, which is, of course, made in the context of the privilege against self-incrimination which exists in respect of potential criminal offences. However, it is a matter of consensus that the privilege against self-incrimination does not apply in disciplinary proceedings. As the Inquiry Chair, you retain the power to compel the officers to provide evidence under the provisions of sections 21(1) and (2) and 35 of the Inquiries Act 2005 and officers of the Police Service of Scotland have a duty of candour to the Inquiry.

The stated reason for the request is that without both these undertakings (i.e. from the Solicitor-General and me) the Inquiry is likely to be seriously impeded in fulfilling its function in relation to the terms of reference in the context of the likelihood of the officers and former officers exercising their right against self-incrimination and not giving full, frank and uninhibited evidence to the Inquiry. As the former only applies in relation to criminal matters, the request from me is in the context of the latter.

I note that it is accepted that the decision as to whether to grant any undertaking, and the terms thereof, is a matter solely within my discretion as Deputy Chief Constable Designate and that I require to weigh the competing public interests. A clear and significant public interest is the maintenance of public confidence in the police. One of the primary purposes of an effective disciplinary regime with accountability is to ensure that public confidence. The Chief Constable and I have a duty in the public interest to maintain discipline to ensure public confidence in policing.

The rights of the bereaved family of Sheku Bayoh are at the centre of the Inquiry. As stated in the submission on behalf of the Chief Constable, their Art.2 rights encompass not only the carrying out of thorough, diligent and comprehensive inquiry, but the duty also requires there to be appropriate provision for disciplinary action. The views of the family require to be considered by me. The family have opposed the seeking of undertakings. The submissions made on their behalf by Miss Mitchell Q.C., founded on the duties of police officers, the declaration made by each officer in terms of the Police and Fire Reform (Scotland) Act 2012, the code of ethics of Police Scotland and the statutory standards of professional behaviour (per the 2014 Conduct Regulations). As I understand your Ruling, these submissions were not persuasive because of the right against self-incrimination, but this only applies as regards the Crown.

In my role as Deputy Chief Constable, I have oversight of the operation within Police Scotland which responds to and supports the Inquiry. I am committed to supporting the Inquiry's aims and objectives with absolute candour. Extensive resources have been applied and continue to be applied to assist in the provision of material to the Inquiry and ensure the fullest possible sharing of evidence and support to the Inquiry. I recognise the importance to the Inquiry of ascertaining the truth as to what happened to Mr Bayoh on 3 May 2015.

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As the Chief Constable has stated publicly, policing in Scotland is done with and by the consent of the public. The main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland (per the policing principles at Section 32 of the Police and Fire Reform (Scotland) Act 2012). Effective policing is enabled and enhanced by the trust and confidence of the public.

Your aim in seeking the undertaking from me is to '*remove any barrier to the giving of full, frank and uninhibited evidence*' by witnesses who are serving police officers. Police officers should not and do not need to seek comfort from me, nor any of their colleagues, to give full and frank testimony – either to this Inquiry or to any inquiry. Giving such full and frank testimony is the basic expectation we have of one another as police officers and the very least the public demands of us as their servants. It is not 'transactional' and it should never be conditional.

The Chief Constable has made it clear that racism or discrimination of any kind is deplorable and completely unacceptable; it should have no place in society and it has no place in policing. Any perceived failure to further the policy of zero tolerance within Police Scotland of racist views or discriminatory attitudes would seriously undermine the confidence of every community in Police Scotland. It would be highly damaging to the integrity of the Service and the rigour with which that policy of zero tolerance is discharged between and among police officers and members of police staff. It would be antithetical to Police Scotland's values of integrity, fairness and respect and contrary to our commitment – reflected in the police officer's declaration - to upholding human rights and a shared mission to keep people safe.

The Coalition for Racial Equality and Rights ('CRER') made an important point in their submissions to you regarding the potential impact on communities and relationships within the Police Service of Scotland should an undertaking (*from me*) cover evidence that an officer had evinced malice and ill will towards Mr Bayoh based on his membership or presumed membership of a racial group.

The rulings in the *Rosemary Nelson Inquiry* and the *Hutton Inquiry* were cited to you in support of the request for the undertakings. I have considered those carefully. It is notable that in the *Rosemary Nelson Inquiry*, the position taken by the Chief Constable of the Police Service of Northern Ireland – with the concurrence of the Police Ombudsman – was considerably more restricted than the undertaking sought in the application made to you. In that Inquiry, although an undertaking was granted, this was under specific exception of evidence which might have pointed to alleged behaviour on the part of police officers of such severity that they may have been liable to the most serious disciplinary sanction. The equivalent, in terms of the 2014 Conduct Regulations, would be an exception for alleged behaviour amounting to gross misconduct. In the *Hutton Inquiry*, the Cabinet Secretary also excluded serious misconduct from the undertaking.

I am aware that in the *Baha Musa Inquiry*, Sir Michael Gage stated that there should not be an unreasonable restriction on the ability of the authorities to hold accountable, by disciplinary or administrative proceedings, those who had been guilty of misconduct.

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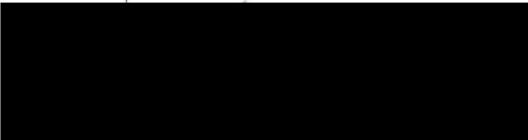
I am being required to approach my decision, further to your Ruling, in this matter in a somewhat unusual position. In the first place, I do not yet have all the relevant material upon which a decision (whether or not to institute a misconduct investigation and/or proceedings) under the 2014 Conduct Regulations might be made in the normal course of things. That material is still being disclosed to Core Participants by the Inquiry Team and the greater part which might have been presumed by me to be of interest in this connection would have been held by the Crown and/or PIRC. It is not material hitherto known to me. Additionally, I am asked to come to a view (on an undertaking) *'in anticipation'* of what the evidence to the Inquiry may be from the various officers who would potentially benefit from its terms.

I also recognise that, were any undertaking (in whatever terms) to be given by me, its actual effects (or 'benefits' if they might be seen in such terms by officers seeking to avail themselves of such effects) may not become manifest for some period – possibly even after the Inquiry itself has concluded. The competing public interests which it is fairly recognised I must weigh in the balance in coming to my decision will, likewise, obtain after the Inquiry has concluded.

I have been provided with a copy of the letter, to you, dated 22nd March 2022 from the Solicitor-General. I have had very careful regard to its terms. In particular, I note the Solicitor-General's decision not to provide the undertaking requested of her in your Ruling, and her reasons for so doing. Having had due regard to my own responsibilities under the said 2014 Conduct Regulations, and especially the provisions which mandate the referral of any matter which may reasonably be said to infer criminality on the part of a police officer to the Crown (per Regulation 9), I cannot do other than decline to give an undertaking.

I respectfully submit the foregoing for your consideration.

Yours sincerely



Fiona Taylor QPM
Deputy Chief Constable