



AAMER ANWAR & CO
SOLICITORS & NOTARIES

[REDACTED]

3rd May 2019

By email only: [REDACTED]

Mr Iain Livingstone QPM
Chief Constable of Police Scotland
Police Scotland

Dear Chief Constable Livingstone,

[REDACTED] complaint in relation to [REDACTED] ex-PC Nicole Short and
ex-PC Alan Paton

We refer to the above.

We can confirm that we represent the family of the late Sheku Bayoh, in particular the partner of Sheku, Collette Bell and his sister, Kadijatu Johnson, who have instructed us to prepare the following [REDACTED] complaint for your attention.

You will no doubt be aware of the circumstances in which Mr Bayoh died, which we do not intend to rehearse here. Today is the 4th anniversary of his death in police custody. The matter is presently being considered by the Lord Advocate's office on the basis of the Victim's Right to Review after a four year investigation.

On 18th April 2019, the Opinion of Lord Woolman in a petition for judicial review by the above named against decisions of the Scottish Police Authority refusing to allow them to retire on medical grounds was published.

The Opinion is available here: <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2019csoh35.pdf?sfvrsn=0>.

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As far back as June 2015, one month after Sheku's death in police custody, his family raised concerns with the then Chief Constable that police officers would attempt to resign or retire on the basis of post-traumatic stress. As such the attempt by Nicole Short and Alan Paton to retire came as no surprise.

Over the years, following many deaths in police custody, there has been widespread criticism of the excuse of 'ill-health' and post-traumatic stress syndrome being used as a means of evading potential sanctions.

In the four years since we raised this concern, absolutely nothing appears to have been done by the Lord Advocate, James Wolffe QC, to assist the Scottish Police Authority in fighting the resignations of Short and Paton in the Court of Session case.

Whilst the SPA did oppose the resignations, we understand that they had to present a court case without any information having been provided to them by the Crown Office.

The danger of such an approach is that the public perception is that Police Scotland has been protecting its officers from scrutiny, when in fact they had no role to play, as responsibility for disclosure of information rested with the Lord Advocate and COPFS.

Lord Woolman's decision ultimately means that these officers will never be subject to potential misconduct hearings or disciplinary action. The family are aware that Police Scotland was not a party to these proceedings and do not intend to raise the substance of the judgment with you.

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[REDACTED]

The family are angry at the painting of racial stereotypes of a ‘black crazed’ male with ‘bulging muscles.’ There is no mention of the fact that within 30 seconds of four police officers arriving, Sheku was face down on the ground never to get up again. Nor is there mention that he never brandished a knife at the officers, or that one was never found upon him.

Sheku’s family believe he was subjected to unprovoked violence at the hands of the police right at the start with the use of CS spray and batons, only responding on the fourth instance of such violence.

Nicole Short states that she was punched in the back of her head, her ‘*feet actually left the ground*’ and that she ‘*landed on the ground almost on the other side of the road*’. If true, this would mean that she flew through the air approximately 8 metres, some 26 feet across Hayfield Road.

We would submit that even if Short defied the law of physics, at the very least one would have expected significant physical injuries from this scenario to have been presented to the court. They were not.

What we do have is post-traumatic stress syndrome – this does not in itself mean that Nicole Short’s version of events can be relied upon.

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The family understand Nicole Short was discharged from the hospital in under 45 minutes and was able to return to Kirkcaldy Police Office to join eight of her colleagues who were involved in Sheku's death for seven hours in one room, able to speak to each other. Despite a death having taken place in police custody, the police officers failed to give statements to the PIRC for some 32 days. Nicole Short's affidavit reveals that she was told what happened for part of the incident.

Nicole Short talks of the fear of a murder taking place, yet there was only one person that day who died: Sheku Bayoh. He was the only person whose body was covered from top to bottom in bruises, cuts and lacerations.

At paragraph 6 of Lord Woolman's Opinion, he sets out the position of PC Short "at length". The source of this position is said to be an affidavit sworn by then-PC Short in late 2018. As such the content of it, as noted by His Lordship, is untested by cross-examination.

Whilst we have our own concerns arising from a variety of aspects of the affidavit, we are limited in what we can say due to restrictions on the use of information that we have been provided by Crown disclosure and the civil action against Police Scotland process.

[REDACTED]

The family wish for Police Scotland to consider and investigate the whole affidavit but draw particular attention to the following excerpt :-

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“I tried to step back and tried to keep distance between us. I still thought in my head that he would stop eventually. In all my years of service I have never needed to use my baton or spray at all and usually, because I am so short and petite, this serves to de-escalate situations with men. Part of me still believed that is what would happen, but he just kept coming towards me. I swiped my baton at him whilst he was skipping towards me to try to show him that I was serious and that he needed to stop. I swiped towards the middle of his body and I completely missed him. Mr Bayoh was now so close to me that he was right in my face and I decided to turn around and run. I was screaming at this point and desperate to get away from him. I screamed ‘NOOOOO’. I knew that he was chasing me, and I knew that he was right behind me. I could hear him behind me and I knew from what he had said and the way he had moved towards me that he was going to hammer me. I felt an enormous blow to the back of my head over to the lower right side. ... I went flying. My feet actually left the ground and I landed on the ground almost at the other side of the road. ... At the time, I remember thinking that I would not let my head be kicked about like the videos they showed us in Officer Safety Training and so I grabbed my hair which was in a bun and wrapped my arms around my head. I curled my body into a ball to protect myself. I did not feel him hitting me again and I’m not sure that I was conscious, but I was later told that he stamped on me at least three times.

I could not get up. I tried two or three times and I just kept falling back down on to my knees. I rolled onto all fours and tried to stand twice and could not. I felt someone helping me up. It felt like my legs were not working. I was desperate to get up. Constable Paton lifted me up by my vest and I recall that his complexion was grey.”

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The family have had the opportunity to view certain CCTV that captured Mr Bayoh’s interactions with police officers. The account provided by ex-PC Short does not accord with their recollection.

The family would invite you to compare this account with CCTV footage already in the public domain, having been broadcast in the BBC Scotland documentary, “Disclosure: Dead in Police Custody” (available here: <https://www.bbc.co.uk/iplayer/episode/b0bw8f21/disclosure-series-1-6-dead-in-police-custody>) in order to assess whether PC Short’s account of this attack is accurate.

They would invite you to have particular regard to the circumstances of PC Short “going to ground” and getting back up.

The family would request that similar enquiries be made of PC Paton’s evidence.

[REDACTED]

We are grateful to you for your assistance and look forward to hearing of your intentions.

Yours faithfully,

[REDACTED]

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