



**The Sheku Bayoh Public Inquiry**

**Witness Statement**

**Aamer Anwar**

Taken by [REDACTED] at [REDACTED]  
[REDACTED] on 19 and 20 March 2024

**Witness details and professional background**

1. My name is Aamer Anwar. My year of birth is 1967. My contact details are known to the Inquiry.
2. I studied at the University of Glasgow. I started a course in mechanical engineering and then switched courses and did politics and sociology. I graduated with MA honours in Social Sciences in 1994.
3. I did an accelerated law degree in 1997 at Strathclyde University. I started my traineeship in 2000 and have been a solicitor for nearly 24 years, with my own firm Aamer Anwar & Co., for around 17 years. I trained as a criminal defence lawyer but run a multi-discipline practice that specialises in Public Inquiries, deaths in custody and FAIs. A significant proportion of my practice around 50% is pro-bono campaign where families are not entitled to legal aid funding, or the family is taking on sections of the state.

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4. I want to begin by stating this public inquiry would never happened had it not been for the courage and perseverance of Sheku's loved ones who have refused to walk away, to be silenced, bullied or patronised. The Inquiry is testament to their desire to seek the truth and ensure Sheku is never forgotten. Over the years it has become clear to the family, that the police, PIRC and Crown Office has operated an unholy trinity of dishonesty, racism and incompetence, betraying the word justice. Kadi Johnson, has no doubt that the way Sheku or her family were treated by the justice system would not have happened had Sheku been white, in his death Sheku was dehumanised, smeared, stereotyped in order to strip him of his right to life.
  
5. Families should never have to rely on their own efforts to make sure the full facts about such deaths are established and those responsible for deaths are held to account. There is something deeply shameful about a system where people are unlawfully killed at the hands of our protectors and those perpetrators remain free. As a lawyer, I am sick of being told that justice is colour blind, sick of a system with its ignorant and privileged eyes, desensitised to the loss of innocent life. Everyone should ask the question why it would take a family 9 years to get to the truth. I am tired of the audacity of those who tell us they see no colour, that they treat each person the same.

**Background**

6. In November 1991 I was a victim of a racist attack by police officers. I was chased behind Ashton Lane, attacked, pushed to the ground, head smashed off the ground, teeth smashed out. During the assault, I was told by the police "this is what happens to black boys with big mouths". Thereafter, I was hospitalised and required to have reconstructive surgery on my mouth and teeth implanted. For the first week or so I was unable to walk and had to take food through a straw. Years later I was diagnosed with post traumatic stress.
  
7. It took me about three to four years to take Strathclyde Police to court in a civil action. In that period, I was arrested on multiple occasions. I appeared in

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court some 5 times and had some 20 attempted arrests over a period of 4 years, on a number of occasions it would be at demonstrations but on others I would have done nothing wrong and would be targeted. I was regularly harassed and victimised over that period, in order that I gave up my civil action against the police. As a result of the treatment by the police I became very political and heavily involved in race politics and a campaigner for justice.

8. I won my civil action against the police and made legal history, by being the first person of colour to win a case against the police for a racially motivated attack in Scotland. I remain the only person of colour to have done so. Sheriff Evans in September 1995 issued a decision accepting that the police officer had shown racial bias, racial hatred and was 'wantonly violent' to myself and made the remark "this is what happens to black boys with big mouths." After I won my court case against the police, I decided that I would go back to university to study law.
9. Following the police attack, I had become the national organiser for the Anti-Nazi League for about three years, as well as the Coalition against Criminal Justice Bill. So, it was never just the case that I was a student who went from school to university to law school. There was a bigger background that meant when I became a lawyer I had an experience of racism at the hands of the criminal justice system, and had, at first hand, seen the impact of injustice. However, when I would meet the authorities, it was often patronising and it felt like they were thinking "What does he know?" not realising actually there is a huge backstory and experience of what had happened over the years.
10. In the first year of law school I became involved in an anti-racist campaign to get justice for the family of Imran Khan, a racist murder in Glasgow of a 15-year-old schoolboy stabbed by the Gilmour twins. In that case, racism was denied even though everybody in the community was aware of the background of the Gilmour twins who attacked Imran before. The twins were ultimately convicted of culpable homicide.

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11. I had seen on a very personal basis how the criminal justice system operates; how it victimises you, how you are gaslighted, treated as a troublemaker for demanding answers, but also how it tries to silence you, humiliate you and make you paranoid. Police officers in my case were not suspended at the time of the attack, nor were they ever sacked or charged with any criminal conduct. When I won my civil action, the police officers were suspended for six months and then were put back on the beat without any charge - I subsequently learned that it was because the Crown Office and Procurator Fiscal Service had in the original case decided after an initial investigation, that there was no criminality, so ultimately I saw the suspension as nothing more than a cynical exercise, ultimately putting the officers back on the beat once widespread uproar had died down.

12. In March 1999 in my final year of my law degree, the first trial for the murder of Surjit Singh Chhokar took place at Glasgow High Court. There was a public argument that took place between the trial judge, the late Lord McCluskey, and Lord Hardie, who was the Lord Advocate at the time. The trial judge was highly critical of the fact that three men were arrested and charged with the murder of Mr Chhokar yet only one, Ronnie Coulter, faced trial. The trial took place just a week or two after the Stephen Lawrence Inquiry reported in England. Of course, the attitude at the time in Scotland by the criminal justice system was that we did not have a problem with 'institutional racism'.

13. In March 1999 after the first trial collapsed. I arranged to meet with the Chhokar family. The meeting took place just a few days after the trial. The family were naturally hostile and resistant as they did not know me, but they then started to tell me their story. Their story was very much a case of they didn't even know the trial was going to start. Nobody from the Crown bothered to tell them. There were no interpreters provided. The police were incredibly arrogant, patronising. The police told the family within days of Surjit's murder they had arrested three white men. But in the days or weeks that followed, the family became concerned to learn that two of the men were

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back out on the street. Everybody in the community knew the three men that were responsible for the attack on Surjit Singh Chhokar. The family were only aware that the trial was starting because somebody who came to the family, and told them that, "Have you seen this newspaper? Your son's killer is going to trial."


14. When the family turned up to court, the police tried to turn them away and said, "You don't need to be here,". However, the mother Gurdev Kaur and the father Darshan Singh Chhokar who didn't speak very much English, along with their daughter, Manjit Sangha, who did speak English went into the court. They watched the trial and at the end of it when Ronnie Coulter was found not guilty, the family were left sat there shocked, in tears, and eventually a police officer came up to them to tell them to leave the court. No one from the Crown, Police or Court Service had the decency or the respect to speak to them or explain what had gone wrong.
15. I said to the family at the end of my first meeting with them, "We'll start a campaign." I contacted the Stephen Lawrence family lawyer, Imran Khan. It was confirmed to me by Neville and Doreen Lawrence, Stephen's parents, that they would publicly support the Chhokar family, if they wanted to fight for justice. As a seasoned campaigner by that point in time, I got my pieces into place. I contacted the trade unions for support, the STUC. Everyone instantly assumed it was a racist murder, the Chhokar family themselves believed it was and the local community told them of the racist terms used by the accused. In addition, Surjit was the only person of colour living amongst a white community.
16. The campaign had four basic demands. One was justice for Surjit, for a trial to take place of the other two men, for answers to be given, for there to be a public inquiry and an examination of the role of racism. I, of course, went for it on the issue of racism, as the family believe he was killed because of the colour of his skin.

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17. We had the first press conference at the STUC. Thereafter, we first went to the Crown Office to seek a meeting with Lord Hardie, he refused to meet with us so we then met with the Deputy Crown Agent Frank Crowe, who is now a Sheriff. To be fair to Mr. Crowe he always treated the family with respect. We asked for answers and the case was in the newspapers every week. Most of the media backed us, they made the connections, they went onto to call the case the Scottish Stephen Lawrence. Of course, the police response and the Crown's response and the battle that was fought out in the media at the time was, "This is not Stephen Lawrence. It wasn't a racist murder." and I said, "We very much believed it was a racially motivated murder" and that very least the issue of race should not have been excluded from consideration of the motivation for the murder.

18. We fought a long, hard battle until the second trial took place in 2000 of the other two men, Andrew Coulter and David Montgomery. In the second trial, the media left the court when Ronnie Coulter's sister made this allegation so the words that he boasted "killing the Paki bastard," were not reported anywhere, so there was no record of it apart from what I said. So, I was seen as a liar, even though it was said in the courtroom, and it wasn't utilised. The second trial collapsed. Both men walked free and there was a huge outcry. At that time, again, I saw how the system operates to shut you down. I did my what was called "the inflammatory statement" on the steps of the court, where I accused the legal system of being institutionally racist. I said, "How many Black judges? How many High Court prosecutors? How many senior police officers were Black?" I used Black as a political term to encompass people of colour and I accused the system of being corrupt, incompetent, and institutionally racist.

19. Of course, that drew a lot of flak, but it hit the front pages and the family was raging, and I spoke on behalf of the family. I remember at that time that the lesson I did not learn was, that it was utilised to say that I was playing the race card, that I was using my words, which certainly wasn't the case because we

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would agree beforehand what the family wanted said. So, they just patronised this Asian family.

20. We knew by then that there was going to be a statement in Parliament the next day from the Lord Advocate and that we would be denied a public inquiry, despite the fact that all the parties had back the demand up until the point of the acquittal. It was a devastating blow flow for the family as they knew the Crown would engage in a cover up. In 2018 it was revealed in disclosed papers that the former Justice Minister Jim Wallace had blocked a public inquiry into the Surjit Singh Chhokar murder case as he “was concerned about the effect of a further inquiry on staff morale” in “a time of change in the Crown Office”.<sup>1</sup>

21. In 2001 there was an Inquiry chaired by Raj Dr Jandoo. When we came to this Inquiry, one of the things I said publicly was “How can this Inquiry be trusted?” We wanted a public inquiry where the family are represented and have access to documents. We felt the Inquiry should have not just examined the role of the police but the Crown Office who had never truly been held to account.

22. We fought for but did not get the public inquiry the family wanted. Ultimately, the family boycotted the Inquiry before it started. Mr Chhokar had developed cancer at the time and then we were fighting for a private prosecution. The two Chhokar inquiries were one sided and did not reflect the experience of the family. The report by Dr Jandoo was extremely patronising to the family and concentrated its fire on myself. It was incredibly comfortable dealing with cultural issues, pinning the blame on the police and everyone around the table was willing to accept the term ‘unwitting racism’ because it meant they never really had to deal with the racism, injustice and second class treatment inflicted on the Chhokar family.

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<sup>1</sup> <https://www.thescottishsun.co.uk/news/3690516/justice-minister-jim-wallace-surjit-singh-chhokar-murder/>

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23. We were trying to find different ways to fight the case, but we wound the campaign up as the family were heartbroken and tired out. It lay on a backburner for many years. Then around 2010, Imran Khan KC, Doreen Lawrence's solicitor advocate, phoned me and said, "you need to do what we've got happening in England. We have worked with the Labour government and they're going to change the law. They're going to bring in double jeopardy. You need to speak to the government in Scotland."
24. I then had discussions with then First Minister Alex Salmond and DFM Nicola Sturgeon about changing the law on double jeopardy in Scotland which they were agreeable to. We met with the Lord Advocate, Frank Mulholland KC and the Solicitor General, Lesley Thompson KC, I pushed for the case to reopened and they agreed. Ultimately, it took until October 2016 for the retrial of Ronnie Coulter and he was eventually convicted of Surjit Singh Chhokar's murder. Mr Chhokar died one year before, so he never got to see justice.
25. Imran Khan said to me at the time of Chhokar, and said to me when we began Bayoh, "Watch your back. They will come for you because if they cannot get at the family, they will come for you. You will be targeted because you're a lawyer, a person of colour." Bizarrely much of the Jandoo report was an attack on me despite not having any role to play in the arrest or prosecution of the accused. Furthermore, the Crown Office negated to mention in their submissions attacking me, that during the Chhokar campaign and before the second trial commenced, they sought my advice on the lack of anti-racist and diversity training and actually got me in to deliver training in 2000 to senior members of their staff. What struck me at the time both with Crown Office as well as the police was how basic, culturally centred, and box ticking the training they delivered. My whole experience was that the material being delivered was extremely basic, but also the staff did not want to be there, or like Constable Alan Paton viewed it as a day out. Sadly nothing much appears to have changed looking at the anti-racist and diversity materials relied upon by the COPFS and Police Scotland.

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26. Similarly, Doreen Lawrence’s senior counsel Michael Mansfield KC said to me when I started the Chhokar campaign: “It’s fine for me. I’m white, I’m middle class. I’m seen as a knight in shining armour who rides to the rescue of these poor, vulnerable Black people, but when you do it, Aamer, or Imran does it, you’re playing the race card, you must prepare to be attacked and you will always be accused of having got an ulterior motive.” I have to say this has been my experience to date, the treatment, the exclusion by members of my profession combined with constantly being on high alert as you wait to be falsely accused, vilified or humiliated, but never able to speak out on what I believe to be racism, because otherwise I fall into the trap by taking the bait, and allow powerful forces such as the Scottish Police Federation will say ‘oh look he’s playing the race card, it’s all about Aamer Anwar’, or for example accused by a good friend of theirs former justice minister Kenny MacAskill of using the Bayoh case to keep my “profile high”, adding that the ongoing controversy was “good for business”.

27. It is an incredibly difficult and lonely place to be in, when you take on cases involving race, combined with the heavy responsibility of representing the families devastated by their loss, one has professional responsibilities, one can falter but cannot afford to fail as the consequences for the families, but also myself on a professional and reputational basis could be devastating-

28. I was amazed to find in Disclosure from this Inquiry in 2024 that the Scottish Police Authority, who had no locus in the investigation into the circumstances of the death of Sheku Bayoh, should also see it as their role to “come for me” (COPFS-00336). This is an email chain which includes an email from Stuart Milne who was in charge of conduct and complaints for the SPA wrote to [REDACTED], Crown Office on the 20 December 2019 regarding a request for disclosure of redacted statements to the SPA - From Stephen McGowan dated 12 February 2020. In particular, speculating and querying whether they could “advise whether any of the information contained Alan Paton’s redacted statements was later revealed in the BBC Documentary by Mr. Anwar and if

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*any information from the statements was revealed, whether Mr Anwar breached the terms under which COPFS disclosed the statements to him.”*

This is yet another example of the system seeing it as their role to attack the family's lawyer and seeking for me to be investigated based on a false assumption. It begs the question did they write similar letters about Crown Office employees or police officers? I doubt it very much.

29. One further example of how 'they come for you' was when at the end of a difficult period for my mental health. I had returned to work after not being in for several weeks, it had taken a great deal of effort to bring myself out to a legal function a few days before the start of the Sheku Bayoh Inquiry. That night I approached a very senior member of the criminal justice system in Scotland, who proceeded to mockingly rub his eyes as though he was crying and say loudly 'boo hoo, let's all cry and have a vigil for the poor man who died....'. I was shocked, he then proceeded to tell me that 'we are coming for you, the Federation are coming for you.' Once again, I felt humiliated and upset as I felt unable to do anything about it. Only several weeks before the pressure of work, personal circumstances led to severe deterioration in my mental health I sought help, and my friends and colleagues gave me a safe place to build myself back up. What happened that night was just another example of how the system bullies, intimidates and when challenged claim it's just a bit of banter: it's not, it's dangerous, its insidious and shameful. I left that function that night scared and shaking and spoke to colleagues who wished me to pursue the matter, I chose not to do so, although the individual was spoken to and he tried to apologise to me. I simply wish to provide this as an example of what is still happening, and if this is my experience then what hope is there for the families like those of Sheku Bayoh.

30. I also highlight the above because of the constant accusation of being anti-police because it is simply not the case, I have fought a lifetime for them to do their job and within the law. Where credit is due I give as I did at the end of the third Chhokar trial in October 2016 with the following statement on the

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steps of the High Court - *“Today's verdict is not a cause for celebration but relief that finally justice has been done. At the end of the second trial in 2000, I stood on the steps of this court accusing our justice system of acting like a 'gentleman's colonial club', of being 'arrogant, unaccountable and institutionally racist', but today the Chhokar family want to thank the prosecutors, Crown Office and Police Scotland for their unwavering commitment to justice. They have shown themselves at their finest”.*

31. It is important to note the above, as there have been desperate attempts over the years to portray me as an enemy of the Police, however nothing could be further from the truth. In fact, at the end of the Chhokar trial in 2016 despite the distortions and untruths in the Jandoo report in 2001, the SIO Detective Chief Superintendent Clark Cuzen at the conclusion of the 2016 trial said: *“It is important to recognise the tireless campaigning for justice over the years by the Chhokar family and their lawyer, Aamer Anwar. I hope they can take some comfort from today's verdict. This tireless activity ultimately revealed fresh evidence that pointed the finger firmly at Ronnie Coulter as the man responsible for the violent and calculated attack on Surjit Singh Chhokar. Whilst we were unable to find evidence of racial motivation at the time of the murder, there was evidence to support the fact that Ronnie Coulter described Surjit using racist terms when confessing to the murder.”*

32. Chhokar was important because it takes me right up to 2015. I had built a very good relationship by then with the Crown Office, with Frank Mulholland who became the Lord Advocate and Lesley Thompson Solicitor General.

**First meeting with the Bayoh family**

33. I have been asked what I was told about the post mortem by the family and the arrangements for that and at what stage this was discussed with me. I think Ade had contacted me on 4 May 2015 to arrange to come to the office with the family the following day. The family told me that they are holding back the post-mortem until Sheku's mother [REDACTED] was here. That was very much

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their position from the beginning and my instructions flowed from that hence my text message to the Lord Advocate and then phone call with him, and it's my understanding that they've told the PIRC about that, to tell them I was instructed and meeting with the family and would be speaking to the Lord Advocate I had dialogue with the PIRC to advise I was instructed. I was concerned at that point at what I was told from the family and that there was a parallel police investigation going on.

34. My understanding was the post-mortem hadn't happened. The family informed the PIRC they wanted to wait for Sheku's mother to come. It was never the case of, "We refuse to identify." The family wanted to see the body before the post mortem. There was no requirement to rush the post-mortem. This undue haste doesn't make sense. Why would there be such haste from the Crown Office and David Green if they have already accorded witness status to the police officers? That means that there's no criminality. After all, in my professional practice, we've known year in, year out, post-mortems can take place a week, two weeks, a month, two months. So, at that time of Sheku's death, it would have made no difference to the forensic findings, to the pathology findings to have held off until Tuesday afternoon or Tuesday evening for a post-mortem to take place. What is highly insulting and suspicious is that the PIRC and Crown could make arrangements for the police to attend the Post-Mortem, even though no statements had been provided, meanwhile the Bayoh family and Collette were being denied that same right.

35. I arranged to meet with the family on Tuesday 5 May 2015. Prior to the meeting at 9:48 a.m. on 5 May, I sent the Lord Advocate, Frank Mulholland, a text message advising him that I was acting for the family, that I had spoken to the PIRC, I expressed real concerns about the investigation, what had happened and the potential for things going badly wrong, but that also the family wanted an independent post mortem. The Lord Advocate agreed in a subsequent phone call that morning, before the arrival of the family, that

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would happen, and the post-mortem would be put on hold. So, that's at 9:48 a.m. which totally contradicts the version of events told by PIRC of the conversation that had taken place prior to that.

36. However, events rapidly unfolded, the family came to see me later that day. It was Kadi, Adi, Colette, [REDACTED], the mother, various members of the family – there was around 10 to 15 people in my room. I went through the case with the family. They told me the background, in the first instance, how they'd been lied to – how there'd been several different versions of events which set off alarm bells. I'd asked them about whether Sheku took drugs. From what little I had read in the newspapers and what the family had told me, I assumed that there was more to it and potentially there would be drinks and drugs involved, simply because with his previous good character, total lack of a violent record and what was being claimed, he would appear to be having a mental health episode that could only be as a result of drugs or alcohol consumption or both.

37. The language I used publicly later was that Sheku Bayoh had no previous convictions of violence. That his behaviour was out of character. I expected very much that when the results came back that drink and drugs would be involved, which the family quite honestly weren't happy with. But I said as a lawyer, I had to deal with the case impartially and be honest with them. The family were obviously hostile to that, but I said that doesn't take away from the fact that if somebody's suffering a mental health crisis, they need help, you take the person as you find them. Obviously, [REDACTED] wanted to see her son. So, she'd arranged to come up, and I was going to contact Professor Busutill as our pathologist to be present alongside the Crown's pathologists.

38. I have been asked whether, in my experience as a solicitor, I have ever known a family to ask for the post-mortem to be delayed and for that request to be granted. Yes, absolutely, because families will invariably want to see their loved one before the post-mortem takes place. There have been post-

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mortems that have taken place a month, sometimes later, sometimes several weeks later. I've never known it to be claimed that that somehow has meant that you can't find out the cause of death. After all, this was only asking it to be delayed for some 48 hours.

39. During the meeting with the family, I received a call from Alastair Lewis at PIRC in which he stated, to my astonishment and the horror of the gathered family, that the PM had taken place. The Lord Advocate subsequently phoned me to apologise and state he did not know the post mortem had already happened. On the same day at 17.18 I advised the Lord Advocate that I had instructed Professor Busutill and he wished to see in the first instance the draft PM report, I had also asked him for someone different to deal with rather than David Green as I was aware that he would be hostile towards me from the days of Chhokar in 2000, the Lord Advocate provided me Stephen McGowan's number for myself to liaise with.

40. One of the things that still stands out for me is that at that meeting with the Bayoh family, I said to them, the 'elephant in the room' will be racism because the family were speaking about racism. It has very much occupied their minds. They believed it's because he was Black that he died. They believe that the overwhelming force that had been used on him was because of the colour of his skin. They believed that he was being criminalised in his life in order to justify his death, and when I said that we could not publicly mention the word racism, there was an outburst in the room. I tried to explain, because of the lessons I learnt from the past, about how the system just comes tumbling down and they'll say, "Aamer's playing the race card. Where's your facts for it?", that we must bide our time, but I wrongly assumed that the Crown would have learned lessons and the issue of race would be front and centre in any investigation- how wrong I was.

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41. I didn't know until very recently that when the family actually left that meeting, they thought about not instructing me because they were so angry and upset that I said we are not going to address the issue of race publicly.

42. I did it tactically for a reason. I thought let's gather the evidence. Let's see how the COPFS and PIRC deal with the issue of race, after all it was their responsibility, it should not have to be me to have to constantly reminding them of their duties and good practice, that they had to be given a chance, but as I said repeatedly in public, nothing should be done to prejudice the investigation. The responsibility rested in the hands of the Crown and the PIRC to consider race. Bearing in mind that the issue of race had been flagged up on the very first day by the family directly to the police and then to the FLOs. It's not, as in, if they see, it they'll deal with it. No, it should be a primary issue. It was recognised in Stephen Lawrence it should be primary. It's not rocket science: a black man is dead on the street, so consider if his colour had a role to play, after all not one police officer could resist using the word black multiple occasions in their statements yet expected the family to believe on their return to the station and then the canteen, that not one person considered the issue of race.

43. I knew we were in a difficult position, because of course you had only one person who could tell you what happened, that was Sheku Bayoh, and he was dead. I knew by that point that the window of opportunity in the investigation, a 24-hour golden window of opportunity for detectives to investigate, was closing rapidly. So, I said I would speak to the Lord Advocate and the PIRC. I also told them that we needed to step back, allow PIRC to do their job and refuse to speculate.

**Issues with communication and family liaison with PIRC**

44. I have been asked about the reasons for the family's non-engagement with the Family Liaison Officers (FLOs). The family didn't want to work with the FLOs because they found them arrogant, defensive and they had no

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information to provide. If you're going to have a relationship with a family, whichever institution you are, you expect it to be a two-way process. However, it is the FLOs job is to relay information back to their institution. In the Stephen Lawrence Inquiry, the FLOs were very much a vehicle for flow of information back to the police, with the family simply viewing them as spies. So, there was nothing of substantial value that they could offer, they were at the bottom of the food chain. They were not offering us meetings with senior members of their staff. They were offering this meeting with the FLOs, who invariably would say, "I can't tell you that, I'll have to come back to you". Why would the family want to meet with individuals who had no power or information to relay, when we have an opportunity to meet the Lord Advocate. After it was the Lord Advocate that had ultimate responsibility for directing the investigation.

45. I have been asked to outline my understanding of the issues with PIRC at the beginning of the family's relationship with the PIRC. At one of the first private meetings in the days following Sheku's death, Senior Investigator John McSporran stated to me in my offices at Carlton Place, Glasgow - *'You should see the size of this guy's pecs, I have never seen someone so big'*. Followed by the comment *'the toxicology will sort it'*. Firstly, I was shocked that a senior investigator in the early days of the investigation could speak in such a manner about the deceased but also have such a predetermined view of what had happened. Such a view could only have been formed on the basis of what the police officers had said and no matter what concerns were raised by the family, this partial view was repeatedly offered to the experts as fact.

46. When I met with PIRC, it was friendly, but I was taken back by their arrogance and their incompetence, but I noted it, and I kept noting it, and I kept hoping that it would change. That's why I kept going to the Lord Advocate and to Crown Office, saying, "What about this? What about that gap?" Right down to things such as the correct factual matrix for post-mortem reports, exclusion of excited delirium and the missing weights of the restraint officers.

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47. It seemed to the family that the PIRC had already decided from the outset, that the officers would be accorded witness status. So, that was the first alarm bell that went off. Why were they according them witness status so quickly? Kate Frame's response to us on terms of criminality was flawed within the law. We thought it was a wrong way of viewing it.

48. Our main concerns about the PIRC were that they failed to use their powers, which are fairly substantial powers. We're asking, "Have you ever used your powers? Have you gone and got a warrant? Have you detained anyone? Have you done any of that?". In my view, they had not. There is no point to PIRC if they do not use the powers that they have: it's a toothless tiger. We were also concerned that it was still taking instructions from its former bosses. The individuals in PIRC I was meeting with, I had met previously when they worked for Police Scotland and they used to work for Ruaraidh Nicolson, in Strathclyde CID or serious crime. It appeared to me that none of this was being declared, that there was a conflict of interest here. Not one of them is saying anything to allay anybody's alarms or fears. At the same time, I'm very conscious of this but felt that we needed to give them a chance and see how it went.

49. I have been asked what powers I considered the PIRC weren't using in relation to this case. It's laid out in that letter to PIRC of 31 July 2015 COP 9-047  
26(a). The failure to deal with the question of race and racism; why they didn't seek assistance from organisations that are dealing with deaths in custody. We suggested, for instance, Inquest, which is an NGO. It's an organisation that, as far as we are concerned, is impartial, that was instructed by Theresa May to work as an advisor with Dame Elish Angiolini KC to in the review of deaths in police custody. Why not go to them and seek assistance. No, they weren't interested.

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50. PIRC's failure to exercise their powers in the golden hours, when they fail to separate the officers, they fail to go in and take control of the situation. Our argument, in simple, layman's terms, was you walk into a room, you find a person lying dead, there's six people in the room, the first thing you think is one of them may have killed that person. There might be a reasonable explanation, but the first thing you don't do to six civilians is put them all in a room together for eight or nine hours and then let them off to their own devices for 32 days. No. Why, then when the scenario involves police officers do the PIRC step back? What were they so scared of? Were they scared because they lack confidence because they're a new organisation? Maybe, yes. Or was it a case of that they weren't impartial because they had formerly worked for individuals within Police Scotland and had too close relations, or is it a case of they had unconscious bias because they were formerly police officers?

51. The whole organisation didn't even turn up with sufficient resources. They could not even get out of their beds. They're like, "Oh, it's the length of time to get to Kirkcaldy". It's not in the Orkneys, it's just Kirkcaldy. Somebody phones you up and says, "Somebody's dead," you go. That's what you're paid to do. You get your full team down, and you walk into that police station and say, "Never mind your Gold Commander. I'm in charge". Their failure to do that showed that they were unwilling to use the powers they had they were superior to the police at that time. I would have expected them to take control and say, "Actually, this is not your investigation. Actually, you shouldn't be at the post-mortem." They failed on each and every occasion to say, "You are not in charge, step out. You shouldn't be doing this, step out. We'll ask you for when we want resources. You don't decide. You don't go and have meetings and arrange what you're doing, running a parallel investigation. We are in charge. Stop issuing statements. Stop doing that".

52. In relation to the failure to separate the officers, what would have stopped them walking into the police station and saying, "Sorry, but we want you to

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separate the officers?” If Police Scotland and the Gold Commander had turned around and said, “Actually, we’re not going to do that,” then that’s fine, but they never even asked them to do it. They left it to the police. They allowed themselves to be patronised. I have to ask what instructions did they give about conferring in those first eight, nine hours? Where were the PIRC in that stage of the process to intervene say, “Actually, do you know what? We don’t accept this.” The idea that they couldn’t separate those officers out was the family’s first major bone of contention, apart from the several versions that were told. Why? Because they made out, “we don’t have the resources and the facilities.”

53. However, Police Scotland had the resources and facilities to pick up Colette, to put her in an interview room, to get Zahid, to get his two other friends Martyn Dick and Kirsty Macleod in there, to be raiding their houses, to be finding the facilities and getting two van loads of police at Zahid Saeed’s mum and dad’s house, but they didn’t have the facilities to separate the officers? Were people’s lives being turned upside down and the PIRC not aware? Did they just simply not care? Their attitude in the way they interviewed people as well struck at the heart of what the family believed, because it was being relayed back to the family as to how their friends and how families were treated, how they were left feeling humiliated.

54. PIRC didn’t use one power, as far as we’re concerned, to extract information. We were told, we can’t seize the officers’ mobile phones. However, they were able to seize Zahid Saeed’s mobile phone and Martyn Dick’s mobile phone. The phones were taken and not returned to them for over 8 years. Zahid’s still not got his mobile phone back. We got a copy of it. It was kept. Kept for what? But no, you can’t seize the police’s mobiles. So, there is a difference in treatment. Because the PIRC are not using their existing powers against the police officers, but for some reason, powers are being used against those who are not responsible for his death, who couldn’t be considered to be responsible for his death. PIRC allow the police to take over people’s houses

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and say it's part of the whole investigation. Why did the PIRC not take over a police officer's involved houses after al they were involved in Sheku's death?

55. Why would you not take a police officer's mobile and say, "We want to check it, see what there is because we believe there's a reasonable suspicion that you're involved in the death, that there's been conferring. We look at your statements and say, these are identical. You've sat together, and you've combined the details. That actually is not truthful."

**Letter to the PIRC dated 31 July 2015**

56. I have been asked about my letter to the PIRC dated 31 July 2015 (COPFS-04726 (a)). On 28 July, the PIRC advised that John McSporran was working on the report for the Crown Office. By 31 July, we say the family's confidence in the impartiality and robustness of the PIRC was rapidly going. This letter was written to the PIRC on behalf of the family containing 53 points for PIRC to address. At paragraph 3, I state "*At several meetings with the family, you have stated you did not have the information at hand and would revert to us, but have failed to do so.*" I have been asked to clarify the meaning of this. I am referring to Kate Frame's office having failed to respond to our queries. That was always the tactic and I'd be growing increasingly tired of being told "We'll come back to you?".

57. Our letters would take hours if not days to compile. They were very focused, they were very detailed, they were precise in the questions that were asked, whether it be on a medical basis, whether it be on a police procedure basis, or whether it be on an investigative basis. They were precise, they were focused. It didn't take much to provide answers to it, and the approach that they adopted was first of all, ignore. If we persisted, then they would write back in response. They'd ignore the points that were the important ones. They'd provide a couple of answers to some and then they'd delay and say, "We'll come back to you or to deny you the information on the basis that,

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“We’re Crown-directed and we’ll have to seek advice from them,” or , “it’s a criminal investigation so we can’t comment on it.”.

58. So, we realized that they were actually not providing answers to anything and leaving the family in the dark. However, Crown Office, when Frank Mulholland was Lord Advocate, took a different approach. The caveat that was given to me was, “this can’t be disclosed publicly”. In the same way that disclosure if dealt with in this public inquiry.

59. The Bayoh family were just being treated as though they were a box that’s been ticked in their family liaison box: “Box ticked, met with the family. We provided them information.” No, the PIRC provided the information that it wanted to provide. It wasn’t an equal partnership. It wasn’t a two-way process, it was not Article 2 & 14 compliant, in fact I remember at times when I would mention this, the blank expressions of ignorance that would greet me. They were simply not interested in hearing from us what were entirely legitimate and reasonable responses or questions, but also relaying the information being provided that would assist their Inquiry. We weren’t trying to work against them. It didn’t get the family anywhere to work against the PIRC.

60. It seemed to be that there was a blocking mechanism. Personally, as a lawyer, I grew tired, in that first year and the years that passed, of how many times I had to go to meetings previously with the PIRC and then with the Crown and say, “Could you please do an audit of what I’ve asked you? Because I don’t have the resources. I don’t have the funding for a team of lawyers to follow up every line of every question I’ve asked to say ‘What happened to that answer? You promised to respond”. So, July, I suppose, is the start of the breakdown in relationship with the PIRC.

61. On page 10 of the letter, I say, “*We are growing increasingly concerned at the breakdown of trust, poor communication which does not allow the family to*

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*raise important concerns and grievances with you.*” This described the state of the relationship between the family and PIRC as at 31 July 2015, so just under two months into the PIRC investigation. This was prior to the family’s first meeting with the Commissioner, Kate Frame. I have been asked whether I felt that it was this letter that prompted the meeting with the Commissioner. Yes.

**Meeting with the Commissioner of PIRC - Background**

62. I have been asked about my memory of the meeting with the Commissioner on 3 September 2015. There was a build-up to that, because from July onwards, we started to mention race. I felt that the PIRC had had plenty of time and the that they hadn’t done anything with the race. There are many questions being asked including about the weights of all the officers. It seemed to me to be the most basic question that required to be asked.
63. You don’t have to be a rocket scientist to know that six people on top of a man is dangerous and you would want to know what the weights of each of them were. However, we weren’t getting answers to that. But there was interest in the weight of Sheku, and remarks about him being the biggest Black man. Sheku was 5’10” in height and 12 ½ stones in weight. I was taller than Sheku, and I was heavier than Sheku, and I was thinking, “Does that make me the biggest male they’ve ever seen?”. For the family and me it was the ‘fear of a black man’ but the PIRC and COPFS because they were so blind to colour couldn’t see the implicit racism.
64. On 24 August we were advised that COPFS got an interim report from the PIRC and we weren’t told the contents of the report. On 25 August, we were told by the PIRC that the officers had failed to provide information on the weight, so then we’re going, “Why is the PIRC telling us at that stage the officers have failed to provide information on weight?” They had not considered the importance or the centrality of the biomechanics, the pushing down, the issue of race, all this being a real, significant factor. Fair enough

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you want to concentrate on the drugs, but it's in association with restraint, so why would you not have the details of that to be able to say to an expert, "Listen, this was the quantity of weight potentially, this is the ground, this is the chest being pushed onto concrete with people on top of you." You've got all the stuff, the description of it, but it wasn't being done. As I understood it, the officers failed to provide information on their weight, but when they did they would do so directly to the Lord Advocate's office. However, once again, the PIRC failed to provide us with information on the weight of the other officers. So, there were some officers who'd failed to provide it, and some officers who had provided it.

65. On 26 August 2015, we met with the Lord Advocate. At that stage, the family expressed serious concerns about the conduct and the direction of the PIRC. The family's confidence was starting to wane. We issued a statement following that, saying that we've uncovered serious matters of concern, they were referred to the chief constable for investigation, the family now had a pretty accurate account of what happened, but chose not to release a great deal of information into the public domain.

66. We already had the narrative that had been built by the Scottish Police Federation and we still, at that point, had not released a huge quantity of information that we were able to do legally, that was because we chose not to. It was because we didn't want to interfere with the live investigation. The family felt under such pressure, such pressure to defend Sheku as the family felt that Sheku was being attacked by the press, they're smearing him and they're justifying his death. The family wanted to know why I was not doing this?" I said, "You have to have confidence in the PIRC investigation. This is the only mechanism we have, and if we don't, that just gives away then, the chance of any criminal prosecutions".

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67. On 1 September 2015, prior to the meeting with the PIRC, I wrote another substantial letter to the Lord Advocate (COPFS-03489a). In this I mention an article in the Herald dated 31 August 2015, which stated:

*“But one policing source said that while excited delirium had to be examined as a possibility, it was unlikely to have been a factor, pointing to tests which are understood to have revealed the presence of the drug ecstasy in Mr Bayoh’s body. The source said, ‘I am 100 per cent confident that the fatal accident inquiry will reveal any injuries to be in line with standard police arrest.’”*

68. Our question was **who’s feeding this information? It’s very detailed information that’s being fed to the press and it’s very convenient to say “police source” because the press won’t say it’s a police source unless of course it is a police officer.**

69. I raised this with the Crown. The family was concerned the investigation had focused all of its energy on everything apart from what the police did to restrain Sheku Bayoh and that was pretty obvious then, as the months passed, that that was all they were talking about. It was focused on toxicology, it was focused on sickle cell, it was focused on Sheku having caused his own death **by the widely discredited and racist theory of ‘excited delirium’**. The Lord Advocate was left under no illusions that the Bayoh family did not see a fatal accident inquiry as a panacea for all the problems that Police Scotland faced.

70. This letter lays out, on 1 September (COPFS-03489a), all the various concerns including the involvement of the Health and Safety Executive, the concern around the instruction of Dr Karch, the erroneous suggestion that Dr Cary endorsed him as a world class expert and the investigation of race as a relevant or contributory factor.

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71. Les Brown of COPFS replied in relation to the question of race in a letter dated 2 September (COPFS-02926). This letter stated that PIRC had been:

*“... instructed to confirm that the issue of race is a priority in their investigation and to investigate whether there is any evidence of any racial motivation. I have written to PIRC making it clear that a key priority is to ensure that if any evidence of racial motivation exists that it is fully investigated and reported to the Crown.”*

72. The family of course were never given any information on how race was investigated or why it had not been considered by the PIRC or the Crown Office and Fiscal Service up until that point.

73. This same paragraph of the letter continues (COPFS-02926) *“I note that Mr Johnson will provide the Crown with further information. I have advised PIRC of this matter and will be grateful to receive the matter so that this matter can be fully investigated”*. I have been asked if I can recall what the information was that Mr Johnson was due to pass to the Crown and whether this information was actually provided to the Crown. I believe this was further details of the inquiries he had carried out and information the family had been receiving.

**Meeting with the Commissioner of 3 September 2015**

74. In terms of the meeting with the Commissioner himself, the meeting was an absolute disaster. Kate Frame and her team sat up at the end of a huge board room table with us at the bottom. She talked at the family for some 20 to 30 minutes about her CV. As John Mitchell said in his evidence to the Inquiry, that it was not the best format to have the PIRC representatives sitting at the top and the family at the bottom. It felt like two sides. It was defensive, there was no attempt to break the ice. It was just very much, “We are here to

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tell you what's what," and in response to every question I asked the response was, "Legally not defensible." It was patronizing and arrogant.

75. I have been referred to the PIRC Family Liaison Log 3 (PIRC-04152) at page 32 of the PDF which has a note of the meeting with the Commissioner on 3 September 2015.

*"Again, Aamer made comment about police officers conferring and police officers considering the incident was a terrorist attack. Mentioned the 'elephant in the room' racism and questioned the credibility of some of the police officers and their conduct both on and off duty."*

76. I have been asked if I recall mentioning the officers considering the incident a terrorist attack and whether in my comments at that time, I was linking this to racism. Yes, I remember this. I was linking the officers' consideration of terrorism to racism. Racial profiling would have been automatic. I've dealt with the question of racism for a number of years; I worked with Ruaraidh Nicolson on the question of racial profiling at Glasgow Airport. Both myself and Humza Yousaf, when he was in MSP, raised the issue at a public meeting which ACC Nicolson organised. I dealt with these issues on a professional basis, in terms of training provided to special branch, in terms of public meetings, lectures, in terms of papers that I'd written, etc. about racial profiling, about the use of the Terrorism Act, and how, post-9/11, it had criminalised the Muslim community and people of colour.

77. So, I was very much attuned to the fact that when you mention a Black man walking down the street with a knife, it becomes, "Oh, it's a Lee Rigby." How convenient. Two police officers at the same time in their statements are writing this down, so it becomes terrorist-linked, and yet for some reason nobody can say, "If he was a white man, would it have been seen as terrorism?" No, it wouldn't.

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78. So, that should have alerted the PIRC and the Crown to this issue. Of course, Britain's on terrorist alert, but every day of the week there are people who are walking about, unfortunately, with knives. It doesn't become a terrorist incident. This was my experience and that was the experience of the family, because I wasn't dealing with a family that weren't attuned to these issues, I was dealing with a family that were extremely intelligent. I was dealing with a family member like Ade, who had been involved in training with the police on equality and diversity issues, so he knew the issues inside out. I was dealing with Kadi, who was a nurse, and of course I was dealing with Collette, who had been in a relationship with Sheku and was more than aware of the fact that he was Black and her being white and the issues that would arise, etc. as a result of that.

79. When we were sitting in that meeting with the Commissioner and raising these issues, it was a blank look from Kate Frame, John Mitchell, and John McSporran. For me, I took it I was dealing with individuals who were unconsciously biased, or institutionally racist, or simply did not care but they certainly had no recognition of those issues. They just couldn't see it and any attempt to guide, explain or prod was viewed as hostility rather than assistance or a fundamental basis for the involvement of the family due to Article 2, rather than being expected to sit silently.

80. That angered the family; the temperature in that room got higher and higher, because whilst these people sat at the top of the table, they couldn't see what they were doing to this family. They couldn't see what their lack of responses and their inability to see these as potentially fundamental, core issues which were being flagged up. It was almost like they refused to recognise it. They never once said, "You're right. We should be looking into that."

81. I have been asked, when the issue of race was raised at the meeting, whether this prompted PIRC to explain what they would be doing to investigate race?

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It is pointed out to me that PIRC Family Liaison Log 3 (PIRC-04152), at page 32, records that “*Commissioner assured family all investigators are diversity trained,*”. I had wanted detail on how they were trained in investigating racial motivation or racism, they could give me absolutely no assurance other than mentioning diversity training and then provide zero detail - it did not instil confidence rather that they were completely out of their depth. They gave us no assurance. They couldn’t point to how they were trained. When I have heard the evidence of diversity in this Inquiry, it appears the investigators were diversity trained when they were police officers. I didn’t realise that when you join a new organisation, that that new organisation relies on what training that person had in their previous job. It’s just astonishing. We know from Elish Angiolini’s report they had no training in investigations of race-related deaths. They had no training at all. Also, if they had diversity training in the police it might have been 5 years before, it might have been 10 years before, it might have been 15 years before.

82. In the meeting, they couldn’t provide me a practical detail of what it meant, and of course then I flagged up certain issues. I flagged up the terrorism, I flagged up the racial profiling, I flagged up Alan Paton, I flagged up the question of text messages, I flagged up officers’ background details. In response, there was silence. Blank expressions. If they had any response, then it would have been written down. They had nothing to provide, not one of them, to say, “Mr Anwar, we assure you. Mr Johnson, we assure you that this is what we’re doing, this is how we plan to do it.”

83. I knew at that point, we’re in for the long haul because this PIRC have deliberately or unwittingly sabotaged the investigation. They had a responsibility, they failed to act on the instructions, they failed to even take on board the information that we were providing to the PIRC and do anything with it. They were obstructing it, so they were sabotaging it. They had a mindset and a culture that meant they were in denial of what had taken place in front of them.

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84. Following the meeting with Kate Frame, that pretty much finalised the breakdown in the relationship with the PIRC. The family lost every bit of trust that they had in the PIRC to deliver. The family saw Kate Frame as being arrogant, they saw her organisation as being unfit for purpose. They felt the PIRC failed to provide information, and at times the information that was provided was completely and utterly wrong. We had to compare and contrast, because then we'd get the information from the Lord Advocate, and we'd say, "This is different to what we've been told," and of course there was that constant bleeding and leaking of information into the media that could come only from one or two sources the PIRC or the Crown. If it wasn't from them, then it was being leaked to the Federation then described as police sources in the media. I felt there was an agenda; the agenda was to rubbish what the family was saying.

85. We wrote to PIRC on 16 September 2015 (PIRC-01839) (the letter was copied to the Lord Advocate) and told them that the family's confidence in the PIRC was "shattered". We said, in essence, it was the end of the road for the family's trust in PIRC, who placed any hope they had left in the Lord Advocate and in the Crown Office. So, the buck was then passed to them. There was no purpose, as far the family were concerned, in carrying on with the PIRC who'd failed in each and every turn of this investigation. On 30 September, two weeks after writing the PIRC, we wrote again to the Lord Advocate advising we had not received a response from the Crown or the PIRC, requesting a response to a letter (COPFS-04636(d)). One would have thought after what the family had stated a response would have been prioritized - it was not she waited until the 16 September 2015 to respond. You would expect that somebody like Kate Frame, rather than waiting, would write back immediately saying, "Really, I'm left disturbed or upset or alarmed or concerned by the public statement of the family," and come back to you, "We'd really like to resolve this. We'd really like to sort matters out. Could we have a meeting?" No, there wasn't any attempt. It's just like a spoilt kid throwing their toys out

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of the pram because, what, I decided to meet with the Lord Advocate? Why shouldn't I? Does the family not have the right to meet with the country's most senior prosecutor and ask questions of him? The reassurance she tried to give in her letter was simply not enough, her understanding of the law was basic and flawed, she and the PIRC were out of their depth, in essence they wished we were not demanding or asking questions because it exposed their total incompetence and laziness as an organisation.

86. It wasn't easy for the family to walk away from the PIRC because they knew that they were the organisation tasked with investigating Sheku's death at the hands of the police, and I had to constantly say, "We don't have a choice" but ultimately, at the end of the day, they're my clients, and when they say, "we've had enough, we never want to meet with her again," I have to follow their instructions.

87. I have been referred to Kate Frame's statement (SBPI-00447), and paragraphs 549 to 555 where there is a suggestion from the PIRC Family liaison log that there was no contact between the PIRC FLOs and the family between 14 September 2015 and 10 August 2016. At paragraph 552, she states *"I was aware that the family had a number of meetings with the Lord Advocate and that their solicitor was engaging directly with COPFS staff. As the PIRC was operating under the direction of the Lord Advocate, it appeared that the family's preference was to engage directly with the Lord Advocate. They didn't explicitly say that, but their actions suggested that. There were occasions when in response to questions raised by the family, PIRC provided information only to be advised that the family had been given that information by the Crown. Similarly, when requests for disclosure of material were made to PIRC, as it was a Crown directed investigation, PIRC required to seek the Crown's approval and by the time that was received from COPFS, the family's solicitor had separately approached COPFS and obtained their approval directly."*

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88. I have been asked if I accept her point that there would require to get Crown approval for the disclosure of information to the family. We would not have required to go to the Crown Office had PIRC, in the first instance, not been so incompetent, had they not been so arrogant and patronising, had they not been so dismissive in the way in which they talked about Sheku, in the way in which they conducted themselves. The fact that they would sit in my office and talk about the lack of resources and say "Any pressure you can bring to bear would be helpful." I mean, otherwise, what business was it of mine? Why would I be getting MSPs to raise questions in parliament from the justice secretary? Why would I be approaching the justice secretary about PIRC's resourcing, and then Kate Frame saying everything's fine and hunky-dory?

89. Of course, a year later, everything's not 'hunky-dory'. Post the M9 FAI and Sheku Bayoh, they required more resources and more investigators. Going back to that question of do I accept that PIRC needed Crown approval for disclosure, I don't think that provides the full context, they failed to comply with Article 2 and blocked the flow of even the most basic of information. It was the breakdown in relationship that resulted in the fact that we had to keep going back to the Crown, because the information that was continuously being provided by the PIRC either wasn't correct, or it was incomplete, or they just were getting the law wrong as far as we're concerned.

90. I have been asked to comment on paragraph 555 of Kate Frame's statement (SBPI-00447): *"I have been asked, if there was no contact between PIRC's FLOs and Mr Bayoh's family or their legal representative during this period, whether that would give rise to any concerns around the investigation's compliance with the principles of Article 2. Several efforts were made by PIRC to engage with the family throughout the process but the choice to engage or not lay with the family. The family had made it clear from the outset in May that they did not want direct contact. Despite agreeing a process for weekly communication via their solicitor, he frequently did not adhere to those arrangements or timeously respond to requests for communication. The FLOs*

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*repeatedly sought the provision of suitable dates that were convenient to him and all the family members to enable a formal meeting to be fixed. The family agreed to formal six-weekly meetings and then ignored an invitation to attend that meeting preferring to meet with the Lord Advocate on the identified date. They declined to meet with FLOs when requested to do so. They were involved in the process through engagement directly with the Lord Advocate and COPFS, as was evident in the selection process for the expert witnesses and continued to correspond directly with PIRC. They also had been provided with contact details for PIRC FLOS, with whom they had been repeatedly encouraged to engage with but chose not to do so.”*

91. I have been asked about Kate Frame’s suggestion that we didn’t take up the offer of the 6 weekly meetings or engage more with PIRC as an organisation. Engaging with the PIRC was tiring. In letter after letter, we asked questions that were reasonable questions that the family expected a response, and there’d be silence, weeks would go by. Nothing, other than another patronising response. It’s a red rag to a bull. The Family’s view was “Enough, we don’t want anything to do with that woman again, we don’t want anything to do with the PIRC again.” We also knew the interim report in August 2015 had been passed on to COPFS and we had been told about the PIRC report (I’ve forgotten who it was in the Crown Office), “It’s incompetent, it’s full of holes. Don’t worry, we’ll be picking those up, we’ll go back to it,” and I’m thinking, “All this time has passed and you’re going to have to go back and ask them to do more and more? Why?” As for the family not wanting to meet with the FLOs, what was purpose? they were not complying with Article 2, they had no answers to the questions the family had, and it was becoming increasingly obvious to the family that the PIRC were not up to carrying out the most obvious tasks in their investigation of Sheku’s death.

92. So, the moment’s passed, and the only people to blame for it are the PIRC, and even when they are being blamed, publicly, privately, and in correspondence, they still fail to deal with it. They have a childlike denial of

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their own failures, racism, their incompetencies and their inadequacies, and all the while they are defensive. Justice is a right, not a privilege. The family want answers, they're not getting it, they will use whatever facilities and procedures they can to extract those answers, and that's what they had to do.

**PIRC contacting the family about the media enquiry about Collette Bell**

93. I have been asked about my recollection of a telephone call from PIRC regarding contact to the PIRC from a journalist making an allegation about Collette Bell. Alistair Lewis from PIRC phoned me that there had been contact from a journalist about a potential story about Collette. The suggestion was that the journalist was going to try and run a story that on the morning of 3 May 2015 Sheku had fallen asleep and he woke up and found Collette and Zahid in bed. I suspected this information was provided to them by the Scottish Police Federation. I replied, "Well, let them." Alastair said, "We wanted to tell you, just so you're aware of this". I said, "I'm going to discuss it with Collette,". I felt he was almost trying to make out maybe there's some truth to this. It was the way it was said which took me by surprise, and I said straight away to Alistair Lewis. "You know Collette wasn't there. You know this absolute nonsense. This is just a further attempt to smear Sheku, to now attempt to smear Collette."

94. PIRC knew absolutely that Collette wasn't at the house at the time. but to create that innuendo, to drag up dirt, to smear and criminalise a Black man when he's dead, when they know he can't answer back for him, forcing the family, of course, always to have to be the ones that have to fight back.

95. I have been asked whether I am objecting to the fact that PIRC attempted to warn the family about this potential newspaper article being printed. No, I'm not concerned that they shared that with us in the first place. However, as an institution, they could have immediately put a stop to that whispering campaign. They could have responded to the journalist, that they had already checked Collete's whereabouts on the morning on 3 May and there's no truth

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to the matter and stop it right at the front door, if they were really that concerned for the welfare of Collette. They could have just done it like that. I know from my own experience of speaking to journalists. I know what's on the record and I know what's off the record, but I also know that they will not risk printing something if they can't stand it up.

96. The PIRC do nothing. This is the organisation that's willing to go with my press release to the police (PS04984), who then pass it on to the Federation to see what they can do, but this is an organisation that isn't willing to pick up the phone or say to the journalists, "Actually, this is absolute garbage."

97. A narrative is being created that is trying to imply that Sheku died maybe because Zahid assaulted him and that this is drug-fuelled binge, orgy of drugs and alcohol. That Sheku was violent and aggressive because Collette was found in bed with Zahid. It's untrue, and it begs the question: where does this information come from? Who provided that information to the press? I know who provided the information to the press, because the information was provided to the press by the likes of the Scottish Police Federation or some intermediary.

98. I have been asked about Kate Frame's Inquiry statement (SBPI-00447) at paragraph 550, in which she is asked about this situation with Collette Bell. She states:

*"I do remember that sometime after the meeting, the office received a media enquiry about Ms Bell and when PIRC staff contacted Mr Anwar to alert Ms Bell to the media interest, he appeared to imply that PIRC had either initiated the story or were trying to benefit from it. That was entirely inaccurate and the sole motivation in letting Mr Anwar know was to ensure Ms Bell's safety and protect her from press intrusion. When the FLOs tried to meet with the family following that inquiry, they refused to meet with them. I think that coincided with the reduction in contact with the FLOs and the family."*

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99. I never ever implied that PIRC had initiated the story because why would they? If I had thought that I would have put that in writing then to them. I wasn't shy about putting in writing anything where I thought they were breaking the rules or breaking the law, and I did that in relation to Steven Karch. As I've explained, my recollection of my argument was why are they not putting a stop to it? They know the facts. Why are they allowing this to continue. Why are you coming to me on this basis rather than explaining "we receive an approach from a journalist but don't worry, Amer, we've put a stop to this." For instance, if there was a media Inquiry that a police officer was stabbed, what would the PIRC do at that point? They'd say to that journalist, "That's just absolute nonsense".

100. The narrative created in the media is important. For instance, if the story that Sheku Bayoh had stabbed a police officer. This was corrected; however, the purpose was achieved. The reason why the purpose was achieved, because you've got it out in the first hour, a police officer stabbed. And then to this day, people say, "Oh, he attacked a police officer with a knife." Job done. Again, this is common with other Black people dying in police custody. The narrative in the first 24 hours is the important narrative, because you then spend days, weeks, months and years trying to discount that, trying to prove the opposite.

101. My attention has been directed to the latter part of paragraph 550 which states that Ms Frame thought that this situation with the media inquiry "*coincided with the reduction in contact with the FLOs and the family.*" I have been asked whether I was aware of there being any sort of correlation between this and the reduction of contact with PIRC. According to the PIRC Family Liaison Log 3 (PIRC-01452, page 34), the contact from PIRC about this matter took place on 7 September, I can't recall the date but I accept that this was correct. I've already outlined the difficulties with PIRC through May, June, July, August and the family being increasingly frustrated and the fact

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that the family were shattered following the meeting with the Commissioner on 3 September 2015.

102. If PIRC had acted decently to the family, they wouldn't have been sacked. I see how it operates because if you've got a direct line of access to the family, then you win the Brownie points. You hold the ace cards because you're like, going back to your boss and saying, "Listen, I've got a good relationship with them." But if there's somebody acting on behalf of the family who says, "You have no relationship with the family anymore. The family wants nothing to do with you", they then start to have alarm bells ringing up, because they're thinking ahead, "Somebody's going to ask us questions why that broke down, and who's going to be blamed for that?"

103. Well, there's only two people. Either they're going to blame the family's lawyer, or the people are going to blame those individuals who are responsible for the relationship breaking down. The blame rests squarely with them because in each and every public statement, you see me continuously saying, "The family have faith in the PIRC, but there's caveats." Having confidence in somebody is built on trust, and they shattered the trust. The family felt they were lied to. They felt they were manipulated. They felt that they were not the front and centre of PIRC's Inquiry.

**Investigation of racism**


104. I have been asked to summarise my concerns regarding the PIRC investigation, or failure to investigate, race. The need for the consideration of race and suggests of points to consider were outlined in my letter of 31 July 2015 to PIRC (COPFS-04726 (a)) at point 11 and points 23 to 27. I raised specific concerns regarding PC Alan Paton at point 11: *"It is also has been alleged that this officer has a history of racism from a young age. Can you advise whether that has been checked and considered? For instance have family members such as his mother, father and sister been interviewed, in the same way as Mr Bayoh's family were to assist the investigation?"*.

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105. Point 25 also stated *“The family have raised concerns as members of the public have given them information about police officers involved talking about the incident and referring to Sheku as ‘We killed a black man today, We whacked him on the head then he fell’”*. In relation to these points, Kate Frame responded on 7 August 2015 (PIRC-02420(a)). In relation to point 11, she states *“These points contain fresh criminal allegations which go beyond the terms of reference set by the Lord Advocate for this investigation. I will however seek his instruction in relation to these matter.”* In relation to point 25, the letter comments *“if as it appears, you or the family have information that you consider to be relevant to the investigation I would urge you to make it available to my investigators without delay.”* I have been asked whether the source of the information in point 25 was passed to the PIRC for investigation, they were told about the allegations of racism, it was for them to follow it up- it was not rocket science, in fact it reminds me when Doreen Lawrence gave the murder detective a piece of paper with the names of her son’s killers on it and he proceeded to crumple it up, in essence that’s exactly what they did with the information I provided, all they had to do was investigate then follow the lead to Paton’s family.

106. Following the failure of PIRC to act on the allegations of racism, BBC Scotland did an expose on racism and PC Alan Paton on 14 October 2015. It was on the front page of national newspapers. I have been referred to a letter from PIRC to me dated 20 October 2015 (PIRC-02441(a)). At page 1, the letter states that PIRC investigators have traced Barry Swan and interviewed him. At page 2, the letter states *“I am disappointed that you and the family of Sheku Bayoh were unable to respond to the offer which I made in my letter of 10 September to meet with you and them again on 15 October to facilitate open and honest dialogue and discuss the progress of the investigation.*

*I can confirm one aspect which I would have been able to update the family on was the progress in investigating the allegations against Constable Paton.*

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*As I indicated at our meeting on 3 September, I am committed to pursuing a thorough and impartial investigation and I requested at that meeting that you and the family share any relevant information in connection with Sheku Bayoh's death with me or my family liaison staff. It is therefore disappointing that you chose to reveal the identity of a number of Constable Paton's family members, who you assess hold information that is critical to this investigation, via the media."*

107. I have been asked to comment on this. I found the Commissioner's response patronising. She says she found it "Disappointing." In my view, who was she to be disappointed in me? I act on behalf of the family. She was given every information possible. She had the resources to investigate the allegations of racism. The PIRC had the opportunity to go and contact the Paton family. But they chose not to do so.

108. PIRC just couldn't see institutional racism impacting because it's a **Black family** that's asking these questions. This puts their noses out of joint. This is how racism, insidious racism, unconscious bias, and that drip-drip corrosive effect of racism works, because as soon as you start asking, you're seen as trouble, you're described as trouble, you're treated as trouble. You're accused of playing the race card. I always wonder sometimes, had it been a white lawyer, what their attitude would have been. Because when it comes to me, it's a case of they can write in whatever insulting terms they want on pieces of paper thinking no one's ever going to see the light of day. What are they actually saying in the room, where they know there's no accountability? Time and time again my name has popped up in disclosure and what jumps out is the anger and disquiet at my asking questions, of how to counter what I am saying, of being the errand boys for the Federation agenda.

**Instruction of expert witnesses by PIRC and COPFS**

109. I have been asked about our concerns in terms of the selection of experts. We provided names to COPFS and PIRC of experts that we

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considered should be utilised. The PIRC were resistant from the start but Frank Mullholland as Lord Advocate was very much open to it. I was recommending experts who are recognised not just in the United Kingdom, but throughout the world in their field. The last thing we're going to suggest is anyone that could have any aspersions cast on their credibility or reliability; they must be impartial. Everyone in my office is taught that before we instruct an expert, we do due diligence which is much more than can be said for the PIRC or COPFS.

110. In the meeting with PIRC, they requested our input into the selection of expert witness. PIRC were trying to claim credit, but actually, in the meeting with the Lord Advocate on 26 August, Frank Mulholland had already asked us to provide the names of suitable experts. Coming on the back of the offer from the Lord Advocate, PIRC were just jumping on the bandwagon.

111. I have been asked to outline my concerns about the language used in the expert witness package. PIRC didn't appear to understand the question of racial stereotype. They didn't recognise the danger of using value-laden language, separating the author of the report from their accounts of what happened. In terms of the language that's used, they didn't take that on board. The value laden language created a narrative that wasn't factually correct and it was a factual matrix that was not correct. So, pathologists and experts, pathologists in the first instance, were provided the narrative that came from the police, or sources within the police, or when they didn't even know what had been done and then, following on from that, it wasn't corrected and then experts were again provided that. So, they didn't have a balanced approach nor was the changing factual matrix provided, nor were the experts consulted with again.


112. Even in terms of the background and circumstances being provided of Sheku, for example, Sheku watching the boxing, being out with his friend. I couldn't see the relevancy of this because nowhere in that summary of the

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circumstances was there any detailed examination of restraint. Nowhere in that did you see any detailed examination of the weight applied, the biomechanics, the potential of positional asphyxiation. The imagery that was built up was almost as if you take out excited delirium, but somebody's Googled it and produced a narrative that fits with that. So, anybody looking at it, "Oh, well, it must be ABD."

113. So, the concern first was the false narrative, the false factual matrix, followed by a focus on one cause of death, but rather they weren't keeping an open mind. So, it seemed to be that as soon as you'd get one response in, they would then do everything to counter it. So Nat Cary provides his report. Then it's a case of, "we need to get other experts." You've got the guy at the top. Why are you now trying to find multiple experts? Because I was thinking, "When I'm in a criminal case, I never see the Crown turn around and say, 'Listen, we've got one expert and we're now going to try and find an expert that backs up the fact that the accused killed this man until we've got enough to get it over the line to prosecute.'" You don't spend the time then getting several other experts to counter that expert, but that's what the Crown seemed to be doing.

114. I have been asked about my letter of 1 September 2015 to COPFS (COPFS-03489a), in which I state under the heading "*instruction of experts*" that "*We share your opinion that experts require to be instructed to assist with this investigation*" and then go on to express concern about certain experts i.e. Dr Karch and Dr Payne James. I have been asked to comment on this. Whilst there is some contradiction, as I agreed they needed to instruct multiple experts, they also did not need to keep trying to instruct those very much versed in excited delirium by default or to counter the findings of leading experts. Whether it be the PIRC or the Crown, that seemed to be the approach they adopted in order to deal with their experts, as in they were cherry-picking out those who would be shutting down the argument. They were lying to the family about excited delirium because they were still trying to

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utilise that. In evidence and documents as well as directly from the Lord Advocate it was confirmed that excited delirium would not be considered or relied upon. They were saying it won't be considered in the final report. We did not get to see the final report, but now know only through disclosure it was in the report. We never knew Crown Counsel Ashley Edwards was unaware of Karch's speaking to the Sun, or that she was considering excited delirium.

115. In our letter of 1 September 2015 to COPFS (COPFS-03489a), I refer to our meeting with the Lord Advocate on 26 August. I reiterated the family's concerns about the instruction of Dr Payne James and Dr Karch. I outlined Dr Cary's opinion about both experts being "*strong proponents of excited delirium syndrome*" and Deborah Coles concerns regarding Dr Karch. However, could PIRC have not researched Steven Karch? I did a google search and you find out who he is quite quickly, but they couldn't do that.

116. It is concerning that Kate Frame put in a section in the letter saying that Dr Nat Cary "*expressed his professional regard for the significant expertise of both person, considering Dr Karch to be one of the most eminent and expert practitioners in the world in the field of cardio pathology*" (PIRC-01849 – Letter from PIRC dated 9 October 2015, page 6). I have never, to this day, understood how Kate Frame came to put in a letter. How did that come to be? How do you make that up?

**PIRC's dealings with the Swan family**

117. I have been asked about the approach taken by the PIRC to the Swan family and the arrangements for Karen Swan's statement. The first contact with the Swan family came through an email which came into the family through. Obviously, there were emails that were clearly from timewasters and conspiracy theorists. Sometimes there was information that would come in that had a ring of truth to it. These emails take time to be sifted through and you lack resources.

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118. Eventually, I arranged to meet with Karen Swan. I think it would have been around July or more like August 2015. She's very nervous and initially doesn't want to meet. I went along, no recordings, no notes taken. I just spoke to her and was shocked by what she told me because it was extremely serious allegations. These were not allegations orchestrated by me as Mr Paton tried to make out. I didn't know who Karen Swan was. How was I ever going to get hold of Alan Paton? We didn't even know the names of police officers involved until later on in the day, we started to get their names. It was only Nicole Short's name that I was aware of.

119. However, we managed to trace her and I arranged to meet her. It was a very gentle process to try and build up her confidence to give a statement.

[REDACTED]  
[REDACTED]

[REDACTED] So, it was a very gentle process, realising this is a vulnerable witness and must be dealt with appropriately.

120. [REDACTED] there was a question of providing protection, for example, putting a marker on their house, or on the telephones etc. So, we arranged that with ACC Ruaraidh Nicolson. However, issues arise in relation to this, I think the local police don't respond appropriately or properly, and I had to raise these questions with Ruaraidh and, I think, with Deputy Chief Constable Iain Livingstone (as I think he was at the time). We were trying to get that resolved and so there was delays in her interview taking place because our first priority is ensuring that they feel safe enough to come forward.

121. Arrangements are made for the interview to take place on 8 January 2016. Investigator Ross Stewart from PIRC is arranged to take a statement along with another female investigator. The interview is due to take place at my office with me present. I've obviously explained in advance of the interview that Karen [REDACTED] has to be handled

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correctly. I'm told "Don't worry about it, an experienced investigator will be sent in."

122. Ross Stewart started the interview with taking the details from Karen, and I could see this is upsetting for her. You can see the trauma, it's dealing with family, [REDACTED] allegations of racism, and she starts to get upset, and first, I think she asked him: "Are you a police officer?" and Ross Stewart replied "No." Karen then asked "Were you in the police?" and Ross Stewart replied "What's that got to do with it?". So, it's not a case of trying to build a relationship. It's almost like he's defensive and he starts to be rude. She may well be, and he might see her as being aggressive or being resistant. That's not the point. You're there to do a job, so you need to be constructive and try to get the information, because you have finally a key person here who can provide a statement.

123. Karen is clear getting upset, and then she starts to speak about her brother, [REDACTED]. Then the words that came out of Ross Stewart's mouth was, "Doesn't this happen in all families?" I was shocked and thought did he actually just say that? Karen started to cry and said, "No, it's not normal" something along those lines. He started to argue with her and she said "I can't do this", got up and, I think she left the room. I questioned Ross Stewart about his actions and told him he had sabotaged the interview and asked him to leave.

124. I think I phoned John McSporrان, I'm not sure if it was him I spoke to. I complained, and obviously, Mr McSporrان was shocked, and said that we would rearrange the interview. I said, the other investigator, the female officer was fine. The interview was rearranged for a couple of hours later that day. I spoke to Karen and calmed her down. Later, the two female officers who conduct the interview were not former police officers. They were very gentle with Karen in extracting a statement from her and they get the necessary details.

Signature of Witness [REDACTED] .....

125. Now, I didn't have the time to sit every waking minute and hour to file complaints against the PIRC. I had other work to do. I had paid work to do. It was just of those things that "We'll deal with that later." Of course, it was never dealt with later. At best, this was arrogance, misogynistic and a cultural issue of a former police officer that had no understanding [REDACTED] [REDACTED] of appropriate treatment of a woman who's sharing these allegations. At worst, it struck me as an attempt to sabotage a critical witness or perhaps not deliberate, but not realising the consequences of the way he dealt with it was dangerous to the Inquiry. Of course, we managed to rectify that, but it still left the damage.

126. While I did not make a formal complaint, I am asked whether I was aware of any action taken by PIRC, following my call with PIRC notifying them about the incident. My recollection was that he said "Oh, we'll deal with that." So, it was almost like they're going to deal with it back in the office, but almost instantaneously, "We're going to come back to you," regarding the rearranging of the interview.

**Article 2**

127. I have been asked to outline the obligations on PIRC and COPFS and of my expectations of the participation of Mr Bayoh's family in the investigation. Article 2 ECHR imposes a procedural obligation upon the state to investigate deaths where state responsibility is potentially engaged, yet as seen from our correspondence with the PIRC/COPFS, their response was one of lip service paid to this obligation, as the authorities felt immune from repercussions for breaches, in the comfort that the family of Sheku Bayoh had no resources to challenge them, i.e. there was no state funding and we faced state bodies with unlimited resources.

128. Article 2 was effectively a law without a remedy and over many years COPFS used this fact to their benefit. When pushed to account to the family,

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COPFS/PIRC's mantra was 'this is a live investigation', 'matters were still under investigation', or that it would be 'premature to disclose at this stage matters to the family so as not to prejudice an ongoing inquiry', 'await the end of the PIRC inquiry, then it became await the end of the COPFS inquiry, then await the end of the VRR, then it ultimately it was you need to await for disclosure from the Public Inquiry.

129. Regardless of the form of the investigation, state authorities must act of their own motion once a matter has come to their attention. It must not be left to family members to lodge complaints before investigations are triggered. At each stage, COPFS, PIRC and Police Scotland failed the family on the following standards of investigation: Independence, Adequacy, Promptness and reasonable expedition and public scrutiny and participation of Next of Kin.

130. **Independence** - Investigations must be independent. This means that those who are responsible for and are carrying out the investigation must be independent from those implicated in events; this requires "*not only a lack of hierarchical or institutional connection but also a practical independence*". Article 2 does not require absolute independence, but rather that those conducting the investigation are sufficiently independent of the people and structures being investigated.

131. In the case of Sheku Bayoh, there were key players who the family believe acted in unison because of an unwitting culture or deliberately bias. No account was taken of the close connection between those in PIRC and those in the Gold Command at Fife following Sheku's death.

132. Fundamentally the family believe that both COPFS and PIRC were relaxed over their failures over many years, as they thought an inevitable FAI would mean they could never be held to account for their failures to prosecute, ultimately a dead end for the Bayoh family' search for truth and justice.

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133. **Adequacy:** Investigations must be “adequate”. Where there has been a use of force by State agents, the investigation must be adequate and effective in that it should be capable of leading to a determination of whether the force used was justified. Investigating authorities must take reasonable steps to secure evidence concerning any incident; this includes eyewitness testimony, forensic evidence and any clinical evidence obtained through autopsy. For the Bayohs the investigators accepted versions of events put forward by the accused state agents without hearing from any further witnesses.

134. **Promptness** - Investigations must be prompt and must proceed with “reasonable expedition”. There may be some obstacles that prevent progress in particular situations; however, the ECtHR has stressed that a prompt investigatory response is generally regarded as essential in maintaining public confidence in a state’s adherence to the rule of law and in preventing the appearance or perception of a state’s collusion in or tolerance of unlawful acts. The ECtHR has also found that the passage of time is liable to undermine an investigation and will compromise definitively its chances of it being completed. Yet there no rhyme or reason was provided to the family, as to why it took COPFS ultimately 5 years to reach a decision.

135. **Public scrutiny and participation of Next of Kin** - There must be a sufficient element of public scrutiny around the investigation or its results. In all cases, there must be involvement of a deceased’s Next of Kin to the extent necessary to safeguard their legitimate interests. There will often be a lack of public scrutiny of police investigations; however, this can be compensated for by providing access for the public or the victim’s relatives during other stages of the available procedures. These investigations were not accessible to Next of Kin, nor did it allow for real public scrutiny where, for example where the family truly had access to the investigation.

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136. The participation and information provided to the family of Sheku Bayoh, was tokenistic, part of a box ticking exercise as can be seen from the repeated requests for information. The most serious prospect that could ever arise for an individual being arrested is death and yet, paradoxically, that event did not trigger the provision of immediate access for next of kin of the deceased to legal advice. The immediate aftermath of a death in custody is the point of the process, more than any other, when families are in urgent need of advice, support and information about their rights, and the processes that will ensue over the coming days and months.

137. This inequality of arms is an unacceptable curtailing of justice, undermining in the case of Sheku Bayoh and the potential for his family to interrogate the facts and ensure harmful practices were brought to light. The power imbalance between bereaved Bayoh families and the state was the most significant injustice of the whole investigation process. What many do not realise is the total inequality of arms that flows from the death of Sheku, they had no right to legal aid funding, I acted on a pro-bono basis for several years that brings its own stresses and strains as you pour every resource into trying to hold to account the most powerful institutions in the country. There were times that my firm almost did not survive as I poured everything into trying to stay one step ahead but vigilant for the battles that lay head. This cannot be allowed to pass this is what happened to the Bayoh's despite our advocacy on their behalf and the spotlight we brought to bear on the criminal justice system, what happens to all those families that do not have that?

**Data protection aspect of the PIRC investigation and recording of Mr Anwar's name under counter terrorism category**

138. I have been asked about the discovery that Police Scotland were holding information about me under a category of counter terrorism. My understanding is that the data protection investigation started when I wrote to Police Scotland on 31 July 2015 (COPFS-02768(a)). This letter stated at page 2:

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*“It was also alleged by the family that PC Alan Paton and his colleagues regularly access the police data bases and other Crime file systems to check up on the personal data of individuals without consent of the data controller namely the Chief Constable without there being a ‘policing purpose’.*

*To do so would be a clear breach of the Data Protection Act 1988 and officers would be subject to criminal proceedings.*

*Can you advise whether an audit has been carried out in terms of PC Paton, along with the ten other officers from the incident or any other colleagues in accessing such systems and viewing personal data related to any of the civilians connected to this case, including the deceased?”*

139. The letter goes on to provide individual names and dates of birth for Sheku Bayoh, specific family members and friends together with my own details. DCC Neil Richardson replied by letter, dated 5 August 2015 (AAC-00348). He states:

*“As you will understand the circumstances into the death of Sheku Bayoh is being investigated by the Police Investigations Review Commissioner (PIRC) and therefore I will seek direction from the Criminal Allegation Against the Police Division (CAAP-D) of the Crown Office and the Fiscal Service, who are best placed to investigate these matters as clearly we would not wish to compromise the current ongoing investigation. I shall update you in due course once I have received a reply from COPFS.”*

140. When the response came, we were told that there’s nothing, that’s there no evidence that any information had been access for any reasons other than a policing purpose.

141. I have been asked about my knowledge of the creating and viewing of intelligence logs held by Police Scotland under my name with the subject term

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REFRACT, used for submission of counter terrorism intelligence (PIRC-00488) and when I became aware of this. I was unaware of any details being held; I had always suspected that I had been placed on numerous occasions through my life because of the cases I was involved in that meant conflict with police. The first time I became aware was when the Inquiry last year told me that they had discovered this material in disclosure. Following that I meant with ACC Alan Speirs and was shown minimal paperwork at the Police HQ in [REDACTED]. The tried to explain it off by saying they were not allowed to show me the information but some of it related to death threats to me. This was not satisfactory, but I also was unwilling for the police to be sidetracked into me rather than Sheku's death- I thought when the time arises then I would deal with it.

142. I have been asked whether I was aware that COPFS had referred this matter to the Information Commissioner's Office (COPFS-04209(e)). I was not aware that the matter was referred by COPFS to the ICO, after all I was led to believe there was no information stored on me or the family.

143. I knew that there would be information stored there, but it would have to be a lawful basis for it and a lot of what seems to have been there was nothing to do with anything to do with that. Yet what they seem to have done is they've shut down the investigation and I never got anything and had there not been a public inquiry, I wouldn't have known anything about it. I'm aware of the fact that there will be details stored in relation to threats to my life, in relation to terrorism, from extremists, whether it be religious extremists or political extremists, because of the work I've done over the years. So that was often where I was assisted by DCC Ruairaidh Nicolson, Iain Livingstone when he was DCC and various other officers.

**Discussions with COPFS regarding race**

144. I have been asked about the discussions held with COPFS in relation to race and what did the Crown say that they would do to investigate and

Signature of Witness [REDACTED].....

address it. We knew that in May, June, July, and August, and then up to the beginning of September, that nothing had happened when it came to race. The very fact that we knew that the Crown Office had not included this as their terms of reference was damaging, to say the least. It gets quite tiring to have to have that heavy responsibility that you have to lead somebody by the hand to point out, "Going to do this? What about that?"

145. As I've already explained, I wrote to the PIRC on 31 July 2015 (COPFS-04726(a)) and copied this letter to the Lord Advocate and LES Brown at COPFS. The need for racism to be investigated is discussed at our meeting with the Lord Advocate on 26 August. I followed this up in my letter to the Lord Advocate on 1 September 2015 (COPFS-03489a) in which I state "*The family noted your clear, personal commitment to combatting racism wherever and whenever it arises. However, we would submit that the same commitment has not been shown by PIRC. At no point has any reference been made by them to investigating race as a relevant or a contributory factor. It would seem that they have no expertise whatsoever in the matter. This is deeply unsatisfactory given that race is undoubtedly the 'elephant in the room'.*"

146. Whilst on one level, Frank Mulholland takes on board what I say, and instructs the PIRC to confirm "*that the issue of race is a priority in their investigation and to investigate whether there is any evidence of any racial motivation*" (Letter from Les Brown dated 2 September 2015 at page 2; COPFS-02926) we are not provided any information as to how this will done. There is no information regarding the route map for examining, investigating and analysing the evidence. The role of the Crown is to direct the investigation. I would have expected Crown Office to provide guidance to the PIRC as to how the race aspect of the investigation should be conducted.

147. I didn't see anything provided, and that was damaging because that also started to erode the trust in the Crown Office because they were unable to provide any basis for what they were instructing. We come to September

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2015 and the trust is completely damaged in PIRC in October 2015 but also in the Crown as they have done nothing on race, and then there's a report being handed over by the PIRC to the Crown, PIRC is out of the picture – or so we're being told – we're almost made to think that the Crown's getting on with the job now. They're carrying on, they're filling in the gaps, this is getting done. Of course, then Frank Mulholland left, and then once Frank left, there wasn't really anything.

148. So, we're left under the impression that everything's been done possible to consider race. We're none the wiser because we're outside of inner circle. We don't get the information. Once James Wolfe becomes Lord Advocate in 2016, Nobody's telling me, because every time we want the information, they say, "This is a live inquiry, so we can't give you this information. It's a live investigation. We can't provide that. We can't tell you, because it might be potential criminal proceedings. There might be health and safety proceedings." So, they use that as a blanket caveat in order to obstruct you getting the answers. If we're not getting the answers, how can I ask the question? I ask the question, I get no answers, but I get told it's on a need-to-know basis.

149. However, at the same time, I'm conscious of the fact that the PIRC is supposed to be an independent organisation. It's heavily resourced and funded from taxpayers' money, there's the equality legislation, there's Article 2. It's a law that exists, but it's a law without a remedy, and the whole point of having a law is that for each and every wrong there must be a remedy, but I now know in this country there is no remedy. Why? Because families are not funded. There's no way back. When it comes to the question of PIRC, they should have known about it anyway.

150. At the end of the day, you're heading up an organisation and you have extremely senior individuals who've had 30 years of experience in the police or 30 years of experience within the Crown Office. You would think, at the

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very least, with the knowledge of previous cases such as the Stephen Lawrence Inquiry and Surjit Singh Chhokar in Scotland, that they would instruct their own expert.

151. They may not want to speak to me about it. I'm providing the letters, I'm giving them the pointers, I'm giving them the route map, I'm sending them in the direction of examples of what they should be looking at and involving Deborah Coles. But they don't accept any assistance, they don't accept any advice. Not as far as I'm aware. Nothing to show for it. Why? Because they had a closed mindset.

**Meetings with Deborah Coles**

152. The first meeting with Deborah Coles took place sometime in or around 15 October 2015. I have been asked how this meeting came about. I suggested this meeting to the Lord Advocate. We tried to work on a partnership basis with the Crown, in terms of suggesting resources which we were aware were out there and might be helpful. We wrote and suggested individuals as experts, including Maurice Lipsedge, Nat Cary, and various others. We also suggested Deborah Coles, because she was the executive director of Inquest, an NGO which has dealt with deaths in custody and she was a foremost expert in the United Kingdom.

153. I have been asked what I was hoping to achieve by this meeting. Deborah Coles was a recognised expert and was highly respected across the United Kingdom, especially in England and Wales where they dealt with pretty much most of the deaths in custody that have taken place in prison establishments, in hospitals or at the hands of the police. She has been selected by Theresa May, then the Home Secretary, as an advisor to Elish Angiolini's Review into Deaths in Custody. She had an encyclopaedic knowledge of deaths in custody, of the mechanisms, of the procedures, of what happened in each case. She was an excellent resource with more experience than anyone in Scotland at that time. My thought was that COPFS may want to reach out to her for assistance. Deborah came along to

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that meeting and, while the Lord Advocate met with Deborah and it was very positive. Did COPFS contact her again? No. Did they utilise her resources? No.

154. So, the government of the United Kingdom, Theresa May, as the Home Secretary, can utilise the likes of Deborah Coles, can put aside any personal animosity of thinking, "Oh," you know, "They represent Black people," and deliver a very powerful, damning indictment in Elish Angiolini's report – again, a highly respected former Lord Advocate – yet the Crown Office fails to utilise her as a resource. Why? Why were they so blind and determined not to seek help from others? It's almost like it was a small-minded, parochial way they operated. They wouldn't look beyond themselves because, "Well, no one's going to tell us what to do." It's not a question of, "No one's going to tell us what to do." Actually, knowledge is power. It gives you an opportunity to go, "Well, we don't have the experience here. Let's go and get experience from somewhere else."

155. At the end of the day, PIRC/COPFS went to the United States for that so-called expert, Steven Karch. There were people in England that could have assisted them. It was a resource that they could have utilised, Deborah Coles knew the experts, she knew the issues. They could have had that dialogue built up to go, "Actually, how can you assist us on this? These are the issues that are arising." Alternatively, let's reach out to a former Lord Advocate, Elish Angiolini, and say, 'Is there any lessons that we could learn from this? Is there anything you can assist us with?'" give her involvement with reviewing deaths in custody. She's also a former Lord Advocate. Even at the point that her report comes out in 2017, did they approach her the? No, they didn't.

**Difficulties in relationship with COPFS**

156. In the period, from 2015 to October 2016, it was a relatively good healthy relationship with Crown Office. There was partnership working

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between the Bayoh family and the Crown while Frank Mulholland was Lord Advocate. There was disclosure of material to the family and discussion around issues arising out of that material and the suggestion of potential experts to be instructed. When James Wolffe became Lord Advocate, all of a sudden, the provision of information, the application of Article 2 rights, just came to a stop. James Wolffe became Lord Advocate in June 2016. It appeared that the Crown were getting on with things, we're waiting for the Crown to do this and do that and we're getting told everything's fine, but then it was obstruction after obstruction. Everything I asked, everything we wrote in a long, long letters, and the key points that we'd make from the very start were just being resisted. It would always be a case of, "We'll come back to you. We'll come back to you." This seemed to coincide with the Chhokar case finishing in October 2016. It was almost like the doors came down, the shutters came down and the relationship changed, and I realised they had what they wanted. They had a complimentary statement from the steps of the court some 16 years after the second trial saying thank you to the Crown, for all that they've done, how unwavering they've been in their commitment to justice, etc.

157. The issue that I raised with the Crown Office was that we expect the same promises that were made by the Lord Advocate, Frank Mulholland, because it's the Office of the State, it's the institution that the Lord Advocate speaks for – he's not speaking on himself personally – to continue the promises that were made that the family would be kept fully informed, that the Lord Advocate would meet with the family and tell them what's happening, and it seemed to be initially an attempt to resist that, and I said, "Absolutely not," I think to Les Brown or Lindsey Miller. I said, "I'm sorry, a promise was made by the Lord Advocate. It doesn't matter if the Lord Advocate's gone because the Lord Advocate never goes. There's a new Lord Advocate in place, and this is a case of high prominence, it's controversial, and it's imperative that that Lord Advocate retains the confidence of the family,"

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158. I wasn't attacking the Crown Office. My public statements were always very supportive of the job they were doing. But the approach of Crown Office changed; it became then the letters started to become, "We're unable to provide this. We can't do that. There's a live criminal inquiry. It's not appropriate. It would be premature at this point to hand you this material." So, more and more that started to happen, to the point where the source or the provision of information seemed to dry up, and it became more and more frustrating as time went on because I was continuously asking for an audit of to various questions I asked and it wouldn't come. They wouldn't deal with them.

159. In relation to some of the questions they say, "This is premature at the moment because we have the PIRC investigation. I'm waiting until the PIRC report's done." The PIRC report then goes to the Crown – "Well, the Crown needs to consider whether there's going to be a criminal investigation, so we can't tell you because there's potentially proceedings," so, of course, that delays the process. Then, of course, the Crown decide, "we can't tell you anything yet because there needs to be a VRR and a decision will need to be made at the VRR." The after the VRR the response is that "actually we can't give you anything now because there's going to be a public inquiry."

160. I have been asked about the change of working with The Lord Advocate, when it changes from Frank Mulholland to James Wolffe, and my understanding of why this changed. Following James Wolffe's appointment as Lord Advocate, we asked again and again for the disclosure of information. Much of this was delayed. Eventually we received a letter from the Lord Advocate dated 16 October 2017 (COPFS-01353(a):

*"My letter of 6 October 2017 sought to set out the progress made by the Crown in relation to the instruction of further expert opinion. The Crown requires to consider any request for that material at this time in light of the stage that this investigation by the Crown has reached and in particular the potential for criminal proceedings.*

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*It would, it seems to me, be inappropriate, having regard to that context, to disclose the investigated material obtained recently by the Crown at this time. The Crown will make available relevant material, including reports obtained by the Crown in the course of its investigation, to you at the appropriate time.”*

161. So they just continually shut it down. We weren't given full disclosure, and there was always a reason why. I can see why now. Because if they'd given us full disclosure, we were going to check it, we were going to analyse it, we were going to seek any potential expert evidence to basically say, "Look, there's somebody else that would say that". It would have given us the ammunition to say, "You've got this wrong". So we went into it almost blindfolded, but despite that I think we did a pretty good job in exposing the flaws, the fundamental flawed investigation into the death of Sheku Bayoh that failed at each and every turn and that was predicated and motivated by shutting down an inquiry, to covering up the mistakes of the PIRC and the continued mistakes of the Crown Office. If they shut down the provision of information, then they shut the family up and it meant it took the pressure off, and they probably thought to themselves, "The longer this drags out, the family's going to give up." It's what they always do.

162. So, they let the years pass. We could have assisted the investigation. Then ultimately, we find out all those things I'd asked the Crown and having to go back, "Why have you not done this? Why have you not done that?" and it was too late. So, it's almost like the case has been destroyed and they're trying to do damage limitation around it. So, they're trying to protect the institution. That was their sole raison d'etre. It's like a wall of silence that they continuously erect.

163. Overall, COPFS do not fulfil their obligations under Article 2 to do with the rights of the family to be involved. It's a tokenistic response, it's a box-ticking response where they use that wall of silence to just shut the family out

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and their representatives, which means they've got excuses all the time, then we have to drag them before the courts to have them issue an apology and all the rest of it. The Bayoh family had had nothing of the sort.

164. Meantime, the smears appearing in the media. There's personal attacks and humiliation. It's that drip, drip, corrosive effect of, "Attack those who represent the family and then you attack the family. You attack them, and it means that you take away the credibility." "He had a knife," "he was drugged up," "he deserved to die," "he was having an affair," "it was him and his pal. That's who's responsible," "Oh, who cares about colour?".

165. I know from experience, even up to date, where the Crown would give me information which I cannot relay to the family. For instance, in the [REDACTED] case, I was, over the two years, given information by the Lord Advocate, by the Solicitor General, by the Advocate Deputy on the basis that we were unable to share this with the [REDACTED] family due to concerns that it might be relayed out to the public domain and jeopardise the right to a fair trial. We were always very conscious of that. So, there were opportunities for them to do it in the case of the Bayoh family; however, they never took up the opportunity.

163. One occasion, papers were sent by our Edinburgh Agent April Meechan to the High Court in Glasgow for our junior Counsel, Claire Connelly on 30<sup>th</sup> December 2016. The papers were sent to the High Court on the instruction of Clare Connelly as she was having papers sent there as she was involved in a long running High Court case. The envelope was marked confidential and contained papers in relation to the Sheku Bayoh case. Neither April or I were aware that papers had gone missing, Counsel herself was in the midst of a very lengthy trial, and only after a certain period of time Ms. Connelly became aware she had never received the papers. The matter was looked into by Court and Chambers staff. It came to light in March 2017, when I was contact by April Meechan. She explained to me that Lindsey

Signature of Witness [REDACTED] .....

Miller contacted her. April advised me that she was unaware who Lindsey was, and that Lindsey asked what papers I had provided to April. April explained to me that she advised Lindsey that she was my Edinburgh Agent. Consequently, she had a duty of confidentiality and was unable to tell her what I had sent. I was told that Lindsey's manner changed completely, there was no longer a friendly tone. April explained to me that Lindsey stated that I should not have shared documents with April as they were sent on a confidential basis.

164. Thereafter, I never received a phone call or correspondence from COPFS, which was surprising given this allegation to another solicitor that I had breached my duties. A few days later, April received a letter from Lindsey Miller of COPFS dated 13 March 2017 (AAC-00391 ). It stated:

*"I [...] write to confirm that a set of papers relating to this fatality was delivered in error to the High Court Division of COPFS and was opened by Crown Office staff. At that point it was ascertained that there was sensitive material contained therein, including post mortem photographs, but also what might be considered privileged communications between solicitor and counsel.*

*On that basis the papers were sealed and passed to the Procurator Fiscal for High Court who in turn passed them to me. Other than the member of staff who opened the papers and an Advocate Depute who was asked for advice on what to do with them, I can confirm that the papers have not been seen by any other member of COPFS staff (including me) and they have been secured in my safe since they were passed to my office. Both the member of staff and the Advocate Depute have confirmed to me separately that they did not read the papers in any detail and had simply looked through them to ascertain whether or not they were for COPFS. I have confirmed that position with them directly.*

*The reason that I am dealing with this matter is because it was assessed that some of the material within the papers may have been*

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*disclosed under a strict undertaking to another firm of solicitors and a concern has been raised with me by staff within the Serious Casework function which I lead, that the terms of the undertaking may have been breached.”*

166. So it transpired that the papers had been intercepted by COPFS and kept in a safe without disclosing that to April or me. The papers were retained for investigations to take place. Ms Connelly expressed her concerns about the situation and was told by the Crown Agent that this was a mistake and that no one had read the papers. The papers would be returned and the Lord Advocate had been informed.

167. This tells me everything I need to know about the culture of that organisation, I was not the enemy, nor were the Bayohs. Had COPFS simply picked up the phone to me they would have been provided an explanation, as to why our Edinburgh Agent was provided papers, in order to identify and instruct experts. This left me with a number of unanswered questions – i) Why did COPFS open papers clearly marked for Clare Connelly ii) why did they look at the contents of the paper allowing them to identify the contents, including PM photos iii) Why did they retain the papers for several months and not contact Clare Connelly iv) Why phone my Edinburgh Agent asking her to reveal what I had sent her, which was highly inappropriate.

**Leak of decision not to prosecute in Mail on Sunday**

168. I have been asked to outline the family’s impression of the apparent leak of the decision not to prosecute in the Mail on Sunday article dated 23 September 2018 (PS18106).

169. A detailed narrative, which is almost identical to the narrative that the family are told later in a meeting, is published in the Mail on Sunday article, and for them to do it several days beforehand was deliberate, was cynical, was manipulative because it was to take away and reduce the temperature. It

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was to place me and the family in a position whereby we had tried to say to the family, "Trust in the Crown Office." The publication of this article placed me in a difficult position, I didn't know if the content of the article was true or not. I contacted Crown Office to ask "What's going on?" but was informed that they could not tell us: we had to wait and see. So, of course, I'm trying to not respond. I'm placed once more in the position whereby somebody in Crown Office decided it's more important to brief The Daily Mail than it is to brief the family. The family were heartbroken. They were in tears. They were crying at that because they couldn't believe it, and that shattered any last shred of trust that was left in Crown Office.

170. We were told by those that were present, by the Lord Advocate, by Lindsey Miller, we were told there was only a handful of people that were privy to the information. We asked for an investigation and they tried to pass the buck and suggest that the Scottish Ministers could have been a source of the leak. However, Humza Yousaf told me in the meeting with him, "We didn't have the information to leak it. How can my staff be accused of leaking it when we don't even know what the decision is?". He informed me that they weren't told of the decision because they were protecting the integrity of the Crown. Why would it suit the agenda of the government anyway? But the point is they didn't have the information, and I was told that at the highest levels.

171. The leak symbolised for the family everything that was wrong with this investigation, that this leak could have only come from the highest levels within Crown Office. So, quite clearly, somebody in COPFS decided, "We need to get this story out first," and it's called damage limitation. Get it out beforehand, because if you get it out beforehand then it means that the world's media then is gathered on the day that the family arrives, the pressure is off. Why? Because one newspaper has already covered it, then a multitude of other newspapers will cover it and run it, and then they place the family and their lawyer in the position that we can't respond because our

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hands are tied because we're not having it confirmed to us whether this is true or not. And that means that the Crown, through their sources, get to do all the talking. "There's no criminality. There's nothing we can find. He died as a result of this. This is what the position is. We are not going to prosecute."

172. Then when a few days when we do meet with Crown Office, there's less media interest as it's old news. We get some news coverage, but it's not as powerful and it's not brand-new news.

173. They carried out an investigation. They said they couldn't get to the bottom of who did it. How very convenient that they couldn't. It was clear from the evidence of John Logue, Crown Agent given at the Public Inquiry, that no statements were taken from staff and it a 'box-ticking exercise', there was no investigation into the leak. We were told it was a small group within Crown Office that knew of the decision. Somebody is responsible for leaking this to the newspapers – and they can't say it wasn't leaked because it was so accurate in terms of what the media said, the most accurate being the decision not to prosecute. That begs the question: what else did Crown Office leak over the years? What other stories? They were willing to go to that extent and potentially, endanger their own career, endanger their own position, subject themselves to criminal prosecution, potentially to be sent to prison. And if they're willing to do it then, at the moment that the biggest glare of spotlight is on it, what about the rest of the times where information was dripping like out of a sieve of every piece of information involved in that inquiry? How many times were you willing to go to leak information.

174. I have read John Logue's Inquiry statement (SBPI-00454). At page 17, he states "*in my experience working in COPFS I do not recall any example of a member of staff releasing confidential information to the media or any such media reporting demonstrating that a member of staff could be the only source of an unauthorised release.*" That simply is not true and simple google search would show examples of this. One case from September 2015 states

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a Crown Office employee was found guilty of breaching the Official Secrets Act and Data Protection Act by leaking information about court cases following a trial at Edinburgh Sheriff Court<sup>2</sup>. Another media article dated 7 December 2022 states “the number of data leaks at Scotland’s Crown Office and Procurator Fiscal Service has nearly doubled in past year”. The article states that a number of deliberate breaches that had occurred and revealed one of the cases received compensation for the breach.<sup>3</sup>

175. Unfortunately, I have had a previous experience of leaks at the Crown Office or from the criminal justice system. On a Sunday, before we were to be told the findings of the Chhokar Inquiry, they released whole scale tracts of the Jandoo Inquiry which were a systematic attack on me. I think it was Scotland On Sunday newspaper that did it. It built a narrative on behalf of the Crown Office, allowed them to get ahead of the bad news. The intention was to smear specifically, but also ensure that the media was briefed the way they way they wanted – at that time no leak, of course, could be found. But this for someone wishing to control the narrative, this was a perfect way to ensure the media had dealt with ‘bad news’ it a few days before, without input from the family who obviously could not answer and were holding on for a meeting with Mr. Wolfe.

176. I have been shown letter to me from John Logue dated 13 December 2018 (COPFS-00855A). The letter states:

*“I am writing to advise that I have concluded my analysis of the processing of information and I am satisfied that the information held by the Service was processed appropriately and in a manner consistent with the terms of the Data Protection 2018 Act. There is no identified basis to suspect that the reporting by the Mail On Sunday was based on the inappropriate release of information by anyone involved in the Crown’s investigation of Mr Bayoh’s death.*

<sup>2</sup> [Crown Office employee Iain Sawers guilty of leaks - BBC News](#)

<sup>3</sup> <https://www.scottishdailyexpress.co.uk/news/scottish-news/number-data-leaks-scotlands-crown-28672742>

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*As you are aware, COPFS had exceptionally engaged with the Scottish Government in relation to this case so that it could consider whether or not, if no proceedings are raised, a public inquiry should be held. I understand the Scottish Government is carrying out its own inquiry into the processing of information."*

177. This article played, some three, four days beforehand in the Sunday paper. How does that match up to reality? It doesn't because the Crown Office kept it to themselves. We're in a position whereby they have made a decision not to prosecute. We still have the VRR to go through. That's kept extremely tight and they're the only ones who know about it. The government had no locus. The government got told, as I understand it, at the same time as we were getting told.

178. They may well have been in dialogue, but they weren't in full dialogue about a public inquiry in 2018, but they would have been theoretical decisions as we were told the family were the first to be told of the decision not to prosecute in October 2018. If they were discussing in detail the public inquiry prior to the decision being made on prosecution, it begs the question why were they interfering with the setting up of a public inquiry, the only reason I can surmise is to protect the institution and continue the 'cover-up'.. I have been asked about the notes of the meeting between the family and the Lord Advocate on 3 October 2018 at page 2 (COFPS-04618) which notes "LA advises Public Inquiry is for Scottish Government. Crown has discussed with SG about the case so if there is no prosecution no unnecessary delay in the next steps". They could only discuss in full the details of a public inquiry later on, once the VRR had been processed, once the VRR went in because our VRR took some time. I was aware in discussions about the Terms of Reference that the Lord Advocate James Wolfe was resistant to any real analysis of the role of Crown Office, however the Bayoh family would not accept an inquiry without their role truly being looked at. The VRR wasn't just a box-ticking exercise for us. [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]. So, I don't accept what they say, if they discussed matters with the Scottish Government it was because they knew we were pushing for a public inquiry and would accept nothing less. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Crown Office were not cheerleaders for a public inquiry, it was simply the fact that there was nothing they could do to oppose it publicly; But they certainly did not want an inquiry that shone a spotlight, and having listened to the evidence of the parties during the Public Inquiry I can now see why. Mr Wolffe resisted the terms of reference that I was proposing for the consideration of the role of the Crown Office especially the prosecutorial decision making. An eventual compromise that was reached between myself, the family, and the government and Mr Wolffe was that it would go right up to the door of the decision to prosecute and then, after that, scrutiny was not allowed. But I said to the Scottish Government that the family were not going to have anything to do with this public inquiry if it tried to totally exclude the role of the Crown.

179. So, if you're going to decide whether to criminally prosecute someone, the COPFS have no right to intervene in the setting up of the public inquiry, after all they are one of the institutions accused of failing the family. So the very fact that they're talking about it is a case of whether you're going to prosecute or not. That doesn't then automatically transfer. The public inquiry comes way later on albeit that we alert the Lord Advocate to the fact we are pushing for a public inquiry into the Crown failures and death in police custody if there is no prosecutions at the end of the VRR. In November 2019, they announced a public inquiry. Have they already made up a decision that a senior official of the Crown Office decided, "Well, actually, this VRR doesn't count"? The VRR is still to come in. How could they be talking about public inquiry when the process is not completed? And that again strikes up an

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alarm bell for me that the Crown Office is not taking seriously the victim's right to review because they've already decided nothing is going to happen with this because they, what, they're telling me now, or John Logue's saying at the time, "We're in dialogue with the government about a public inquiry." How could they be? Hasn't been announced. It's still some nine months, ten months away before they announce it because they still have to work through our VRR. This doesn't make sense. This is a decision on criminal prosecution. It has absolutely nothing to do with the government of the day. The Crown is independent. The Lord Advocate is supposed to be independent of the government, and that is a matter of deep concern if the Crown is saying they're already discussing it with the government.

180. I have been asked whether Crown Office discussed with me what steps they would take to investigation whether the decision had been leaked. I think it was a very sort of superficial exercise in telling me that they would conduct an investigation, but they didn't provide me any details of who did they speak to, how did they do it, what was the analysis, whether computers were checked, whether mobile phones were checked, whether they sought any meetings with the newspapers, none of that. They never provided any detail on that. There was no detail, zero.

181. How can you have confidence in the process if you have zero detail? How could the family have trust in the process if still that same institution that is in the firing line and that is suspected of leaking this fails to then provide these? Also the question I ask is this: why when at the highest level they are being accused of leaking and committing a criminal act, because that's what it is, should they be trusted to carry out an investigation into themselves? Who in that institution is going to rock the boat?

182. There's been leaks after leaks with the Crown Office in relation to this case for years. Nobody's ever come forward. They've not ever revealed

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anybody. Now, of course, we have a free press in this country to a certain extent and they're under no obligation to reveal their sources.

**Meeting with the Lord Advocate on 3 October 2018**

183. I have been asked about my recollection of the meeting between the family and the Lord Advocate on 3 October 2018. This was regarding the first decision not to prosecute. The leak creates an environment, a firestorm, when we go into Crown Office with the Lord Advocate where the family are more angry than I've ever seen them before. There wasn't any respect left for Mr Wolffe at that meeting, and I think he was aware of that. There wasn't any respect left for the Crown Office, and I think they were aware of that. I had to stop the meeting, and the family were left broken by it because, of course, we went, "So, you did tell the newspapers because that's the decision you're telling us here now," and it was done.

184. [REDACTED]

185. [REDACTED]

186. [REDACTED]

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187. [Redacted]

188. [Redacted]

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189. [REDACTED]  
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[REDACTED] The only way I can summarise it is a case of remove the uniforms and the name of Police Scotland from the context. Just have them as ordinary people who are on a public street. I know 100 per cent that those individuals would have been in police stations, separated, not allowed to confer. Doors would have been kicked in. They would have been dragged in, kicking and screaming. It was the same way that Collette Bell, Zahid Saeed and Martyn Dick and Kirsty Macleod were dragged in, treated as criminals.

190. [REDACTED]  
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[REDACTED]  
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[REDACTED] Every weekend somewhere in Scotland, sadly, someone dies after being attacked or assaulted or restrained. Somebody dies and they prosecute, but the only time they don't is if you put a put a uniform on, and that's a dangerous position for a civilised society to be in, that our police officers cannot be held to account.

191. It's not bizarre; it's not rhetoric; it's not the language; it's not mud-throwing; it's not hyperbolic; it's not inaccurate; it's none of that. Those police

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officers always have a right to a defence. They have it, but they are no different from any other members of society. This idea that all police officers run into dangers and police officers do a difficult job. They also have the use of CS spray, PAVA spray, the use of force that you can utilise, restraint techniques. You are trained to know that what you do could kill someone. [REDACTED]

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[REDACTED]

194. [REDACTED] it comes down to this: the words that I remember of Kadi and Ade in that meeting was, "Do you think that Sheku would have died if he hadn't come into contact with the police?", and the family fundamentally believe no, he wouldn't.

195. The wrong information was provided to one of the experts that Sheku had been running a marathon, Sebastian Lucas had told this in consultation with Dorothy Bain KC and our senior consultant solicitor April Meechan. and I view it simply as this, today with hindsight, which all of this lot seem to have big hindsight now: Sheku didn't have a knife on him. He was coming out of it. He didn't attack his neighbour. He was calm when he was spoken to calmly by that man, who asked him to come in for a cup of tea. That man didn't feel threatened. Sheku had a knife in his hand. He went, "No, it's fine. It's not sharp," but when the time came, Sheku for some reason, whatever it is, had decided to drop the knife, and it wasn't him that displayed violence. It was police officers that displayed violence with no rhyme and no reason. They are the ones who assaulted Sheku Bayoh and then within seconds spend their time justifying his death.

196. That's the issue here for the family: that they used the CS spray; they used the PAVA spray; they used the batons; and all I can see the actions of a young black man is he is walking open-palmed towards them and he keeps walking. He doesn't do anything, and it's on the fourth or the fifth occasion

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that he lashes out, but even then, he's down on the ground. Remove yourself from his body. He's struggling. He's crying out. He's making a noise that sends chills through one of the witnesses: "Never heard a scream like that." Once the police have got him handcuffed, get off him. Why do they persist? Are they not trained? Do they not know about positional asphyxiation? [REDACTED]

[REDACTED] The whole focus has been on drugs and cardiac arrest. That was the be all and end all for them. We pushed and pushed on positional asphyxiation. We pushed and pushed with the PIRC on the basis of that. The biomechanics, the whole way his chest being pushed into a hard ground. We could see it. Nat Cary could see it. Professor Crane could see it. [REDACTED] There's no need to lie on top of him.

There's no need to teach "the boy" a lesson, that was the insulting terms they referred to him as. Because that's what this all is. "He went after one of us, a white female officer. We had to teach him a lesson." And obviously the other officers that arrived on the scene, to a certain extent, can only be told what the first two have said to them or the first four have said to them. They don't know the full facts and circumstances. They're just getting told very quickly, "This is what happened." They never told their fellow officers, "By the way, he didn't have a knife, we attacked him first, we used CS spray and he wasn't doing anything. By the way, he was just walking and he still didn't respond." First occasion, second occasion, third occasion, fourth occasion, he still did not respond with violence. That is not the actions of a wild, violent man.

197. So on the fifth occasion that something happens, but even then, was it a murderous attack? Did it require the use of overwhelming force that stopped him breathing? Was Nicole Short so seriously injured? Was she stamped upon? Did any of that happen? Because this is an individual who walks to the van. They get her an ambulance. She goes to the hospital and she leaves after 30 minutes. That to me is the factual matrix.

198. I remember Collette came to one of the meetings with James Wolffe. I don't know which one but I've never seen Collette so angry. She went for the

Signature of Witness [REDACTED] .....

jugular, but she'd had enough. She'd carried this for years, and then she got that, and they didn't know what to do. What did they think they were going to do? Tea and biscuits and hold hands and think everybody's going to be happy? You've got the partner of Sheku Bayoh, and they don't even think it appropriate to note down what she's got to say. It just shows how insulting and demeaning Crown Office is in that because they don't think it's relevant. Why? Because she took the Lord Advocate to task personally.

**Meetings with the Lord Advocates**

199. I have been asked how often I would meet with the Lord Advocate – whether the meetings took place at set intervals. No. It would normally be when the scenario arose that we would meet, so it would be significant moments where we would meet with the Lord Advocate. With James Wolffe, I think, we had one meeting and then we had the meeting for the decision and then the third meeting following the VRR, so I think we had three meetings in total.

200. I have been asked about the family's meetings with Frank Mulholland. We had more meetings with Frank Mulholland than with James Wolffe. I also regularly texted back and forth with Lord Mullholland and we spoke via mobile or WhatsApp messages. It was much more of an open door. It was much more hands-on. There was much more compassion. There was much more empathy. All I can say is that Frank Mulholland had the confidence and the trust of the family. They didn't feel patronised by him. It is important to note that Lord Mullholland could not be faulted in his treatment of the Bayoh family, they were always treated with respect. As and when required we would pick up the phone and have a candid discussion, invariably he would try to follow through with instructions, the problem would become when those instructions reached Crown Office staff, they would resist, delay and obstruct.

201. In relation to Mr Wolffe, he is an extremely intelligent man and he is well respected for his intellect and the cases he's dealt with. But the family

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didn't think he was fit for purpose. The role of the Lord Advocate is somebody that operates and prosecutes in the public interest, and of course they come into contact with the public. But from the word go the family didn't feel comfortable with James Wolffe because it was like he was reading off a script and couldn't deal with the family that sat in front of him. He would smile and laugh at inopportune moments. I think he was nervous. I don't think he knew how to deal with the family. He didn't know how to comfort them. He didn't know how to build their trust and their confidence in him.

202. Frank Mulholland would take us to the room upstairs, to the Lord Advocate's rooms. We sat close to each other around the table. With James Wolffe, we met in the boardroom downstairs. It's just a big, huge table. James Wolffe and the Crown Office representatives sat on the opposite side, and of course then they create a position where there's all the line of Crown Officers and then we're sat on the other side, so it's us and them. So even tactically in training and managing and all that, you think, "Learn how to approach these situations." So there was a different manner in the way that the family were treated. It was like we were going through a paper process, and the family just lacked total confidence.

**Media Engagement: Views on what was briefed/reported in media releases by SPF/PIRC/COPFS**

203. I have been asked about the Bayoh family press conference on 14 May 2015 and the subsequent press release from the Scottish Police Federation (SPF). We arranged a press conference to take place on 14 May 2015 in [REDACTED], which is around the corner from Crown Office in Chamber Street. I read out a statement, which was subsequently issued as a press release (AAC-00379). I was very careful in what I said. I've explained to the family that I'm not going to mention the word race; that we have to give the PIRC and the Crown the opportunity to carry a full-scale investigation without being hindered or speculated upon. This was a live investigation. I was very much viewing it that this is a live criminal investigation. Nothing


Signature of Witness [REDACTED].....

must be done to prejudice it. At that point in time, I don't know what the position is, because the police officers haven't given statements. I have my own suspicions. I believe overwhelming force has been used. I believe he's in a mental health crisis, from what I've heard, but I still don't know.

204. The content of our press release is not controversial. I have not speculated, it's not hyperbolic. It's not exaggerated. The family is open minded. I'm not blaming the officers. I'm laying out the facts as are known publicly. I'm not relaying a narrative of the events of what happened; I refuse to engage with that. I ask for police officers to cooperate, people to come forward and I express concern about officers not being separated and what goes on. I don't even mention the word "race." In fact, when I was sitting on the platform, I was asked by two journalists about racism. I said, "I'm not going to comment on that; I'm not here to speculate."

205. I now know that when we emailed PIRC to tell them about the press conference, that the PIRC ran along like messenger boys to the police and the police then ran along like messenger boys to the Federation. You can see this in the chain of emails between PIRC and Police Scotland (PS04984). Had the PIRC told me that they were going to do that, I would've said no. They never asked my permission. This is supposed to be an honest, equal relationship between the representative of the family and the PIRC, who is supposed to be investigating the police, and yet I now know that that wasn't an honest relationship; it wasn't an equal partnership. They saw them as very much on the one side and me and the family on the other side.

206. Within minutes of our press conference ending, the Scottish Police Federation and their lawyer were publicly issuing a vivid description of what they claimed to have happened, whilst their own officers had not even given statements to PIRC. The Media House Press release, issued on behalf of Professor Peter Watson (COPFS-05339) dated 14 May 2015 quotes Professor Watson as stating: *'I am disturbed about the unhelpful and ill-*

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*informed comments being made by the family lawyer.” What’s he disturbed about? What was unhelpful and what was ill-informed? There is absolutely nothing in that statement that he issues that on that he could know was ill-informed. He’s assumed what I’m going to say. It was an attack on my professionalism, on my credibility and integrity. Ultimately, it was an attack on the family, is the way I see it. It was to try and shut them down. The press release continues: “Whilst it’s deeply regrettable that Mr Bayoh lost his life, I would ask the media and public to remember that a petite female police officer was chased and then subjected to a violent and unprovoked attack by a very large man who punched, kicked and stamped on her. The police officer believes she was about to be murdered and I can say that but for the intervention of the other officers that was a likely outcome.”*

207. He is expressing an opinion as to the potential outcome. It begs the question as a lawyer, why is he personally commenting? It’s not about his personal belief. We don’t even have statements at that time from police officers. The press release continues and alleges: “The family’s advisors appear to believe that police do not have the same legal rights other members of the public.” The is completely and utterly untrue. At that time, I was representing multiple police officers and had acted for the Scottish Police Federation in the past and at that time in my statement I had said, “...suspended without prejudice,” “...protecting their rights.” They have rights, so I didn’t say that.

208. The press release states that my “Calls for the suspension of the officers serve no purpose and do nothing but add unhelpful rhetoric in a difficult situation for all.” Why not? Suspension of the police officers would have led to, immediately, lack of conferring. You wouldn’t have had days and days spent at a public inquiry, at public cost, asking about who said what, where do they say what, why didn’t they do this, on comment says this and that. Why was what I said so controversial as its clear now that the Lord Advocate and John Mitchell of PIRC believed the same.

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209. As I said in the further press release issued in response to the SPF press release later that day, the Bayoh family were deeply hurt by the tone of the press release issued by the SPF and they felt insulted and falsely accused. As our previous press release of the statements issued at the press conference today show, the family have kept an open mind, are simply seeking the truth. The family have every right, as do members of the public, to be disturbed that police officers, 11 days after a death in custody, have not provided statements to PIRC.

210. Anybody interfering with the live inquiry is causing concern because a narrative is being put into the public domain in relation to the events of 3 May 2015. Meantime, I do not say what the family have said to me; I do not say what members of the family have told us has happened at that spot. I don't put any of that into public domain because I'm thinking it's a live inquiry. They need to take statements from the officers. The narrative has been put into the public domain by a solicitor who's acting for all nine officers.

211. I regularly represent police officers on behalf of the SPF. For a number of years, many police officers have been suspended without prejudice over allegations, some of which are minor, such as the breach of Data Protection Act, over allegations in relation to criminal acts that hasn't involved a death and it has not been seen as a problem. In those cases, I haven't seen huge media releases from the SPF and Peter Watson being put out in defence of them publicly and onto the front page. I've seen none of that from the SPF.

212. So what happens is I say no police officer was stabbed. It's then portrayed by the media that no police officer was injured. Then that's used by the SPF to attack me when precise terms have not been used.

213. I have been asked about the SPF press release of 2 June 2015 (SPF-00019), the press release as drafted is headed "Family Lawyer Heavily Criticised" and states that "*The comments made by those representing the*

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*family of the deceased continue to promote a completely inaccurate and misleading account. The officer injured remains off work, has had several hospital visits and is now in rehabilitation. An examination by a leading Consultant confirms her injuries were significant. The injuries have been documented and photographed. The officers involved have never refused to provide statements. It was agreed at the outset with PIRC that they would revert to us when they wanted statements and when they were clear on the basis that statements were to be given. [...] Mr Anwar can try to throw whatever mud he wishes but the fact remains that a petite female police officer was violently assaulted by a large male and believed she was going to die as a consequence. In directing increasingly hyperbolic, inaccurate and bizarre rhetoric at the Scottish Police Federation, one could be mistaken for believing that Mr Anwar being at the centre of attention appears to be of greater importance than allowing the investigation to proceed without interference.”*

214. The SPF are personalising it. They're trying to bait me to get me to respond to personal attacks, and I'm trying to resist. But the pressure is unbearable. It's unbearable for me personally, but I'm a lawyer so I'm expected to take it on the chin. If there's a white lawyer out there and every week somebody prints an article which just personally attacks you for doing your job, what would they be doing about it? The Law Society would be up in arms. Everybody would be up saying, "How dare you make an attack?"

215. But it seems to me that over the years it's become a case of "Oh, it's Aamer Anwar. It's fine; it doesn't have any impact on him personally." So, I saw a concerted attempt to break the family and, if they couldn't break the family directly, then indirectly you go for the lawyer because if you break the lawyer, you break the campaign and you shut it down. I saw that years before with Chhokar and I saw it years before when criminalised by the police for taking them on for smashing a face in a racist attack, and in this they did every trick in the book.

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216. Further, PIRC had told us from the beginning, that they had requested statements and the officers had refused to provide these. So, we kept saying, "You need to publicly state what the position is because I'm being attacked when you've told us, but you're holding back and allowing this warfare to erupt. Why don't you, as an organisation, actually just set out what the truth of the matter is." The PIRC eventually did that on 4 June 2015 (PIRC-03925 at pp. 31 to 32).

217. I have been asked about the SPF press release of 19 October 2015 (COPFS-03404), which is headed "The 10 vital questions". The first two questions are "who was present on Sheku Bayoh and Zahid Saeed was fighting?" and "What caused the fight between Sheku Bayoh and Zahid Saeed?". We know exactly what the innuendo is over that: they're talking about Collette. They're putting this out in the public domain. That's a feeding frenzy they're trying to create and they're trying to create, again, a false narrative of what's going on. Also the various questions regarding Sheku having a knife. I accept that Sheku has a knife; however, there is no evidence that when the police officers approached that he had a knife. In fact, officers said he was open handed, his palms are facing up, and never on any occasion did he display or brandish a knife to them. So that's the point at which they find him, so there's a difference between what happens before and what happens then, but they again create a narrative in the media and continue to do so, so it makes it continuously something that the family has to respond to.

218. What it does is it reduces the public sympathy, it criminalises Sheku, it smears him in his death. He cannot answer for himself and it negates his right to life and it justifies his death. It's a tactic deployed in the death of all Black men in police custody. Get the drugs in. Get the extraordinary violence. Get the superhuman strength in. Create the imagery of Black man,

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zombie eyes, machete, etc, and what better than to have a petite female white police officer, petite, by a very large male.

219. The press release also states *“Prof. Watson added: “These questions will be asked. Answers to these questions will help get to the truth, as will the post mortem and toxicology reports. The family have their own reports. Although information has been drip fed to the media with details of bodily injury, the family have so far refused to release their reports, whilst at the same time demanding that the PIRC or the Crown release evidence, which as the investigating agencies, they clearly cannot do. There is no reason why the family cannot release the reports they hold if they want the public to have a full and balanced understanding of their position.”*

220. What does Peter Watson know of our report? We never told the SPF of the contents of the report. We provided details on our report by Dr Nat Cary to the Crown. Why would we release anything to Peter Watson or to the media? We've released it to the Crown. What the Federation were good at and Professor Watson was very good at, was creating the scenarios that he spoke from a position of authority, but the reality was he had no position of authority because technically he had no access to the information, unless, of course, the Crown and the PIRC were leaking it to him. Again, it is the creation of a media narrative based on a one-sided view. At that point in time, Mr Watson only had nine pieces of the jigsaw. There were hundreds of others to be filled in.

221. I forward this media release to the Lord Advocate and others at COPFS in my email of 20 October 2015 (COPFS-03404) raising concerns about the accuracy of the release and that they are predicated the outcome of the PIRC and COPFS investigation i.e. that it will result in a fatal accident inquiry. I also state *“Furthermore some of the issues contained within the email contain information which PIRC advised us Prof. Watson would not be privy to. We are conscious that either Prof Watson as advised in our last letter*

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*is approaching witnesses directly or he is being leaked information by the PIRC.”*

222. I have been asked about the Lord Advocate’s statement in release to media publications relation to Sheku’s death. We raised our concerns about the SPF media releases with the Lord Advocate. The Lord Advocate, of course, was concerned by it, but he said his hands were tied because he doesn’t control the Federation. I said, “Well, an instruction could be given out. It’s not helpful,” and this went on and on and on. Ultimately, on 22 October 2015, the Lord Advocate makes a statement (COPFS-00975):

*“The Lord Advocate has today called for restraint from all parties in the provision and publication of information in respect of the death of Sheku Bayoh.*

*Lord Advocate, Frank Mulholland QC, said: “The investigation into the death of Sheku Bayoh is being conducted by PIRC under the direction of the Crown and both are well aware of all the evidence, the lines of enquiry and the issues surrounding this case.*

*“The Crown and PIRC are not influenced by comments made in the media and that is how it should be.*

*“However, speculation and a running commentary on the investigation can be upsetting to the family of Sheku Bayoh as well as the families of the officers involved.*

*“A decision will be taken at the end of this extremely complex investigation as to whether or not criminal proceedings should be raised.*

*“An inquiry will also be held at which all the relevant evidence will be heard, open to the public and the media, and it is right that it is this forum where the evidence will be rigorously tested and judicially assessed.*

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*"PIRC, and the Crown, should be allowed to get on with their job."*

223. We were angered by that statement. It was a slap in the face for the family because they almost feel as though their actions have been equated, as the injured party, with that of the Federation who are hugely powerful. They have a magazine whereby they use it as a platform to pay journalists to write stories and, of course, once you're paid by the Federation a huge amount of money, when the newspaper industry is decimated, then of course you're going to be biased in the way you approach things.

224. I have been asked what my or the family's expectations were of the Lord Advocate when we requested that he take action in relation to the media releases that the SPF were issuing. I think the family's expectation was that they would be robust with the Scottish Police Federation. Whether it was material that they were putting in a public domain or whether it was letters they were writing to people, threatening them or whether it was, the media statements that they were making was interfering with the integrity of the investigation, that it was inflammatory, that it was prejudicing an ongoing live criminal investigation. Whereas the Federation were just simply propagating the idea this was a fatal accident inquiry. That was a constant mantra: "There will be a fatal accident inquiry at which all these issues will be discussed." Almost excluding completely and utterly that there's supposed to be a live criminal investigation.

225. We'd hoped that in the same way that, for example, the PIRC had approached the family, when Ade and others tried to gather evidence in the initial period, and I was pretty robust for the family, that they would adopt the same response because behind closed doors everyone was in agreement with us. The PIRC was in agreement with us, the Lord Advocate was in agreement with us, and that the actions of the SPF were shocking and outrageous.

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226. The family feel that the media has been used by the SPF to smear Sheku and attempt to bully the family into silence, to call them or their representatives liars and complicit in this process has been COPFS and the PIRC.

227. The SPF lied, they threatened newspapers, they threatened the National Theatre with legal action. They sent out letters, they talked about fatal accident inquiries, they had people turning up at their doors with cards saying, "A fatal accident inquiry into the death of Sheku Bayoh." But we were not allowed to carry out an investigation. I told the family not to carry out an investigation. I would never have done so because I wouldn't want to interfere with the integrity of it. Meanwhile, they're carrying out an investigation and nobody has literally anything to do to stop it.

228. But when it came to it publicly, nobody's willing to challenge the SPF. It was almost like they were scared of them. They wouldn't take them on. There was a difference in treatment between the family and the Federation at the hands of the Crown. There was almost like a case of the Federation's lawyers. Mr Watson has a completely different treatment, I would say, to me. Information was quite clearly being passed on, things that I would supply, as I have already explained in relation to the email from PIRC to Police Scotland (PS04984).

229. Yet they didn't seem to realise that what I was saying was it was putting the family under unbearable pressure to continuously have to respond to the attacks, to the smears, to the innuendo, to the manipulation, to the lies and to the distortion of the facts. The family had the lack of trust. The trust was rapidly crumbling in the institutions in that it felt like if the Federation was so confident and so bullish about what they were putting out in the public domain, did they know something that we didn't know?

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230. And that’s what it kept coming back to because what was being suggested in correspondence by Mr. Watson and publicly was “These are the facts.” That was a constant line of “These are the facts,” and you’re going, “But how could they know they’re the facts?” They’re not supposed to have any involvement in the live investigation. They’re not supposed to be getting provided disclosure. We weren’t getting provided disclosure, so why would they be getting provided? But we were in a position where we had a certain amount, so it raised alarm bells in that context.

**SPF circular dated June 2020**

231. One example I could give of how organisations such as the Scottish Police Federation wielded their power to bully, intimidate and stifle my advocacy for the family of Sheku Bayoh, was when in June 2020 in a circular issued to its membership (SPF-00425(a)).

232. This circular makes reference to both Collette Bell and me attributing the words “I can’t breathe” to Sheku Bayoh. The SPF imply to their membership any suggestion that Sheku spoke these words is untrue and are an attempt inflame and exploit the situation. I have addressed this allegation elsewhere within this statement. The circular also states:

*“the events in Minneapolis [ie. The murder of George Floyd] have led to the prominent lawyer Aamer Anwar ramping up rhetoric to slur the reputation of the police service in Scotland and those associated with the death of Sheku Bayoh in particular.*

*The SPF has been inundated with correspondence from members asking us to take a more public view in rebutting the “anti-police, racism undertone” rhetoric being directed at the police service by Mr Anwar. The strength of feeling that officers are under attack and that there is a one-way narrative that completely misrepresents both the realities of policing in Scotland, and the events surrounding the death of Mr Bayoh, is understood.*

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*[...] During his online rally in support of the Black Lives Matters protests on the 7th June Mr Anwar stated that the Scottish Police Federation had complained “about officers, one of whom was a high-profile Asian officer, taking the knee.” This is simply a lie. This however reinforces the apparent willingness of Mr Anwar to use any means (no matter how illegitimate) to increase hostility and tension between his supporters and the police service.....It is clear now that as the public inquiry draws nearer that Mr Anwar has abandoned any sense of proportionality or accuracy in his increasingly intemperate commentary. [...] As frustrating as members may find it, it is better to allow Mr Anwar to continue his public half-truths and falsehoods, and for these to be shown for what they are as the inquiry takes place It is already apparent that Mr Anwar is attempting to undermine the conclusions of the yet to be commenced Public Inquiry with his barely contemptable description of Lord Bracadale as ‘simply a white upper middle-class judge.’”*

233. For myself this was a scary position to be placed in, I was accused of being a liar, of distorting facts, and of being anti-police. It is difficult to explain what impact this has on a lawyer trying to fulfil his professional responsibilities whilst not wishing to be drawn into a public and personal battle with the powerful SPF.

234. In relation to the comments regarding Lord Bracadale, I said nothing of the sort and the SPF is distorting what was said. I have welcomed Lord Bracadale’s appointment publicly - I had told the family he is an impartial judge and well respected. We have cooperated and made submissions and am quoted as repeatedly welcoming the inquiry on this video that the SPF refers to it is clear that I was speaking about Sir William McPherson’s appointment to the Stephen Lawrence Inquiry, which was criticized until a diverse panel was appointed to assist him.

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235. To quote what I said exactly: *“Public Inquiry will also investigate the issue of race and it’s still to be picked the panel members and the assessors that will sit beside the senior high court judge Lord Bracadale- what made the difference to the Stephen Lawrence inquiry was this that it wasn’t simply a white upper middle-class judge that was sitting there but the people who had the background the diversity and the background to be able to guide a judge to see what when they see racism”*

**Use of Social Media/Twitter**

236. I have been asked about tweets by myself and Callum Steel on 11 November 2019. This is the day that the decision was given the officers wouldn’t be prosecuted following the Victims Right to review (VRR). I tweeted on 11 November 2019 saying *“Sheku Bayoh died in police custody 3 May 2015, up to 50 separate injuries, broken rib, lacerations, with over 50 stones bodyweight on him, cuffed, ank[l]e & leg cuffs, restrained by up to 9 officers- today he was described to his family of being like a ‘toddler having a tantrum’.”* The tweet was accompanied by an image of a body depicting the locations of Sheku’s injuries and another image of members of Sheku’s family holding his photograph. I have been asked about the reference to Sheku being described to his family as a “toddler having a tantrum”. This was the words of the Lord Advocate, James Wolffe, in the meeting with the Bayoh family earlier that day.

237. In response to this, there is a tweet by Callum Steele on the same date *“Lots of people who follow me also follow Aamer Anwar (well we are both interesting chaps) but whilst many of you will see the image on the left [showing the injuries to Mr Bayoh] you won’t be shown the somewhat more than relevant story on the right.”* The “relevant story” he shares is a Sun newspaper link headed *“Friends Brawled over Girlfriend”* with sub heading *“Custody death dad Sheku Bayoh’s Rage at best pal and bust up over lover.”*

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238. This tweet is once again bringing up allegation that Zahid and Collette had an affair. What evidential basis does he have for it? It's nothing other than total, bizarre, nonsensical speculation by a man who claims to be a police officer, who should know better. There's no factual basis for it. It was done deliberately to smear, to attack Sheku and to smear Collette, who was grieving for Sheku, to debilitate her, [REDACTED], to break her down when they already knew from within the police that she was suffering.

239. Here is a man who is repeatedly prodding away at a young woman to what purpose to break her down, to finish her off along with the rest of the family and create tensions within the family. They knew exactly what they were doing. He had no basis for that outrageous claim. So it's just innuendo and smears, which is always the case when it comes to black men dying in police custody.

240. Callum Steele later followed this tweet with a second tweet, a short gif of a comedic situation of a man slapping someone running away, making fun of Sheku's death. I think in the first instance I wasn't even aware of it and then I realised that people on Twitter were horrified and shocked. It obviously came to the attention of the family, to Collette and to the family, and they were upset, they were really upset. They were traumatised by it because what they saw was that this was a man who headed up the Scottish Police Federation, who was a serving police officer, who was making fun of a Sheku's death, turning it into a comedy, putting up a GIF and showing no humanity. It was another part of the process of dehumanising Sheku Bayoh. He didn't have a right to life. He was dehumanised to such an extent that somebody in authority could have the audacity to put up a video or GIF and make fun of it: that was shocking and made the family extremely upset and angry.

241. [REDACTED]  
[REDACTED]  
[REDACTED]

Signature of Witness [REDACTED] .....

[REDACTED]

**Concerns raised regarding the suggestion that Sheku said “I can’t breathe”**

242. An example of how the Crown appeared to act on behalf of the SPF, is that on 8 June 2020, after repeated emails sent to my office by Peter Watson, we received a letter from Deputy Crown Agent Lindsey Miller (COPFS-  
COP S-00573 (a)).

*“Over the last few days I have seen public comment in social media stating that Sheku Bayoh said “I can’t breathe” in the context of a comparison to recent reports about the death in Minneapolis of George Floyd.*

*In particular Collette Bell was reported in the Daily Record published on 4th June 2020 as saying “George Floyd stated ‘I can’t breathe’. So did Sheku”.*

*Further in a BBC news interview broadcast on 4th June, your client, Sheku’s sister Kadi Johnson, made an identical comparison, also attributing the words “I can’t breathe” to Sheku just before he passed away.*

*I was extremely surprised and concerned to hear of these remarks in advance of the Public Inquiry when none of the witness statements or other evidence in the possession of the Crown contains any reference to Sheku saying to police officers “I can’t breathe”.*

*You will be aware of the evidential significance of such a remark, had it been made, and of the importance of highlighting such evidence to the experts instructed by the Crown...I should be grateful if*

Signature of Witness [REDACTED] .....

*you advise me of the evidential origin of these remarks that have been made to the press and other media, in order that these can be investigated further.”*

243. The family were angered at the accusatory tone of the letter and what appeared to be a follow up on behalf of Peter Watson- it appeared to imply that the remarks had been made up because of George Floyd.

244. The difficulty of course for the Crown Office was that they had not noted it down years before, [REDACTED]  
[REDACTED] . Ms. Miller did nothing to correct as Mr. Watson maintained this position several months later. Such letters highlighted to the family how the Crown Office and the SPF worked as a team against the family.

245. I attach a copy of our response to Lindsey Miller to relay the abject anger the family felt at this letter, I wrote a letter on 12 October 2020 in response (COPFS-01678(a)).

*“The content of Ms Johnson’s interview was based on information passed to the family and the specific comment referred to was based on information given to Mr Adeymi Johnson in the Summer of 2015. Mr Johnson met and spoke to several witnesses in early Summer 2015.*

*In this context it is important that you understand that none of the family have been provided with copies of the police statements disclosed in this case and they have not been advised of any witnesses names or personal details.*

*Given the content and tone of your letter, I consider that I have to respond further by explaining that the family were most upset and concerned when they received it. The obvious implication from what you have said is either that Ms Johnson had no basis for her*

Signature of Witness [REDACTED] .....



*comments, or the family have withheld something from the official investigation.*

*Ms Johnson and the family reject such an implication as grossly unfair and unwarranted. The family met with both the PIRC and the Lord Advocate on several occasions.*

*You will have notes of the meetings as well as copies of letter sent to the PIRC. At an early stage the family were warned not to carry out their own investigations after having approached witnesses.*

*In fact at a later date we wrote to complain about the conduct of agents representing officers, you were copied in the letter to Kate Frame, PIRC along with the Lord Advocate- such as the one dated 28th October 2015- where it stated:-*

..... [redacted]  
 [redacted],  
 [redacted] e  
 [redacted]  
 [redacted].  
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*[...] After Mr Johnson spoke with witnesses, he was asked to desist from any further contact with witnesses or attempts to investigate matters by the PIRC, who in turn complained about his actions to the Lord Advocate.*

Signature of Witness [redacted] .....

*[...] The information that Mr Johnson received was passed on in the early stages of the investigation in conversations the family had with PIRC and the Lord Advocate. If none of this has been recorded or the significance of it has not been understood until the death of George Floyd then this is plainly not the family's fault.*

*If the statements taken by PIRC five years ago now were superficial and inadequate then the fault lies with their officers, and if inadequate instruction has been given to expert witnesses, then that is a matter for you.*

*The family find it offensive that you should write a letter in such an accusatory manner, especially as they are aware you have read the Victims Right to Review 'VRR' submitted on the 1st February 2019. This VRR was exchanged on the basis that it would be taken seriously and read. I ask that you read this again and have particular regard to what is recorded at page 20. There the family shared some details of their precognitions and within these the reference to Sheku Bayoh saying to the Officers "get off me I can't breathe" is recorded."*

246. Of course, we now know that the Deputy Crown Agent never bothered to correct the SPF or Peter Watson in their mistaken belief that the words "I can't breathe" were never mentioned before, despite our letter to her on 12 October 2020.

247. On 6 January 2021 after bombarding our office with multiple letters Mr. Watson wrote once more (SPF-00471) and included in that letter was the following paragraphs:-

*"We enclose copies of our previous correspondence seeking your assistance in relation to comments made by you and Kadi Johnson that the deceased, Mr Bayoh, uttered the words "I can't breathe" or similar iteration.*

*The remarks made on Twitter came subsequent to information from the United States that the deceased, George Floyd, had used*

Signature of Witness  .....

*these words. Prior to this no such suggestion had been made that Mr Bayoh had uttered such a comment.*

***This was brought to your attention by the Deputy Crown Agent who noted that she attended meetings with the family of Mr Bayoh for the period from his death onwards and at no point had this matter been brought to the Crown’s attention.***

*Similarly the investigation conducted by the Police, PIRC and the Crown Office revealed no evidence that Mr Bayoh made this remark nor that anyone was suggesting that it had been made.*

*When the Crown Office concluded that there should be no prosecution of Police Officers you initiated a review of this decision and were invited to bring to the attention of the Crown all matters of significance which should be considered for the review.*

*As we understand it, the suggestion that the words “I can’t breathe” were uttered did not form part of the review but if we are wrong on this, you can no doubt correct us.*

*.....You will observe we are copying our correspondence to the Solicitor to the Inquiry and the Deputy Crown Agent.”*

248. The family’s anger increased when they learned that Crown Office had been liaising with Peter Watson and advising them of what they had written to us, whilst not informing us of doing so. This was a complete breach of trust. It was not for us to have to correct Mr. Watson, but for the Deputy Crown Agent, yet she chose not to take up the opportunity at that time, we doubt very much she ever did. Of course, this led Mr. Watson to perpetuate the falsehood against the family to the Public Inquiry in writing.

**VRR**

249. One matter that does impact, in my view on Article 2 rights, is that lack of disclosure to enable the family to undertake the VRR. Why would the family not be entitled to see the final PIRC report for example? How does that make sense? How does that comply with Article 2? We wrote a detailed

Signature of Witness  .....

response, a 440-page response saying, outlining the inaccuracies and the flaws. But even then, we are still not provided full information that would allow us to properly challenge Crown Office's original decision. In my view, that's a failing because going forward, if there's a recommendation to be made, if they're going to grant the victim's right to review to individuals, then it is insulting and patronising for the Crown to say, "this is the decision we're coming to but we can't provide you any material." But if you're not prosecuting, then how can we challenge it? How can we truly challenge it if you do not provide us the full chapter and verse on why you've come to that decision? You're not trusting the family; you're expecting the family to trust you when at each and every turn of this case the family's trust has been left shattered.

250. 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.

Signature of Witness.....  


April 26, 2024 | 12:51 AM BST  
Date.....