

Deputy First Minister and Cabinet Secretary for
Economy and Gaelic
Leas Phrìomh Mhinistear agus Rùnaire a' Chaibineit
airson Eaconamaidh agus Gàidhlig
Kate Forbes MSP
Ceit Fhoirbheis BPA



Scottish Government
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Audrey Nicol MSP
Convener, Criminal Justice Committee
justice.committee@parliament.scot

25 February 2025

Dear Convener,

Public Inquiry into the Death of Sheku Bayoh - Request for an Extension of the Terms of Reference

I am writing to let you know my decision on the application on behalf of Mr Bayoh's family, for an extension of the terms of reference to include both the initial prosecutorial decisions and the Victim's Right of Review (VRR).

I have taken account of all representations received in response to my consultation on the request. I have also discussed the application for extension with the Chair of the Inquiry, who is a statutory consultee under section 5(4) of the Inquiries Act 2005 ("the 2005 Act").

After careful consideration, I have decided not to grant the request, for the reasons set out below.

I am conscious of the family's wish to see the decisions and actions of all justice agencies involved in this case fully scrutinised. I am also aware that evidence has emerged during the Inquiry, which could be interpreted as calling into question aspects of the basis on which the prosecutorial decisions were made. I understand that the family wish to see this pursued as far as possible.

My decision is based on a number of factors in relation to the practical benefits to be gained from an inquiry, as well as the potential for delay and additional cost. I have set out further details of my reasoning on each of these areas below.

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Firstly, I need to evaluate the practical benefits which would result from expanding the terms of reference. Under section 2(1) of the 2005 Act, the Inquiry “is not to rule on, and has no power to determine, any person’s...criminal liability”. Equally, the Inquiry has no power to decide that any individual is to be prosecuted. Only the Lord Advocate (or the Solicitor General acting on her behalf in these cases) can make such a decision. Under section 48(5) of the Scotland Act 1998, those decisions must be made independently of any other person.

I am confident that the Inquiry Chair will be able to highlight in his report any evidence which has emerged under the current terms of reference, which suggests that prosecutorial decisions may have been made on a flawed basis. Extending the terms of reference could result in a critical examination of the prosecutorial decisions themselves, perhaps combined with a recommendation that they should be reviewed. Such a review could, however, be carried out by the Solicitor General at any time and without having to wait for the final report of an extended Inquiry. The Solicitor General has committed to assessing any new evidence which is brought to light by the Inquiry and has reserved the right to prosecute any of the individuals involved in future, if her assessment of the evidential position changes.

While I can understand the applicants’ view on the potential benefits to be derived from an extension of the terms of reference, I do not regard these as compelling, given the limitations on the Inquiry’s powers in the area of criminal liability. Those benefits must be weighed up against the disadvantages of an extension.

I must also consider the delay which would result from an extension of the terms of reference. The tenth anniversary of Mr Bayoh’s death is fast approaching. It is now five years since the Victim’s Right to Review decision. It is vital that the Inquiry produces its report and recommendations as soon as possible, so that justice agencies can begin to implement those and take on board the learning, which will be available from the report. This is key to preventing other tragic future incidents. There is a risk of aspects of the Inquiry’s report and recommendations being overtaken by events on the ground if the process of producing a report becomes too protracted. The Inquiry’s evidential hearings under the existing terms of reference have been completed. The impact of an extension now will be great in terms of both delay and cost.

The Inquiry has estimated that the extension to the terms of reference would require it to continue for another year, but this may not be sufficient to take into account the need for Core Participants to search for, identify, redact and make available all the new documentary evidence which would be required and to review documentary evidence already submitted for fresh relevance.

It is not possible to predict with any degree of accuracy how much longer the Inquiry would take if the Terms of Reference were to be extended as requested, or how much that might cost. My conclusion is that neither the time which would be required, nor the cost would be inconsiderable.

For example, there is a risk that the Inquiry’s current premises may not remain available to it for the whole of its duration if the terms of reference are extended. Moving to new premises could lead to further delays if there was a period during which a suitable venue for hearings was not available. Clearly this would require significant additional resource.

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Under section 5(3) of the Inquiries Act 2005, I may amend the terms of reference if I consider that the public interest requires this. For all the reasons I have set out, I consider that on balance I should not alter the terms of reference. This request to extend the Terms of Reference was formally made on 4 September, over four years after the current Terms of Reference were announced, and as the Inquiry was nearing the final module of evidential hearings and concluding statements. It is in the public interest for the Inquiry to come to a conclusion promptly and for its recommendations to be implemented as swiftly as possible.

Yours sincerely,



KATE FORBES

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