

**INQUESTS ARISING FROM THE DEATHS
IN THE LONDON BRIDGE / BOROUGH MARKET
TERROR ATTACK OF 3 JUNE 2017**

**SUBMISSIONS OF COUNSEL TO THE INQUESTS
FOR PRE-INQUEST HEARING ON 9 FEBRUARY 2018**

Introduction

1. These inquests concern the deaths resulting from the terror attack in the London Bridge and Borough Market area which took place on the evening of Saturday 3 June 2017. There were eight victims killed in the attack: Xavier Thomas; Christine Archibald; James McMullan; Alexandre Pigeard; Kirsty Boden; Sébastien Bélanger; Sara Zelenak; and Ignacio Echeverria Miralles de Imperial. In addition, the three attackers were also killed: Khuram Butt; Rachid Redouane; and Youssef Zaghba.

2. The coronial investigations into these 11 deaths were formerly the responsibility of HM Senior Coroner for Inner South London. However, few formal steps have been taken so far in the coronial investigations because they have been suspended pending police enquiries (as is normal practice). Late last year, the Chief Coroner of England and Wales (HH Judge Lucraft QC) decided, with the approval of the Lord Chief Justice, that he should conduct the investigations and inquests in all these cases (pursuant to para. 1(1) of Schedule 10 to the Coroners and Justice Act 2009 (“CJA”)).

3. This Pre-Inquest Hearing will address procedural issues concerning all the inquests (those into the deaths of the victims and those into the deaths of the attackers). The issues for consideration are set out in an agenda, and these submissions follow the order of that agenda. Although the agenda includes (at item 4) a number of case management and legal issues for initial discussion at the hearing, it is recognised that these can only be considered provisionally at this stage, when at least some interested persons will not have sufficient information to make more informed submissions.

Factual Background

4. The attack has been the subject of extensive coverage in the media, and the basic facts are in the public domain. At around 10.07pm on 3 June 2017, a white Renault Master van containing the three attackers was driven south over London Bridge, repeatedly mounting the pavement on the east side of the Bridge. Two pedestrians who had been walking on the pavement, Xavier Thomas and Christine Archibald, were killed and others were injured. The van then collided with railings outside the Barrowboy and Banker pub on the west side of the road immediately south of London Bridge.
5. At that point, the attackers left the vehicle. Each was armed with a large knife and was wearing items strapped to his chest which had the appearance of an improvised explosive device (“IED”) (but were in fact a set of bottles covered with tape). They began stabbing people apparently at random in the area of the Barrowboy and Banker pub and Boro Bistro. They made their way to nearby Borough Market, continuing to attack members of the public as they went. The remaining victims sustained their injuries during this short period (most in the area of Boro Bistro): James McMullan; Alexandre Pigeard; Kirsty Boden; Sébastien Bélanger; Sara Zelenak; and Ignacio Echeverria Miralles de Imperial.
6. The emergency services were summoned quickly to the scene. At 10.15pm the three attackers were in Stoney Street (on the south-west side of Borough Market) and they set upon a man outside the Wheatsheaf pub. At that point, firearms officers from the City of London Police (“CLP”) confronted the men. Shortly afterwards, other armed officers from both the Metropolitan Police Service (“MPS”) and the CLP arrived on the scene. There followed an engagement during which all three attackers were fatally shot. Numerous shots were discharged during the engagement, and it appears that a relevant factor in the reactions of the officers was the concern that the attackers had IEDs and might detonate them. From the time the attack began until the time the suspects were initially shot was a period of about nine minutes (10.07 to 10.16pm).

(1) Designation of Interested Persons

7. An early issue to be addressed in any inquest is the designation of interested persons (“IPs”) in relation to that inquest. This question is important, because IPs have a number of important rights in that inquest, including the right to receive documentary disclosure and the right to examine witnesses.

8. Section 47(2) of the CJA identifies which categories of individual or organisation are entitled to be recognised as IPs in a given inquest. It provides as follows:

“Interested person’, in relation to a deceased person or an investigation or inquest under this Part into a person’s death, means –

- (a) a spouse, civil partner, partner, parent, child, brother, sister, grandparent, child of a brother or sister, stepfather, stepmother, half-brother or half-sister;
...
- (f) a person who may by any act or omission have caused or contributed to the death of the deceased, or whose employee or agent may have done so;
...
- (i) where subsection (3) applies [i.e. where a homicide offence may have been committed involving the death of the deceased], a chief constable;
...
- (k) where subsection (5) applies [i.e. where the death of the deceased is or has been the subject of a managed or independent investigation], the Director General of the Independent Office for Police Conduct [“IOPC”];
...
- (m) any other person who the senior coroner thinks has a sufficient interest.”

Subsection (2)(m) gives the coroner conducting an inquest a residual discretion to recognise individuals or organisations as IPs on the ground of sufficient interest in the inquest. In exercising that discretion, the coroner will consider the following factors in particular: (i) whether or not the applicant has a “reasonable and substantial interest” in the inquest; (ii) whether or not the applicant has a concern to intervene which is genuinely directed to the proper scope of the inquiry; and/or (iii) whether the applicant has any close similarity with any of the categories of person who are required to be recognised as interested persons.¹

9. In these inquests, the following submissions are made about designation of IPs:

- (a) As regards each of the inquests into the deaths of the eight victims killed by the attackers, there should be designated as IPs:
 - (i) members of the family of the person who died who fall within the scope of section 47(2)(a) (quoted above);

¹ See: *R v HM Coroner for the Southern District of Greater London, Ex Parte Driscoll* (1995) 159 JP 45; *R v Coroner of the Queen’s Household, Ex Parte Al Fayed* (2001) 58 BMLR 205; *Re Northern Ireland Human Rights Commission* [2002] HRLR 35 at para. 32; *R (Southall Black Sisters) v HM Coroner for West Yorkshire* [2002] EWHC 1914 Admin at paras. 48ff. Although these authorities concerned the statutory predecessor to section 47(2)(m), it is submitted that the principles they express remain applicable. See also the ruling of Hallett LJ in the London Bombings Inquests following the hearings of 26-30 April 2010, at paras. 119ff. (<http://7julyinquests.independent.gov.uk/docs/orders/dec-april-2010.pdf>).

- (ii) the Commissioner of the City of London Police (by virtue of section 47(2)(i) and/or (m)); and
 - (iii) the Commissioner of Police of the Metropolis (by virtue of section 47(2)(i) and/or (m)).²
- (b) As regards the inquests into the deaths of the three attackers, there should be recognised as IPs:
 - (i) members of the family of the deceased person who fall within the within the scope of section 47(2)(a) (quoted above);
 - (ii) the Commissioner of the City of London Police (by virtue of section 47(2)(f) and/or (m));
 - (iii) the Commissioner of Police of the Metropolis (by virtue of section 47(2)(f) and/or (m)); and
 - (iv) the Director General of the IOPC (by virtue of section 47(2)(k)).
- (c) The London Fire and Emergency Planning Authority (the body responsible for the London Fire Brigade) has indicated that it will make an application for designation as an IP in all inquests. It is also anticipated that a similar application will be made by the London Ambulance Service. Given that the inquests will be considering the care and treatment of at least some of those involved in the attacks, it is submitted that these organisations (which were both materially involved) have a sufficient interest in at least some of the inquests for the purposes of section 47(2)(m). No doubt their submissions will provide details of the individuals given treatment and the grounds relied on for designation.
- (d) It is anticipated that an application will also be made by the Secretary of State for the Home Department (“SSHD”), who will wish to represent the interests of the security services. Given that the inquests are likely to consider what was known by the authorities (including MI5) about the attackers, it is submitted that the SSHD has a sufficient interest in all 11 inquests for the purposes of section 47(2)(m).

² The attacks took place partly in the area for which the CLP is responsible and partly in the area for which the MPS is responsible. Although it could be argued that the CLP should be recognised as an IP in relation to the deaths occurring in its area and the MPS as an IP in relation to the deaths occurring in its area, it is submitted that the more sensible course is to recognise the Chief Constables of both forces as IPs in relation to all the inquests (especially since both forces responded to the attack).

- (e) An indication has been received that the Hertz Corporation will apply for designation as an IP, in light of its involvement in hiring out the van used in the attack. We reserve our position on this application and shall address it at the hearing when it has been developed and reasons given.

(2) Update on Investigations and Provision of Documents to the Chief Coroner

10. The attacks have been the subject of a major investigation by the Counter Terrorism Command of the MPS (SO15). This investigation has included the following elements:

- (a) *Witness evidence:* By December 2017, 1,782 statements had been taken from witnesses (including continuity and procedural statements). Witnesses have been categorised into tier groups. Tier 1 comprises witnesses who saw the van collisions, saw the attacks on victims and/or saw the attackers being shot. Tier 2 comprises other witnesses who saw the suspects, who can add detail about the movement of the van and/or who gave first aid. Tier 3 comprises witnesses whose evidence has no real value to the investigation.
- (b) *CCTV and Body-Worn Camera Footage:* The SO15 team has seized (i) CCTV footage from the vicinity of the attacks between 8pm and midnight on 3 June 2017 and (ii) CCTV footage going back as far as possible from the attackers' home addresses. It has carried out a trawl of movements of the attackers on the day of the attacks. It has collected footage from body-worn cameras of police officers directly involved. However, available footage of the attacks and the shooting of the suspects is limited.
- (c) *Forensic evidence:* Analyses have been performed on a range of items collected from the scenes, including the attackers' knives, their mobile phones and their "fake suicide belts". The van involved in the attack has been examined and samples taken from it.
- (d) *Firearms expert evidence:* A forensic scientist from the MPS Firearms Unit has produced a report dealing with the number of rounds discharged by the armed officers, the gunshot injuries to the attackers and the evidence of rounds striking buildings, etc.

- (e) *Collision reconstruction evidence:* An officer from the MPS Collision Investigation Unit has prepared a collision investigation report, which provides a reconstruction of the movements of the van (including its movement, speed, acceleration, etc.) having regard to CCTV evidence, witness evidence, marks on the road, damage to the van, etc.
- (f) *Investigations concerning the attackers:* Substantial investigative work has been done concerning the biography of each attacker (including any signs of extremism / radicalisation) and the preparations for the attack. Enquiries have been made concerning their mobile phones. A number of individuals connected with the attackers were interviewed during the investigation, and searches and arrests were made. However, no suspect has been charged with any offence related to the attack.
- (g) *Toxicology evidence:* Analysis of samples taken from the attackers revealed the presence of DHEA (a steroid hormone) above the acceptable physiological range in each of the attackers. These findings suggest use of the steroid DHEA recently prior to death (i.e. in a period ranging from several hours to days before death). A suitable expert has been instructed to prepare a report on the implications of these findings.
- (h) *Computer-Aided Modelling Bureau (“CAMB”):* Surveyors from the CAMB of the MPS have carried out a high-resolution laser scan survey of the entire scene area. Using further data from the Port of London Authority and the CAMB survey data, a complete three-dimensional model of the area is being produced.
- (i) *Images and footage from the public:* A police appeal was made asking members of the public to provide any images and footage relevant to the attacks. This has produced some useful material which has been considered in the investigation.

11. In addition to the work of the MPS, the Independent Police Complaints Commission (“IPCC”, now the IOPC) carried out an investigation into the police shootings of the three attackers. On 21 December 2017, the IPCC announced that its investigation was complete. It had examined CCTV and other footage, ballistics evidence and witness

statements. Although the investigative work had been largely completed in just over one month following the incident, final pathology reports on the attackers had taken longer to produce. The IPCC made clear that no police officer involved had been under any suspicion of wrongdoing and that all the eight officers involved had been treated as witnesses (rather than being suspected of any criminal or disciplinary offence).

12. A number of internal reviews have been carried out by MI5 and counter-terrorist policing bodies, concerning handling of intelligence prior to the attacks of March to June 2017 on Westminster, Manchester, London Bridge and Finsbury Park. An independent assessment of these reviews has been carried out by David Anderson QC which was published in December 2017.³ This provides a summary of the background of the three attackers and what was known about them by UK authorities (paras. 2.39 to 2.71). It reveals that Khuram Butt had been the subject of an MI5 priority investigation for almost two years (from mid-2015), entailing some coverage of his activities over that period. Rachid Redouane and Yousseff Zaghba had never been the subject of investigation by MI5 but were associates of Khuram Butt.
13. Public authorities, including the police, have a common law duty to assist a coroner by supplying materials from their investigations which are relevant to a coronial inquiry.⁴ In addition, a coroner now has statutory powers to require documents and other evidence to be provided by private and public authorities: CJA, Schedule 5. It does not automatically follow that all material provided to a coroner will be disclosed to interested persons, since for example the coroner may not disclose irrelevant material or material in respect of which there is a valid legal objection to disclosure.⁵
14. In this case, both the MPS and IPCC / IOPC have been giving full co-operation to the Chief Coroner.⁶ In particular:

³ See: <https://www.daqc.co.uk/wp-content/uploads/sites/22/2017/12/Report.pdf>.

⁴ See: *Peach v Commissioner of Police for the Metropolis* [1986] QB 1064 at 1079H.

⁵ The two stage disclosure process (inwards to the coroner, then outwards by the coroner) is considered in the Chief Coroner's Law Sheet No. 3 and in *Worcestershire CC v HM Coroner for Worcestershire* [2013] EWHC 1711 (QB).

⁶ Co-operation between coroners and investigating authorities and the IPCC has been encouraged by the Courts, especially in Article 2 cases. See: *Peach (loc. cit.)* at 1080A-B; *R (IPCC) v HM Coroner for Inner North London* [2009] EWHC 2681 (Admin).

- (a) The SO15 team has reported on its investigations to the Chief Coroner and his team. It has recently provided a set of nearly 100 key witness statements for their review, as well as the key expert reports so far obtained.
 - (b) The IPCC produced a report (which it provided to the Chief Coroner), but the conclusions will not be released publicly until the inquests have finished. It is anticipated that the IOPC will also assist the inquests by providing evidential material from the investigation.
15. In due course, the Chief Coroner is likely to make requests for disclosure of persons other than the investigating authorities. For example, it is understood that some media organisations may have useful photographs and footage which may not be in the hands of the police and which may be requested.
- (3) Arrangements for Disclosure of Documents to Interested Persons**
16. Disclosure of material to IPs is governed by Part 3 of the Coroners (Inquests) Rules 2013 (“the Rules”). The most significant provision is that a coroner is required to provide to an IP, upon request, any document which the coroner holds and considers is relevant to the inquest: rule 13(2)(d). That obligation is subject to a proviso that disclosure may be refused in various circumstances, including if there is a legal obstacle to disclosure or if the request is unreasonable.
17. In substantial inquests such as these, it is standard practice for coroners pro-actively to give disclosure of relevant evidential material to all IPs. It is legitimate in appropriate cases to require IPs to give undertakings only to use material for the purpose of the inquest and not to disclose it unless and until deployed in court.⁷ This is now standard practice in high-profile or sensitive inquests.
18. In this case, the course proposed is as follows:
- (a) The Coroner’s team will require each IP, as a condition of receiving disclosure, to provide a signed confidentiality undertaking in the form which is now commonly used in such cases.

⁷ See *R (Smith) v Oxfordshire Asst. Deputy Coroner* [2008] 3 WLR 1284 at para. 38.

- (b) The Coroner's team will review batches of material disclosed by the MPS and IOPC, and will disclose potentially relevant evidential material in tranches to IPs. Redactions will be applied for (i) contents which are irrelevant to the inquiry but sensitive (e.g. addresses and phone numbers of witnesses); (ii) contents which raise security sensitivities and either are irrelevant to the inquiry or may be the subject of public interest immunity ("PII") applications in future; and (iii) contents which give the names or identifying details for officers who are to make applications for anonymity (pending such applications). It is expected that the first tranche will include the key witness statements.
- (c) An electronic document management platform will be used for disclosure of documents. Material will be uploaded to the platform and each IP who has signed a confidentiality undertaking will be given access to the material pertinent to the inquest(s) in relation to which he/she is an IP.

Further details on the document management system and the timescales for disclosure will be provided by solicitors to the inquests.

(4) Initial Submissions on Case Management and Legal Issues

19. As already observed, the following submissions are made at an early stage in the preparations for the inquests and are primarily made in order to assist others in formulating their submissions for the next Pre-Inquest Hearing. It is understood that IPs may not be able to make informed responses until they have received some disclosure, and it is not suggested that the Chief Coroner should made firm decisions at this stage on the topics below.

(a) Organisation of the inquests

20. When a number of deaths occur in a single incident or series of events, it is common for inquests to be heard together or in groups. Otherwise, there is an obvious risk of evidence of the same witnesses being heard multiple times (causing distress and potentially affecting the quality of the evidence). However, even when multiple inquests are heard together in a single hearing, the coroner or jury will still be obliged to carry out a proper inquiry into each particular death and will adduce the evidence as to how each particular person died.

21. How to organise these inquests is primarily a case-management decision for the discretion of the Chief Coroner. The key relevant factors will be (a) the wishes of the bereaved families and the reasons for their preferences; and (b) the public interest in avoiding duplication of evidence and conducting coherent hearings.
22. In this instance, it would be possible to hear all the inquests together in a single hearing. However, it may well be that the preferable course would be to have two hearings, one immediately after the other: (i) a hearing of the inquests concerning the eight victims of the attack; followed by (ii) a hearing of the inquests concerning the three attackers. That course would have the following advantages:
- (a) In other cases involving terrorist attacks, notably the 7/7 London Bombings and the Westminster Terror Attack (of 22 March 2017), the families of the victims have had a strong preference for their inquests not to be heard with the inquests of the attackers. Such a preference should be given significant weight (as happened in those other cases).⁸ While the families in this case have yet to express a view, they may have a similar reaction.
 - (b) The inquests concerning the deaths of the victims raise substantially different issues from those concerning the attackers. The former will raise questions about how each of the individuals came to die and whether anything could realistically have been done to prevent their deaths. The latter will raise questions about the engagement with the police and the actions of the firearms officers in the circumstances they faced.
 - (c) The period during which the victims were attacked and the period during which the attackers were confronted and shot were separate periods (although close in time). They could sensibly be considered in two separate hearings. Relevant evidence from the first hearing could be introduced at the start of the second through an investigating officer. Duplication of evidence could be kept to a minimum.

⁸ As regards the 7/7 London Bombings Inquests, see the Decision following PIH of 26-30 April 2010 (Hallett LJ): <http://webarchive.nationalarchives.gov.uk/20120216072438/http://7julyinquests.independent.gov.uk/docs/orders/dec-april-2010.pdf>

- (d) As noted below, it is mandatory for a jury to be summoned for the inquests concerning the attackers, whereas it is in the discretion of the Chief Coroner whether to have a jury for the inquests concerning the victims. If the inquests were organised as suggested above, it would be possible to have the first hearing without a jury. One advantage of that course would be that the Chief Coroner could give fuller reasons for his decisions than a jury could (see below).

It is noted that this is the course which has been adopted in the Westminster Bridge Terror Attack Inquests, which have some features in common with this case.

(b) *Scope of the inquests*

23. The CJA provides that the primary purpose of a coroner's investigation (which here includes an inquest) is to ascertain the answers to four factual questions: who the deceased was; and how, when and where the deceased came by his or her death. See section 5(1). A coroner is obliged to call sufficient evidence to allow those questions to be properly answered.⁹ However, the investigation at an inquest will normally go further than is strictly necessary to answer those questions. How much further is a matter for the judgment of the coroner.¹⁰ The scope of an inquiry may narrow as issues fall away¹¹ or may be widened as new topics emerge, so it is usually both unwise and unrealistic to define the scope of the inquiry prescriptively at the outset.¹²
24. With those principles in mind, we would make the following initial and provisional submissions about topics for inquiry. These may be revised after further consideration of the evidence and after receiving submissions from IPs.

- (a) For all the inquests, it will be appropriate to consider some evidence about the background to the attacks, including –
- (i) the personal background of each of the three attackers;
 - (ii) whether and how each of them had come to the attention of UK and other national authorities before the attacks, and in particular whether their

⁹ See the recent discussion by Lord Burnett CJ in *R (Maguire) v Assistant Coroner for West Yorkshire (Eastern Area)* [2018] EWCA Civ 6 at paras. 2 to 3.

¹⁰ See *R v Inner West London Coroner, Ex Parte Dallaglio* [1994] 4 All ER 139 at 155b and 164j; *R (Takoushis) v Inner North London Coroner* [2006] 1 WLR 461 at paras. 43 to 48; *R (Hambleton) v Coroner for the Birmingham Inquests (1974)* [2018] EWHC 56 (Admin).

¹¹ See *R (Lewis) v Mid and North Shropshire Coroner* [2010] 1 WLR 1836, paras. 26ff.

¹² The *Hambleton* case (cited above) recognises that a coroner can, and often should, keep questions of scope under review; and that definitive decisions on scope do not have to be made on all topics at the outset.

- activities gave any warning signs (to include some consideration of what was known to MI5 about Khuram Butt and his associates);
- (iii) their planning and preparation for the attacks (including reconnaissance, hiring of the van and preparation of equipment);
 - (iv) whether they received assistance or support from others in planning, preparing for and/or perpetrating the attacks; and
 - (v) their movements in the days and hours immediately preceding the attacks.
- (b) For the inquests concerning Xavier Thomas and Christine Archibald, it will be appropriate to consider:
- (i) the sequence of events on London Bridge (using witness evidence, forensics, collision reconstruction evidence and audio-visual evidence to establish how each of them suffered fatal injury);
 - (ii) the rescue efforts for each of them, and the care and assistance given to Christine Archibald; and
 - (iii) the injury suffered by each of them, and the medical cause of death in each case.
- (c) For the inquests concerning James McMullan, Alexandre Pigear, Kirsty Boden, Sébastien Bélanger, Sara Zelenak and Ignacio Echeverria Miralles de Imperial, it will be appropriate to consider:
- (i) in general terms, the events on London Bridge until the van came to a halt;
 - (ii) the movements of the attackers from the van to the point of the attack on each of these individuals;
 - (iii) the events of each attack;
 - (iv) the aftermath of each attack, and the care, assistance and treatment given to the victims; and
 - (v) the injuries sustained by each of the victims, and the medical cause of death in each case.
- (d) For the inquests concerning Khuram Butt, Rachid Redouane and Youssef Zaghba, it will be appropriate to consider:

- (i) in general terms, the sequence of events on London Bridge and the following events, from the attackers leaving the van to the point at which they were confronted by police in Stoney Street;
- (ii) the arrival of CLP and MPS firearms officers in a number of armed response vehicles;
- (iii) the events of the engagement with the armed police, including the times at which shots were fired at the attackers; and
- (iv) the shots fired at the attackers, the injuries they sustained and the medical cause of death in each case.

(c) *Jury / juries for the inquests*

25. Section 7 of the CJA makes provision for the circumstances in which a jury should be summoned in an inquest. Most inquests are heard by a coroner without a jury, and in those inquests the conclusions will be determined by the coroner. If an inquest is heard with a jury, then the jury makes the determinations at the end (having received legal direction from the coroner).
26. Section 7(1) states that an inquest must be held without a jury unless either of subsections (2) or (3) applies. Subsection (2) sets out a series of mandatory grounds for summoning a jury, including where the coroner has reason to suspect that the death resulted from an act or omission of a police officer (section 7(2)(b)(i)). Subsection (3) provides that an inquest “may be held with a jury if the senior coroner thinks that there is sufficient reason for doing so.” The discretion afforded by subsection (3) is broad and fact-sensitive. In making a decision under that provision, a coroner should take account of all the circumstances of the case, including (a) the wishes of the bereaved family (a relevant factor but not decisive); (b) the submissions of other IPs; (c) the circumstances of the death (including whether they resemble the circumstances of deaths requiring a jury); and (d) the practicalities.¹³
27. In this case:
- (a) The inquests concerning the deaths of the three attackers must be held with a jury, because their deaths resulted from acts of police officers. A jury is required even if there is no basis for thinking any officer did anything wrong.

¹³ See *R (Fullick) v HM Senior Coroner for Inner North London* [2015] EWHC 3522 (Admin).

- (b) There is no mandatory requirement for a jury to be summoned for any of the other inquests. However, if the inquests for some or all of the victims were heard in a single hearing with the inquests for the attackers, then there would have to be a jury for the entire hearing.
- (c) If the inquests of the victims were heard by the Chief Coroner sitting without a jury, there would be one distinct advantage. The Chief Coroner sitting alone would be able to deliver a summing-up explaining the reasons for his determinations, whereas a jury could not. This was considered a significant factor by the Court in relation to the New Cross Fire inquests.¹⁴ In a case of the present kind, it may be thought that such a reasoned summing-up would be valuable to all those involved.
- (d) *Article 2, ECHR*
28. Article 2 of the ECHR (the right to life) has been held to have a procedural element obliging member states to carry out independent investigations complying with Convention standards in particular types of case.¹⁵ This procedural obligation is “engaged” if (a) a death has taken place in circumstances which automatically engage it (e.g. deaths in state custody) or (b) on the evidence, there is an arguable case that the state or its agents have breached substantive Article 2 duties in relation to a death.¹⁶
29. In England and Wales, in a case where the Article 2 procedural obligation is engaged and the inquest is the primary means for it to be discharged, the statutory provisions governing the objectives and determinations of an inquest are read differently. In particular, the need for the inquest to ascertain and determine “how the deceased came by his or her death” is read as including the circumstances of death as well as the immediate physical means of death.¹⁷ This is now reflected by sections 5(2) and 10(1)(a) of the CJA.¹⁸

¹⁴ See: *R (Collins) v HM Deputy Coroner for Inner South London* [2004] EWHC 2421 (Admin).

¹⁵ See: *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653 at paras. 18 to 20.

¹⁶ See *R (Letts) v Lord Chancellor* [2015] 1 WLR 4497; *R (Humberstone) v LSC* [2011] 1 WLR 1460. The relevant substantive duties are (i) the operational duty to protect individuals from an appreciable “real and immediate” risk to their lives (*Osman v UK* (2000) 29 EHRR, paras. 115 to 116) and (ii) the general duty on states to establish systems to protect life (*Oneryildiz v Turkey* (2005) 41 EHRR, paras. 89-90).

¹⁷ See *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182, paras. 35 to 38.

¹⁸ See the *Maguire* case (cited above) at para. 2.

30. In practical terms, the effect of a determination that the Article 2 procedural obligation is engaged is that the conclusions of an inquest may be in an expanded form. However, and importantly, the decision whether the procedural obligation is engaged will usually have little relevance to the scope of the inquest, the range of evidence called or the procedures adopted. This is because the scope of inquiry is flexible, and a properly conducted inquest of any kind will usually allow the coroner or jury to determine both the cause and the circumstances of death.¹⁹
31. The following initial submissions are made on the engagement of Article 2 in this case:
- (a) The Article 2 procedural obligation is automatically engaged in any inquest where death was due to deliberate use of lethal force by state agents (even if that force was justified). Accordingly, it is engaged in the inquests concerning the deaths of Khuram Butt, Rachid Redouane and Youssef Zaghba.
 - (b) The Article 2 procedural obligation would only be engaged in the inquests into the deaths of the eight victims of the attack if there were an arguable case on the evidence that the state breached substantive Article 2 obligations (applying the correct legal tests), either in (i) failing to prevent the attacks happening at all or (ii) failing to react to them more quickly or effectively. At present, we are not aware of evidence which would support such an arguable case, but we shall keep an open mind on the topic as we review the evidence in more detail.
 - (c) Regardless of whether Article 2 is engaged in individual inquests, there will be a full and thorough inquiry into all the events of the attack and the circumstances in which each death occurred.
- (e) *Arrangements for selection of witnesses*
32. The selection of witnesses for an inquest is primarily a matter for the coroner.²⁰ In deciding which witnesses to call, the coroner will consider (a) the need to call enough evidence to carry out a proper inquiry of sufficient scope (as discussed above) and (b) expediency and practicality.²¹ The latter consideration will encompass, for example: the need to avoid calling duplicative evidence; the need to call the most relevant witnesses;

¹⁹ See: *R (Sreedharan) v HM Coroner for Greater Manchester* [2013] EWCA Civ 181 at para. 18.

²⁰ See: *McDonnell v HM Assistant Coroner for West London* [2016] EWHC 3078 at para. 28.

²¹ See the *Maguire* case (cited above), paras. 2 to 3 and 21 to 26.

practical concerns about scheduling witnesses; and the effect on vulnerable witnesses of giving evidence about distressing subject-matter.

33. It is good practice for a coroner to consult IPs in the selection of witnesses. In this case we would propose that, after disclosure has been given, witness lists should be circulated to all IPs. Representations on those lists can then be made and addressed in correspondence, at least in the first instance.

(f) *Expert evidence*

34. It is likely that evidence from a number of experts will be called in the inquests, including (a) forensic pathologists (to discuss the post-mortem examination and cause of death in each case); (b) a collision reconstruction expert; (c) a firearms / ballistics expert; and (d) a toxicologist on the findings and effects of DHEA.

(g) *Anonymity / special measures*

35. The common law powers of a coroner to manage an inquest enable him/her to grant anonymity to witnesses and others.²² In exercising that power, the coroner may give effect to ECHR rights, including in some cases rights to life and/or freedom from serious harm and in some cases privacy rights. If a refusal of anonymity would raise a real and immediate risk to life or serious harm, the default position is that anonymity will usually be granted.²³ In other cases, decisions on anonymity involve a balancing exercise,²⁴ in which factors such as the applicant's concerns and the effects of refusing anonymity are set against the countervailing interest in open justice and Article 10 rights of media organisations.²⁵ Where an anonymity order is made, it is usually accompanied by other procedural orders, including one under section 11 of the Contempt of Court Act 1981 prohibiting reporting of details liable to identify the person granted anonymity.
36. In this case, the MPS has indicated an intention to make an application for anonymity on behalf of firearms officers. It is likely that the CLP will make an equivalent application on behalf of its armed officers. At this stage, we propose that the Chief Coroner sets a deadline for such applications to be filed with supportive evidence (either in a form which

²² See *R (T) v HM Senior Coroner for West Yorkshire (Western Area)* [2017] EWCA Civ 318 at paras. 55-64; *R (A) v HM Coroner for Inner South London* [2004] EWCA Civ 1439.

²³ See *Re Officer L* [2007] 1 WLR 2135.

²⁴ See *R v Bedfordshire Coroner, Ex Parte Local Sunday Newspapers* (2000) 164 JP 283.

²⁵ See *R (T) v HM Senior Coroner for West Yorkshire (loc. cit.)*, paras. 55-64.

can be seen by all IPs, or alternatively in “closed” and “open” versions). We would not favour the Chief Coroner setting further directions now for IPs to consider and respond to the applications, since IPs will not be in a position to do so properly before at least some disclosure has been given.²⁶

(h) *Public interest immunity*

37. Any coroner has the jurisdiction to consider and determine applications that relevant material provided to him/her should not be disclosed to IPs on the basis of PII objections.²⁷ That power is exercised on well-established principles, and such decisions may be subject to challenge in the High Court. The provisions for disclosure in the Rules accord with this jurisdiction, in that they permit coroners to refuse to disclose relevant material to IPs on the basis of proper legal objections: rule 15(a).
38. However, it is also possible in some cases for a person or organisation to object to providing material to a coroner on the basis that there are valid PII objections to doing so: see para. 2(2) of Schedule 5 to the CJA. In the case of *Secretary of State for the Home Department v HM Senior Coroner for Surrey* [2016] EWHC 3001 (Admin), the Court recognised that (a) public authorities may properly withhold from an “ordinary” coroner security intelligence material and (b) an inquest which requires the consideration of such material in the preparatory stages ought to be heard by a judge. The Chief Coroner is a judge and is entitled to consider security intelligence material which coroners generally could not be shown.
39. In this case, we have not yet been informed of specific security sensitive material obtained in the course of the investigations. However, it is entirely foreseeable that there may be some such material. In particular, the MI5 investigation in which Khuram Butt featured may well encompass material which remains very sensitive. If there does prove to be relevant evidential material which the authorities would not wish to be disclosed to IPs, then a PII application will need to be made in due course (unless some expedient can be devised, such as disclosing relevant documents in a form which excludes material that is both irrelevant and sensitive).

²⁶ The full facts of the engagement between the armed officers and the attackers are not in the public domain, and in this case it would not be appropriate to expect IPs to respond to the application(s) without more information.

²⁷ See *R v Devon Coroner, Ex Parte Hay* (1998) JP 96 at 101; *Chief Constable of the PSNI's Application* [2010] NIQB 66; *Secretary of State for Foreign and Commonwealth Affairs v Assistant Deputy Coroner for Inner North London* [2013] EWHC 3724 (Admin); *Secretary of State for the Home Department v HM Senior Coroner for Surrey* [2016] EWHC 3001 (Admin) at para. 41.

(i) *Possible time and venue for the inquests, and logistics*

40. It is understood that all IPs, especially family members of those who died who themselves live overseas, would appreciate early information about the likely timing, duration and venue of the inquests.
41. At present, it is anticipated that the inquests will take place in early 2019, given that time has to be allowed for disclosure of documents and proper preparations for the hearing(s). A more precise start date will probably be given at the second Pre-Inquest Hearing. The inquests are currently expected to last approximately two months in total (whether they take the form of one or two hearings).
42. The inquests are likely to be heard in a large courtroom at the Central Criminal Court (Old Bailey), which has good facilities for witnesses and jurors. For members of bereaved families who reside overseas, consideration will be given to arranging live video-streaming of the proceedings to UK embassy / consular premises (so-called “remote courts”) in the countries where families live.
43. A website will be created for these inquests on which key information and documents will be published. During the inquests hearing(s), transcripts of evidence will be posted on the website on a daily basis.

(j) *Further Pre-Inquest Hearings*

44. At least one further Pre-Inquest Hearing will be needed, to take place after the first tranche of disclosure has taken place (possibly in June / July 2018). At that hearing, the procedural issues identified above can be addressed by IPs in more detail. Solicitors to the inquests will contact all IPs with further details.

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