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

OPEN SUBMISSIONS OF COUNSEL TO THE INQUESTS
FOR HEARING ON 12 APRIL 2019

Introduction

1. These Inquests concern the deaths resulting from the terror attack at London Bridge and Borough Market on 3 June 2017. Pre-Inquest Review ("PIR") hearings have been held on 9 February 2018, 6 July 2018 and 11 January 2019. The main Inquests hearings are due to commence on 7 May 2019 and are scheduled to last around 10 weeks. The hearings have been fully timetabled and are at an advanced stage of preparation, with very extensive disclosure having already been given to Interested Persons ("IPs") through the Opus document management platform.

2. This hearing is being held to address (a) a claim for public interest immunity ("PII") made by the Secretary of State for the Home Department ("the Secretary of State") by means of a Certificate dated 20 March 2019; and (b) applications for anonymity and special measures by Witness L (Security Service officer), Witness M (counter-terrorism police officer) and two Authorised Firearms Officers ("AFOs") of the Metropolitan Police Service ("MPS") known as D4 and AY37. Submissions on the PII claim will be heard in open and closed sessions, while all submissions on the anonymity applications will be in open session.

3. In this document, we set out our open submissions on the PII claim (primarily in relation to governing principles) and all our submissions on the anonymity applications. A separate set of closed submissions addresses the detail of the PII claim.

Public Interest Immunity Claim

Background

4. These Inquests will be considering the background to the attack on 3 June 2017, including: (i) the personal history and background of each of the attackers; (ii) the extent to which each of them had come to the attention of the UK and other national authorities, and whether their activities gave any warning signs; (iii) their planning and preparation for the attacks; (iv) whether they received assistance and support from others; (v) their dealings with each other and any others before the attack; and (vi) their movements in the days and hours preceding the attacks. See Section A of the Indicative Scope document annexed to the directions from the second PIR hearing.[1]

5. The Security Service and counter-terrorism police had investigated one of the attackers, Khuram Butt, between mid-2015 and the time of the attack. In particular, he had been the subject of an MI5 priority investigation over that period. The investigation had been opened following information that he aspired to conduct an attack in the UK. In the two-years of the investigation, MI5 gathered intelligence about him but did not identify any of the activity leading up to the attack. Some information about the MI5 and police investigations into Khuram Butt was revealed by Lord Anderson QC in his *Independent Assessment of MI5 and Police Internal Reviews on the London and Manchester Attacks of 2017* ("the Anderson Report") (see [2.39]-[2.57]).[2] Some further information appears in the Intelligence and Security Committee of Parliament Report, *"The 2017 Attacks: What needs to change?"* dated November 2018 (HC 1694) ("the ISC Report").[3]

6. MI5 also received an enquiry about another of the attackers, Youssef Zaghba, in June 2016 which is recounted in the Anderson Report at [2.65]-[2.71]. Neither MI5 nor counter-terrorism police investigated the third attacker, Rachid Redouane, at any stage.

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[1] See:
- https://londonbridgeinquests.independent.gov.uk/wp-content/uploads/2018/07/Directions-from-PIH-06.07.2018.pdf

[2] See:
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/664682/Attacks_in_London_and_Manchester_Open_Report.pdf

[3] See:
- https://docs.google.com/a/independent.gov.uk/viewer?a=v&pid=sites&srcid=aW5kZXBlbmRlbnQuZ292LnVrfGlzY3xneDo1ZGExOTdmNDdhMGJhNDZh

7. It would be apparent to any intelligent reader of the Anderson and ISC Reports that the Security Service and police hold documents relevant to their pre- and post-attack investigations which are likely to raise security sensitivities. Accordingly, from an early stage in the preparation for these Inquests, the Inquests Team communicated with MI5 and the police and made arrangements for review and deployment of evidence.

8. The steps taken in the review process can be summarised as follows:

(a) We and the lead solicitor to the Inquests (all with developed-vetted security clearance) have engaged in a comprehensive exercise of reviewing the security-sensitive material. We read the Post-Attack Reviews and Operational Improvement Reviews of the police and Security Service. We reviewed all the original documents underlying those reports. A number of meetings were held between us, the Security Service and its legal representatives to discuss the material. The overall exercise was very substantial and detailed, taking place over several months.

(b) During our meetings, we identified (i) information which did not appear in the Anderson Report which we considered potentially relevant to the Inquests (which we categorised into issues / topics); and (ii) a set of documents which we considered would qualify as relevant evidential material.

(c) The Security Service produced in draft a statement of Witness L, MI5's current Head of International Counter Terrorism Policy, Strategy and Capability (statement dated 4 March 2019). In that draft statement, the witness attested to the accuracy of the information in the Anderson Report and added further information addressing the further points we had raised to the extent the Security Service considered possible. After further discussions between ourselves and the Security Service, the statement was modified and finalised. The final version is dated 4 March 2019 and was disclosed to IPs on 6 March 2019. It details the MI5 pre-attack investigations into the three attackers and what is now known about them: see Statement of Witness L, [94]-[147].

(d) Given that there are documents containing relevant information which the Security Service considered could not properly be disclosed to IPs or others on the

basis that disclosure would harm national security, the PII claim was then prepared and the Certificate produced.

(e) Throughout the process, we have adopted the method of identifying all information which we considered could be relevant to the Inquests and which did not appear in the publicly available reports. This included information of only limited relevance and information which only added points of detail. As the Secretary of State's representatives will no doubt agree, we took a rigorous and challenging attitude at each stage.

We have provided IPs with updates on our review work at the PIR hearings, especially that in January 2019. No IP has taken issue with the staged approach we were following.

9. Whatever the outcome of the PII claim, the process described above has resulted in the production of evidence on an unprecedented scale concerning active MI5 investigations. Furthermore, Witness L will be giving evidence and two days have been set aside in the timetable for that evidence. As in the Inquests into the Westminster Bridge attacks, a procedure will be directed whereby we and counsel for IPs will provide lists of topic areas for the witness in advance, so that he can address further matters of concern to the greatest extent possible in open forum. In addition, the Inquests will hear evidence from Witness M concerning counter-terrorist police investigations into Khuram Butt prior to the attacks.

General Legal Principles: Approach and the Balancing Exercise

10. In our submissions for the third PIR hearing, we set out (at [24]) the principles governing PII claims such as the present one. We understand from his submissions that they are agreed by the Secretary of State. We elaborate on those submissions below.

11. The power of a coroner to order provision of documents and other evidence under Schedule 5 to the Coroners and Justice Act 2009 ("CJA") is subject to the qualification that a person may not be required to provide any evidence or document if he/she could not be required to do so in civil proceedings: see paragraph 2(1) of Schedule 5. In civil proceedings, documents and other evidence may be withheld on grounds of PII. Paragraph 2(2) of Schedule 5 provides that the rules governing PII apply in inquests as they do in civil litigation: see paragraph 2(2).

12. Accordingly, a public authority may in principle assert PII as a basis for refusing to provide material (including security-sensitive evidence) to a coroner. However, in practice a nominated judge will usually be appointed to conduct an inquest to which security-sensitive material is relevant. The Security Service will then usually provide relevant material for review purposes to the nominated judge and raise any objection to proposed onward disclosure by making a PII claim in an application to the judge. See: *SSHD v HM Senior Coroner for Surrey* [2017] 4 WLR 191 at [41]-[48].

13. It is well-established that a coroner has jurisdiction to consider PII applications in respect of material provided to him/her.[4] Under rule 15 of the Coroners (Inquests) Rules 2013, a coroner is entitled to refuse to give disclosure of otherwise relevant material to Interested Persons on the ground that there is a statutory or legal prohibition on disclosure, a ground which encompasses objections based on PII.

14. The principles governing PII in inquests are the same as those applying in other proceedings, as set out in *Conway v Rimmer* [1968] AC 910 at 952 and *R v Chief Constable of West Midlands Police, Ex Parte Wiley* [1995] 1 AC 274. The Court faced with a PII claim will balance the public interest in avoiding harm to the nation or the public service against the interest that the administration of justice should not be frustrated by relevant evidence being withheld. As recognised in *Conway* at 985 and in *Wiley* at 289, the decision is that of the Court both because it concerns the administration of justice and because a judge is better able to carry out the balancing exercise.

15. In *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2009] 1 WLR 2653 (Div Ct) at [34], Thomas LJ suggested that four questions be posed in turn: (i) whether there is a public interest in disclosure; (ii) whether disclosure would bring about a real risk of serious harm to an important public interest and, if so, which interest; (iii) whether the risk can be protected against by other means or more limited disclosure; and (iv) if there is no adequate alternative, where does the balance of the public interest lie. The final balancing exercise involves asking whether the public interest in refusing disclosure is outweighed by the public interest of doing justice in the proceedings.

[4] See for instance *R v Devon Coroner, Ex Parte Hay* (1998) JP 96 at 101; *Chief Constable of the PSNI's Application* [2010] NIQB 66.

16. In an inquest, the public interest in disclosure is in a full and open inquiry being conducted with all potentially relevant evidence available to IPs. In *R (Amin) v SSHD* [2004] 1 AC 653 at [31], Lord Bingham famously characterised the purposes of a coronial investigation as follows:

> "to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others."

17. In *Secretary of State for Foreign and Commonwealth Affairs v Asst Deputy Coroner for Inner North London* [2013] EWHC 3724 (Admin) (the *"Litvinenko Case"*) from [53] to [61], Goldring LJ made the following points which are relevant here:

(a) "[It] is axiomatic… that public justice is of fundamental importance. Even in cases in which national security is said to be at stake, it is for courts, not the Government, to decide whether or not PII should prevent disclosure of a document or part of a document." [53]

(b) The context of the *Wiley* balancing exercise is critical. An exercise which balances national security against the proper administration of justice raises its own particular considerations which may not apply in cases where the interest is not that of national security. [54]

(c) "[When] the Secretary of State claims that disclosure would have the real risk of damaging national security, the authorities make it clear that there must be evidence to support his assertion. If there is not, the claim fails at the first hurdle." [55]

(d) "[If] there is such evidence and its disclosure would have a sufficiently grave effect on national security, that would normally be the end of the matter. There could be no disclosure. If the claimed damage to national security is not 'plain and substantial enough to render it inappropriate to carry out the balancing exercise,' then it must be carried out." [56]

(e) "[When] carrying out the balancing exercise, the Secretary of State's view regarding the nature and extent of damage to national security which will flow

from disclosure should be accepted unless there are cogent or solid reasons to reject it. If there are, those reasons must be set out." Otherwise, the balancing exercise must be carried out on the basis that the Secretary of State's view of the nature and extent of damage to national security is correct. [57]

(f) It is usually a given that the Secretary of State knows more about national security than the coroner, whereas the coroner knows more about the proper administration of justice than the Secretary of State. [58]

(g) "[A] real and significant risk of damage to national security will generally, but not invariably, preclude disclosure." The decision is for the coroner, not the Secretary of State. [59]

(h) For a coroner to reject a PII claim backed by a ministerial Certificate, he/she must conclude "that the damage to national security as assessed by the Secretary of State [is] outweighed by the damage to the administration of justice by upholding the Certificate." [60]

(i) It is incumbent on a coroner to explain how he/she arrives at such a decision, particularly if ordering disclosure in the knowledge that doing so entails a real and significant risk to national security. [61]

18. As submitted by the Secretary of State, there are numerous statements in the authorities to the effect that considerable weight must be given to the view of the Government on whether disclosure of particular material would harm national security and on the degree of any such harm. These statements recognise both (a) that Ministers have access to a broad range of evidence / experience on matters of national security and (b) that the doctrine of separation of powers entrusts judgments about national security primarily to Ministers rather than the judiciary. See in particular *CCSU v Minister for the Civil Service* [1985] AC 374 at 402 and 412**;** *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153 at [50]-[53]; *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2011] QB 218 (CA) at [129]-[135].

19. The Secretary of State is also right to make the separate point (recognised in the *Litvinenko Case* cited above) that disclosure should not usually be made if it would cause significant harm to national security. The interest engaged is usually sufficiently

important to override the competing public interest in administration of justice and (in the coronial context) fullness of inquiry. See *Duncan v Cammell Laird & Co Ltd* [1942] AC 624 at 642-643; *Conway* at 940, 952 and 954; *CCSU v Minister for the Civil Service* at 955; *Balfour v Foreign and Commonwealth Office* [1994] 1 WLR 681 at 688-689.

20. The following countervailing points should also be kept in mind. First, the principle that justice be done in the open applies to inquests and favours the disclosure and deployment of relevant evidence, such that refusing disclosure on PII grounds involves some infringement of the open justice principle.[5] Secondly, the independent judgment of the Court is critical: even when considering objections based on the admittedly important general "neither confirm nor deny" (NCND) policy, the Court does not simply salute a ministerial flag: *Mohamed v Secretary of State for the Home Department* [2014] 3 All ER 760 at [20].

21. In summary:

(a) For each aspect of the PII claim, the Coroner should consider the concerns identified by the Secretary of State, paying proper respect to the underlying expertise and the constitutional position. Absent cogent reasons for rejecting stated national security concerns, they should be accepted.

(b) For each category of material to which the claim relates, the Coroner should consider whether the particular concerns relied upon override the particular benefit to the inquiry of ordering disclosure. In doing so, the Coroner should keep in mind that disclosure should not normally be ordered if it would give rise to a real and significant risk of harm to national security.

(c) The analysis is to be performed with regard to (i) the scope and purpose of the coronial inquiry; (ii) the degree of relevance of the material; and (iii) the information which would in any event be provided through other evidence (here, notably that of Witness L, Witness M and Det Supt Riggs of SO15 (SIO of Operation Dativa)).

[5] See for instance the remarks of HH Judge Hilliard QC in his Ruling on PII in the Perepilichnyy Inquest dated 22 May 2017 at [27]-[28]: https://www.judiciary.uk/wp-content/uploads/2017/04/perepilichnyy-ruling-on-public-interest-immunity-and-related-issues-20170523.pdf.

Application of the Principles in this Case

22. The general public interest in there being a comprehensive inquiry in these Inquests is strong. Indeed, the value of proper inquiry into the attacks is reflected in the detail of the Anderson Report and ISC Report. However, as noted above, the balancing exercise must take account of the value of particular documents and pieces of information to the inquiry and the evidence which will be put before the Court in any event. The public interest in disclosure of a piece of evidence which is of marginal relevance and which simply adds detail to information covered in substance by Witness L's and/or Witness M's evidence would likely be relatively weak.

23. In his submissions, the Secretary of State identifies four categories of national security damage which might arise in a case of this nature. Our submissions on those categories are as follows:

(i) Damage to capabilities and operations: As recognised by Lord Anderson in his Report, the disclosure of operational techniques could lead to their effectiveness being reduced and public safety being impaired: see [2.4]-[2.6]. Without descending to any detail, it can readily be seen that subjects of interest might modify their behaviour in light of information about techniques and capabilities of the Security Service. In both the Westminster Bridge Inquests and in this case, there is evidence of the attackers using techniques to avoid surveillance. Equally, the Security Service must be vigilant to protect information relevant to current or potential future investigations, since otherwise the subjects may take further or more astute precautions. See also the evidence of the Director-General of the Security Service recounted and accepted in *HM Attorney General v Shayler* [2006] EWHC 2285 (QB) at [15]. The protection of operational techniques and current / future operations was recognised as an important interest in *R v H* [2004] 2 AC 134 at [18].

(ii) Damage to persons providing information: Even outside the field of national security, it is well established that disclosure of information which might identify or endanger those giving information to police and public authorities can justify a claim for PII: see *D v NSPCC* [1978] AC 171 at 218-220. As recognised in that case, there is a clear public interest both in protecting such informants and in not discouraging others from giving information. In the national security context,

there are often the further considerations that (a) disclosure may breach Article 2 or Article 3 rights of informants (see *Re Scappaticci JR* [2003] NIQB 56 at [19]); and (b) disclosure may threaten the security of the nation by causing the flow of information to dry up (see *A v Secretary of State for the Home Department* [2003] 1 All ER 816 at [87]). Accordingly, the interest in precluding disclosure of information which might realistically lead to an informant being identified is inherently strong.

(iii) Damage to liaison relationships: Disclosure of information which reveals the existence or nature of liaison relationships with foreign sources, or dealings with such sources, engages two categories of public interest. First, it engages the interest in national security since the preservation of such relationships can contribute to the fight against crime and terrorism. Secondly, it engages an interest in the maintenance of foreign relations, an issue in which Ministers have particular expertise and responsibility.

(iv) Information likely to be of interest to hostile actors: This category is put forward as a general or residual one to cover other information which may be of use to terrorists and other criminals. Of course, the degree of significance to be attached to such information depends on the risk of it being used and the potential consequences of such use.

24. Accordingly, it is submitted that the Secretary of State has identified categories of information which in principle may justify claims to PII. Whether they in fact do so depends upon the analytical exercise outlined above.

25. In our closed submissions, we address the specific material to which the PII claim relates and we explain the degree of relevance. In broad terms, we can say that the Secretary of State has rigorously reviewed the material and that we generally agree with his assessments that the material covered by the claim engages the identified public interests. In those submissions, we also elaborate on the particular relevance of the material to the inquiry and we identify questions which the Coroner may wish to pose to counsel for the Secretary of State in the closed hearing. In our submission, the PII claim is generally well-founded.

26. As part of the analysis, this Court is required to consider whether further material could be disclosed by means less intrusive than the PII claim made. In that regard, we agree with the Secretary of State that (a) substantial information has already been disclosed by way of gist, in the form of Witness L's statement; (b) a confidentiality ring would be impractical or unfair, in that it would either be too wide to provide protection or subject to arbitrary restrictions (e.g. provision of material to lawyers who happen to have clearance); and (c) closed evidence hearings are not permissible in a coroner's court.[6] The Coroner may wish to explore during the closed submissions whether there is further material which might be provided by way of further gist or provision of redacted documents, but we acknowledge that the Secretary of State may have cogent answers to such questions.

Adequacy of Investigation

27. Where security sensitive evidence is relevant to an inquest and there is a PII claim to withhold such material, the question must be asked whether the upholding of the claim would prevent the coroner discharging his/her statutory duty to carry out a sufficient inquiry into how those who died met their deaths. This question can be answered in two ways, as illustrated by recent cases:

(a) Where a coroner upholds a PII claim and the consequence is that the inquiry would be incomplete and/or potentially misleading such that he/she could not discharge the statutory duty of inquiry, the coroner may have little option but to request that a public inquiry be established under the Inquiries Act 2005. This was the case in the Litvinenko inquest: see *R (Litvinenko) v Secretary of State for the Home Department* [2004] HRLR 6 at [62]-[63]. As the Secretary of State observes in his submissions, a public inquiry may receive evidence subject to restrictions imposed under section 19 of the Inquiries Act 2005.

(b) Where a coroner upholds a PII claim and the consequence is that a proper inquiry can still be performed, the coroner may proceed with the inquest. In doing so, he/she may properly use his/her knowledge of undisclosed material to help ensure that the evidence is not presented in a misleading manner. This was the approach taken in the London Bombings inquests. In upholding that approach, the Court of review accepted that a thorough inquiry can very often be carried out by reference

[6] As to which, see *R (Secretary of State for the Home Department) v Inner West London Assistant Deputy Coroner* [2011] 1 WLR 2564. Although the statutory rules considered in that case have been replaced, the same basic principles apply.

to gisted information. See *R (Secretary of State for the Home Department) v Inner West London Assistant Deputy Coroner* [2011] 1 WLR 2564 at [31]-[33].[7]

28. The consequences to the coronial inquiry of upholding aspects of a PII claim are relevant in two respects. First, they may bear on the *Wiley* balancing exercise outlined above, as serious adverse consequences must weigh in the balance. Secondly, they determine the answer to the question whether the inquest(s) can properly proceed.

29. In this case, it is our submission that the Inquests can properly proceed even if the PII claim is successful in full. We say that for the following reasons in these open submissions, and can elaborate in closed session.

(a) While the material for which PII is claimed is relevant to the inquiry, it is relevant to the backgrounds of the attackers and the knowledge of the authorities. Unlike in the Litvinenko case, it is not relevant to the question of how the attacks were perpetrated and how the deceased persons died.

(b) Considerable evidence about the attackers' backgrounds will be adduced, through Witness L, the police witnesses and the attackers' own friends and family members. A review of the biographical reports on the attackers shows how much material is being adduced.

(c) Considerable evidence will also be adduced about what was known to the authorities prior to the attack. The statements of Witness L and Witness M are the main sources, and we can confirm that they are fully consistent with the undisclosed material.

(d) The significance of material about the authorities' knowledge of the attackers may be said to lie in the question whether they could realistically have prevented the attacks. That point will be explored in evidence, and there should be no prejudgment. However, we would point out that (i) even now, and after all the intelligence reviews, it is uncertain whether anyone other than the attackers knew that the attack was to take place and there is no evidence that anyone knew the

[7] See similarly the ruling of HH Judge Hilliard QC in his Ruling on PII in the Perepilichnyy Inquest dated 22 May 2017 at [16]-[30] (see footnote 5 above).

time, date or place;[8] (ii) all the evidence of Khuram Butt's movements in the period before the attacks gives no suggestion that he did anything in public which clearly suggested attack preparation.[9]

Anonymity / Special Measures Applications

General Legal Principles

30. The legal principles governing applications for anonymity and special measures were set out in our submissions for the PIR hearing of 6 July 2018. They are as follows:

(a) As part of the general case-management powers of a coroner, he/she may make an order anonymising witnesses or other persons within an inquest (i.e. prohibiting reference to persons by their true names). There is no inconsistency between that power and requirements for inquests to be held in public. See: *R v HM Coroner for Newcastle upon Tyne, Ex Parte A* (1998) 162 JP 387. Courts give effect to and balance relevant ECHR rights (notably rights under Articles 2, 3, 8 and 10) by exercising this power.

(b) In deciding whether to make such orders, a coroner usually applies a common law test, making an "excursion" if appropriate into the territory of Article 2 of the ECHR. See *Re Officer L* [2007] 1 WLR 2135 at [29]. This involves a two-stage process:

(i) If the refusal of the orders would create or materially increase a risk to the life of the person, such that the risk would be "real and immediate", then the state in the person of the coroner would owe a positive duty under Article 2 to protect the witness by reasonable means. In those circumstances, as it was put in the *Officer L* case, the coroner "would ordinarily have little difficulty in determining that it would be reasonable in all the circumstances to give the witness a degree of anonymity". The threshold of "real and immediate risk" derives from the decision of the ECtHR in *Osman v UK* (1998) 29 EHRR 245. A risk is "real" if it is substantial and significant, rather than remote. It is "immediate" if it is

[8] See Statement of Witness L, [147]; Investigation Overview Report of Det Supt Riggs, [7.2]-[7.3].
[9] See in particular Report on Attackers' Movements of A/DCI Jolley.

present and continuing. See *Rabone v Pennine* Care NHS Trust [2012] 2 AC 72 at [37]-[40].

(ii) If the refusal of the orders would not result in the person being exposed to a real and immediate risk of death, then the coroner should "decide the matter as one governed by common law principles", balancing the factors for and against the orders sought.

(c) When applying the common law test referred to above, it is relevant for the court to consider the subjective fears of the person concerned, whatever their degree of objective justification: see *Re Officer L* at [22]. Risks of harm falling short of real and immediate risk of death (or of serious harm such as might engage Article 3 rights) may be relevant to the balancing exercise: see *Sunday Newspaper Ltd's Application (Judgment No. 2)* (2012) NIQB at [17].

(d) When seeking to strike the right balance under the common law test, the coroner may consider all the consequences of granting and of refusing the orders sought. For example, in an application for anonymity by a police officer who does specialist work, a relevant factor may be that identification of the officer would prevent him/her continuing in his/her current role and would deprive the force of a valuable resource. See *R v Bedfordshire Coroner, Ex Parte Local Sunday Newspapers* (2000) 164 JP 283.

(e) When applying the common law test, a coroner is also required to take proper account of the fundamental principle of open justice, which applies to coroners' courts: see *R (A) v Inner South London Coroner* [2005] UKHRR 44 at [20]. The open justice principle holds that the administration of justice should generally take place in the open, as a safeguard and to maintain public confidence. See *Scott v Scott* [1913] AC 417 at 437-39 and 476-78; *A-G v Leveller Magazine Ltd* [1979] AC 440 at 449-50. In more recent times, courts applying this principle have recognised that giving names and personalities to witnesses is an important aspect of openness in the justice system: see *In re Guardian News and Media Ltd* [2010] 2 AC 697 at [63].

(f) Where a witness seeks to justify anonymity by reference to his/her rights under Article 8 of the Convention, the Court usually has to perform a balancing exercise

which weighs those rights against the rights of media organisations under Article 10. See *In re S (A Child)* [2005] 1 AC 593 at [16]-[17]; *In re Guardian News and Media* (cited above); *SSHD v AP (No. 2)* [2010] 1 WLR 1652 at [7]. This balancing exercise is "highly fact-specific" and "must take into account the evaluation of the purpose of the principle of open justice as applied to the facts of the case and the potential value of the information in question in advancing that purpose, as against the harm the disclosure might cause the maintenance of an effective judicial process or to the legitimate interests of others": see *R (T) v West Yorkshire (Western Area) Coroner* [2018] 2 WLR 211 at [63].

(g) It should be noted that some of the considerations which apply to applications for special measures in criminal cases do not apply to inquests (e.g. the point that the defendant has a right to confront his accuser, including by investigating the accuser's background). See *R v Davis* [2008] 1 AC 1128 at [21]. However, in general terms the open justice principle applies with full force to inquests: *Re LM (Reporting Restrictions: Coroner's Inquest)* [2007] CP Rep 48 at [26]-[40].

Application of Witness L

31. Witness L is the Security Service witness whose evidence is described above. The Service applies on his behalf for orders that (a) his name and identifying details are withheld within the Inquests; (b) the pseudonym "Witness L" is used; (c) no question is asked that might lead to his identification; (d) he is screened from all in Court while giving evidence (under rule 18 of the Coroners (Inquests) Rules 2013); (e) he is permitted to enter and leave Court by a non-public route; (f) publication of his name or identifying details is prohibited (under section 11 of the Contempt of Court Act 1981); (g) electronic devices in Court are turned off during his evidence, save for limited exceptions; (h) no recording is made of his evidence except the official Court recording; (i) his evidence is not publicly disclosed until counsel to the inquests have given confirmation; (j) any live audio or TV link to the Court is turned off while he enters and leaves Court; and (k) everyone in Court vacates the room while he enters and leaves.

32. These are the orders which were made in relation to Witness L's evidence in the Westminster Bridge Inquests, after discussion and submissions. The application in these Inquests has been provided to IPs and media organisations, and there has been no objection to it.

33. In our submission, the application should be allowed and the orders made (subject to further order of the Court) by reference to common law principles and for the following reasons:

(a) Witness L is one of the most senior members of the UK Intelligence Community. He would have very good reason to fear reprisals against himself or his family if he were identified, given the high-profile work he does in relation to highly-motivated and dangerous subjects. The evidence provided by the Security Service in open and closed form shows that he would be an attractive target for terrorists and hostile foreign services. Allowing him to be identified would cause him justified concern.

(b) His ability and that of other officers to carry out their roles within MI5 would be seriously hampered and operations could be prejudiced. Like other serving officers, his role is not publicly avowed. His prior operations, some of which were highly sensitive, could be compromised if he were identified as an officer of the Service. Other officers could find their identities revealed or discoverable by association.

(c) A refusal to grant anonymity and special measures to protect his identity would cause Witness L problems in his personal life, requiring him to reveal his professional role to those from whom he has quite properly concealed it for many years.

(d) Granting the orders sought would not impair the investigation in these Inquests. Witness L would still give his evidence in open Court, heard by all present. The orders would not limit the amount of evidence about MI5 and its work. If anything, they would help Witness L give best evidence. His identity is not relevant to the evidence he will be giving, as it is evidence as representative of the Service. It is not very important that he should be seen giving evidence, as his credibility will not seriously be in issue.

(e) The orders are the minimum restrictions required to ensure that (i) Witness L is not identified and (ii) any inadvertent comment by him which revealed sensitive information may be kept from being published. His experience during the London

Bombings Inquests which is recounted in the application shows that he needs to be screened from all in Court, as otherwise a real risk of public identification would arise.

Application of Witness M

34. Witness M is a counter-terrorism police officer who will be giving evidence on police investigations into the attackers before the attack. The MPS applies on his behalf for orders that (a) his name and other identifying details are withheld in the Inquests; (b) the pseudonym "Witness M" is used for him; (c) questions which might lead to his identification are not permitted; (d) he is screened from the press and public (but not from Coroner, IPs or lawyers) while giving evidence; (e) he is permitted to enter and leave by a non-public route; and (f) publication of his name or identifying details is prohibited (under section 11 of the Contempt of Court Act 1981).

35. Again, this application has been sent to IPs and to media organisations and there has been no objection to it. We submit that the application should be allowed and the orders made (subject to further order of the Court) by reference to common law principles.

(a) Witness M has considerable experience in counter-terrorist policing. By virtue of the particular work he has done over the years (which is detailed in his closed statement), he would be particularly exposed to reprisal attacks. He lives in a socially mixed community in London and does not reveal to members of his community that he is a police officer. He has a highly individual surname, so that it could easily be used to trace him and his family.

(b) In all those circumstances, Witness M would face personal risk if identified. Whether or not it might be of a level and kind to engage his Article 2 (or Article 3) rights, it would certainly cause him justified worry and stress. The risk he faces is supported by his line manager, Commander Jarrett. In that connection, it should be noted that most counter-terrorism officers in these Inquests are not seeking anonymity: his application is made because he is in a special category.

(c) Refusing anonymity and special measures would put Witness M in a position where his ability to carry out roles which require covert action or handling

sensitive material was reduced. That in turn would deprive the MPS of an experienced and capable officer.

(d) As with Witness L, the orders being sought would not impair the quality of Witness M's evidence or reduce anyone's ability to probe or challenge his evidence. Again, the orders being sought are the minimum required to protect his identity.

Applications of D4 and AY37

36. D4 and AY37 are AFOs of the MPS who attended the scene of the attacks in an ARV and were involved in the confrontation with the attackers. Most officers in that category who are to give evidence made applications for anonymity and special measures which were considered and resolved (in their favour) by a ruling dated 19 November 2018.[10] These two officers had not been expecting to be called as witnesses, so had not made applications. After notification that they would be called, applications were prepared by the MPS on their behalf. Like those of Witnesses L and M, those applications have been circulated and have met with no objection.

37. The applications are for orders that (a) the officers' names and other identifying details be withheld in the Inquests; (b) pseudonyms "be used for them; (c) questions which might lead to their identification are not permitted; (d) they be screened from the press and public (but not from Coroner, IPs or lawyers) while giving evidence; (e) they be permitted to enter and leave by a non-public route; and (f) publication of their names or identifying details be prohibited (under section 11 of the Contempt of Court Act 1981).

38. In our submission, the officers' applications should be allowed and the orders made (subject to further order of the Court) by reference to common law principles. Our reasons are the same as those given in relation to the other AFOs in submissions dated 6 July 2018:

(a) Each of these two officers expresses real and serious concerns about being identified as one of those involved in the fatal shooting of terrorists who were engaged in a high profile attack. On their own accounts, both have kept their

[10] See: https://londonbridgeinquests.independent.gov.uk/wp-content/uploads/2018/11/Anonymity-Ruling-dated-19-November-2018.pdf.

involvement private and both are guarded about revealing their role as firearms officers. One has school-age children. One could easily be identified because of an uncommon name, while the other has a name not shared by any other officer. Both are concerned that they or their families may be either targeted by terrorist sympathisers or at least be subject to intrusive and unwelcome press interest. Overall, it is apparent that the Article 8 rights of these applicants are engaged.

(b) If these applications are granted, the orders would have a material effect on the reporting of the Inquests. The narrative of the confrontation between the officers and the attackers would (at least arguably) be less readable and interesting if all the main officers involved were both nameless and faceless. In those circumstances, the granting of the orders would involve a degree of intrusion on the important principle of open justice. The Article 10 rights of media organisations covering the Inquests are engaged.

(c) The following further important considerations tell in favour of granting these applications:

(i) Although each of the officers works in uniform, and carries firearms while in uniform, each may in future wish to move on to work of a covert nature. Trained firearms officers often move on to roles involving surveillance, close protection or counter-terrorism which require an officer's identity and/or duties not to be public knowledge.

(ii) Refusing these applications in this high profile case would probably lead to these officers being very publicly identified (e.g. pictured and/or named in the national press). It would therefore close off opportunities for career development and deny their forces the opportunity to recruit trained and skilled individuals into covert roles.

(iii) Although in other cases armed response officers who work regularly in uniform may not be granted anonymity, there are features of this case which justify a different approach. In particular, the high profile nature of the case and the killing of terrorists accentuate the legitimate concerns felt by these two officers about their identities being made very public.

(iv) If the orders were made, the quality of the evidence in the inquests would not be adversely affected. The names of the two officers are not in themselves important to an understanding of events. There are unlikely to

be important credibility issues concerning their accounts, given that there is video and physical evidence of events (as set out in the IOPC report). The Coroner, jury and lawyers will in any event see the witnesses giving evidence and be able to assess their demeanour.

(v) By contrast, if the orders were refused, the anxiety to which the officers would be exposed might realistically impair the quality of their evidence.

(vi) The applications include plausible evidence from senior officers expressing concern that, if the identities of these officers were not protected in this very high-profile terrorist case, the recruitment and retention of firearms officers may be made more difficult.

(d) The important principle of open justice and the Article 10 rights of the media have to be set in the balance against those considerations, taking full account of the public interest in proper reporting of this important case. Even giving that principle and those rights full weight, the factors set out above justify the applications being allowed.

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