

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

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**SUBMISSIONS ON BEHALF OF THE CITY OF LONDON CORPORATION  
AS TO THE CORONER'S DETERMINATIONS**

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**Introduction**

1. This is the City of London Corporation's ('The Corporation') response to the helpful written submissions received from Counsel to the Inquests as to the Coroner's determinations ('CTI Submissions'), dated 24 June 2019 and the further helpful submissions made on behalf of the families of the deceased of the same date.
2. These submissions are made with the utmost respect to the memories of all the victims of these horrific murders, and the families they leave behind. They are however, necessarily confined to the deaths of Xavier Thomas and Christine Archibald and address the position with respect to the Corporation only.
3. The Corporation broadly agrees with the legal principles contained within the CTI submissions and to the CTI's proposed approach and timetable with respect to PFD issues. Only in one very minor respect are submissions made regarding the third arguable systemic deficiency identified at paragraph [44c] of the CTI Submissions, which it is said gives rise in part to an arguable breach of the general duty.
4. For the avoidance of doubt submissions in respect of paragraph [44c] are made to clarify the position. They are not made to unseat the thrust of the CTI submissions that the general obligation is engaged. The Corporation remains neutral with respect to whether the general obligation is engaged on the facts

and more particularly with respect to the system in place at the material time regarding the definition of Crowded Places.

5. Positively however, the Corporation does not accept, as is submitted by the family of Christine Archibald et al that the systemic issue / breach of the general obligation is of relevance to all of the inquests. The Corporation joins with CTI in submitting that it would be pure speculation to suggest that the attackers might have abandoned their attack plan in the area if hostile vehicle mitigation had been present on the bridge.
6. Limited submissions will also be made as to the wording of the suggested additional narrative which is contained within paragraph [63] of the CTI submissions.
7. It is not accepted that there has been an arguable breach of the operational duty on the part of the Corporation as submitted on behalf of Xavier Thomas and inferred from the submissions made on behalf of Christine Archibald.
8. As to CTI's proposal that each of the eight deaths should be recorded to reflect the fact that the person who died was unlawfully killed. The Corporation can take this shortly in that they agree with and fully endorse this submission.

## **The Law**

9. The Corporation is grateful for the summary of the legal framework set out in the CTI submissions. In addition to the key principles identified therein, which are agreed and gratefully adopted, the Corporation further highlight two matters which it says are important to give due regard to:
  - a. The first being the need to guard against the risk of hindsight bias; and
  - b. The second being the reluctance of the ECtHR to place a disproportionate burden on a State when it comes to the implementation of the operational duty.
10. The courts have repeatedly counselled about the need to be particularly careful not to judge any actions or omissions with the wisdom of hindsight. See

particularly Lord Bingham when he said at [31] in *Van Colle v Chief Constable of the Hertfordshire Police*, [2008] UKHL 50 that it is all too easy “*to interpret the events which preceded in the light of that knowledge and not as they appeared at the time.*”

11. See further from a passage which is particularly applicable to this inquest, per Lord Hope of Craighead in *Mitchell v Glasgow CC* [2009] UKHL 11, [2009] 1 AC 874, at [33]: “*It is the duty of the court to focus on what the authorities knew or ought to have known at the time. One must beware of the dangers of hindsight. The court must try to put itself in the same position as those who are criticised were in as events unfolded for them.*”
12. Furthermore, as to the scope of the operational duty the critical test first formulated in *Osman v UK* (2000) 29 EHRR 245, at [116] recognised that bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way *which does not impose an impossible or disproportionate burden on the authorities.*

### **The Corporation and the Operational Duty**

13. In respect of the operational duty it is not accepted that it is arguable that the Corporation breached an operational duty to protect the lives of either Xavier Thomas or Christine Archibald based on what the Corporation knew or ought to have known of a real and immediate risk to the users of London Bridge and the steps reasonably open to them at the time. This submission is founded on the following evidence:
  - a. CTSA's are tasked with providing advice and recommendations to organisations like the Corporation, which in broad terms is akin to a local authority, regarding the UK's counter terrorism response and more particularly, the Protect strand of CONTEST;

- b. It is undisputed that the CTSA's were and are considered to be the experts in counter terrorism protective security measures;
- c. Accordingly, it was reasonable for the Corporation to rely on forthcoming CTSA advice as to the nature of any threat, the recommendations required to mitigate that threat and the urgency which attached to the implementation of any such recommendations;
- d. Prior to 8 May 2017, London Bridge had not previously been brought to the attention of the Corporation in any CTSA report, or via either of the two private companies – Marshall Kent and AECOM - which the Corporation had instructed to inform its approach to protective security;
- e. When Mr Woolford was made aware that the City of London Police's CTSA considered that "...*London Bridge should be considered the most vulnerable to low sophisticated attacks using a vehicle*" he sought a face to face meeting with him<sup>1</sup> and "...*categorically asked ... is there any urgent action required by me or the Corporation ... to which [the CTSA] said no ...*"<sup>2</sup>;
- f. The CTSA was going to give Mr Woolford recommendations as to long term permanent solutions in relation to London Bridge<sup>3</sup>;
- g. Mr Woolford was waiting for those recommendations<sup>4</sup> and in the interim had placed the issue on the agenda for discussion at the Corporation's Security Board meeting in June 2017<sup>5</sup>;
- h. Mr Woolford would not act purely on the recommendations of a private company, like Cerastes, without direction from a trusted CTSA. In fact,

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<sup>1</sup> Day 30, pg 53

<sup>2</sup> Day 30, pg 54

<sup>3</sup> Day 30, pg 67

<sup>4</sup> Day 30, pg 67

<sup>5</sup> Day 30, pg 68

the Cerastes Interim Two report had made *contrary* recommendations in respect of the protective security requirements of other city locations<sup>6</sup>. That is recommendations which were contrary to what had previously been advised at those locations by the CTSA;

- i. Had the CTSA indicated a level of urgency in respect of the measures on London Bridge then Mr Woolford would have convened a Gold Group meeting<sup>7</sup>, to which TfL would have been invited<sup>8</sup> otherwise the Corporation would have continued to work according to their prioritisation matrix<sup>9</sup>;
- j. The Corporation's prioritisation matrix recognised that other locations higher up the matrix had vulnerabilities from multiple attack methodologies whereas London Bridge had been identified as being vulnerable only to one methodology: low sophisticated attacks using a vehicle;
- k. Although vehicle as a weapon attack was one of the predominant attack methodologies prevalent in the early part of 2017 it was not the only attack which was prevalent at the material time, indeed the attack which took place following the attack at Westminster on 23 March 2017 was not a vehicle as a weapon attack;
- l. It would have been wrong to focus on one type of attack. That prioritisation is an acceptable, indeed an essential approach is not in dispute.

14. The decisions taken from the beginning of May 2017 *cannot* be viewed in the knowledge of how the events unfolded. That approach, albeit all too easy on occasions, is wrong. The decisions must fall to be considered in the context of

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<sup>6</sup> Day 30, pg

<sup>7</sup> Day 30, pg 68

<sup>8</sup> Day 30, pg 76

<sup>9</sup> Day 30, pg 73

what was known, or could reasonably be known, to the Corporation at the material time.

15. No doubt the Learned Coroner will take into consideration that although these inquests have very understandably focussed on the threat which was perceived to face the users of London Bridge, it is without dispute that operating at the material time was a far wider risk picture to the Corporation's estate as a whole. In that connection, it essential that the importance and influence of the wider risk picture is not ignored.

16. It is noted that although the submissions on behalf of the family of Xavier Thomas claim an operational failure on the part of the Corporation the submissions themselves, wherein the terms of the alleged operational failure are set out, make no reference to any specific failure on the part of the Corporation. The same is true of the submissions on behalf of the family of Christine Archibald.

### **The Corporation's response to the third arguable systemic deficiency**

17. At paragraph [44c] of the CTI submissions it is said that there was a lack of clear procedures for reasonably prompt consideration of temporary and permanent HVM measures and that overall it is fairly arguable that the processes of CoLP, TfL and the Corporation lacked the 'dynamic' quality which Sarah Nacey said they required.

18. Earlier at paragraph [33] of the CTI submissions the detail of Sarah Nacey's evidence is provided, namely that with respect to protective security "you need to make sure that you are dynamic and able to respond to events".

19. The Corporation submits that as was demonstrated in the evidence of both Mr Woolford and Mrs Hayward had either the Corporation or TfL been made aware of any urgency surrounding HVM and / or other protective security measures sufficiently prompt temporary measures could have been installed.

20. Mr Woolford<sup>10</sup>, Mr Hughes<sup>11</sup> and Ms Hayward<sup>12</sup> all independently spoke of the scope for organising a Gold Group meeting had the advice coming out of the CTAs been calling for the need for immediate action, which would have included all the necessary decision makers to enable urgent action being taken. Ms Hayward, although accepting that she is no expert on highways contractors, speaks in terms of being able to achieve relative speed when describing the provision and installation of temporary protective security measures on London Bridge<sup>13</sup>.

21. It is therefore, respectfully submitted, that the state of the evidence does not easily lend support to the third limb of the CTI's systemic deficiency.

### ***Observations on CTI's suggested wording for a narrative conclusion***

22. In the CTI submissions at paragraph [63] wording is proposed for a potential narrative conclusion insofar as the deaths of Xavier Thomas and Christine Archibald are concerned.

23. In the event that a final decision were made that the operational obligation is not engaged on the facts of this inquest, it is submitted that the wording suggested should be amended to remove that there was a failure to implement appropriate hostile vehicle mitigation measures on London Bridge.

24. Alternative wording is suggested as follows:

*At the time of the attack described above, there was no form of physical protective security on London Bridge, despite the fact that it was a location which was particularly vulnerable to a terrorist attack using a vehicle as a weapon. This was due to a lack of adequate systems for assessing the need for such measures on the bridge.*

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<sup>10</sup> Day 30, pg 143

<sup>11</sup> Day 30, pg 196

<sup>12</sup> Day 31 pg 9

<sup>13</sup> Day 31 pg 9

25. The rationale in submitting the removal of the aforementioned phrase is that such phraseology more readily lends itself to a breach of the operational obligation, talking as it does of a failure in implementation.

### **PFD Report**

26. As already indicated above, the Corporation agrees with the proposed approach to PFD issues outlined at paragraphs 72 and 73 of the CTI Submissions. The Corporation is committed, so far as it is able, to avoid a repeat of the horrific circumstances of the deaths of Xavier Thomas and Christine Archibald and to learn of further improvements it can make in its already enhanced protective security approach.

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