THE CHIEF CORONER
HHJ LUCRAFT QC

INQUESTS ARISING FROM THE DEATHS IN THE LONDON BRIDGE AND BOROUGH MARKET TERROR ATTACK OF 03 JUNE 2017

SUBMISSIONS ON BEHALF OF THE METROPOLITAN POLICE SERVICE IN RELATION TO CONCLUSIONS AND FINDINGS

I. INTRODUCTION

1. 2017 was a year in which several terrible terrorist attacks took place in England. These followed a range of attacks across Europe and globally in the preceding years. This increased terrorist activity presented significant challenges to the police and security services.

2. Every officer in counter terrorism policing is committed to keeping the public safe. The police and MI5 work tirelessly to protect the public. Lord Anderson was obviously correct in his assessment that not every attack can be stopped but it remains a matter of profound regret that attacks still happen. The Commissioner wishes again to offer her condolences to the families of those who died in the 2017 attacks and to those injured, physically and psychologically, from them.

3. Nothing in this document should be taken as an indication that the MPS is complacent or that lessons will not be learned from any of the 2017 attacks or disrupted terror plots. The MPS is constantly learning, evolving and improving counter terrorism policing. A clear example of the desire to learn can be found in the decision of the Commissioner and the DG MI5 to set up the Operational Improvement Review (OIR) from which many recommendations emanated.

4. It is the case, however, that when viewed fairly, there is nothing in the evidence (which has been exhaustively tested) relating to the MPS response on the night, protective security or intelligence handling and action by the SO15 Operation Hawthorn which shows any relevant failure by the MPS or any missed opportunity to prevent the attacks or otherwise prevent loss of life. There was no opportunity missed to prevent the attacks either probably or possibly. It follows that there has been no breach of Article 2 in this

case and the Chief Coroner's findings and conclusions can and should not criticise the role played by the MPS or any of its officers.

II. RELEVANT LEGAL PRINCIPLES

5. The positive substantive obligation under Article 2 to protect life may be breached where there has been a systemic failure to enact laws or provide procedures reasonably needed to protect the right to life: Van Colle v Chief Constable of the Hertfordshire Police [2008] UKHL 50; [2009] 1 AC 225, para 30, per Lord Bingham.

6. In Osman v United Kingdom 29 EHRR 245, para 115, the European Court of Human Rights identified the 'primary duty' of a state under the article as being 'to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions'.

7. Article 2 may accordingly imply in certain well-defined circumstances a positive operational obligation on the authorities to take preventive measures to protect an individual or to whom a responsibility is assumed whose life is at risk from the criminal acts of another individual: Osman (supra); Savage v South Essex NHS Foundation Trust [2009] 1 AC 681 at para 19; R(Kent County Council) v HM Coroner for Kent [2012] EWHC 2768, para 41; R(Medihani) v HM Coroner for Inner South London [2012] EWHC 1104, para 29.

8. The ECtHR has put the 'operational' obligation in this way: Article 2 may be breached where the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party, but failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk: Osman v UK (2000) 29 EHRR 245, paras 115, 116.

9. Although the test in Osman was phrased in terms of risk to an *identified* individual from the criminal acts of a third party, the ECtHR has itself since recognised that the risk is not restricted to identified individuals, but may include unidentified members of the public at large: Mastromatteo v Italy (App No 37703/97), para 68, 74.

10. A number of points must be made about the nature of the positive Article 2 obligation in the context of a real and immediate risk to life.

    a. The threshold is a high one, and the test of 'real and immediate risk' is not easily satisfied: *In re* Officer L [2007] UKHL 36; [2007] 1 W.L.R. 2135 at para 20, per Lord Carswell ("*It is in my opinion clear that the criterion is and should be one that is not readily satisfied: in other words, the threshold is high*"); Van Colle v Chief Constable of the Hertfordshire Police [2008] UKHL 50; [2009] 1 A.C. 225,

para 69 per Lord Hope ("*…the very high threshold that was laid down in Osman"*); per Lord Brown at para 115 (*"The test…..is clearly a stringent one which will not easily be satisfied"*).

b. The ECtHR in Osman recognised that an impossible or disproportionate burden must not be imposed on authorities: *'For the Court, and 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. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising*': para 116. This observation has particular resonance in this case, in which any assessment of the risk of a terrorist attack was hindered by the unpredictability of any such attack, and the procedures adopted to meet the risk gave rise to difficult operational choices in terms of means of response and availability of resources.

c. The standard accordingly is based on reasonableness, requiring consideration of the circumstances of the case, the ease or difficulty of taking precautions and the resources available: In re Officer L (supra) at para 21: "*The standard accordingly is based on reasonableness, which brings in consideration of the circumstances of the case, the ease or difficulty of taking precautions and the resources available. In this way the state is not expected to undertake an unduly burdensome obligation: it is not obliged to satisfy an absolute standard requiring the risk to be averted, regardless of all other considerations…*"

d. In Van Colle v UK (2013) 56 EHRR 23 (13 November 2012), the ECtHR reiterated the test identified in Osman at para 116, namely that the applicant has to show that the authorities failed to do all that was reasonably required of them to avoid the risk to life. The ECtHR emphasised that '*Not every deemed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising'*: para 88. The ECtHR in Mastromatteo v Italy also emphasised that there is no obligation to prevent every possibility of violence: para 68.

e. The relevant act does not have to amount to gross negligence or wilful disregard of the duty to protect life. The House of Lords in Van Colle (supra), at para 30, noted that the submission to the contrary had been rejected in Osman.

f. Guard should be taken against the dangers of hindsight, '*although stupidity, lack of imagination and inertia do not afford an excuse to a national authority which reasonably ought, in light of what it knew or was told, to make further inquiries or investigations'*: Van Colle (supra) at para 32 per Lord Bingham. The court must try to put itself in the same position as those who were criticised were in as events

unfolded for them, subject to the obligation to carry out further inquiries had due diligence so demanded: Mitchell v Glasgow City Council [2009] 1 AC 874, para 33; Medihani (supra), at paras 3, 44, 45.

g. A real risk is one that is objectively verified and an immediate risk is one that is present and continuing: Re Officer L (supra) at para 20 and Rabone v Pennine Care NHS Foundation Trust [2012] 2 WLR 381, para 39. In the context of the risk of a terrorist attack, whilst of course the risk of such an attack in London was continuing, the means and time of any attack was necessarily unknown.

h. In relation to causation, the ECtHR rejected in Van Colle (supra) any suggestion that the appropriate test of causation within Osman was one of a 'but for' test of state responsibility: para 104. In Pearson v UK (2012) 54 EHRR SE11, an admissibility decision, at para 72, the ECtHR stated: '*However, it is recalled that "a mere condition sine qua non does not suffice to engage the responsibility of the State under the Convention" (Mastromatteo v Italy at [74] where the applicant's son was murdered by prisoners who had been provisionally released by the prison authorities). Accordingly, even if it could be said that but for her erroneous arrest Kelly Pearson would not have later died in London, this would not necessarily be sufficient to engage the responsibility of the state under that article.*'. The test is whether there was a failure to take reasonable measures which could have had a real prospect of avoiding the deaths: R(Long) v Secretary of State for Defence (infra) at para 32.

i. In an Article 2 inquest, the coroner has, a further *discretion*, though not a duty, to make findings in relation to matters that were possibly and not probably causative: R. (Lewis) v. HM Coroner for the Mid and North Division of the County of Shropshire [2010] 1 WLR 1836, CA, per Sedley LJ at [28]. In a non-Article 2 inquest the coroner's findings should be confined to matters which are probably causative. The position is reflected in the Chief Coroner's guidance document (No. 17), at paragraph 50. There must be a proper basis for concluding that the matter was possibly causative if the Coroner decided to exercise his discretion in this way. The court must not be drawn into speculation.

11. The standard in Article 2 is constant and not variable with the type of act in contemplation, although the crucial question is one which can only be answered in the light of all the circumstances of any particular case: Van Colle (supra) at para 35 per Lord Bingham. However, in R v Secretary of State for Defence ex parte Smith [2010] UKSC 29; [2011] 1 AC 1, at para 210, Lord Mance identified certain categories of case in which the substantive right in Article 2 may potentially be engaged:

    a. Killings by state agents;
    b. Deaths in custody;
    c. Conscripts;

d. Mental health detainees;
e. Other situations where the state has a positive substantive obligation to take steps to safeguard life: '*Such situations exist not only where the right to life is inherently at risk, but also where the state is on notice of a specific threat to someone's life against which protective steps could be taken: Osman v United Kingdom (1998) 29 EHRR 245 ; Öneryildiz v Turkey (2004) 41 EHRR 325 (state allegedly tolerated and, for political reasons, encouraged slum settlements close to a huge uncontrolled rubbish tip, without making any effort to inform the settlers of dangers posed by the tip, which in the event exploded, killing some 39 residents).*

12. In each of these categories, including 'Osman' cases, it is clear that there is some special link between state and victim: either because the deceased was in the special care or custody of the state, or in a position of vulnerability, in which additional responsibilities arose; or was a soldier; or was in hospital. In each case, the state is taken to have assumed some responsibility towards the person whose death is in issue, on account of vulnerability, either factual or presumed, borne out of the deceased's status, position or location, or on account of specific knowledge on the part of the state. The nature of that responsibility is directly relevant to the nature of the positive obligation imposed by Article 2.

13. Accordingly, in the context of the death of a person under the care and responsibility of health professionals, the ECtHR has noted that '*where a contracting state has made adequate provision for securing high professional standards among health professionals and the protection of the lives of patients, it cannot accept that matters such as errors of judgment on the part of a health professional or negligent co-ordination among health professionals in the treatment of a particular patient are sufficient of themselves to call a contracting state to account from the standpoint of its positive obligations under Article 2 of the Convention to protect life*': Powell v UK 30 EHRR CD 362.

14. The Court of Appeal in R(Takoushis) v Inner London Coroner [2005] EWCA Civ 1440, endorsing Richard J's analysis in R(Goodson) v Bedfordshire and Luton Coroner [2006] 1 WLR 432, noted that '*The position is or may be different in a case in which gross negligence or manslaughter is alleged: see, e g, R (Khan) v Secretary of State for Health [2004] 1 WLR 971 . By gross negligence we mean the kind of negligence which would be sufficient to sustain a charge of manslaughter*': para 96.

15. In R(Humberstone) v Legal Services Commission [2011] 1 WLR 1460, also in the context of health care, the Court of Appeal in held that only systemic failures by the state could give rise to arguable breaches of Article 2. Allegations of individual negligence would not suffice: '*By implication, the judge accepted that the state's substantive (he called it primary) duty under article 2 would not encompass responsibility to protect patients from a simple act of negligence by a health*

professional. There can be no doubt that that is the law: see, for example, Savage v South Essex Partnership NHS Foundation Trust (MIND intervening) [2009] AC 681, paras 69–70, per Lord Rodger of Earlsferry': para 53, per Smith LJ. And at para 58: '*Those limited circumstances arise where the death occurs while the deceased is in the custody of the state or, in the context of allegations against hospital authorities, where the allegations are of a systemic nature such as the failure to provide suitable facilities or adequate staff or appropriate systems of operation. They do not include cases where the only allegations are of "ordinary" medical negligence*'… .

16. In R(Parkinson) v Kent Senior Coroner [2018] EWHC 1501 (Admin); [2018] 4 W.L.R. 106 the High Court (Singh LJ; Foskett J; HHJ Lucraft QC) stated:

> "**86** The enhanced duty of investigation, which falls upon the state itself to initiate an effective and independent investigation, will only arise in medical cases in limited circumstances, where there is an arguable breach of the state's own substantive obligations under Article 2.
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> **87** Where the state has made adequate provision for securing high professional standards among health professionals and the protection of the lives of patients, matters such as an error of judgment on the part of a health professional or negligent co-ordination among health professionals in the treatment of a particular patient are not sufficient of themselves to call the state to account under Article 2.
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> **88** However, there may be exceptional cases which go beyond mere error or medical negligence, in which medical staff, in breach of their professional obligations, fail to provide emergency medical treatment despite being fully aware that a person's life would be put at risk if that treatment is not given. In such a case the failure will result from a dysfunction in the hospital's services and this will be a structural issue linked to the deficiencies in the regulatory framework.
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> **89** At the risk of over-simplification, the crucial distinction is between a case where there is reason to believe that there may have been a breach which is a "systemic failure", in contrast to an "ordinary" case of medical negligence."

17. In the context of military service, the ECtHR has similarly limited the impact of the substantive positive obligation under Article 2. In Stoyanovi v Bulgaria (App No 42989/04) 9 October 2010. It stated:

> '**61**. Positive obligations will vary therefore in their application depending on the context. It is primarily the task of the domestic systems to investigate the cause of fatal accidents and to establish facts and responsibility. In the present case, which concerns an accident during a military training exercise, the Court notes that while it may indeed be considered that the armed forces' activities pose a risk to life, this is a situation which differs from those "dangerous" situations of specific threat to

life which arise exceptionally from risks posed by violent, unlawful acts of others or man-made or natural hazards. The armed forces, just as doctors in the medical world, routinely engage in activities that potentially could cause harm; it is, in a manner of speaking, part of their essential functioning. Thus, in the present case, parachute training was inherently dangerous but an ordinary part of military duties. Whenever a State undertakes or organises dangerous activities, or authorises them, it must ensure through a system of rules and through sufficient control that the risk is reduced to a reasonable minimum. If nevertheless damage arises, it will only amount to a breach of the State's positive obligations if it was due to insufficient regulations or insufficient control, but not if the damage was caused through the negligent conduct of an individual or the concatenation of unfortunate events (see, for comparison, *Kalender v. Turkey*, no. 4314/02, §§ 43-47, 15 December 2009).'

18. The 'concatenation of unfortunate events' has been interpreted as meaning no more than a combination of events over which the state has no control and for which it cannot be held responsible: R(Long) v Secretary of State for Defence [2015] EWCA Civ 770, para 15.

19. To similar effect, the Supreme Court in Susan Smith v MOD [2013] UKSC 41; [2014] AC 52, the Supreme Court held that the extent to which the substantive duty under the article might be applied to military operations would, given their unpredictability, vary according to the context; that an unrealistic or disproportionate positive obligation under Article 2.1, in connection with planning or conducting military operations in armed conflict, should not be imposed on the state, but effect should be given to the obligation under Article 2.1 where it was reasonable to expect an individual to be afforded protection; that allegations relating to matters of procurement, training or the conduct of operations linked to the exercise of political judgment or issues of policy, or to acts or omissions occurring during actual operational engagements, would be beyond the reach of Article 2.

20. Accordingly, Article 2 may be breached where the death was caused by insufficient state systems, regulations or control, in other words a system failure, but not where the death resulted from individual operational failings, such as individual failings of understanding or individual failings of compliance: R(Scarfe) v Governor of HMP Woodhill [2017] EWHC 1194 at paras 54-56, or from an individual's failure to operate properly within the system provided by the state. The Chief Coroner is reminded that it is important that allegations of individual negligence are not dressed up as systemic failures: R(Humberstone) v Legal Services Commission [2011] 1 WLR 1460, at para 71, per Smith LJ.

III. APPROACH TO THE EVIDENCE

21. It is often said that hindsight is the enemy of justice and particular care is required when assessing the evidence in this case because hindsight has been the inspiration behind and the basis for many of the issues raised in these proceedings.

22. We can all be smart, focussed and without fault when examining history through the lens of hindsight. That is why caution is always required if the examination of past events is to be rational and fair. If this attack had targeted the "wide open spaces" of a famous London high street, for example, the approach in these proceedings would have been that the authorities had failed to protect such an obvious and vulnerable target. If, like the Bastille Day atrocity in Nice on 14 July 2016, the terrorists had attacked on a national day of celebration, the approach would have been that the authorities had failed to protect citizens on a day when an attack was obvious. And so on. All that the authorities can ever do is to act on a combination of intelligence, evidence, professional experience and instinct. Of the many skills and technologies available to those who have the responsibility to protect us, seeing the future is sadly not amongst them.

23. Questions have been asked on the basis that it was obvious that London Bridge would be the target of a Hostile Vehicle (HV) attack. That approach is simply misplaced. London Bridge was one of many thousands of locations in London at which pedestrians were vulnerable to an HV attack. Likewise, Borough Market was one of many thousands of locations where people gather and are vulnerable to a marauding attack by terrorists armed with knives.

24. On the evidence, it is more likely than not that Butt, Redouane and Zaghba did not decide to attack London Bridge until minutes before the attack was launched. That submission is based on the following:

    i. The fact that SFR/1, the Samsung Galaxy mobile telephone found on the front near passenger seat of the van, contained two relevant Google Map searches: Oxford Street and the City of Westminster. The screen shot of the satellite navigation system in operation on SFR/1 that night shows Oxford Street as the intended destination [DC7242/10].
    ii. Contained within the downloads of SFR/1 are images of the Palace of Westminster, Westminster Cathedral and Westminster Abbey. What is particularly germane is that those images were loaded onto SFR/1 from Google Maps between 19:15:43 and 19:15:54 on 3 June 2017.
    iii. The route taken through the City of London was wholly inconsistent with any previous reconnaissance or of a settled intention as to where the attack would be.
    iv. The route from the north side of London Bridge to the south, past Borough Market, the U-turn at about Marshalsea Road, and then back to the north side of London Bridge to commence the attack may have been the first and only

reconnaissance of this area and this may have been the first time that Butt, Redouane and Zagbha decided to launch their attack at this location.

v. The considered evidence of Acting Detective Chief Inspector Jolley, is that in his assessment of the evidence, Butt, Redouane and Zaghba had not made up their minds as to where the attack would take place even by 3 June 2017 [Day 18: 70/18-23].

25. In essence, this attack could have been at any London location where pedestrians were vulnerable from vehicles.

26. Richard Woolford, the strategic director for security for the City of London Corporation, said on [Day 30: 122/7-9], that an HV attack can happen anywhere there are pedestrians with an unprotected run to them. It is an uncomfortable reality with which all of us must live that there are many tens of thousands of such locations throughout the United Kingdom and barriers cannot be placed at each and every one of them. Barriers at one location will simply make terrorists choose another which is why there has been such an emphasis on protecting those areas which have an additional component beyond that of popularity or footfall, such as, for example, government properties and significant infrastructure.

27. These proceedings have understandably focussed on HV attacks on bridges, but that is such a narrow view of the threat from vehicles let alone terrorism in general. DC8342 identifies the main incidents of known HV attacks across the world from 3 March 2006, yet although this document comprises just two pages, it clearly demonstrates the immense diversity of targets which terrorists have chosen when carrying out HV attacks: University campus, police checkpoint, railway station, bus station, beachfront promenade, Christmas market, high street, bridge, mosque, police officers, cycle path, cyclists, synagogue, bus stop and pedestrians on a narrow street. This document clearly shows why the authorities did not regard bridges as a particularly vulnerable target, any more so than any other pedestrian thoroughfare. To understand the full nature of the terrorist threat, and the reason why bridges were not singled out as requiring special treatment, regard must also be had to all of the other threats from terrorism: attacks from firearms, knives, explosives, planes, chemicals, radioactive materials and drones together with the threat to our utilities and rail and roadway infrastructure. In addition, the threat of a terrorist inspired cyber-attack has been present for many years. These proceedings have rightly been fixated upon the threat of an HV attack on bridges, the authorities must look at a much wider picture.

28. On 4 June 2017, at an Emergency Security Review Committee at which all relevant bodies were represented, DAC D'Orsi decided to install barriers on eight London Bridges and on one bridge outside London. The installations were completed within six days although more time was necessary to refine the installations. It would be quite unfair to hold that decision against the relevant authorities. This decision was based on instinct, morality and common sense (and no doubt a need to safeguard and promote

public confidence); there was still no intelligence that bridges were a target. The fact that the installations were completed in such a short time is no more than a consequence of the extreme conditions which then prevailed, no one could suggest that this work would have been done in such a short time without the two attacks on Westminster and London Bridges.

29. An attack such as this will inevitably lead to chaos and confusion and this was no exception. There was desperate uncertainty as to the number of terrorists involved and it was plainly believed that there were more outstanding, that they had and were discharging firearms and that they had taken hostages. In addition, there was the perceived threat from body worn and vehicle-borne explosives and the concern that the terrorists might return to attack unprotected members of the emergency services. It is the responsibility of the emergency services to cut through such chaos and confusion, but sight must never be lost of the most relevant maxim that can be applied to such circumstances: at times of crisis, the demand for information is at its highest when the quality of information is at its lowest. The calm and order of a court room could not be more different to the conditions that prevailed that night.

30. Finally, much effort has been expended in the suggestion that Butt, Redouane and Zaghba had received extensive training in order to prepare for this attack. This suggestion is made in order to criticise the intelligence and police services: the longer the period of training, the greater the failure for not having detected it. There is no evidence of training, the whole purpose of basic terrorist methodology is that it does not require training. Nothing from the detail of the circumstances in which the two vehicles were hired, the route taken and the execution of the attack, evince any evidence of training. There are only so many ways to use a knife as a weapon, especially when each terrorist had his knife taped to his hand in an identical fashion, and once the tips of the knives had broken, the cutting edges had to be used. Furthermore, it is more likely than not that SFR/1 was not bought as the operational or attack phone in mid-March 2017, see DS Ager at [Day 18: 164/12 – 165/13]. Detective Superintendent Riggs was entitled to regard Paul Fenne's opinion that the similar damage to the three blades may indicate that the stabbers had an agreed stabbing method as speculative, as it undoubtedly was [Day 26: 94/13 – 95/5]. Of course, the three terrorists planned and prepared for the attack but such discussions could have been had at a variety of locations and there was no need for, let alone evidence of, training in the sense that that word has so often been introduced in the course of these proceedings.

IV. SUBMISSIONS

(i) MPS RESPONSE AT THE SCENE

31. It is submitted that there could be no legitimate criticism of the MPS response at the scene (and none has been seriously suggested in questioning). The MPS makes the

following submissions in relation to the various areas which have been explored in questioning over the course of the inquests.

(a) RIVER SEARCH/ MARINE SUPPORT

32. The Marine Support Unit (MSU) response was swift and effective. The first 999 call was received at 22:08 and once this was passed to MSU, Marine 2 (the first MPS boat to arrive) arrived at London Bridge at around 22:14 with Marine 3 shortly thereafter [Day 3: 58/12].

33. A hasty search was immediately commenced. As the Chief Coroner is aware "hasty" relates to the urgency with which the search is carried out and not its adequacy.

34. The search was conducted by Marine 2 and Marine 3 travelling slightly faster than the tide (at around a walking pace) and side by side. The search was as structured as it could be [Day 61/1]. The "hasty search" covered the area from London Bridge to Cannon Street Bridge. This was as far as Mr Thomas could have been taken by the tide which was slowing when the MSU arrived and came to a standstill during the search.

35. The evidence is that those on the water must use their experience and real-time observations as opposed to the tide-charts which are akin to a weather forecast [Day 3 121/9]. The boats were crewed with two very experienced officers at the front, scanning the water for bodies as well as the captains [Day 2: 66/3].

36. The coastguard arrived at 22:25 and a line abreast search then started. This was conducted by four boats as two lifeboats joined the MPS vessels. The presence of three of four boats was described by Mr Savage as an "unknown luxury" as most river searches are conducted by one or two vessels only [Day 14: 97].

37. A line abreast search was completed of the relevant area of the river from London Bridge to Cannon Street and back up to London Bridge. There had now been four passes of the relevant area: two with the police boats and two with both police and RNLI resources. It was only after the area had been searched four times that the MPS units left the search in order to assist with keeping the public away from what was believed to be an ongoing MTA/MTFA and to assist with scene evacuation. The lifeboat search continued.

38. This was a comparatively small area to search. This area was well lit and free from obstructions making it easy to find a person if they were on the surface [Day 14: 96]. The evidence is that if Mr Thomas was floating in the water then he would have been seen by the hasty and or line abreast search [Day 14: 116]. As he was not found during the search, the tragic reality is that he was lost upon or shortly after entering the water and could not have been saved despite every possible effort having been made to find him.

39. The conclusion above is consistent with the evidence of Mr Savage that of the six possible mechanisms of death; only two had any survivability [Day 14: 113]. These were scenarios A and B both of which were ruled out by virtue of the post mortem findings [Day 14: 64].

40. There was therefore no failure by the MSU and the search could not in any event have been causative of death.

41. The suggestion by counsel for Xaveir Thomas that *there were significant flaws in the search and rescue effort for Xavier* is not accepted. The basis for this criticism seems to be that the MSU left the search and that it was eventually called off when Xavier might have been on the surface and still alive. This is not supported by the evidence or the MSU, Coastguard or Mr Savage. In terms of the police resources PC Bultitude was clear that if Mr Thomas had been on the surface he would have been found before the police vessels went to warn civilians of the MTA and to help evacuate casualties, day 3: 114/5 – 10. Further submissions will be made if this assertion is repeated in the context of the report to prevent future deaths.

(b) SURVIVABILITY OF VICTIMS

42. As Xavier Thomas was tragically lost in the Thames (see above) no first aid could have been given to him.

43. All of the evidence suggests that Christine Archibald could never have survived her terrible injuries on the bridge. She too tragically could not have been saved.

44. Equally the post mortem evidence relating to Sara Zelenak (*quickly fatal and not capable of being survived*) Alexandre Pigeard (*could not be survived and led to swift collapse and death*), James McMullen (*early collapse and not practically survivable*), Kirsty Boden (*quickly fatal and not survivable*) and Ignacio Echeverria Miralles De Imperial (*catastrophic bleed leading to rapid death*) is that their injuries were un-survivable These findings were all confirmed by Dr Wrigley who is an expert in emergency care [Day 27: 179 – 185].

45. In relation to Sebastien Belanger it is noted that Dr Swift said that it was possible that treatment could have been usefully provided which might have affected the outcome. The highest this could be put was that Dr Swift could not offer any view on probability but with optimum treatment at the scene and speedy transport to hospital he was *open to the possibility that in those circumstances his life could be saved* [Day 17: 22]. Dr Swift accepted that this was not, however, his area of expertise [Day 17: 19].

46. Dr Wrigley who is an expert in emergency medicine said that due to his extensive blood loss, Mr Belanger's condition was unsalvageable and that there was no chance of reversing the situation by 22:16, when he was in cardiac arrest [Day 27: 176].

47. Before 22:16, Dr Wrigley said that there was treatment that could have been given to Mr Belanger if he was an isolated patient but prospect of survival was very low even then and not possible after he had collapsed. On a balance of probabilities, Dr Wrigley said, that even before 22:16, Mr Belanger would not have survived and that there was no realistic chance of survival if he had been taken directly to an ambulance [Day 27: 177].

48. In any event the Chief Coroner will note that the first ambulance arrived at 22:13 whereupon the paramedic (Mr Armstrong) was inevitably drawn to casualties on the bridge. The first paramedic to reach Borough High Street was Mr Edwards who did not

arrive until 22:16 [Day 5: 120]. As such there was no prospect of a paramedic treating Mr Belanger before his condition was unsalvageable at 22:16.

49. Even if the courtyard was designated as a warm zone and armed police had been instantly available to take Mr Edwards into the courtyard (which was not the position), the terrorists were not shot until 22:16 and they continued to pose a threat with their mock IED belts for some time afterwards. There was therefore no opportunity for armed police to have formed up to take LAS HART teams into warm zones within the window of survivability. It is noted that those representing Mr Belanger have criticised an armed police officer from the City of London Police for remaining at the scene to provide first aid to a victim rather than advancing to confront the terrorists. It is suggested that in the circumstances, such criticism was misplaced.

(c) POLICE FIRST AID EFFORTS

50. A number of police officers from MPS, BTP and COLP provided swift and appropriate emergency first aid to the victims. These efforts are not repeated in this document. It is clear that the declaration of Operation PLATO, swift provision of first aid and evacuation of causalities (many of whom had life threatening injuries) saved lives.

51. There is no evidence of any delay from MPS officers in providing first aid to the victims.

52. It is clear from the schedule for casualty evacuation that the victims were provided with first aid by police officers without delay. In the case of Mr Belanger this can be seen on PC Orr's body worn video at 22:15.

53. Any attempt to remove Mr Belanger from the courtyard to the bridge in an effort to find paramedics would have been futile as he would not have received treatment from paramedics before his condition became unsalvageable and as common sense dictates that being carried up the steps and across the bridge would not be in the best interests of a patient who had already suffered very significant blood loss.

54. The actions of MPS officers who provided first aid has been widely commended. Mr Rutherford, for example, described the police response in this regard as "phenomenal" [Day 6: 198/18 - 25].

55. The Chief Coroner will recall the moving evidence from a number of police officers who put themselves at risk in order to deliver emergency life support and first aid. This has unsurprisingly not been the subject of criticism in questioning.

(d) DEPLOYMENT OF ARMED OFFICERS

56. Armed officers arrived at the scene at 22:14 before Operation PLATO was correctly declared at 22:16.

57. The Chief Coroner will note that evidence of DAC D'Orsi that the uplift in armed policing was introduced to deal with situations such as this and that the MPS armed response was extremely quick; in part as a result of that uplift (though the responding units cannot be tied to a specific operational deployment). The Chief Coroner will recall

that five ARVs patrolled the environs of Borough Market in the hours before the attack on 03.06.17.

(e) LAS PARAMEDICS AND HOT AND WARM ZONE WORKING

58. The casualties in Borough Bistro were swiftly located by police officers. Their location was passed to the police control room and CADs were passed to LAS requesting paramedic assistance in this area without delay. The Chief Coroner will note that the attack was ongoing with casualties being reported in multiple areas as police officers treated victims. It would be wrong to focus upon events in the Borough Bistro in isolation.

59. The Chief Coroner will also note the evidence from body worn footage and from Mr Carlson that paramedics were asked by police to attend the area under the bridge but that they felt that this was not safe (see below).

60. Mr Rutherford was not aware of the presence of the courtyard casualties but said that it would not have been safe or appropriate for the LAS to deploy into what was believed to be a hot zone.

61. The evidence is therefore that whatever was done by the MPS; the LAS would not deploy into the courtyard area until it had been made safe much later. For the avoidance of doubt the MPS does not suggest that LAS staff should have deployed into what at that time was considered a dangerous environment. Great care must be taken in this area to avoid endangering paramedics in the future who might breach procedure based upon a perception that they will be criticised for not risking their lives. LAS staff were acting in accordance with their training and abandoning the principles of their training may often be inadvisable.

ii. PROTECTIVE SECURITY

(a) LONDON BRIDGE

62. As London Bridge falls within the City of London Police area, the MPS has no responsibility for providing advice as to protective security on this bridge. DAC D'Orsi was repeatedly pressed on this point by counsel for the families, however, the line of questioning ignores the fact that under the Collaboration Relating to Counter Terrorism Activities made under Section 22 of the Police Act 1996 it is the Commissioner for the City of London Police who has the legal responsibility for tackling immediate and long term threat from terrorism in his area. DCC Gyford agreed that DAC was correct on this point and that subject to intelligence requiring protective security on the bridge (of which there was none) it would be for the COLP to advise on protective measures upon the bridge [Day 29: 51-55].

63. Whilst there had been a bridge attack at Westminster in March 2017, this was the first time that a bridge had been attacked in the UK or anywhere in the world as part of a marauding attack (as opposed to an attack on infrastructure). The intelligence from Westminster was that this was an attack upon government buildings and police officers and not bridges.

64. As DAC D'Orsi explained, in 2017 the police had to respond to and plan how to protect the public following a number of attacks with different methodologies including the Manchester Arena bombing. There had been numerous attacks across Europe and globally over the same period including an attack in Stockholm on 7 April 2017 in which a truck ran over pedestrians on a busy shopping street before crashing into a department store killing five [DC8296]. This reinforces what DAC D'Orsi said about the range of attacks which the police were dealing with in 2017, [Day 28: 139].

65. That the phone recovered from the attacker's van had Oxford Street as a destination within the navigation system (as well as searches for Westminster) is evidence that this was a spontaneous attack as opposed to a planned attack upon a bridge. If London Bridge as a "crowded place" really was the terrorist's target, a rush hour attack would have been expected when the bridge was busy as opposed to a night time attack over the weekend when the bridge was described as being fairly quiet.

(b) BOROUGH MARKET

66. In relation to Borough Market, this location met neither the crowd density requirement nor the clear ownership and area definition to be considered as a tier 2 site. The market was a tier 3B site but the evidence shows that it received substantial support from a CTSA. The provision of protective security advice and guidance was therefore substantially over that which is envisaged or required by the Crowded Places Model and Guidance.

67. This support was given to all relevant locations including Borough Bistro, Black and Blue and the Wheatsheaf public house. Appropriate attention was given to French locations including Borough Bistro following the appalling 2015 Paris attacks. The details are set out within DAC D'Orsi's statement at paragraphs 119 – 121.

(c) ACTIONS POST WESTMINSTER ATTACK

68. Action was taken by the MPS in relation to the most vulnerable sites in the MPS area following the Westminster attacks. As the Chief Coroner will understand, actions and sites had to be prioritised. Additional officers were deployed to locations which were believed to be most at risk.

69. Officers replicated terrorist methodology to identify the most vulnerable sites in the MPS area. 31 sites were identified and a list of the top 10 was drawn up. Neither London Bridge nor Borough Market featured in the top 10. There was no intelligence received by the MPS as to the vulnerability of bridges.

70. Questions were asked of DAC D'Orsi concerning why bridges were not addressed in the wake of the attack on Westminster Bridge. A clear rationale has been given as to the priorities that applied across the MPS area.

71. Whilst PS Hone raised concerns about the vulnerability of London Bridge and another (classified) location in the City, his findings would not be (and were not) shared with the MPS or DAC in her National role. Counsel for the six families has tried to suggest

that this reveals a failure on the part of the MPS to consider security on bridges. This is not only irrelevant to the scope of the inquests[1] but fails to appreciate that the MPS area is many times larger than that of the COLP. It is unsurprising that London Bridge would feature at the top of a COLP vulnerability list but this would not be the case in relation to bridges in the MPS area, with a far greater number of targets.

72. Appropriate advice was provided by DACSO to all forces including the advisory message (AM) on 23.03.17. In part as a result of this AM, heavy vehicle mitigation was appropriately considered by COLP, see DCC Gyford's evidence at [Day 29: 7/12-25], and before the London Bridge attack.

iii. PRE ATTACK INTELIGENCE

(a) Resources

73. Counsel for the six families addresses resources at [37] of their submissions. A number of considerations arise in response. It has not been the evidence of MI5 or SO15 that reasonable steps were not taken because of resource limitations. Rather the point that was being made was that it is necessary to prioritise. This applies even more so when the evidence is that MI5 and SO15 were facing an unprecedented threat from a very wide range of plots and attack methodologies. Even the best resourced state must prioritise valuable and finite resources (hence the need to take **reasonable** steps) and nothing in Article 2 tells otherwise. For the avoidance of doubt and for the reasons set out below at no stage did SO15 realise (or ought to have realised) that Butt posed a real and immediate threat to life.

(b) Usman Darr and the Anti-Terrorism Hotline Call

74. On 30 September 2015, Usman Darr telephoned the Police Anti-Terrorism Hotline and made a report expressing his concerns about Khuram Butt. The most accurate record of that report is the contemporaneous record made by the call handler and it is set out in full at paragraph 3.24 of M's witness statement [WS5025/16]. M, at Day 19: 73/12-15, described it as an "exact record of what was said" and Darr, at Day 21: 234/17-20, accepted that it was correct and could not recall providing any further information to the Hotline call handler.

75. Darr's report was not lost, as has been suggested, it was assessed and sent to the SO15 ALM desk, perhaps because the reviewer had been more focussed on Abu Haleema, to whom reference is made, than on Khuram Butt, and M accepted that that was a "failing". M said that the initial assessment had been wrong and that the failing had been due to, "a supervision and a process issue", a combination of both a process and a human error [Day 19: 74/4-18]. And later at [Day 19: 160/14 – 161/14]:

> *A: So it's come down to human error and a supervision issue and that has been noted.*
> *Q. So was there no supervision that picked it up at the time?*

[1] the Chief Coroner having directed that this would extend to *physical security measures on **the** Bridge (so far as relevant to the deaths)* on 06.07.18

A. So it went in the different direction when it should have come to us, so it was human error, they'd failed to make that link with our investigation.
Q. Was there no supervision at the time that picked this up?
A. So it went through a process, and I've seen that process that it went through as well, so once the initial link to Khuram Butt was not identified as part of our investigation, it then went in the direction of ALM and the supervision of that took that initial bit of information at its word and hence put it in the direction of a different desk.
Q. So error by the first person, error by the supervising person?
A. No. So the supervisor, I wouldn't have thought had had reason to kind of disbelieve or check what that officer had got wrong and then forward it into the right direction they saw fit.
Q. And the recipients who did get it, did they not say: oh gosh, Khuram Butt, the team investigating him might want to see this intelligence?
A. No, sir, it wasn't picked up.

76. Logic dictates that the report should have been sent to both the ALM desk and to Operation Hawthorn (SO15 and MI5).

77. This Inquest will want to consider the reasons for and the consequences of that failure.

78. M accepted that the above denied SO15 the option of discussing the information provided by Darr with MI5 and to examine how it, "fitted in with the bigger picture". M also accepted that it denied the investigators the option of discussing what subsequent action might have been taken [Day 19: 74/24 – 75/3].

79. In assessing the material consequences, if any, of this failure it is important to reflect on two critical factors: first, the significant amount of intelligence which MI5 had on Butt at around the time of the call and second, the limitations of Darr as a source of accurate and reliable information.

80. It is very easy to underestimate what in fact was known about Butt between 2014 and 2016:

(a) Butt had been under investigation from 2014, not then in name, but as an unidentified associate of ALM [L at Day 24: 68/15-25].
(b) Butt had been identified as one of a number of people in contact with Anjem Choudary, a "leadership figure" within ALM [L at Day 24: 69/2-8].
(c) Those factors alone were of significance because ALM had been a proscribed organisation from 2006 and its avowed intent was the destruction of all existing regimes and the establishment of a global caliphate [M at Day 19: 53/15 – 55/4]. Hence its affiliation to ISIS.
(d) From mid-2015, there was a "significant development" and MI5 received a "single strand of intelligence" which suggested that an individual, very soon to be identified as Butt, "had an aspiration to conduct an attack in the UK" and this intelligence was taken so seriously that a Priority 2H investigation was opened which placed Butt as the principal subject of interest in an operation into "high risk extremist activity linked to attack planning". [L at Day 24: 71/5 – 73/8].
(e) On 31 July 2015, there was a meeting in Regent's Park at which Butt associated with ALM figures including Mohammed Shamshuddin and Shakil Chapra.

Videos of this meeting were posted on YouTube from August 2015 and the meeting formed the basis of the Channel 4 documentary, "The Jihadis Next Door", broadcast on 19 January 2016 [M at Day 19: 71/13 – 72/13].

(f) In September 2015, a PLA (potential lone actor) assessment was conducted on Butt and he was considered to have a strong intent and a weak capability, placing him as a medium risk [L at Day 24: 76/14 – 77/19].

(g) As 2015 progressed, it was confirmed that Butt was continuing to associate with members of ALM on a regular basis and with Anjem Choudary in particular [L at Day 24: 81/1-7 and at Day 25: 55/9 – 56/25].

(h) In 2015, there was intelligence that Butt may have disseminated extremist material which was of a type that may have given rise to a criminal prosecution though no one in fact has ever been prosecuted for disseminating the material believed to have been handled by Butt [M at Day 19: 69/20 – 71/12].

(i) From late 2015 to early 2016, MI5 began to see indications that Butt was contemplating travelling overseas, possibly to Syria, and that Butt was linked to an Islamic extremist who could have given him "logistical assistance" to help him travel to Syria [L at Day 24: 88/18 – 92/17 and Day 25: 137/21 – 138/16 and 140/14-17].

81. The intelligence picture, therefore, whilst far from complete, was of very real substance: it depicted Butt as an Islamic extremist who had significant Islamic extremist links and who was not only considering travelling to Syria but had also made contact with a fellow Islamic extremist who could help him do so. In addition, Butt had a strong intent to carry out an attack in the United Kingdom. Darr's report merely confirmed part of that picture, it did not add to it.

82. Furthermore, it is far from clear what would have happened if M had been informed of Darr's report beyond, of course, sharing and discussing it with MI5.

83. M's assessment was that caution would have been exercised because the call might have been a "trap" and that there would have been "a lot of variables to consider" before any attempt to contact Darr would have been made [Day 19: 75/13-22]. And later, "I cannot say to you with any certainty that we would have gone back to Mr Darr and employed him as a potential agent" [Day 19: 162/12-14].

84. L agreed that Darr would have been treated with caution. If MI5 had had Darr's report it would obviously have been considered and investigated, but MI5 would not have approached Darr on the basis that because he was a family member, that of itself would have been an indicator of the report's "reliability or seriousness" or would have given the report "more weight" [Day 25: 53/1-7 and 133/13-19]. MI5 obviously have to consider the range of motives a family member might have for making such a call.

85. Both M and L were adamant, however, that Darr's report did no more than confirm the existing intelligence picture because Butt's extremist mindset was already known [M at Day 19: 75/23 – 76/3 and L at Day 24: 85/5-16 and at Day 25: 52/19-25]. At Day 25: 131/2-8, L did not accept that Darr's report was "terribly important" for it "simply reflected material that was already known about Butt".

86. Whether Darr would have been approached following his call to the Hotline is now a very difficult question to answer. L accepted that it was not impossible that MI5 would

have gone back to Darr [Day 24: 86/2-12] but that the question was now hypothetical. Because of the multiplicity of "variables" described by M above, Darr plainly would have been assessed before any approach would have been made but as to whether he would have been approached, and, if so, with what success, is a complex issue to which the following factors are relevant:

(a) Darr made the Hotline call in private, he did not want his family to know that he had made it (indeed, they never did before the attack) and that imperative of secrecy never changed [Day 21: 243/24 – 244/5]. In such circumstances it is very difficult to imagine that Darr would later have been a willing participant in an intelligence gathering exercise against his brother-in-law.

(b) Saad Butt is satisfied that the family meeting at which Khuram Butt's passport was seized and, together with the tickets to Turkey, destroyed, was on 14 February 2015. Darr was not present at that meeting and neither was his wife, Haleema (Khuram Butt's sister), but she later told him what had happened though it is far from clear when [Day 21: 245/17-18]. On the premise, however, that it is more likely than not that he would have been informed close to the event such was its sensational and dramatic nature, it is clear that Darr did not pass that relevant fact to the authorities during his Hotline call. That tends to suggest that he had decided not to be entirely open with the authorities. It must also be relevant that Darr called the Hotline during a time of marital disharmony, when his marriage to Haleema was, "going through a rocky patch" and that police had been called to their home only two days before following a domestic argument [Day 32: 146/9 – 147/12 and DS Ager's evidence on Day 33 – transcript not currently available].

(c) Darr gave conflicting answers as to what he would have done if subsequently approached. When first questioned, he said that not only did he not expect a response or follow-up call from the authorities but that he did not want to be contacted [Day 21: 234/24 – 235/8]. Later, he accepted that if he had been contacted, he could see no reason why he would not have passed on any further information of which he had become aware [Day 21: 246/4-8]. On balance, it is suggested that it is more likely than not that Darr would not have continued to be a willing informant against his brother-in-law. Darr is to be commended for the call he did make, but in the circumstances, it is far from clear what his true motivation was and thereafter, that he would have wanted to supply further information to the authorities.

(d) As to the details that Darr might subsequently have been able to give, however, it is first important to note that following the Hotline call, Darr deliberately distanced himself from Butt [Day 21: 235/12]. Again, Darr gave conflicting evidence as to what information he might have been able to give to the authorities *post* 30 September 2015. When first questioned, Darr said that after his call, he had no further information to pass on: he no longer had contact with Butt; he no longer knew with whom Butt was associating; he no longer knew if Butt was distributing extremist material; and although he knew that Butt was teaching children how to box in a gym, he did not know that Butt was teaching Quran classes at a school. Darr had distanced himself from Butt to a significant extent:

Q: If you had been contacted again, say on a monthly basis, by the police asking about Khuram Butt, is there anything more you could have told them

of value about Khuram Butt, what he was doing, what he was thinking, what he might be capable of?
A: No, sir. Like I said, my contact with him was very minimum. I did not want to see him because he was not someone that I wanted to have in my life, to be honest, sir." [Day 21: 235/9 – 238/16].

Notwithstanding that answer, Darr later said that there would be no reason why he would not have passed on any information he had received after the call, but added this important qualification:

Q: And if you had been asked for more information you have told us that you would have provided it?
A: Perhaps, yes" [Day 21: 246/4 – 247/19].

(e) To all of the above must now be added what has been discovered about Darr during this inquest. His malevolent communications to his estranged wife whilst both were at court waiting to give evidence, betray a malicious and manipulative mind: see DC8312. The five most worrying WhatsApp messages are those at lines 10, 11, 12, 15 and 16 of DC8312/2, for they evince a propensity to use judicial proceedings to manipulate both the proceedings and the persons involved in them; the truth or otherwise of the testimony given in those proceedings being seemingly irrelevant to Darr.
(f) Furthermore, it is for this court to decide how to approach Darr as a witness, but his attitude to Zahrah Rehman and the extravagant changes from the account in his witness statement to his evidence against her in this inquest is plainly of concern [Day 21: 249/11 – 256/13]. In short, following a detailed assessment of Darr, of course based on the information which would then have been available, Darr may well not have been determined to have been a future and suitable source of information.

87. To conclude, the failure to forward Darr's report to Operation Hawthorn was plainly regrettable but it would not have added to, and would merely have re-affirmed, the then existing and significant intelligence picture. Butt's extremism, his association with ALM contacts and his aspirational attack intent were already known. Furthermore, because of what is now known of Darr's character, and what may have been discovered at the time, he may not have been regarded as a reliable source and may not have been chosen by MI5 for a follow-up approach. If Darr had been approached in late 2015 or early 2016 to be a "potential agent" for MI5 or SO15, this court can have no confidence that he would in fact have agreed to become one and, even if such assistance had been offered by Darr, that it would have been worthwhile. (See also the evidence given by Detective Superintendent Riggs about Darr at [Day 26: 88/5-13]).

88. On balance, therefore, an objective review of the evidence reveals the following:

(a) It is more likely than not that Darr would not have been approached to become an agent/informant/source of information.
(b) If Darr had been so approached, it is more likely than not that he would have declined to become involved in a covert operation against his brother-in-law.
(c) If Darr had decided to become involved, it is more likely than not that he would not have supplied any material information.

89. As for lesson learning, M accepted that the failure to forward Darr's report to Operation Hawthorn was a "supervision and process issue" which has been the subject of a review following which, SO15 have "tightened up" on the process, no doubt to ensure that a similar error cannot occur again [Day 19: 74/10-14 and 159/20-23]. As for improvements, also see L's evidence on those introduced by MI5 to its record-keeping [Day 25: 130/16-131/1].

90. It is cannot be said that the failure to forward Darr's call to Operation Hawthron was probably or possibly causative. There is no evidential basis for a proposition that this could have prevented the attack. MI5 and the SO15 officers handling Operation Hawthorn would not have acted in a materially different manner. To suggest otherwise is speculative at best.

(a) The Ummah Fitness Centre, the Ad-Deen Primary School and Sajeel Shahid

91. Much has understandably been made of these three topics and the link between them but by the end of these proceedings, there has been insufficient evidence to establish any failure in the investigation conducted by SO15.

The Ummah Fitness Centre

92. As already stated, hindsight can be a misleading influence and may unfairly affect opinions not only as to what did happen but also as to what should have happened. The evidence of M and L could not have been clearer: during the course of this protracted and thorough investigation, there was no intelligence let alone evidence which indicated that the gym was of any material relevance to attack planning. Indeed, even after the attack, there is no intelligence or evidence to indicate that the gym played any part in attack planning. First, the evidence of M and what the SO15 investigative team knew:

(a) SO15 became aware of Butt's attendance at the gym at the end of 2016 and that some of the coverage suggested that he frequented the gym on a "regular basis" [Day 20: 7/19-22 and Day 19: 103/1-2].
(b) Before the attack, SO15 was not aware of Sajeel Shahid. The name "Sajeel Shahid" did not feature in SO15's investigation [Day 19: 104/16-18].
(c) Before the attack, SO15 was not aware of any connection between the gym and Sajeel Shahid [Day 19: 103/18-22 and Day 20: 39/12-14]. Indeed, MI5 did not consider the potential link between Butt and Sajeel Shahid significant enough for it to inform SO15 of it [Day 24: 129/10 – 130/3].
(d) Before the attack, SO15 was not aware that it had been alleged that Sajeel Shahid was a leadership figure of ALM in Pakistan and had run a militant training camp [Day 19: 104/4-9].
(e) Before the attack, SO15 was not aware of Sophie Rahman and Ibrahim Sajeel [Day 19: 104/25-105/4].
(f) Before the attack, SO15 was not aware who was running the gym [Day 20: 40/2-4].
(g) Before the attack, SO15 was not aware of the meetings at or near to the gym on: 7 March 2017; 29 May 2017; and 2 June 2017 [Day 19: 113/11-24; 126/25 – 127/8; and 129/17 – 130/3].

(h) M, with his considerable experience of CT Operations and as a CT Senior Investigating Officer (CTSIO), was resolute in his opinion that the available intelligence did not suggest that the gym was of any significance to the investigation. These are just two of the answers M gave when asked about this topic: *"... there was no significance attached to that gym in terms of any kind of terrorist planning or terrorist activity, so it was not a location we focused on ... we followed the intelligence and none of the intelligence linked that gym to any kind of terrorist activity*" [Day 20: 32/2-11]; to the suggestion that SO15 was blinkered in its approach to the gym, "*No, I'd refute that. For the reason I have said, unless it came with some intelligence attached that gym had some significance, that gym has been involved in any form of terrorist activity, then it was a location that he [Butt] visited. It needs to come with another layer to make it significant and worthy of further investigation*" [Day 20: 42/17-22]. There were at least nine other occasions on which M gave similar evidence and notwithstanding the time taken on this issue, no intelligence or evidence of attack planning or of any terrorist related activity in the gym was ever identified by those examining him.

(i) To put the gym into a more realistic perspective, M explained that the coverage led the investigators to "multiple locations" and that the gym was just one of them [Day 20: 32/13]. It is submitted that it cannot have been a proportionate use of resources to have conducted covert operations at each of those "multiple locations" without a reason for so doing.

93. Importance is placed by CTI on an answer M gave at [Day 19: 105/18-25] namely, that "the gym didn't have the significance [before the attack] that we know it has now". See: CTI's written submissions at paragraphs 15. a and 17. a. We suggest that perhaps too great an emphasis has been placed on that answer because M can only have meant the 7 March 2017 meeting, of which little even now is certain, and the fact that it is now known that Redouane and Zaghba also went to the gym. None of this implies that there is now evidence that the gym was a place of significance.

94. At all times Operation Hawthorn was an intelligence operation and L, as a senior figure in the Intelligence Service, was repeatedly asked about the gym and the absence of any covert inquiries in relation to it. This was his evidence:

(a) MI5 was aware that Butt was attending the gym from late Autumn 2016 [Day 24: 123/19-20] and from early 2017, that he was working at the gym [Day 25: 85/3-5].

(b) MI5 was aware that the gym was a "regular haunt" of Butt [Day 24: 123/24 – 124/1].

(c) MI5 was aware by late 2016 to early 2017 that there was an "ownership link" between Sajeel Shahid and the gym. This knowledge came from what Sajeel Shahid had said about the gym on each of the two occasions he was stopped at Dover: the first stop was on 9 May 2014 and the second was on 5 May 2017 [Day 24: 125/22 – 126/22 and DC8306/6].

(d) MI5 was aware of, and the potential significance of, the 7 March 2017 meeting at the gym close to the time it took place. It was difficult for MI5 to discern the purpose of the meeting but it was aware that Butt was possibly attempting to obtain an unspecified item. It was only after the attack that MI5 believed that Butt was possibly attempting to obtain a firearm. [Day 24: 141/10 – 143/7].

(e) In short, the gym was not a "significant investigative priority for MI5" and due to the historic extremist pedigree of Sajeel Shahid, it was not a matter of concern that Butt was spending a significant amount of time at a gym which had a link to Sajeel Shahid [Day 24: 124/9-10 and 127/10-25]. L emphasised that not even today, with the benefit of hindsight, can it be said that Butt and Sajeel Shahid spent "significant amounts of time together" or "how significant or regular" any such contact was [Day 24: 128/7-23].

(f) Sajeel Shahid was not at any of the meetings between Butt, Redouane and Zaghba of which MI5 is aware. MI5 was investigating Butt and had there been any suggestion that Sajeel Shahid was involved, he would also have been investigated [Day 25: 142/12-20].

(g) Similar testimony was given as to the lack of evidence surrounding Butt, Redouane and Zaghba and the gym, "I don't think we can say even today we know that they were meeting regularly at the UFC, though I think it is a strong possibility" [Day 24: 164/7-10].

(h) A night time meeting of Butt, Redouane and Zaghba at the gym would not have provoked any suspicion because late night meetings and gym sessions were quite common both in general and in particular during Ramadan [Day 24: 172/15-24]. Many of MI5's subjects of interest go to gyms, "They are young men who are interested in gym work" [Day 25: 87/18-20].

(i) There is no evidence that terrorist training was conducted at the gym and there are no grounds to suspect that any terrorist related activity took place at the gym [Day 25: 51/9-12 and 92/25 – 93/3]. It takes an extremely febrile mind to interpret teaching children to box as amounting to any form of terrorist related activity.

(j) MI5 sought to task "greater coverage" of the gym but its efforts did not come to fruition [Day 24: 130/8 – 131/3]. It appears that for reasons of national security, L was unable to say what that intended coverage was and why the plan to use it had failed but this demonstrates an interest by MI5 in the gym; it had not been ignored as a potential source of information.

(k) It would have been "reasonably easy" for MI5 to have identified Redouane and Zaghba as "regular contacts" of Butt, "… *but our judgment at the time would have been that those were social contacts and therefore not really worthy of greater investigation*" [Day 24: 131/15-23 and also see Day 25: 100/19 – 101/21]. It is worthy of note that Butt did indeed have social contact with Redouane and Zaghba.

(l) Redouane was not a subject of investigation by MI5 before the attack [Day 24: 179/24 – 180/1].

(m) Zaghba was not a subject of investigation by MI5 before the attack [Day 25: 7/12-15 and more clearly set out in L's witness statement at paragraph 136 of WS5006/37].

95. Ultimately, MI5's position is clear: the gym was of no material significance to the investigation and it is L's opinion that if there had been "some other form of surveillance" it would not have revealed either the 29 May 2017 meeting at the gym or Redouane's temporary and suspicious abandonment of his phone outside the gym [Day 25: 149/18 – 150/3]. The inescapable fact is that the gym was a gym: it looked like a gym, it had the equipment that a gym would be expected to have and it was widely used as a gym. Of course, it may have played a part in the attack, relevant discussions may have taken place there, but save for the possibility of the 7 March 2017 meeting, there

is no evidence that they did, just as there is no evidence that such discussions took place at the multiple other locations Butt frequented. An Ultimate Fighting Championship poster (an American mixed martial arts promotion company) and a picture of a beach does not convert a conventional gym into an extremist Islamic training camp.

96. Based on the knowledge that it had, there is nothing further SO15 could or should reasonably have done in relation to the gym or to its investigation of Butt. SO15 had no reason to believe that the gym was of any significance and two years after the attack, the extensive efforts of Operation Dativa1 have not produced any evidence that the gym was of any significance. Indeed, it is notable that the plainly suspicious events just after midnight on 29 May 2017 took place *after* Butt, Redouane and Zaghba had left the gym, which tends to suggest that the gym was not considered a safe place for conspiratorial discussions.

97. This was an investigation which was still in its intelligence phase and in which MI5 plainly had primacy. As M explained, *"… we share resources and we would support MI5 in the intelligence-led phase of the operation*" [Day 19: 68/8-10].

The Ad Deen Primary School

98. The school can be dealt with more briefly. To follow the same format as before, M's evidence was as follows:

(a) In early 2017, SO15 received information that Butt was teaching the Quran to children in a school in the Barking or Ilford area [Day 19: 108/9-12].
(b) There was "further information" that pointed SO15 in the direction of a number of schools where Butt might be teaching. This "further information" was a "single piece of intelligence that was very detailed around schools where this activity might be taking place. So we just followed the intelligence through to its conclusion". The intelligence SO15 received from MI5 was sensitive, M could not even reveal how many schools were checked, but he was able to confirm that the Ad-Deen Primary School was not one of them. Prevent conducted enquiries as a result of this intelligence, and they included discreet inquiries with the named schools and the Disclosure and Barring Service (DBS); those inquiries were negative. M described the intelligence as "uncorroborated" and as such, after the inquiries had failed, it was his opinion that it would have been neither proportionate nor appropriate to have kept Butt under "intense surveillance" for one or two days in an effort to identify the school [Day 19: 108/18 – 112/4].
(c) "The intelligence was specific around the number of schools where [Butt was] believed to be working" [Day 20: 43/18-19].
(d) SO15 followed the intelligence, it made "proactive inquiries" in the Barking and Ilford area at those schools which had been named. Those inquiries were negative. M added that there were hundreds of schools in that area [Day 20: 102/2-12].
(e) It would have been a "fishing exercise" to have gone to each of the schools in that area [Day 20: 104/16-17].

"If we'd become – if the information we had was vaguer in terms of where he was teaching, yes, we might have spread our net further and conducted further

inquiries, but we didn't. We just went with the intelligence, intelligence-led, we went with the intelligence that pointed us in the direction of a number of schools and conducted inquiries at those schools. We consulted locally and it wasn't identified. If we'd had any more information or any more suggestion that he was teaching in schools, we would have revisited it; we did not" [Day 20: 105/16 – 106/1].

(f) SO15 had no knowledge of the Ad-Deen Primary School or of its proprietor [Day 19: 111/16-21].

99. L's evidence was as follows:

(a) From early 2017, MI5 was aware that Butt was teaching the Quran to children at a school on a "regular" basis [Day 24: 131/25 – 132/17].

(b) MI5 did not know the school at which Butt was teaching, so it "… attempted through open source material only, so there is no intelligence involved in this, to identify local schools that might possibly be candidates for that, and we identified through open source research a number of possible schools but that did not include Ad-Deen". That "open source material" inquiry was similar to a Google search on schools within a particular radius of Butt's home. The Ad-Deen Primary School was not on the list of schools so revealed [Day 24: 133/14 – 134/12].

(c) Following this "basic" electronic search, MI5 imposed "focussed surveillance" on Butt for an unspecified number of days, which included weekdays, which did not identify the school [Day 24: 134/14 – 135/1].

(d) From late 2016/early 2017, MI5 was aware that Sajeel Shahid had "links" to the Ad-Deen Primary School [Day 24: 136/7-9] but L did not know if the Operation Hawthorn investigators were aware of Shahid's links to the school [Day 24: 137/1-5].

(e) The safeguarding responsibility which arose from Butt teaching children was much more of an issue for SO15 than it was for MI5 [Day 24: 135/2-11]. M had earlier agreed to that proposition [Day 20: 44/5-17]).

Sajeel Shahid

100. Much has already been covered concerning Sajeel Shahid. To summarise M's evidence:

(a) Before the attack, the SO15 Operation Hawthorn investigative team was not aware of the existence of, let alone the alleged ALM background of, Sajeel Shahid. Furthermore, it was not aware of Sophie Rhaman and Ibrahim Shaheed or of any links between any of those three persons and either the school or the gym [see above for the evidential references].

(b) M added that he had only become aware of Sajeel Shahid's alleged ALM and Pakistan terrorist training camp background during the week before he gave evidence and that this information had come from open source reporting [Day 19: 104/4-9].

101. To summarise L's evidence:

(a) By late 2016/early 2017, MI5 was aware that there was a link between Sajeel Shahid and both the gym and the school. Sajeel Shahid was not an investigative

priority because of his historic extremist pedigree and, it could be added, Sajeel Shahid was not at any meeting, of which MI5 was aware, with Butt, Redouane and Zaghba [see above for the evidential references].

(b) In addition, MI5 knew about Sajeel Shahid before 2016 but for security reasons it was unable to say from when [Day 24: 124/21-24].

(c) There are no records which show that MI5 ever discussed Sajeel Shahid with SO15 [Day 25: 98/25 – 99/3].

(d) In relation to Mohammed Junaid Babar: *as we commented in the 7/7 inquest, Mohammed Junaid Babar wasn't always accurate in the things he said and understood about activities in Pakistan*. Day 24: 124.

102. Remarkably, perhaps, the evidence which Sajeel Shahid gave on Day 32 added little to the picture already established. Much has been made of the electronic communications between Sajeel Shahid and Butt in 2017 and the fact that Sajeel Shahid would not surrender his mobile telephone to the police when invited to do so after he had given his evidence. If it is being suggested that Sajeel Shahid was involved in this terrorist plot, then sight must not be lost of the obvious. As has clearly been demonstrated during the evidence at this inquest (and indeed at any terrorist trial or inquest), terrorists do not as a rule retain their attack planning telephones let alone the same SIM cards and telephone numbers.

DRAWING THE STRANDS TOGETHER

103. The relevance of these combined topics is that it is suggested that more could and should have been done to draw the various links together and that if that had happened, the attack might then have been thwarted. L at Day 24: 137/6 – 138/7:

> *Q. It might be suggested that it's surprising that Ad-Deen school was not identified by the authorities as the place Butt was teaching simply from the fact of Butt's connection to Shahid at the gym and Shahid's connection to the school. It might be said that it's surprising that the dots weren't joined; what would you say to that?*
> *A. I would agree that it would have been possible to join those dots.*
> *Q. Would you accept that it was surprising that the dots weren't joined?*
> *A. So because Shahid was not of himself of great significance to us and because we were not seeing ourselves as the primary force on the safeguarding issues, possibly not.*
> *Q. We know that Youssef Zaghba was teaching with Khuram Butt at the school for a time before the attack. If the school had been identified, would you accept that that would have given you better opportunities to identify him, Zaghba, as a daily associate of Butt?*
> *A. Yes, I would.*
> *Q. Would you accept that the identification of the school would then have given you an opportunity potentially to investigate Zaghba depending on the additional information you got about him through identifying the school?*
> *A. Yes, I would.*
> *Q. So to that extent, the failure to identify the school deprived you of investigative opportunities?*
> *A. Yes, I would agree with that.*

104. M was also asked about the links. At Day 20: 45/15 – 47/7:

> *Q. If you had investigated either the gym or that local school, the Ad-Deen school, it's likely, isn't it, that you would have identified the involvement of this person, Sajeel Shahid, realistically; would you agree?*
> *A. Possibly. Possibly. But we did not, and for the reasons I've explained. Q. And then, no doubt, you would look at your databases and find out that a key prosecution witness had said that this was somebody facilitating terrorist training for Mohammad Sidique Khan, the leader of the 7/7bombers; that's likely, isn't it?*
> *A. If we'd - -*
> *Q. The link would have been made?*
> *A. -- if we'd made the link and he'd become a person of interest in that inquiry, we would have conducted back ground checks, yes.*
> *Q. If you had looked more closely into the gym or the school?*
> *A. If we had undertaken those inquiries then yes, that would have been a natural course of activity by us, but we did not, for the reasons I've explained.*
> *Q. If it were suggested, officer, if it were to be suggested that a reasonable investigator would have and should have identified the location of that school, would you accept that?*
> *A. So we followed the intelligence, it came back uncorroborated. Any activity I would take in addition to that on uncorroborated intelligence would not be proportionate.*
> *Q. And that once you start investigating the school or the gym, you're onto Sajeel Shahid and you're likely to be onto the significant preparatory activities and planning of Butt and his accomplices; that's the likelihood, isn't it?*
> *A. I don't agree.*
> *Q. All of this, I suggest, was a very real missed opportunity in the months leading up to the attacks; would you accept that?*
> *A. There was no intelligence that suggested the gym was of significance prior to the attack, and we followed the intelligence around the school, around a number of schools that led us to believe that it was uncorroborated.*

105. And later, M at Day 20: 106/14 – 107/7:

> *Q. You made no proactive inquiries in relation to the Ad-Deen school? A. That's correct.*
> *Q. You made no proactive inquiries in relation to the Ummah fitness gym; is that right?*
> *A. We did not have cause or did not have intelligence that led us to make-- or lead us into a position where we needed to make those further inquiries.*
> *Q. And if you had made inquiries about either of those organisations, I suggest to you that they would have led you to Sajeel Shahid, would they not?*
> *A. Possibly.*
> *Q. Well I would hope probably.*
> *A. Possibly. I can't say that – that is speculative -- I haven't made those inquiries so I don't know the details of his links to the schools, to the gym, we would have to make all those inquiries and if they came back affirmative in terms of his links, then yes, we would have made a link to Sajeel.*

106. SO15 was not the lead agency in this intelligence phase of Operation Hawthorn. It did not know, and had no reason to know, that there was any link between the gym and the school it was attempting to identify and it had no knowledge of Sajeel Shahid let alone that he was that link. M had to make an assessment on the intelligence and evidence that he had and it was his considered opinion that there was no reason to mark the gym as a location of significance amongst the "multiple locations" to which the "coverage" on Butt had led. M is justified in saying that all else is speculation which, no doubt, has been driven by hindsight. Just as another section of this inquest has understandably been fixated on London Bridge and attacks on bridges, so this has been concentrated on the gym and a school when, of course, Butt had connections to many other premises.

107. We submit that this court must be very careful before rejecting M's evidence on this point. Obviously he is not infallible, but he is a very experienced CT SIO and he and his team would, of course, have been dedicated to stop any potential plan to carry out a terrorist attack in the UK; the 13 disrupted terrorist plots in 2017 are testament to that dedication and proficiency [Day 28: 3/25 – 5/7 and WS5032/32]. It is also relevant that the terrorist threat in 2017 was unparalleled, there are various references in the evidence but see, for example, DAC D'Orsi's evidence [Day: 28: 3/25 – 6/20] where she emphasised the unprecedented nature of the threat in terms of its pace and the diversity of its methodologies, targets and origins. Decisions are not made recklessly or with disregard to their consequences.

108. Resources are finite and decisions have to be made in real time taking into account those limited resources, the number, nature and extent of other live investigations, and most importantly of all, the intelligence and information then available to M. He was very clear in his evidence: the gym was not of significance and the school was not found after proportionate efforts had been made to find it. M plainly believed that the list of schools he had been given was sensitive, he would not say how many schools were on the list and did not identify the schools on it. M believed that the list was based on the best intelligence then available and did not believe it was proportionate to look beyond it; as M said, there must have been hundreds of schools in the area. MI5 had taken the lead in identifying the school through the "focussed surveillance" it had placed on Butt during the course of which the Ad-Deen Primary School had not been identified. SO15 had not been tasked to do more and there is no reason why it should have done more on the intelligence it then had and as it understood it to be.

109. The MPS clearly had the lead on safeguarding and M had requested Prevent to do the work to identify the school. In the circumstances of a covert operation into an Islamic extremist it is not accepted that there was any failure with regard to SO15's approach to the school, but if there was a failure, it was one of safeguarding and that cannot be relevant to this inquest.

V. DMEU EVIDENCE

110. It has been repeatedly suggested that the material found on Butt's phone seized during the fraud investigation suggests an extremist mindset. This is accepted. It is not accepted that this adds anything to the intelligence picture or that relevant evidence was ignored in a way which might suggest that the investigation was deficient either by SO15 or MI5.

111. It was unsurprising that Butt had an interest in Islamic extremism, ISIS and violence. These were all interests of Butt known to MI5 and SO15. That is why he was the subject of an extensive investigation. As L stated in evidence, the material was *consistent with the understanding of Butt we already had.* L agreed with the suggestion from CTI that MI5 would have *expected to see this sort of material on devices…even before those devices were seized* based upon *experience from both this case and other similar cases.* [Day 24: 120/17 – 121/2]. Therefore, the extremist material found on Butt's phone did not in any sense reveal a need to review the current risk assessment of or the coverage on him. At the risk of repetition, nothing on the phone revealed attack planning.

VI. CAUSATION

112. Even if the matters set out above had been brought to SO15's attention it is not accepted that this would or might have altered the outcome. Counsel for the families suggest that had all these matters been known to MI5 and SO15, there would have been increased coverage which would have led to the discovery of the van hire and then to an armed stop. This is not accepted.

113. The degree of coverage required would have been nothing short of sustained 24/7 surveillance over a period of weeks if not months. This is extremely resource intensive. L described the cost of such surveillance as "extraordinarily draining on our overall resources" [Day 25: 157/2 – 6]. It has varyingly been suggested that this should have extended to all three subjects which is wholly unrealistic. The surveillance would have required the discovery of attack planning to have justified it being continued. Butt and his accomplices did nothing overt over the relevant period which would have led to such a discovery. It is notable that the attackers' families and close friends discovered no evidence of attack planning.

114. Even if SO15 had learned that Butt was hiring a van, it does not follow that he would have been stopped. The evidence given by M on this point as cited by counsel for Xavier Thomas at [41] is noted but this must be read in the context of what M said before and after namely that he would have stopped Butt on CTI's hypothetical scenario **because** MI5 were contacting him out of hours to tell him that Butt was hiring a van which would of itself have suggested that the event was significant. M also spoke of the need to ensure that the stop would not compromise any CT operations. If there had been 24/7 surveillance on Butt for a sustained period of time then this would have been an important consideration in any decision to stop. There is a real danger in placing too much weight upon hypothetical considerations such as this. It is respectfully submitted that the families are seeking to draw the Chief Coroner into speculation as opposed to evidence based conclusions.

VII. INTELLIGENCE AND INFORMATION SHARING

115. It is clear from the above that MI5 did not share all of its intelligence and information with SO15 and did not discuss the two suspensions of the investigation into Butt before the decisions to suspend had been taken; there is an obvious need for improvement [see the Anderson Report and L's evidence at Day 25: 17/5-19]. In search for improvements, however, sight must not be lost of the intrinsic differences between these two organisations. MI5 is the Intelligence Service; its principal purpose is the procurement and assessment of intelligence. SO15 is its close investigative partner, but as M said at

[Day 20: 41/15-22], MI5 takes the lead in intelligence gathering and will only disseminate that which it regards as significant and to which SO15 can respond, "If they phoned me every day with every intelligence update, we would be overwhelmed".

VIII. CONCLUSION

116. There is no evidence that anyone other than Butt, Redouane and Zaghba was involved in this attack.

117. There can be no doubt that these inquests have fully and fearlessly explored the circumstances of terrible and tragic events of 3 June 2017. The MPS respectfully endorses the conclusion of CTI that there has been no breach of Article 2 in relation to the conduct of the Metropolitan Police Service.

25 June 2019
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