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

SUBMISSIONS ON BEHALF OF THE HOME SECRETARY

ON DETERMINATIONS TO BE MADE BY THE CORONER

INTRODUCTION

1. The Secretary of State notes, and endorses, the submissions made by Counsel to the Inquest (CTI) at §§4-7 and 9 concerning the legal principles applicable to the formulation of the Coroner's determinations in these Inquests and has nothing to add in respect of those matters. The Secretary of State also endorses CTI's proposals for dealing with the issue of PFD reports (as set out at §§65-73) and will serve additional submissions on that issue in due course.

2. These submissions address the question of Article 2 engagement insofar as it bears on the evidence relating to the involvement of MI5 in this case. In summary, the Secretary of State submits that:

   (i) The evidence before the Coroner does not reveal an arguable, or *prima facie*, case that there was a failure on the part of MI5 to take reasonable steps to avoid a real and immediate threat to the lives of the victims of the attack, of which they were, or should have been aware at the time. Accordingly, Article 2 is not engaged in respect of the involvement of MI5 in this case.

   (ii) If, contrary to the previous submission, the Coroner determines that Article 2 is engaged, it is overwhelmingly clear from the evidence that there has been no failure on the part of MI5 to protect the lives of the deceased which would merit inclusion in an Article 2-compliant narrative conclusion, and moreover that there is no arguable causative link between the matters explored in MI5's evidence and the attacks.

3. The resolution of these issues will, of course, have no effect on the nature and extent of the Coroner's investigation. That investigation has been both rigorous and thorough. It has looked carefully, and in great detail, at the circumstances in which the deceased came by their deaths, including by reviewing the entirety of MI5's investigation into Khuram Butt and its knowledge of the other two attackers. This Inquest stands as a clear example of the frequently-made observation that the ultimate decision as to whether the procedural obligation is engaged will have little, if any, effect on the scope of the inquiry: see, for example, *R (Smith) v Oxfordshire Assistant Deputy Coroner*

[2011] AC1 (at §§152-154) and *R (Sreedharan) v Manchester City Coroner* [2013] EWCA Civ 181 (at §18(vii)). However, the issue of Article 2 engagement may have a bearing upon the form and content of the Coroner's conclusions. In the event that the Coroner determines that Article 2 is engaged, his conclusions in respect of each of the deceased will require (i) an account of the means by which the deceased came by their death; *and* (ii) a (brief) account of the broader circumstances, including reference to issues he considers to be of central importance a proper understanding of the death.

4. The Secretary of State recognises that the Coroner may conclude that Article 2 is engaged in respect of some other aspect of his investigation, aside from what may be termed 'MI5 preventability'. In those circumstances, the authorities (see, in particular, *R* (*Sreedharan) v HM Coroner for Greater Manchester* [2013] EWCA Civ 181) would tend to indicate that an Article 2-compliant conclusion should be returned in respect of all material aspects of the evidence, and that a Coroner should not attempt to address individual issues differently depending upon whether or not Article 2 was engaged in the relevant respect.

5. No issue is taken with the narrative conclusions proposed by CTI at §§59(a) – (e) of their submissions, which accurately and adequately address the question of how the deceased came by their deaths. The Secretary of State would also agree with the submission, at §§56-57, that a short-form conclusion of unlawfully killing should be recorded in each case. If, contrary to the submissions set out below, the Coroner concludes that Article 2 is engaged, or if it is found to be engaged on some basis other than an arguable breach of the operational duty on the part of MI5, the Secretary of State endorses the supplementary narratives proposed by CTI at §§61-62.

ARTICLE 2

6. The legal principles applicable to the issue of Article 2 engagement are set out below but it is anticipated that they will be largely uncontroversial. The key point, as the Coroner will be aware, is rigorously to test the relevant aspects of the evidence against each element of the Osman duty when determining whether there is an arguable case of breach, including the need for the state to be aware, not merely of some additional cause for concern, but of a real and immediate risk to life.

7. The more controversial aspect of the analysis concerns the application of those principles to the evidence. Both CTI and the families have identified, in the course of their written submissions, additional investigative steps which (at least arguably) could have been taken by MI5 during the course of its investigation of Butt. However, there is *no* evidence to support the conclusion that any of those steps, had they been taken, would have given rise to a real prospect of identifying the attack plan. This was an attack planned in secret, by the three attackers alone. The exhaustive post-attack investigation has not revealed a single piece of intelligence which, had it been identified at the time, would have alerted MI5 to an imminent attack. The attackers appear to have

kept their plan secret from even those closest to them. The only route by which it is possible to draw a link between an additional investigative step and the attack plan is, as CTI correctly observe at §25 of their submissions, to engage in speculation.

(1) The Applicable Legal Principles

8. The core proposition is that the procedural obligation to investigate whether the state may have breached its substantive Article 2 obligations to the deceased arises only in circumstances where there is at least an arguable breach of those substantive obligations. There are two distinct elements to this proposition: (i) the procedural obligation to investigate is parasitic upon the substantive obligation; and (ii) there must be at least an arguable breach of the substantive obligation in order to trigger the procedural obligation. Each is addressed in turn below, but it is first necessary to identify the substantive obligations imposed on a state by Article 2.

The Substantive Obligations

9. There are two parts to the state's substantive Article 2 obligation: (i) a negative obligation to refrain from taking life; and (ii) a positive obligation to protect life – see Lord Bingham in *Van Colle v Chief Constable of Hertfordshire Police* [2009] 1 AC 225 at §28:

> "*According to what has become a conventional analysis, [Article 2] enjoins each member state not only to refrain from the intentional and unlawful taking of life ("Thou shalt not kill") but also to take appropriate steps to safeguard the lives of those within its jurisdiction.*"

10. The negative obligation is plainly not in play here.

The three key elements of the operational duty

11. The scope of the state's positive obligation to protect life – sometimes referred to as the state's 'operational duty' - was described by the ECtHR in *Osman v United Kingdom* (2000) 29 EHRR 245, in a formulation that has been repeated and endorsed in the domestic jurisprudence. At §116 in *Osman*, the Court defined the circumstances in which the procedural obligation to investigate whether the state has breached its positive obligation to protect life in the following terms:

> *"… it must be established to [the court's] satisfaction that [1] 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 and that [2] they failed to take measures within the scope of their powers which [3] judged reasonably, might have been expected to avoid that risk."* (numbering added)

In *Van Colle* Lord Bingham (at §29) observed that: "*every ingredient of this carefully drafted ruling is, I think, of importance*."

12. As to the **first** element or ingredient, the real and immediate risk which the authorities knew or ought to have known about, Lord Dyson explained in *Sarjantson v Chief Constable of Humberside Police* [2014] QB 411 that the reference in the *Osman* formulation to 'identified individual or individuals' does not serve to limit the scope of the duty only to those individuals whose identities are known to the state authorities at the time. The duty can extend to the public at large, or a particular section of the public. The 'essential question' as formulated by Lord Dyson (at §25) is: "*whether the [state] knew or ought to have known that there was a real and immediate risk to the life of the victim of the violence and whether they did all that could reasonably be expected of them to prevent it from materialising*."

13. However, this real and immediate risk threshold for engagement of the state's positive obligation to protect life from the criminal acts of others is high, as was made clear by Lord Carswell in *Re Officer L* [2007] 1 WLR 2135, with whose speech all the other members of the Appellate Committee agreed. At §20 Lord Carswell said this:

> *"Two matters have become clear in the subsequent development of the case−law. First, this positive obligation arises only when the risk is "real and immediate". The wording of this test has been the subject of some critical discussion, but its meaning has been aptly summarised in Northern Ireland by Weatherup J in Re W's Application [2004] NIQB 67, where he said that: "a real risk is one that is objectively verified and an immediate risk is one that is present and continuing." 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."*

14. That the threshold is indeed high was noted by Hallett LJ at §83 of her ruling on the scope of the 7/7 Inquest.

15. The reason for the height of the threshold is directly linked to the **second** element of the operational duty (the failure to take reasonable steps in the face of that real and immediate risk). The ECtHR's evident concern – highlighted in *Osman* and frequently noted both before and after that case – is that this operational duty must not impose unreasonable or disproportionate burdens on the state: see eg *Osman,* §116. The jurisprudence recognises that states face numerous and serious threats to their citizens from many sources, including specifically from terrorism, and it cannot reasonably be expected to react to, still less to prevent, all of them. The reasonableness standard accordingly brings into account *"the ease or difficulty of taking precautions and the resources available. In this way the state is not obliged to satisfy an absolute standard requiring the risk to be averted, regardless of all other considerations"*: see *Officer L,* at §21.

16. It is apparent from cases such as *Osman* and *Van Colle* that even in a case where the state authorities can be said to have knowledge of a specific risk of harm to a person posed by an identified individual, it will not readily be shown that the positive obligation to protect life imposed by Article 2 has been breached. In *Osman* itself, the ECtHR found no violation of the UK's positive obligation to protect life, despite the extensive evidence (summarised at §§117-121) as to knowledge of the police the specific risk posed by the murderer to his victim. In *Van Colle*, the Claimant's son, who was a witness in a criminal trial, was killed by the accused, following, *inter alia*, a telephone call in which the accused had spoken to the Claimant's son in an aggressive and threatening manner. Again, no violation was found.

17. It is also extremely important that the assessment as to whether the state is, or arguably was, in breach of its positive obligation to protect life must be undertaken on the basis of what was, or should have been, known at the time of the death. It must not be infected with hindsight: see e.g. *Bubbins v UK* (2005) 50196/99 at 147 "*the Court must be cautious about revisiting the events with the wisdom of hindsight*". Guarding against the use of hindsight requires particular care in a context such as the present, in which the (entirely proper) focus has for a prolonged period been on the actions of the attackers and what was, and is now, known (or assessed) about them; and in which, in learning every lesson that may be there to be learnt and seeking to effect all improvements that can be made, hindsight is used (a distinction very clearly made by Witness L at the end of his evidence). It is very easy in those circumstances for the necessary rigour of guarding against hindsight to lessen – and for links between events and people to be made, and for events to have significance attached to them, which would simply not have been reasonably evident in real time and looking into the mists of the future. This point therefore does not focus on the proposition that, in assessing whether there really was an arguable breach of the operational duty, it is necessary to exclude hindsight. That is obvious and is no doubt accepted on all sides. The focus of the point is to emphasise the proper rigour and care needed to ensure that that accepted approach is in fact applied at all stages of the analysis.

18. The **third** element evident from *Osman* is causation. There will be no violation of the operational duty unless the failure to take reasonable steps in the face of the real and immediate risk to life would, judged reasonably, have prevented the deaths. The ECtHR has considered the nature of this causation element. The test is whether the steps that could reasonably have been taken to deal with the real and immediate risk "*could have had a real prospect of altering the outcome*": see eg *Blajkaj v Croatia* (2014) 38 BHRC 759. Again, hindsight must be rigorously excluded from the consideration of this third element.

The general systems duty

19. Finally, it is to be noted that Article 2 also imposes a general duty on the state to establish a legal and administrative framework designed to protect life by establishing an effective system of deterrence. This general, or 'systemic' duty was definitively described by the ECtHR in *Oneryildiz v Turkey* (2005) 41 EHRR in the following terms (at §89):

> *"The positive obligation to take all appropriate steps to safeguard life for the purposes of Art.2 entails above all a primary duty on the state to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life."*

20. This formulation was noted, and adopted, by the Supreme Court in *Rabone v Pennine Care NHS Foundation Trust* [2012] 2 AC 72, at §12. This 'systemic' duty consists of an obligation to establish, in the particular context of the criminal acts of non-state agents, a framework of criminal law, backed up by effective law-enforcement machinery, in order to deter the taking of life. It is, in other words, the basic obligation of a civil society to protect its citizens by establishing, and enforcing, the rule of law.

Arguable breach of the operational duty

21. The procedural obligation to investigate is parasitic upon the substantive obligation imposed by Article 2: see Lord Bingham in *Middleton*, at §3, describing the procedural obligation as arising:"*in circumstances in which it appears that one or other of the foregoing substantive obligations has been, or may have been, violated and it appears that agents of the state are, or may be, in some way implicated."* This conclusion is reflected in his observation, in *R(Amin) v Secretary of State for the Home Department* [2004] 1 AC 653, that the investigative duty was "*secondary to the duties not to take life unlawfully and to protect life*." He returned to the issue in his speech in *R(Gentle) v Prime Minister* [2008] 1 AC 1356, at §6:

> *"It is the procedural obligation under article 2 that the claimants seek to invoke in this case. But it is clear (see the Middleton case [2004] 2 AC 182, paragraph 3, Jordan v United Kingdom (2001) 37 EHRR 52, paragraph 105; Edwards v United Kingdom (2002) 35 EHRR 487, paragraph 69; In re McKerr [2004] 1 WLR 80, paragraphs 18–22) that the procedural obligation under article 2 is parasitic upon the existence of the substantive right, and cannot exist independently. Thus to make good their procedural right to the inquiry they seek the claimants must show, as they accept, at least an arguable case that the substantive right arises on the facts of these cases. Unless they can do that, their claim must fail."*

22. The consequence of the parasitic nature of the procedural obligation is that the Coroner must be satisfied that there is an adequate evidential basis for the assertion that this may be the case.

23. The most frequently used formulation of the test is that there is an arguable breach of the substantive obligation (here the operational duty)[1]: see, for examples of cases using that concept, *Al Saadoon v MOD* [2017] QB 1015 , per Leggatt J at §§281-5; *R v Home Secretary ex parte Wright* [2001] EWHC 520 (Admin) at §43 (approved in *Amin*); *R (Humberstone) v Legal Services Commission* [2010] EWCA Civ 1497 at §67.

24. The arguable breach test was specifically considered and applied by Hallett LJ in her ruling on the scope of the 7/7 Inquest. Hallett LJ described the submission made by Mr O'Connor QC, appearing on behalf a number of the bereaved families and survivors, that there was no evidential burden on him to establish an arguable / potential breach of the state's substantive Article 2 obligation in order to trigger the procedural obligation as "*bold*" (see §90). She went on to analyse the cases upon which that bold submission was based (two cases involving the special relationship between the state and those in custody, and the first instance decision of Hickinbottom J in *Humberstone*, which was subsequently overturned on appeal) before rejecting it at §97 in the following terms:

> *"Absent a special relationship [*ie the custody cases], *and/or an* ***arguable*** *breach of the Article 2 substantive obligation, to my mind, there is as yet no authority for the proposition Mr O'Connor advanced. I have no inclination, therefore, sitting as a Deputy Assistant Coroner to accept Mr O'Connor's invitation to purport to make new law."*

25. For examples of cases in which slightly different language was used, see:

    a. *R (Takoushis) v Inner North London Coroner* [2006] 1 WLR 461. Sir Anthony Clarke MR framed the test at §38 in this way: "*We are satisfied that article 2 is engaged in the sense that it gives rise to certain obligations on the part of the state whenever a person dies in circumstances which give* ***reasonable grounds*** *for thinking that the death may have resulted from a wrongful act of one of its agents."*

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[1] There is a special rule that applies in the narrow category of cases in which an individual is in the custody of the state. In such cases, the possibility that the state may have been in breach of its Article 2 obligations to the deceased can, absent some exceptional factor, be taken as read: see *R(L(A Patient)) v Secretary of State for Justice* [2009] 1 AC 288, per Lord Rodger at §59. In cases of this nature, referred to as "*special care/special need*" cases by Hallett LJ in her 7/7 Inquest ruling at §96, the investigative obligation will be triggered automatically by virtue of the fact that the deceased was in the "total control" of the state at the time of his death.

b. *Ekinci v Turkey* (App No. 27602/95). In that case, the Applicant alleged that there had been an inadequate investigation into the fatal shooting of her husband, a prominent supporter of Kurdish independence. It was therefore a case involving killing by agents of the state. At §§137-138 the ECtHR described the test as being whether there was a "*prima facie*" case that the applicant's husband had been killed by or at least with the connivance of State agents. If that is the test when the case involves alleged killing by agents of the state, it would be very surprising if some lower standard applied when the case involved a failure to prevent a death.

26. CTI, in the course of observing that the threshold for Article 2 engagement is 'low' (at §6(d)) cite *R (AP) v HM Coroner for Worcestershire* [2011] EWHC 1453 (Admin) as the source of the proposition that an arguable case should be defined as 'anything more than fanciful.' The families adopt CTI's reference to *AP* at §23 of their submissions. The 'anything more than fanciful' formulation is not one which has been adopted generally in the domestic jurisprudence (summarised above) or by the ECtHR; and it is submitted that it should not be adopted by the Coroner. The straightforward concept of an arguable or *prima facie* case is a familiar one and has been repeatedly used by the higher courts and the ECtHR. It requires that there be sufficient evidence to support the conclusion in question; and involves an analysis of appropriate rigour before imposing on the state an Article 2 investigative obligation. In the context of Article 2 engagement in respect of the operational duty, the question is whether there is sufficient evidence, judged without the benefit of hindsight, to support a positive finding on each of the three elements of the Osman duty.

(2) Application of the principled approach in the present case

The Systemic Duty

27. There can be no doubt that the state has adequately discharged the general 'systemic' duty to '*establish a legislative and administrative framework designed to provide effective deterrence against threats to the right to life*.' There is a robust framework of criminal law prohibiting the commission of terrorist acts and an extensive, and highly sophisticated, machinery of intelligence and law enforcement capability dedicated to enforcing that legal framework. There has never been any suggestion, in the domestic authorities or by the Strasbourg court, that the United Kingdom's system of criminal law and law enforcement fails to meet the general systemic obligation imposed by Article 2.

28. The Secretary of State notes, and endorses, the conclusions of CTI at §13 in respect of what they term the 'general duty'. There is a clearly a sophisticated counter-terrorism apparatus operated in the UK, which is more than sufficient to discharge the systemic or general duty. The conclusion of CTI that none of the 'systemic flaws' that have been highlighted during the course of the Inquest have any causative relevance to the deaths

is also clearly correct, although the Secretary of State would observe that even if some causative link could be identified between a 'systemic' issue of the type to which reference has been made in the submissions that could not, even arguably, amount to a breach of the 'primary' duty identified by the ECtHR in *Oneryildiz* (see §16 above).

29. To the extent that the evidence before the Coroner may indicate a need to improve, or refine, the procedures adopted for the handling and/or evaluation of intelligence, none of those matters bear upon the general systemic duty, imposed by Article 2, to establish a legislative and administrative framework designed to provide effective deterrence against acts of terrorism. Accordingly, issues that have been considered during the course of the inquest such as: (i) the handling of concerns reported by members of the public: or (ii) information sharing between MI5 and CT policing; or (iii) consultation with CT policing regarding decisions to suspend investigations; or (iv) the handling of trace requests from foreign authorities by SIS/MI5 – all of which have been explored in the course of evidence and all of which might be said, in general terms, to be of a procedural or 'systemic' nature – cannot amount, even arguably, to a breach of the Article 2 systemic duty. That duty is concerned with the high-level obligation to establish a legislative and administrative framework (comprising, in the present context, of anti-terrorism laws and an effective intelligence and CT policing capability), and not with the fine detail of how that framework operates at the level of individual cases.

The Operational Duty

30. As follows from the analysis of the correct principled approach above, in order for the obligation to arise in the circumstances of this case, the Coroner would need to be satisfied that there was sufficient evidence before him to establish at least an arguable case that:

    a. MI5 knew or ought to have known at the time of the attack that the deceased faced a real and immediate risk to life from Butt, Redouane and/or Zaghba;

    b. there was a failure to take reasonable steps to avoid that risk; and

    c. had such steps been taken, there is a real prospect that the attacks would have been avoided.

    The rigorous exclusion of hindsight must be applied in considering those matters. It would also need to be borne in mind that the threshold for imposing a positive obligation on a state to protect an individual from the criminal acts of a third party is a high one (*Re Officer L*), which is rarely reached (*Osman* and *Van Colle*).

31. It is submitted that there is a tendency running through the submissions of the families to focus on the second element of the analysis – whether additional reasonable steps

could have been taken – and to lose sight of the other two elements. In particular, much of the analysis follows a structure whereby a series of potential further investigative steps are identified (§§41-52), and then it is asked whether, had those steps been taken there was a 'substantial chance' of a different outcome (§§65-81). The fundamental premise of this analysis appears to be reflected at §56, where it is said that: "*It is therefore submitted that, in all the circumstances, a reasonable investigator would have known more, and that that would have led him to do more*." On this basis, it is said, there is a chance that, had more been done, the attack might have been stopped.

32. The flaw in this analysis is that it fails to engage with the critical requirement that, for engagement of the operational duty, the state must be aware of a real and immediate risk to life. In the context of this case, that translates to knowledge of the attack planning. There is simply no evidence to support the conclusion that some additional investigative step would have created a real prospect of the attack planning being revealed, as opposed to some form of additional knowledge of the attackers' associations or activities.

a. Real and immediate risk and knowledge or imputed knowledge

33. It is important at the outset to bear in mind the overarching point that *none* of the witnesses who have given evidence to the Inquest have said that they had any knowledge whatsoever that the three attackers were planning an attack. Those witnesses include individuals who lived with and/or associated closely with the attackers, on a daily basis. Not one of them had any inkling that an attack was being planned and that, accordingly, the attackers posed a real and immediate risk to life.

34. The *Osman* formulation of real and immediate risk is, of course, distinct from some form of generalised threat, or concern. The Inquiry has heard evidence from a number of witnesses who expressed a degree of concern to the effect that Butt held extremist views, and MI5 was aware, from mid-2015, that Butt had expressed an aspiration to carry out an attack. In the present context, that is not enough to establish the existence of a 'real and immediate risk' to life. What is needed is evidence that an individual is actively intending and planning an attack that would threaten life. There is all the difference in the world, from an intelligence perspective and in relation to this first *Osman* element, between a person engaging in extremist activities (eg viewing extremist material on line; and associating with other extremists) and attack planning. That critical distinction was a central theme of Witness L's evidence.

35. It is to be noted that even the exhaustive post-attack investigation has not identified any intelligence that anyone other than the attackers had any knowledge of the attack plan. As explained at §147 of Witness L's statement, the post-attack investigation revealed some fragmentary intelligence to the effect that one individual might possibly have had some awareness that the attackers were planning some form of attack, but there is no indication that individual had any awareness of the when, where or how, any such attack

might be carried out such as to constitute awareness of a real and immediate risk; and nothing whatever to suggest that in real time any such possible awareness was or should have been known to MI5.

b. Reasonable steps

36. Four initial points are to be noted. **First,** there are two aspects to reasonable steps in the present case. There first is as to steps that it is said might have been taken that might then have led to further understanding of the threat posed by the three attackers. The second is the steps that it is said might have been taken in reaction to any such threat appreciation. The two aspects shade into each other, but should be considered separately.

37. **Secondly,** in considering both aspects it is to be borne in mind the appreciation by the ECtHR that unreasonable and disproportionate burdens cannot be imposed on the state under the operational duty. That feature goes not merely to the steps that eg MI5 could realistically and reasonably have been expected to take. It also renders important the context in which they were operating in the period leading up to the attacks. The Coroner will recall Witness L's evidence that the early part of 2017 was, in summary, as dangerous and resource intensive as any period he can recall in his 28 years of service.

38. **Thirdly,** the reasonableness of steps taken or not taken is to be judged having regard to the expertise and experience of MI5. Unsurprisingly in a democratic society, MI5's resources were and are finite, and judgements have to be made about how they are to be deployed most effectively in the constant and strenuous efforts that are made to protect the public from precisely this sort of terrorist attack. Moreover, there are layers of judgement built into that process of targeting its resource. Judgements have to be made about for example the significance of a piece of intelligence, about what that intelligence viewed alongside others may or may not indicate, about the extent of the risk posed by an individual or group, about whether something seen or heard may or may not be significant and if so, how. Those are not judgements that a Coroner or any other court is well placed to make. That is why there is a well-established principle that in this sort of exercise (ie considering whether arguably other or different steps should have been taken) the correct approach is to afford very considerable respect to the judgements actually made in real time by the expert and experienced specialists: see eg *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153 and *Lord Carlile v Secretary of State for the Home Department* [2015] AC 945. The practical effect of that principle is that the Coroner should be very cautious indeed before disagreeing with the expert and experienced views of Witness L across the range of subjects on which he was invited to offer views in his evidence – for example, as to the significance of intelligence, the steps that could reasonably have been taken in the light

of the situation at the time, the assessments as to whether there was intelligence that should have led to higher or different risk ratings of Butt etc.

39. **Fourthly,** it is insufficient simply to highlight additional steps that could have been taken, and then to make the self-evident assertion that the possibility that step might have yielded some information about the threat posed by the attackers cannot be ruled out. That would be an incorrect approach in principle; and it characterised at least part of the questioning of Witness L. The question is whether the step under consideration was one which it was unreasonable not to take.

40. With those four points in mind, focus is placed on the principal aspects of concern raised with Witness L in his evidence, and now reflected in the CTI's analysis at §§14-25.

Butt and extremism

41. The short point in relation to this topic is that MI5 had to make expert judgements over time as to the threat posed by Butt and its relative nature as compared to other cases being considered on the 'grid' at any point in time. There is nothing to suggest that any of those judgements was, at any point, anything other than reasonable.

42. Butt had been a serious concern in 2015 as someone who might have been planning an attack. That is why he was graded as he was and intensive resource devoted to his case. However, it is a fact of real significance that, despite that resource, the intelligence in the 2016 and in 2017 leading up to the attack did not reveal <u>anything</u> to indicate that he was attack planning.

43. He continued to be associated with extremists, or that intelligence of activities associated with extremism (material online etc) continued to emerge. However, that added little to what was already known and assessed about him. It provided no justification for taking any different action in relation to him; and it provided no basis for concluding that he was attack planning. There is a critical distinction between such intelligence and attack planning – as Witness L repeatedly emphasised.

44. The observations of CTI, at §15(b), to the effect that further analysis of Butt's seized devices in late 2016 should, arguably, have led to MI5 being 'more concerned' about Butt, is noted. However, the exhaustive post-attack analysis of the devices has not identified anything which is indicative of active attack planning, such as to reveal a real and immediate risk to life. Moreover, it is unclear how such additional concern might realistically have manifested itself. Butt was, at the time, a Tier 1 SOI in an active P2M investigation ('medium risk extremist activity not directly linked to attack planning'). It is submitted that there is nothing on the seized devices that would have demonstrated that grading to be inappropriate or too low, or (therefore) to have indicated that the priority being accorded to the investigation of Butt was inadequate.

Public Reporting

45. Witness L explained that, prior to the commencement of its investigation into Butt in mid-2015, it received an anonymous report from a member of the public expressing concerns regarding Butt, but making clear that s/he did not wish to be contacted further. Witnesses M and L also confirmed that the report made to the anti-terror hotline in September 2015 by Usman Dar (whose state of mind, behaviour and 'neutrality' viz a viz Butt were explored after Witness L's evidence) was not communicated to the relevant team in SO15 and was not passed to MI5.

46. However, there is no basis for concluding that either of those reports (even if genuine) would have revealed anything approaching a real and immediate risk to life. On the contrary, there is no suggestion that those reports would have provided any intelligence of attack planning. Reports which may have added to the general intelligence picture of Butt as an individual with an extremist mindset would not have revealed him to pose a real and immediate risk to life of a type that would engage the Article 2 obligation. Witness L made quite clear that the reports, had they been considered, would have added nothing significant to the intelligence picture of Butt as an individual with an extremist mindset, and would certainly not have indicated that he was engaged in active attack planning.

47. CTI observe, at §15(a), that the fact the public reports of concern regarding Butt did not reach the relevant investigative teams arguably deprived MI5 of the ability to secure further information regarding Butt's intended travel and/or his 'routine'. First, the public reporting made to MI5 was anonymous, and the individual made clear that they did not wish to be contacted. The nature of the reporting, as explained by Witness L, did not add materially to the intelligence picture of Butt as an extremist, and gave no indication that he posed a real and immediate risk to life. The Usman Darr report was made to the Police, and not to MI5 and it is difficult, therefore, to identify how there might arguably have been a failure on the part of MI5 to take reasonable steps in response to it. Moreover, the suggestion that, had further steps been taken, and had Usman Darr been willing and able to provide reliable information regarding Butt's activities, that would have led to MI5 knowing more about Butt's activities and routine falls very far short of an arguable case that intelligence would have been uncovered that he posed a real and immediate risk to life. The risk that we now know Butt posed did not arise from his 2015 travel planning, or from his routine. It arose from specific attack planning carried out, in secret, with two accomplices, neither of whom were known to Usman Darr. A more detailed picture of how Butt spent his time in September 2015 (when Usman Darr made his report) would not have revealed anything about the attack planning that ultimately came to pose a real and immediate risk to life 2 years later.

Identification of Redouane and Zaghba

48. As Witness L accepted, it would have been possible for MI5 to have identified Redouane and Zaghba prior to the attack. However, he made clear that, had such identification taken place, both Redouane and Zaghba would have been identified as social contacts only, and of no significant concern. There is nothing to contradict or undermine that assessment. Butt did indeed associate with both Redouane and Zaghba during the first half of 2017, and did so on a fairly regular basis. However, there was nothing in the nature of that association (even as it is now known to be), which would indicate that it would (or should) have been regarded as anything other than social in nature. Indeed, much of the association that has now been identified in the course of the post-attack engagement occurred in environments in which non-extremists were present, including: (i) the trip to Leeds on 18 April 2017; (ii) the social event on 14 May 2017; (iii) the swimming trips; and (iv) the UFC. If MI5 had been aware of Redouane's and Zaghba's identities, and the nature and extent of their association with Butt, the intelligence picture would have served only to confirm the impression that they were social contacts.

49. It is acknowledged that MI5 was unaware that Zaghba was also involved in teaching Koran classes, along with Butt, at the Ad Deen school. To be clear, MI5 was aware of intelligence to the effect that Butt was teaching at a school in the area, but not the identity of the school. MI5 passed this intelligence to the Police, as the body with responsibility for the PREVENT element of the counter-terrorism, and sought to provide some limited initial assistance by providing a list of potential candidates for the school in question. Any assessment of whether there is an arguable case for failure to take reasonable steps on the part of MI5, in this particular regard, would have to take account of the division of responsibility between MI5 and the Police.

50. However, even if the school had been identified and Zaghba's involvement ascertained, this additional intelligence would not have indicated anything more than a social association between the two men (together with a shared interest in teaching the Koran) and there is no evidence that anything said or done by either Butt or Zaghba at the Ad Deen school indicated that they posed a real and immediate risk to life. CTI refer to this activity as demonstrating Butt's 'very regular' association with Zaghba (at §17(b)). It is unclear, even now, how frequently Zaghba accompanied Butt to the Ad Deen school, or when he began to do so. But it is the nature of the association, rather than its frequency, which is the key issue, and there is nothing to indicate that the activities of Butt and/or Zaghba at the school gave any indication that they posed a real and immediate risk to life, whether through the 'views [they were] espousing to the children' (§17(b)), or at all. Indeed, there is no evidence to indicate that the Ad Deen school, and Butt's teaching activities there, had any relevance to the attack planning whatsoever.

51. Indeed, there is no evidence to indicate that, even if Redouane and Zaghba had been identified prior to the attack and placed under some degree of coverage (for which there would have been no proportionate justification in any event) such coverage would have revealed anything to demonstrate that they posed a real and immediate risk to life. A very high level of coverage of Redouane might, conceivably, have identified him buying three kitchen knives (along with numerous other everyday items) from a supermarket and/or a number of bottles of wine but neither of those activities would have revealed him to be engaged in attack planning, and there was nothing to warrant the institution of that level of coverage in any event. There is no evidence that Zaghba did anything in the period leading up to the attack which might, on any realistic assessment, have revealed that he posed a real and immediate risk to life.

7 March 2017

52. At §17(d) of their submissions CTI raise the issue of whether further work could have been done in response to the events of 7 March 2017, and the second meeting in particular. As CTI note, Witness L explained that, although not apparent at the time, coverage and analysis since the attack (including contemporaneous coverage) has indicated that, during the second meeting on 7 March 2017, Butt was possibly seeking assistance with obtaining an item, which may possibly have been a firearm.

53. There is no evidence that any further intelligence regarding this potential attempt was, or could have been, available had further steps been taken at the time. In any event, and as explained by Witness L, Butt did not obtain a firearm and no firearm was used in the attack. Accordingly, any additional steps taken at the time in an effort to pursue this strand of intelligence would not have revealed evidence of a real and immediate risk to life. At most, it would have served to confirm the general intelligence picture that had been in place since mid-2015, namely that Butt was an individual who might be aspiring to conduct an attack.

54. It follows that even if the Coroner were to conclude that it was arguable that some additional steps should reasonably have been taken in response to this strand of intelligence, and it is far from clear what those additional steps might have been, there is no arguable basis upon which it could be concluded that those steps would have revealed a real and immediate risk to life. Even if the further steps revealed that Butt had been engaged in an unsuccessful attempt to acquire a firearm (which is only a possibility even following extensive post attack analysis) that information would not disclose a real and immediate risk to life; it would extend only as far as indicating that Butt might pose such a risk should some future attempt prove to be successful.

Coverage of the UFC

55. As Witness L explained there was no intelligence in the possession of MI5 at the material time to indicate that extensive coverage of Butt's activities at the UFC was

necessary or justified. It is clear that the UFC was frequented by non-extremists; that it was used as a venue for night prayers during Ramadan; and that no one (either at the time or subsequently) reported anything suspicious about the conduct of any of the three attackers at the gym. It is also notable that, on 29 May 2017, the attackers chose to have their security-conscious conversation away from the UFC (importantly, it was not, therefore, the 'location' of the 'walk-and-talk' as suggested by CTI at §17(a)). Even with the benefit of the extensive post-attack investigation it is not possible to conclude, with any degree of confidence, that attack planning took place at the UFC. To the extent that Witness M's evidence might be taken to accept that the UFC was a 'significant' location in the planning of the attack, that assessment is not shared by MI5 and, it is submitted, there is no evidence to support it.

56. There is nothing in the evidence which would support the conclusion that there was a failure to take reasonable steps in seeking further coverage of the UFC. For such a finding to reach the threshold of arguability there would need to be at least some intelligence to indicate that Butt's activities at the UFC posed a risk. There was no such intelligence. The fact that Sajeel Shahid (and individual with an historic extremist profile) was known to have some involvement in the ownership and/or administration of the gym would not, of itself, mandate the taking of some additional steps to obtain further coverage of Butt's activities at the gym.

57. It is further submitted that, even if such additional coverage had been obtained, there is no evidence of any kind to indicate that such coverage would have revealed that the attackers posed a real and immediate risk to life. There is no evidence that any attack planning took place at the UFC, or that anything said or done at the UFC by the attackers would have revealed that they posed a real and immediate risk. The possibility that, had some form of additional coverage been obtained (and it is unclear what that coverage might have been), some intelligence indicating attack planning might have been obtained is nothing more than speculation and falls very far short of the threshold of an arguable case.

58. As already noted, the meeting between the attackers on 29 May 2017 took place away from the UFC. The evidence that has now been obtained of that meeting consists of CCTV footage obtained from private premises in the vicinity of the UFC to which MI5 had no access at the material time. In any event, as Witness L explained, the level of coverage that would have been required to observe that meeting (including Redouane discarding his phone) would have been extremely intensive. On the basis of the intelligence and assessments at the time, there was no proper or reasonable basis for that sort of coverage.

59. Even if some form of additional coverage of the gym had been achieved prior to 29 May 2017, and even if that coverage had revealed the intelligence that has now been obtained from the private CCTV in the vicinity of the gym, the evidence of Witness L

does not support the contention, advanced by CTI at §17(a), that this would have led to a focussed investigation of Redouane and Zaghba 'with the potential to uncover their attack preparations.' Witness L explained (TX/24/171-172) that had the suspicious activity of 29 May been observed the first step would have been to identify Redouane and Zaghba. If that had been achieved prior to 3 June – and that is far from clear – there is no evidence to support the conclusion that their identification would have given rise to a real prospect of uncovering their attack planning. That conclusion could only be reached by speculating that they may have done something which was capable of revealing such planning and then assuming that a level of coverage would have been instituted (in the 4 days available) that would have identified that activity. The only additional activity undertaken by the attackers in the material period that has been revealed by the exhaustive post attack investigation has been the 'possible but not certain[2]' meeting on 2 June 2017. Witness L explained, when asked about this possible meeting (TX/24/172) that, if it indeed occurred, a night-time meeting between Butt and two associates in the vicinity of a venue used for night-prayers during Ramadan would not have been regarded as suspicious.

The PLA Assessment

60. At §15(c) of their submissions, CTI observe, correctly, that the years leading up to the attack saw an increase in low-sophistication attacks and plots involving vehicles and/or knives, and that both Witness L and Witness M recognised the growth of this kind of attack planning during their evidence. It is also correct to observe that, in this context, the threshold of 'capability' to mount an attack is a very low one. However, it is submitted that these valid observations do not translate into an arguable case, for *Osman* purposes, that the PLA assessments conducted in Butt's case constituted a failure to take reasonable steps which, if taken, would have given rise to a real prospect of identifying that he posed a real and immediate threat to life, particularly in circumstances where it is quite clear that the PLA assessments did not result in any material alteration to the investigative priority accorded to Butt's case, which was always driven, primarily, by the original intelligence that he had expressed an aspiration to conduct an attack.

61. The chain of reasoning that would have to be followed to reach such a conclusion would have to be that, had the PLA assessments expressed different conclusions as to capability, some alternative investigative step would have been taken which would have had a real prospect of revealing the attack plan. That, it is submitted, is an unsustainable

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[2] It is, indeed, only a possibility. Redouane and Zaghba have been identified on CCTV as walking past the UFC at around 22.00. Butt is not with them at this point. However, Shahid Iqbal stated to the Police (DC5300/28) that he saw Butt at night-prayers at the UFC on 2 June 2017, and so there is some evidence that he was in the vicinity. There is no direct evidence that the three attackers met on this occasion, and nothing to indicate that they engaged in any private discussion.

analysis. First, the material assessment in the October PLA assessment was that the risk posed by Butt was 'unresolved' and that further intelligence was required to reach a concluded view. Far from shutting down potentially valuable investigative action, the assessment illustrated that further such action was required. Second, the self-evident conclusion that virtually everyone has the capability to conduct a low-sophistication attack with a vehicle or a knife would deprive the PLA tool of a significant part of its utility. As Witness L explained, the capability assessment includes consideration of issues such as whether the individual has travelled overseas for training, whether they have engaged in violence of particular kinds, and whether they have crossed the psychological barrier of breaking the law. Third, the PLA assessments did not, as a matter of fact, change the investigative priority accorded to Butt's case and there is simply no evidence to support the conclusion that, had he been given a higher grade as to capability in either assessment, further investigative steps would have been taken. Finally, there is nothing to suggest that had some further steps been taken in response to a different classification in a PLA assessment, that step would have given rise to a real prospect of identifying the attack planning.

Suspensions of investigation

62. The submissions of CTI on the issue of suspension, as set out at §24(b) are noted and endorsed. However, in light of the submissions of the families at §§37-39 the Secretary of State makes the following brief additional observations. The decisions to suspend investigation into Butt on the two occasions in question cannot properly be criticised as unreasonable. There were expert judgements to be made about where finite resources should best be targeted. Those judgements had to be made in the light of the extremely serious security context of the time. The intelligence in relation to Butt was as just summarised. There is no evidence, of any kind, to contradict the evidence of Witness L that the suspension decisions were both reasonable and justified at the time that they were made.

63. In any event, the attack took place after the second period of suspension came to an end and whilst the investigation was open. There is also no evidence to indicate that, if the investigation had not been suspended, intelligence would have been obtained to indicate that Butt (or any of his associates) posed a real and immediate risk to life. Neither the post attack investigation nor the evidence given to the Coroner by Butt's family and associates indicates that he did or said anything during the periods of suspension which, had it been detected at the time, would have indicated that he posed a real and immediate risk.

64. There is no question of the inescapable fact of finite resources being used to 'empty' the operational duty of its content (§37). It is an inherent aspect of the operational duty that it extends only as far as the taking of 'reasonable steps'. The judgment as to what constitutes a reasonable step has to take account of both the resources available to the

state and the scale of the threat it is required to meet: see *Officer L* at §21, cited at §13 above. The intense scrutiny to which the investigation of Butt has, quite properly, been subject in this Inquest should not obscure the reality that he was one of approximately 3,000 SOIs under active investigation at the time and there was a constant need to prioritise resources against what appeared to be the most acute threats. If the submission by the families, at §39, that the investigation into Butt should be considered 'on its own merits' is intended to set a standard whereby the *Osman* duty is applied in a manner which ignores the need for the state to make real-time decisions as to the prioritisation of resources, then that submission is clearly wrong.

The events on 3 June 2017

65. The extensive post attack investigation has been successful in piecing together a detailed picture of the actions of the attackers on the day of the attack. In particular, it has been possible, through a montage of CCTV images sources from a large number of public and private cameras, to see the attackers collecting the van, buying gravel, loading the van with chairs etc. outside Butt's address and then driving into the City. The Coroner has heard from a number of witnesses, including Witness L, as to the extent to which this activity, had it been witnessed at the time, might have given rise to the suspicion that an attack was imminent.

66. The **first** question that arises is whether MI5 could or should reasonably have had the attackers under the sort of coverage that might have enabled them to know about what are now known to be acts of preparation for the attack. Witness L was very clear about that. As at 3 June 2017, there was no proper or reasonable basis for having either Butt, or the other two under that sort of coverage. The key fact in that respect is that, even in relation to Butt, there had been no intelligence of attack planning despite the coverage he had been under over that last two years. If necessary, it is also to be noted that the general security threat position at that date was extremely serious, with the consequent demand of resources that entailed. There is, of course, no question of any justification for such a level of coverage in respect of Redouane and Zaghba. There is thus no arguable basis for finding that MI5 should reasonably have been aware of those acts of preparation.

67. In this regard it is important to keep clearly in mind the nature of the coverage that would have to have been instituted in order to achieve the results postulated by CTI at §19. The very short timescales within which the van was hired, collected and used in the attack would have required any coverage to be conducted in real-time to produce intelligence which might even conceivably have prompted action to prevent the attack. The threshold for the maintenance of live, real-time coverage of this sort is extremely high, and must be borne in mind in any assessment of whether there was an arguable failure to take reasonable steps. However, if such intense and extensive coverage had been maintained at the time then it would necessarily (in order to be effective) have had

to extend over all of Butt's communications. Accordingly, it would – had it been conducted - have identified the cover story of moving house that Butt deployed not only to Habibur Murad (as identified by CTI) but also to Hertz and to Irfan Saaed.

68. As to the observations made by CTI at §20, to the effect that it is arguable that further monitoring and coverage of Redouane and Zaghba would have identified other causes for concern, it must again be remembered that the test is not whether such coverage might have indicated cause for concern but whether it might have revealed a real and immediate risk to life. Accordingly, the directly relevant observation made by CTI is in the final sentence of §20 where they observe that 'any sight of the attack paraphernalia could have prompted sudden and decisive action.' The question prompted by this observation is whether there is any evidence to support the conclusion that further coverage would have given rise to sight of the attack paraphernalia. The possibility that constant, real-time coverage of the attackers during the period leading up to the attack might have revealed something to indicate that they were assembling paraphernalia for an attack cannot be completely excluded (although it is difficult to conceive of how such coverage might have been maintained); but that is a very different issue from whether there was a failure to take reasonable steps to avoid a real and immediate risk to life.

69. In any event, **secondly**, and even if MI5 had had that level of coverage and had known about some or all of those preparatory steps, there is no evidential basis for the conclusion that such coverage would have demonstrated a real and immediate risk to life and to consideration of what reasonable steps might be taken to deal with it.

    a. The activities of the attackers, in renting a van and loading it with items including a suitcase and furniture, was consistent with the cover story established by Butt of helping a brother move house. The journey into London was typical of countless such journeys every day. The attackers had behaved normally during the course of the day and, in the case of Butt, had ostensibly made plans for the evening. None of the witnesses who interacted with them that day identified any cause for suspicion.

    b. The purchase of a quantity of gravel after hiring the van is not inconsistent with the cover story; and Witness L did not consider that it would have or should have been regarded as indicating an attack in progress.

70. In any event, **thirdly**, the timelines in combination with the likely assessments in real time of the significance of the developing information (explored in Witness L's re-examination) do not lead to any realistic possibility of intervention on the day. In order

for preventative action to have been taken – in the form of a Police stop of the van[3] - it would have been necessary not only for MI5 to obtain real time intelligence of the van hire but also to undertake a real-time assessment of that intelligence leading to the conclusion that it was of such importance as to inform the Police that immediate action needed to be taken. Witness M's evidence to the effect that he would have been inclined to stop the van was predicated on the understanding that the Police had been contacted by MI5, out of hours on a Saturday, on the basis that it considered the hiring of the van to be sufficiently serious to warrant SO15's immediate involvement[4]. In that scenario, and assuming that level of concern by MI5, it is entirely understandable that Witness M said that he would lean towards stopping the van. But before that becomes relevant it must be concluded that there is an arguable case: (a) that there was a failure to maintain real-time coverage and assessment of all Butt's communications and activities on 3 June 2017; and (b) that such real time coverage and assessment would have given rise to such pressing concern on the part of MI5 (notwithstanding the cover story) as to the purpose of the van hire that it would have been deemed appropriate to involve SO15 on the Saturday evening in question.

71. This is, it is submitted, an aspect of the evidence in respect of which the importance of excluding hindsight from the analysis is particularly acute. Now that we know the true purpose of the van hire it is very difficult to maintain an objective assessment of how this information, had it been obtained in real time on a Saturday afternoon in June 2017, would reasonably have been viewed. The best evidence is that provided by Witness L. As he explained the 3,000 SOIs under active investigation by MI5 live normal lives when not engaging in extremist activity. They hire vehicles from time to time, they move house, and they assist their friends. There was no intelligence that Butt was considering using a van or lorry to conduct an attack in the UK. Nothing revealed during the 2 years during which he was under investigation had indicated such a plan, and there was nothing on his seized devices which would have highlighted such a risk. Viewed objectively, and without hindsight, his activities on 3 June 2017 would not have given rise to suspicion of such gravity and urgency as to have prompted action which might have prevented the attack.

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[3] Although what would have happened had the Police stopped the van on the way back from B & Q (for example) is far from clear, and there has been no exploration as to whether there would have been any grounds for arresting any of the occupants of a hired van containing a number of bags of gravel.

[4] See, in particular, Witness M's evidence at TX/19/132 in which he prefaced his answer to the question of what he would have done in response to receiving information regarding Butt's hiring of a van with the observation that: "*So I'd like ... if I think about it logically then I'm being told this for a reason*". Also at TX/19/134 where M said "The very fact that I'm getting a phone call out of hours on a Saturday to tell me this information would kind of push me in the direction of doing something."

c. Causation

72. For all the reasons given above, it is submitted that there is no proper evidential basis for concluding that MI5 ought to have known (they plainly did not in fact know) of a real and immediate risk of the attack taking place; or that there were any further operational steps that could, and reasonably should, have been taken by them in real time.

73. Into the picture of events just dealt with, the question whether such action any a real prospect of preventing the attacks needs to be woven. That is an important, third element to the *Osman* analysis; and it needs to be considered in relation to any step that it is said should reasonably have been taken. The question in relation to each such step is: What then; would the outcome of taking the step truly have had a real prospect of thwarting the attacks?

74. It is submitted that there was no real prospect of any step that could conceivably be characterised as reasonable in fact leading to the thwarting of the attacks. The point is at its sharpest in relation to the events of the day itself. But that has already been dealt with – including the complete answer that there was no reasonable basis on which MI5 should have had the sort of coverage needed even to have known about the preparatory acts.

75. This causation element is emphasised because the cases being put to Witness L did not come close even to asserting, let alone establishing, a 'real prospect' case. It is self-evidently not enough to put a string of mere possibilities together. The longer the chain of those possibilities, the more speculative any causation (or indeed further reasonable steps) case becomes. There is here nothing remotely close to some of the facts considered by the Strasbourg court – including *Osman* itself - and held not to be sufficient make out an operational duty case.

76. As CTI point out, at §25 of their submissions, the analysis of every one of the various 'missed opportunities' to undertake further investigation that have been postulated during the course of the Inquest ends in speculation. It is inevitable that a detailed and forensic examination of a single investigation of this type will identify additional steps that could have been taken. In this case, however, there is no evidence that any of those steps would have created a real prospect of the attack plan being identified. The most that can properly be said is that some additional investigation might possibly have revealed some additional information which might possibly have led investigators to suspect than an attack was being planned. However, even to arrive at that conclusion requires an assumption that the most extraordinarily intensive coverage of the attackers was being maintained at all material times.

PII

77. The Secretary of State notes the invitation to the Coroner advanced by the families at §§82-89 to review his PII ruling, in light of the evidence as it now stands, and to consider whether it remains possible for adequately to discharge his statutory obligations pursuant to s.5 of the 2009 Act. It is submitted that the reasoning adopted by the Coroner in upholding the Home Secretary's claim for PII continues to hold good. The Coroner made clear, from the outset, his intention to conduct a rigorous and thorough investigation into the circumstances surrounding the attack, including MI5's investigation into Butt, and he has done so. As CTI have acknowledged, and as reflected in the Coroner's PII ruling this case has seen unprecedented disclosure of the detail of a live MI5 investigation. Information has been withheld only on the strongest grounds of national security, and the rigour of that process, in which CTI have been closely involved throughout, has been unaffected by consideration of whether Article 2 was engaged in this inquest or not. As CTI made clear in the course of the PII proceedings the position they adopted was to seek disclosure of any material which might be regarded as relevant, and about which the families (in particular) might have legitimate questions. Were the Coroner to conclude now that Article 2 was engaged, that would have no impact whatsoever on the PII analysis undertaken to date.

Conclusion

78. In conclusion, therefore, it is submitted on behalf of MI5 that on any fair analysis of the evidence before the Coroner the threshold of an arguable case of breach of the Article 2 operational duty has not been met; and, even if it has, it admits of a clear answer, in the terms set out at §25 of CTI's submissions. There is no proper basis for a conclusion that MI5 failed to take reasonable steps in the face of a real and immediate risk.

79. Indeed, it is submitted more generally, that Witness L was a thoroughly impressive witness. The Coroner is invited to conclude, on the basis of his evidence (written and live), that there is no proper basis for any criticism of and work of MI5 – and thus to agree with what were in effect the conclusions of the post attack reviews that were undertaken into their actions.

SIR JAMES EADIE QC

NEIL SHELDON QC

25 June 2019