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

SUBMISSIONS ON BEHALF OF THE FAMILIES OF

CHRISTINE ARCHIBALD,
SARA ZELENAK,
JAMES McMULLAN,
ALEXANDRE PIEGARD,
SEBASTIÉN BÉLANGER
and
KIRSTY BODEN

AS TO THE CORONER'S DETERMINATIONS

Introduction

1. By submissions provided at 10am on 24 June 2019, Counsel to the Inquests ("CTI") have provided helpful written argument, which sets out the relevant legal principles, consider the application of Article 2 of the European Convention on Human Rights ('the Convention') and make submissions as to determinations which the Coroner should consider.

2. In outline, CTI have submitted that the Article 2 procedural obligation is engaged in these inquests, on the basis that it is arguable that there was a breach of:

   (i) The state's operational duty to protect life, namely the lives of potential victims of a terror attack, by virtue of failings in the investigation by the Security Service and Metropolitan Police into Khuram Butt; and

(ii) In respect of Christine Archibald (and Xavier Thomas), the state's general duty to protect life by having systems in place to assess the risk from hostile vehicle attacks on the road network, and to mitigate those risks;

3. On behalf of the families, we support and, in large part, adopt the arguments advanced by CTI on these fundamental issues. We do however submit that:

(i) CTI are right to argue that there is a procedural obligation under Article 2 in respect of the investigation by the Security Service and Metropolitan Police into Khuram Butt, but wrong to say that the argument *"ultimately fails"* and that no criticism should be expressed in the narrative conclusions. The families agree that this was an investigation which was flawed by virtue of the gaps identified at paragraph 17 of CTI's submissions, and that the key question is causation. They consider that, given the evidence that this attack was in planning for a period of months, that the focus by CTI on the telephone calls to rental companies represents an inappropriately narrow approach to this issue. (For the avoidance of doubt, the families agree, in the alternative, with the submission that the narrative conclusion should, in any event, record the fact of the investigation: see paragraph 62.)

(ii) It is arguable that protective measures on the bridge *would* have prevented the knife attack on Borough Market, as well as the deaths on the bridge. It is submitted that the general duty in respect of protective security is engaged in respect of all eight of the deceased, and not just Xavier Thomas and Christine Archibald.

(iii) It is arguable that there was a breach of the state's operational duty to protect life in respect of protective security on London Bridge. The families agree that there was no adequate system

4. The families accept that it is not arguable that any act or omission by the London Ambulance Service constitutes a breach of a substantive Article 2 obligation because causation cannot be established. Of the Hogan Lovells deceased, only the injuries sustained by Sebastién Bélanger were possibly survivable, and it is accepted that on the evidence and in light of the chronology, this is a possibility that is theoretical rather than practical in the circumstances. However, this has been one of the major

themes explored in the course of the inquests. Noting the principle in *R (Sreedharan) v Manchester City Coroner's Court* [2013] EWCA Civ 181 that, if Article 2 is engaged by reference to the conduct of one state agent, the conduct of all state agents should be subjected to the same level of scrutiny, and that not to do so would lead to unbalanced conclusions, it is submitted that the facts should be recorded, though without asserting that there has been any failing.

5. Finally, the families support the submission that there should be reference to the warning signs known to Khuram Butt's close family members.

Short Form Conclusion

6. As CTI have submitted. the evidence unquestionably establishes that on 3 June 2017, Christine Archibald, Sara Zelenak, James McMullan, Alexandre Piegard, Sebastién Bélanger and Kirsty Boden, along with Xavier Thomas and Ignacio Echeverria, were murdered by Khuram Butt, Rachid Redouane and Youssef Zaghba acting individually and jointly.

7. The short form conclusion of unlawful killing may be returned when the deceased was the victim of a criminal act of homicide. The standard of proof for a finding of unlawful killing is the criminal standard. There can be no doubt that this standard is met, and a short form conclusion of unlawful killing is plainly appropriate based on the evidence which the Inquests have heard.

8. The Coroner's determination must not appear to decide any question of criminal liability on the part of a named individual, and therefore Butt, Redouane and Zaghba cannot be identified by name in the determination, although no difficulty arises from the fact that it will be obvious from the circumstances and the summing up who has been identified as responsible.

Narrative Determinations

9. If the Coroner accepts any of the submissions on behalf of CTI and the families that there have been arguable breaches of Article 2, narrative determinations must, in the

case of each deceased person, address the question how *and in what circumstances* the deceased came by his or her death.

10. Even in the unlikely circumstances that CTI's submissions as to the procedural obligation are rejected, the families submit that it is not only legitimate but highly desirable that the short form conclusions should be supplemented by a narrative in each case. While the families agree with the submission (at paragraph 3a of CTI's submissions) that the overwhelming responsibility for these terrible murders rests with the attackers and that that fact should be recorded, they also consider that a short form conclusion alone would not do justice to the careful and thorough exploration of the deaths of each victim. Narrative determinations covering the circumstances of the attacks themselves should be entered irrespective of the decision of the Coroner as to the Article 2 procedural obligation, as was done in relation to those who died on Westminster Bridge on 22 March 2017

11. Given the timetable for providing these submissions, the families (who are located in time zones across the world including where it is late night/early morning at the time CTI's submissions were served) have not all been in a position to provide full instructions on the draft narrative conclusions proposed by CTI or on the detail of these submissions. Urgent instructions have been sought, but is possible that further submissions will be made orally as to the parts of the narratives reflecting the attack itself (that is, what occurred at and around the time that the fatal injuries were inflicted, and prior to the attendance of any emergency responder).

London Ambulance Service ("LAS")

12. A major issue explored in these inquests has been the remarkable lapse of time between the first 999 call and the time at which James McMullan, Sebastién Bélanger, Alexandre Pigeard and Kirsty Boden were first attended by LAS paramedics.

13. While the families are concerned about the current arrangements for responding to such incidents, it is accepted that the injuries suffered were such that failures by the LAS did not cause or contribute to the deaths.

14. It is, however, appropriate that the determinations should record the facts: that is, that resuscitation efforts were made by members of the public, police officers and off duty medical professionals (as applicable), who remained to provide treatment regardless of any risk to themselves.

15. In relation to those who continued to receive active resuscitation in the courtyard of Boro Bistro (that is, Sebastién Bélanger and James McMullan), the narrative conclusions should record that those who remained in the courtyard, continuing to provide the treatment, did so at a time when they were unaware that ambulances were close by.

16. The issues which these inquests have explored, including issues relating to the LAS and other themes explored in questioning by counsel acting on behalf of the families, should be fully addressed in summing up the evidence and submissions will be made in due course as to recommendations to be made in a Preventing Future Deaths ("PFD") report.

17. Noting the formulations proposed by CTI for the narrative conclusions, the following wording is proposed in each case:

18. In relation to Sébastien Bélanger, instead of:

> *"… Sébastien received prompt treatment from members of the public and police officers, including CPR"*

we propose:

> *"… Sébastien received prompt treatment, including CPR, from members of the public and police officers who stayed to treat him regardless of any risk to themselves, and not knowing that there were ambulances close by."*

19. In relation to James McMullan, instead of:

> *"…James later received treatment from police officers, who saw no signs of life"*

we propose:

"…James later received treatment from police officers. They stayed to treat him regardless of any risk to themselves and not knowing that there were ambulances close by. The police officers saw no signs of life."

Legal Framework

20. We are grateful for the summary of the legal framework set out in submissions by CTI. The principles are well-known and are not controversial. The following short submissions are intended to provide some supplementary observations rather than to repeat the law as set out in CTI's submissions.

The Article 2 Procedural Duty

21. The Inquest is required to fulfil the United Kingdom's procedural obligation to establish effective and independent investigations in cases where Article 2 is engaged.

22. It requires to be considered by reference to the substantive Article 2 obligations (that is, the general and operational duties, as set out in CTI's submissions).

23. We repeat here only the most important point: that it is not necessary to establish that there has been a violation of Article 2 of the Convention. Indeed, any assessment of this question would require an impermissible determination of civil liability. The question is whether there has been an *"arguable"* breach of the substantive obligations. This is a low bar: *"arguable"* means anything more than fanciful: *R v AP HM Coroner for Worcestershire* [2011] EWHC 1453 (Admin) at [60].

24. Although a determination has not previously been made that Article 2 is engaged, this is a matter which is commonly kept under review throughout inquests. As has been recognised throughout the evidential hearings, the procedural obligation has a limited if any effect on the scope of the inquest. The families are grateful to the Coroner for permitting a thorough exploration of matters of concern to them, which now require to be reflected in appropriate determinations. The hearings have made plain that those concerns were not unfounded. The evidence has revealed matters of significant concern, not only to the families but also to the wider public, as to the systems (or lack of systems) around protective security on the road network. It would be surprising indeed if, in the face of submissions from Counsel to the Inquest that

findings should be made that *"the failure to implement appropriate hostile vehicle mitigation measures on London Bridge was due to a lack of adequate systems…"*, there could be any suggestion that the procedural duty under Article 2 was not engaged. We submit that Counsel to the Inquests' submissions under-state the failures in the investigation into Khuram Butt and the causative impact of them, but even on their analysis it is plainly right that the duty to carry out an effective investigation has been triggered.

25. Notwithstanding the various reviews conducted in the wake of the attacks, these are matters which have not previously been explored in such a way as to meet the procedural requirements of Article 2. In particular, none of the previous reviews appears to have been effective in exploring the matters which these Inquests have analysed; there has not been a sufficient element of public scrutiny to secure the level of accountability that is required to comply with the procedural requirements, by contrast to the much greater level of public scrutiny which these Inquests have permitted; and the next of kin have not been involved.

The MI5 / Police Investigation

The Operational Duty

26. CTI have set out the legal principles on which the operational duty under Article 2 is based, citing in particular the well-known test in *Osman v UK* (2000) 29 EHRR 245:

> *"It must be established to [the] satisfaction [of the Court] that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of the individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk."*

27. It is important to emphasise, in particular, the words *"knew or ought to have known"* in the opening lines of that test. A public authority cannot rely on its own failures to excuse its failure to appreciate that a real and immediate risk to life had emerged.

28. This approach was confirmed in *Van Colle v Chief Constable of Hertfordshire Police* [2009] 1 AC 225. Lord Bingham considered the *Osman* test and stated at [32]:

> *"…the Strasbourg court …laid emphasis on what the authorities knew or ought to have known 'at the time'. This is a crucial part of the test, since where (as here) a tragic killing has occurred it is all too easy to interpret the events which preceded it in the light of that knowledge and not as they appeared at the time … the Court should endeavour to place itself in the chair of DC Ridley and assess events as they unfolded through his eyes. But the application of the test depends not only on what the authorities knew, but also on what they ought to have known. Thus stupidity, lack of imagination and inertia do not afford an excuse to a national authority which reasonably ought, in the light of what it knew or was told, to make further inquiries or investigations: it is then to be treated as knowing what such further inquiries or investigations would have elicited."* (emphasis added)

29. It is also right to repeat, in light of the submissions set out below, two important principles noted by CTI. First, in assessing whether there is a real and immediate risk to life, the word "real" is to be interpreted as a risk more than remote or fanciful (a low threshold), and the word "immediate" as "present and continuing" (rather than sudden or topical): see *Rabone v Pennine Care NHS Trust* [2012] 2 AC 72 at [38]-[39].

30. Secondly, breach of Article 2 duties in relation to a death may be established without proof that a relevant failure probably caused the death. It is only necessary to prove that the deceased lost a substantial chance of surviving as a result of the breach: see *Van Colle v Chief Constable of Hertfordshire* [2009] 1 AC 225 at [138].

The Investigation into Khuram Butt

31. The evidence shows that in mid-2015, MI5 initiated a priority investigation into Khuram Butt. It was categorised as a P2H investigation: that is, it was considered that there was a high risk that he would commit a terrorist attack. [M; Day 19, p 151, l 24]. This investigation was initiated as a result of intelligence received in mid-2015 that Khuram Butt had an aspiration to conduct an attack in the United Kingdom.

32. This is the starting point for the analysis of the operational duty. MI5 had received intelligence that Butt aspired to carry out a UK attack, the assessment being that he was a high risk extremist linked to attack planning. In these circumstances, an operational duty arose unless and until it could be suggested either that the risk that Khuram Butt would carry out an attack was "remote" or "fanciful", or that it was no longer "present" (that is, continuing). It is plain that based on what MI5 and the

Metropolitan Police knew (let alone what they ought to have known had they investigated as they reasonably ought), neither suggestion could have been made at any stage from this point on.

33. Accordingly, there was a real and immediate risk to life such that the United Kingdom government was under an operational duty to take steps to protect life. For the reasons given by CTI, once the nature of the risk (that is, a terrorist attack) had been identified, the particular victims of any attack did not need to be foreseen: reasonable steps had to be taken to protect the general public from Khuram Butt. Responsibility for discharging this obligation lay with the Security Service as investigative lead, supported by the Metropolitan Police.

34. We note the submission of CTI that there is (at the very least) an arguable case that this operational duty was not discharged; we submit that it goes further than this in that it plainly was not. It is important to take a staged approach to this issue. The first step is to consider whether MI5, supported by the police, took the steps that they reasonably ought. In carrying out this analysis, the authorities are to be treated as knowing what they knew at the outset, and also (as time went on) anything which further inquiries or investigations would have elicited if those inquiries or investigations ought reasonably to have been undertaken. It is only after this analysis has been undertaken that the question of causation arises.

35. The background to this issue is that the intelligence picture in relation to Khuram Butt was alarming from the outset, and cause for concern continued to emerge:

    (i) By the end of 2015, the intelligence that Butt had aspirations to carry out an attack in the United Kingdom had been corroborated by separate retrospective intelligence [L, day 25 p34]. He was assessed to have a strong intent.

    (ii) It is relevant to this initial intelligence that Butt had a history of violence.

    (iii) Butt's association with ALM was in itself a significant factor; the organisation had been proscribed since 2006. It was assessed that Butt was associating with senior figures within ALM, including at his home, and having discussions of a possibly Islamist extremist nature [t/s day 25, p 55] (WS5006/30 para 107)

(iv) Butt's association with Anjem Choudhary, a leader of ALM, was a particularly significant factor (Witness M, Day 19, p 146, l 23- p 147, l 3). Since 2014 Choudary had declared allegiance to Bagdadi and support for ISIS, who were encouraging terror attacks in the UK: see L day 25 p 41-42. The Coroner may take the view that it was not a factor to which sufficient weight was given at the time, especially given that Choudary was well-known to be under suspicion of terror offences from 2014 onwards. See observations of Richard Kemp, former Chairman of Cobra, as to the extent to which ALM was not taken seriously enough: DC8239/4.

(v) It was also assessed that he was accessing extremist material suggesting that he was supportive of ISIL [t/s day 25 p 58] (WS5006/30 para 107).

(vi) Butt was willing to associate publicly, and in the presence of police officers, with other members of the proscribed terrorist organisation ALM (Witness L, Day 25, p 38, l 18). It was assessed as at autumn 2016, when he re-engaged with ALM, that he had the potential to be an influential and inflammatory presence among ALM affiliates – this suggests that he was by no means at the moderate end of the spectrum even of ALM supporters [day 25 p 78 l 17] (WS5006/31 para 116).

(vii) Butt used anti-surveillance measures *("exhibited… operational security"*) throughout the period when he was under investigation. L agreed that this suggested he had something to hide and of itself added to the concerns [day 25, p 35]. There were a number of manifestations of this [p35].

(viii) L's repeated assertions that there was no evidence of attack planning are to be judged in light of the fact that (a) the evidence shows that the suspect was known to be using different means to avoid detection and (b) the investigators must have been aware of the significant gaps in the monitoring: eg for many months MI5 were unaware that Butt spent most afternoons at the Ad Deen Primary School and most evenings at the Ummah gym: L (on day 25, pp 71-72) agreed that there was possibly a whole range of activity happening without MI5's knowledge. These gaps are alarming and the investigators must have realised that much of Butt's activity remained unknown to them. In short, the

gaps in the intelligence are not only relevant to the question whether there were failings – they are relevant to the extent of the threat because the level of risk is necessarily affected if much is unknown.

(ix) L agreed that it was believed that at one stage Butt was more likely than not to be planning to fight for ISIS in Syria, recognising that he may die in the process [day 25, p 59-60].

(x) Material found on Butt's devices seized in October 2016, and considered at the time, was very troubling. Although there was no evidence that a violent attack was being planned the contents were nevertheless demonstrative of a mindset that M agreed to be "concerning" (Witness M, day 20, page 16, l 22) (see too L on day 25, p 81, l. 20-21). In addition to sermons by radical preachers such as Awlaki and Jibril, it is demonstrative of repeatedly if not obsessively accessing material about Islamic State at a time when their brutality was 'off the scale', repeatedly accessing images showing violence and serious injuries and executions, and web page after web page relating to violent martyrdom operations. It includes images of known terrorists. It includes a video of Butt, taken on a mobile telephone on his honeymoon to record the slaughter of a cow, in which Butt takes apparent pleasure in the thought of humans having their throats cut and dying. It includes a personal message from Jibril, the contents of which indicate that Butt had sought him out and made contact with him. There was a voice message in which Butt spoke about wanting to be amongst the martyrs in paradise. Taken together, it is submitted that this material was evidence of a willingness to fight and die.

(xi) In early 2017, it was assessed that he was accessing extremist material, and that there had been a growth in his extremist rhetoric [t/s day 24 p 138 l 24] (WS5006/32 para 120)

(xii) L agreed that there was no positive evidence that Butt abandoned his aspiration to carry out an attack: day 25, p78.

36. The cumulative weight of all this material is such that Butt was known to be a dangerous person. It is against the background of all this alarming intelligence, known to the investigators prior to the attack, that the steps taken by MI5 and the

Metropolitan Police to protect life fall to be assessed. It is submitted that the extent of the Article 2 risk heightens what was required by way of response.

37. It is acknowledged that the investigation into Khuram Butt was far from the only investigation being undertaken by the Security Service at the relevant time. However, appeals to resourcing constraints must not be allowed to empty the operational duty to protect life of its content. If the state is aware of several separate threats from which real risks to life arise, it is no answer to the Article 2 duty to protect life to say that it only has resources available to take reasonable steps in relation to some of them – even if it selects those amongst the cases those that pose the greatest risk of all for action to be taken. It is clear from *Osman* that reasonable steps have to be taken once the state knows, or ought to know, of the real and immediate risk in every case where such a risk arises.

38. For these reasons, it is not accepted that the suspensions of the investigations can simply be dismissed on the basis that CTI suggest at paragraph 24a (that is, that there was a need to prioritise). The decision to suspend the investigations was not based on any change in the level of threat which Khuram Butt posed. It appears that no attempt was made to secure additional funding in light of the increasing threat and the ongoing problem of suspensions in the period 2015 - 2017 [L, day 25, p 66, l 13]. Although Witness L accepted that it was not an "all or nothing" situation [L, day 25, p 65, l 24], it also appears that nothing was done to strike a middle course. While there is a democratic debate to be had about the point at which the Security Service becomes so large that it is obtaining intelligence on more individuals that it should, it can surely not be sensibly suggested, as witness L appeared to do, that a 'democratic society' would wish the Security Service to be too small to fulfil the operational duty under Article 2.

39. The steps taken to investigate Khuram Butt require to be considered on their own merits against the requirements of Article 2 of the Convention. If it were seriously suggested by the Secretary of State for the Home Department that a lack of resources prevent that duty being complied with, the question would arise whether that assertion amounted to reliance on a wider systemic failing.

The Reasonableness of the Steps Taken to Investigate Butt: Failings

40. There were a number of failings in the steps taken to investigate Butt. Before turning to consider their cumulative effect, we highlight the main failings below.

Notification by Members of the Public

41. The Coroner has heard that there were two occasions on which the authorities were contacted by people who knew Khuram Butt, and were concerned about the risk which he posed: Usman Darr contacted the Anti-Terrorism Hotline on 30 September 2015 and an anonymous member of the public contacted the Security Service before the investigation was opened to report concerns about Khuram Butt.

42. Despite the fact that both of these individuals were contacting the authorities to raise concerns specifically about Khuram Butt, and both effectively named him and gave identifying details – and despite the fact that the Security Service and the Metropolitan Police were running a live investigation into Khuram Butt from mid-2015 – *neither* message reached investigators.

43. This was an acknowledged operational failing on the part of the police and MI5 respectively: *"That was not satisfactory that it was not passed to me"* [Witness M, day 19 p 159 l 21]; *"...it's come down to human error and a supervision issue"* [Witness M, day 19 p 160 l 14]; "*You would want that sort of material to reach investigators, wouldn't you? Yes, I would"* [Witness L, day 25, p 28, l 6].

44. Witness M acknowledged the possibility that Darr would have been called back [Witness M, day 19, p 160, l 21] and described this as *"an intelligence opportunity that was not progressed*" [Witness M, day 20, p 95, l 24]. Usman Darr would have been willing to provide information about Butt's intended travel to Syria and fight, and the fact that he used to attend a gym and teach people how to fight. [Darr, day 21, p 246]

'The Jihadis Next Door'

45. The Senior Investigating Officer and his team investigating Khuram Butt did not review the footage from this documentary in which Butt featured, notwithstanding police involvement on the day of the events at the Regent's Park mosque [Witness M,

day 19, p 76]. The court has as yet heard no evidence that this information reached any part of the police team investigating Khuram Butt.

Ummah Fitness Centre

46. MI5 became aware in late autumn 2016 that Butt was frequenting the Ummah Fitness Centre at 316 Ilford Lane. There was a delay in their learning this even though he had been attending for several months prior to that. They also learnt he was working there. This was therefore a significant place in Butt's life. MI5 already knew from a 9 May 2014 port stop at Dover that that gym at 316 Ilford Lane had been opened by Sajeel Shahid, who had had links with the proscribed terrorist organisation ALM and who had been referred to in the press. MI5 had featured heavily in Operation Crevice, in respect of which the witness called by the prosecution and relied upon as a witness of truth, Mohammed Junaid Babar, had asserted that Shahid had run a terrorist training camp in Pakistan for ALM-linked terrorists including Mohammed Sidique Khan, leader of the 7/7 bombers. Further reminders of Shahid's links to the gym (and school: see below) were provided to MI5 on 8 May 2017 in relation to a 5 May 2017 stop at Dover. L said that the gym was not a significant investigative priority [day 24, p 124]. DCI Jolley said that the gym had not been identified or investigated before 3 June 2017, adding "the significance of the gym wasn't realised until post-attack" [day 17, p 162 and to like effect on p 165 and p 174]. M did not even know of the link between the gym and Shahid until these inquest hearings. This is despite the fact that Shahid was known to have had "a strong historical extremist pedigree" [L day 24, p 125]. L conceded that the gym could feasibly have been subject to greater coverage than it was [day 24 p130]. It is submitted that there was a failure urgently and sufficiently to investigate Butt's activities at the gym.

47. Gyms have played significant roles in the past in allowing extremists to associate in other terrorist activities. A reasonable investigator would have investigated the gym as a matter of urgency. Indeed, this is to some extent evidenced by the fact that MI5 did initiated some (unspecified) enquiries into the gym prior to 5/5/17, although these "did not complete" or "come to fruition" [L day 25, p89-90] and so MI5 will have realised that the gym and link to the terror suspect Sajeel Shahid had not been successfully investigated and so the concerns remained un-addressed.

48. Moreover, even the most cursory investigation of the gym using the internet and open sources would have led Butt's investigators to identify that it was associated with Sajeel Shahid, an individual publicly identified during the significant Operation Crevice trial as running a terrorist training camp for ALM extremists including Mohammed Siddique Khan. Even two years on, open source research swiftly identifies material that should have concerned an investigator, and prompted proper investigations of activities within the gym: see DC8307 (summarising various pieces of information about the gym publicly available before the attack, linking it to Shahid) and DC8305 (image still available on the internet showing what appears to be a Samurai sword or scabbard displayed on its wall; the black flag used by ISIS was on its Facebook page; black banners were hanging inside the gym).

49. A reasonable investigator would have undertaken basic checks which would have identified the connection with Shahid upon learning that Butt was working at the gym. The checks would not have been resource intensive in that they would have required no more than brief computer searches. The MI5 records as to the Sajeel Shahid Dover stops contained the precise address in question. Witness M acknowledged that it would be a "*natural inquiry"* to look at what was on the internet and build a profile of it [Day 20, p 100, l 13].

50. Upon discovering the link to Shahid, a reasonable investigator could be expected to consider further steps to investigate the gym and those associated with it; these are steps that were not taken because the link was not identified.

51. The initial intelligence had included the suggestion that Butt was planning a group attack [Witness L, day 25, p106]. If the gym had been investigated, it is possible if not probable that the association with Redouane, who was also working behind the counter, would have been picked up (the possibility was acknowledged by Witness M, Day 20, p 34 line 2). Witness L conceded that it is possible that with further coverage of the gym MI5 would have identified Redouane and Zaghba as regular associates of Butt [day 24, p131].

Ad Deen Primary School

52. In early 2017, SO15 received intelligence that Butt was teaching Quran classes to children. He was in fact teaching at Ad Deen primary school. Although other schools

were approached, investigation by the Metropolitan Police failed to identify the school in question. This was so despite the fact that:

(i) The statement of Witness M makes clear (WS5025/16) that there was intelligence that the school was in the Barking or Ilford area. This intelligence is correct – the school was in Ilford, but located between Barking and Ilford.

(ii) The Ad-Deen primary school was a Muslim school, and it would not have been unreasonable to assume that Quran classes are more likely to be taught at a Muslim school, and less likely to be taught at schools associated with other faiths.

(iii) The Ad-Deen primary school was formerly owned or run by the same Sajeel Shahid referred to above. This information should have been readily identifiable to investigators; it had been reported in the Daily Mail in a 2014 report referring to concerns about his activities at that school [DC8298/1]. Independently of any investigation into Khuram Butt, the school was an obvious target for a degree of attention from counter-terrorism police.

(iv) The school was less than a mile from Butt's home address. The evidence from Butt's wife suggests he was teaching there most afternoons. All that Witness L identified by way of investigation was a Google search [day 24, p 133-4], clearly inadequate.

(v) The police were aware of Shahid's links to the school from a discussion with him on 29/3/14 after a Department for Education query. Both the police and MI5 were aware of his links to the Ad Deen primary school from the port stops. Witness L agreed that the dots could have been joined and that this would have given them a better opportunity to identify Butt's association with Zaghba who also taught there [Witness L, day 24, p137]. This would have provided an opportunity potential to investigate Zaghba [Witness L, day 24, p138].

<u>Failures to investigate: Summary</u>

53. Having set out the failures admitted and apparent from the evidence, it is necessary to stand back and consider whether reasonable steps were taken to protect life. As noted above, it is important to take a staged approach: the question of causation is a subsequent step in the analysis.

54. The failures identified above are cumulative. In considering steps which the authorities might reasonably have taken to avoid the risk, the assessment must address what would have been appropriate if the investigator had known *all* that he ought reasonably to have known at a given stage in the investigation.

55. A reasonable investigator would have investigated the Ummah Fitness Centre and the Ad Deen primary school, and it is likely that this would have identified the suspicious nature of Butt's relationship with Redouane and Zaghba. This may have led to monitoring their activities and drawing them into the investigation. Taking the information which would have been revealed about the gym and school together with the other facts that were missed, as set out above, concern about Butt is likely to have increase and the need for closer monitoring is likely to have been appreciated.

56. 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.

57. It is not now possible to say with certainty what more might have been revealed, had all reasonable investigative steps been taken which in fact were not. The failure to take steps at the time, and the precautions taken by the attackers (such as disposing of their main mobile telephones) mean that the evidence as to what might have been revealed has been lost.

58. This is not, however, something which exonerates the authorities. It is wrong to place reliance, as CTI do, on *"the risk evident from Butt's activities"* (paragraph 24b, by which we understand the risk *actually* evident rather than the risk which reasonable investigation would have uncovered), or on the fact that *"even after intensive post-attack investigations by MI5 and all of the work of the Operation Dativa l team, there is no evidence that anyone other than the attackers knew the attack plan and only fragmentary evidence that one person was aware that some attack was in prospect"* (paragraph 24d). While the latter is an accurate reflection of the subsequent work, opportunities were available at the time which were not available to the Operation

Dativa team. Operation Dativa could not retrospectively monitor Zaghba, Redouane or the gym, could not retrospectively take technical measures such as installing eavesdropping devices, and could not retrospectively assess what might have been forthcoming from human sources at the time. It did not attempt to do so: its task was to inform the inquest about what had happened, not to offer a view on what might have been discoverable.

59. Assessed against the standard of what the authorities knew about Khuram Butt, what they ought to have known about him, and what they ought to have known about Rachid Redouane and Youssef Zaghba, it cannot be said that they took reasonable steps to prevent the risk to life.

Rental of vehicles

60. The coroner has heard evidence that there is now a voluntary scheme in place in relation to vehicle rentals.

61. It is submitted that, given the clear threat from low sophistication vehicle as weapon attacks, the surrounding systems inform the steps that are reasonable under the Article 2 operational duty.

62. The court has heard evidence as to how capability is assessed. It is plain that, apart from any psychological factors, all that is required for an individual to have a capability to carry out a vehicle attack is that they should have the capabilities to hire a vehicle: essentially, a driving licence and a relatively small amount of money. The requirement for a knife attack is still lower. There is less opportunity to obtain evidence in relation to capability and planning of low sophistication attacks [Witness M, Day 19, p 156].

63. It is submitted that the difficulty of detecting low sophistication attacks heightens the need for monitoring in order to discharge the Article 2 operational duty. This is because there are no other measures which may mitigate a real and immediate risk to life. If systems were in place to enable the Security Service to be alerted to vehicle hire or attempted vehicle hire and detect a possible vehicle as weapon attack, a comparatively lower level of monitoring to seek to identify attack planning might be sufficient in combination to such systems. The fact that the Security Service and the

police knew that Khuram Butt could hire a van at any time without their knowledge, just as Masood had done in March 2017, and that preparation for a vehicle as weapon attack by hiring a vehicle would not trigger any notification to them, means that a higher level of monitoring should have been in place in order to detect planning by other means.

64. It is not accepted that a reasonable investigator, alerted to Butt's attempts to hire a vehicle, would reasonably have regarded them as unsuspicious. In particular, it is noted that the attempts to hire a 7.5 tonne lorry are inconsistent with this. It is unlikely that an innocent person effecting removals that could satisfactorily be carried out with a 2.5 tonne van would attempt to hire a 7.5 tonne lorry; and it is unlikely that a person needing a 7.5 tonne lorry for removals would then conclude that a 2.5 tonne lorry would be sufficient. In all the circumstances, a reasonable investigator would have been seriously concerned by this behaviour, and would have acted.

Causation

65. The final stage in the analysis is to consider whether this made any difference to the outcome: that is, causation.

66. In considering this issue, the following considerations apply:

(i) It is not necessary to prove causation on the balance of probabilities. It is only necessary to prove that the deceased lost a substantial chance of surviving as a result of the breach: see *Van Colle v Chief Constable of Hertfordshire* [2009] 1 AC 225 at [138].

(ii) Hindsight is relevant. Although the question what steps the authorities ought to have taken is to be assessed by reference to what they knew or ought to have known at the time, causation is a question of pure fact and any available evidence may be relied on.

Causation: Before the attack

67. It is submitted that CTI's submissions adopt an approach to causation which is too narrow. There is a focus on surveillance on the day, and on what would have happened if MI5 had learned of Butt's attempts to hire a van (see paragraphs 18, 19

and 24e), but although it is important, it is only one part of the analysis. Moreover, CTI's submissions appear to fall into the trap of considering what would have happened if the authorities had learned of these events knowing what they *actually* knew, rather than what they ought through reasonable investigation to have discovered.

68. The attack was planned over the course of several months, rather than being spontaneous. The attackers were in mutual contact by 14 January 2017 (DC5021/3). Evidence of attack planning can probably be dated to the meetings of 7 March 2017 and the purchase of the operational telephone on around 15 – 17 March 2017. This means that there was a period of months during which an attack could have been detected.

69. It is submitted that there is a *"substantial chance"* that a higher level of monitoring would have detected such planning. It is important that the paucity of *actual* evidence of attack planning, in the context of a failure to investigate, is not used to suggest that there was no evidence that might have been uncovered through proportionate investigative steps.

70. For example:

(i) There is at least a *"substantial chance"* that a greater level monitoring of the Ummah Fitness Centre might have revealed evidence of attack planning, though as no such monitoring was undertaken, this cannot be conclusively proved.

(ii) There is at least a *"substantial chance"* that more intensive monitoring of. Redouane and Zaghba would have revealed evidence of attack planning. They were in regular telephone contact with Butt, were using his car, Redouane was attending at Butt's home address and travelling with Butt to Leeds to meet ALM terror suspects, and all three men went swimming together. L agreed that it was possible, if not probable, that attack planning was being discussed around the time of the purchase of three identical knives on 15 May 2017 [day 25, p 118].

(iii) L agreed that it is possible that more intensive monitoring could have led to the discovery of the van hire and / or its collection and the purchase of gravel [day 24, p 173]. It is submitted that such monitoring would have been justified. It is submitted that the need for this would have been even more apparent the authorities learned more, as they should have done, at earlier stages in the investigation.

71. For these reasons, it is submitted that there is a *"substantial chance"* that proper investigation would have given the authorities warning that an attack was likely at a much earlier stage than the afternoon of 3 June 2017 when the process of hiring a van began. With such warning, the priority level would have changed and steps would have been taken to disrupt or prevent an attack. It has not been suggested that the authorities would have been powerless to act had they obtained direct evidence of attack planning at an earlier stage: plainly there are a number of tactical options in those circumstances.

Causation: the day of the attack

72. It is also wrong to conclude that the no action would have been taken upon receipt of intelligence that Khuram Butt was taking steps to hire a van.

73. It should be noted that the circumstances of this were intrinsically suspicious. In particular, the separate booking of a 7.5 tonne lorry [DC5022/6] should have given rise to concern, as set out above.

74. Witness M confirmed that if there was intelligence that a target was trying to hire a van, that would prompt further inquiries [Day 20, p 81, l 15]. He stated that if he learnt from an MI5 phone call that Butt was trying to hire a van or truck, and in the absence of surrounding intelligence to say it is particularly significant, or an overarching operation that would be compromised (and he did not suggest there had been one), then he would have taken action, having regard to the recent attacks. He said this was even without hindsight. [day 19, p 131-132]. If he had learnt of the purchase of gravel that would have fitted into some of the known threat they had seen before and some of the ISIS propaganda as to how to conduct these types of attack and so that would have added to suspicions causing him again to take steps to have

Butt stopped [pp 132-3]. Likewise if the driving into the city centre was discovered [p 133-4].

75. L stated that it was possible that the cover story would not have been detected [day 25, pp 120-121].

76. L's surprising assertion that MI5 would not have taken action is to be approached with care given that he is necessarily engaging in a degree of speculation as to what investigators would or might have done. The possibility of intervening cannot realistically be ruled out, especially given the candid concessions by M as to the climate after the attacks in Westminster and Manchester, and especially given his answers that *"it would depend on the context"* [day 25, p 122], and that driving into the city centre would be less consistent with any cover story, even if picked up [p 123]. Moreover, L stated that the decision as to whether to stop the van would have been a decision for the police rather than MI5 [p 123].

77. L mis-understood M's evidence. L wrongly suggested [p 123, l 19-21] that M's answers had been on the basis that MI5 had recommended stopping. However M had said nothing of the sort in his evidence. M's evidence that he would have had the van stopped was not on the basis of such a recommendation from MI5 but were his evidence as to what he as the CTSIO would have chosen to do, for the reasons he gave.

78. In any event L went on to agree that it was possible that the decision would be made to stop the van [l 22-24]. His subsequent words qualifying this (if advice had been given by MI5) are irrelevant, as M never based his decision to stop on having been seeking MI5's advice or recommendation.

79. Moreover, any suggestion that it is impossible that the van would have been stopped, had the investigation been conducted as it reasonably should have been, would be based on impermissible assumptions, favourable to the authorities, about how this information might have been assessed against the background of the intelligence which a reasonable investigator would have obtained.

80. In all the circumstances, there is a *"substantial chance"* that if this information had been known at the time, steps could have been taken to prevent the attacks.

81. Accordingly, it is submitted that the narrative conclusions in each case should refer to the *possibility* that the attack could have been prevented had it not been for unreasonable failures in the investigation into Khuram Butt.

Public Interest Immunity

82. By a ruling dated 10 June 2019, the Chief Coroner upheld a claim made by the Secretary of State for public interest immunity in full. He indicated (at paragraphs 44 – 45 of the ruling) that he was satisfied that he could discharge his statutory duty notwithstanding this decision.

83. The Coroner indicated that he would keep the position under review, as counsel for the Secretary of State accepted he should.

84. The "statutory duty" to which the Chief Coroner was, at the time of his ruling, making reference was the general duty under the Coroners and Justice Act 2009 to inquire into a death. It was not at that stage understood that section 5(2) of the Act was engaged, and that this duty extended to requiring a sufficiently effective, and a sufficiently public, exploration of the issues to satisfy the procedural obligation under Article 2 of the Convention.

85. It is noted that the "indicative scope" provided by way of an Annex to the directions from the third Pre-Inquest Review made reference to *"some consideration"* of what was known to MI5 about Khuram Butt and his associates.

86. It is submitted that, having heard the evidence and having determined (as he should now do) that Article 2 of the Convention is engaged, such that his inquiries are required to satisfy the procedural obligation under the Convention, the position should be reviewed:

    (i) to assess whether *"some consideration"* of what was known to MI5 (and counter-terrorism police) about Khuram Butt was the threshold that would have been set by the indicative scope if it had been appreciated that the Article 2 obligation arose;

(ii) to assess whether, in light of the evidence that has now been heard, there is additional material which should be obtained which had not previously been seen by the Inquest team or considered to fall within scope (as to which, if any such material proved relevant, any claim for public interest immunity if made would need to be considered), noting that there have been instances in which it has become apparent that matters of clear relevance were not disclosed through the statement of Witness L for reasons other than perceived sensitivity (see, for example, the answer given at day 25, p 128, line 18, about the report by a member of the public);

(iii) to assess whether, in light of the evidence that has now been heard and the procedural duty under Article 2 of the Convention, there is any further document or information as to which the '*Wiley* balance' would now be differently determined. This might be the case, even where the case for non-disclosure is unchanged, if it became apparent that the significance of the document or information, and hence the public interest in disclosure, was increased. For example, the evidential significance of a document might not have been fully appreciated or the need to fulfil the procedural obligation under Article 2 might affect the balance.

(iv) to assess whether the Article 2 procedural duty can properly be satisfied without considering sensitive evidence, if the outcome of the '*Wiley* balance' remains unaltered. It might still be necessary to consider the possibility that a public inquiry which can consider restricted evidence is necessary to fulfil this duty.

87. As the Chief Coroner noted when ruling on the application for public interest immunity, it is not a straightforward task to make submissions on the relevance of material without knowing what the material is. We do not attempt to repeat that exercise, trusting that it is sufficiently clear from the questions that have been asked of relevant witnesses, particularly Witness M and Witness L, what are the topics which we would like to have explored in greater detail and the relevance of them.

88. However, it is right to note that central to the Coroner's assessment of the reasonableness of the investigations are questions as to the steps and coverage that

MI5 were in fact pursuing. The coverage and monitoring is also relevant to the repeated assertions by M and L that there was no evidence of attack planning: if the coverage was limited in type or duration then this absence of evidence of attack planning obviously carried less weight.

89. All interested parties, and most of all the families, are keen that the Inquests should be concluded within the established timetable. Difficulties and distress would undoubtedly be caused if the result of any review was that further evidence was required and that delays in concluding the inquests necessarily resulted. However, as the Coroner rightly concluded in the ruling on the original public interest immunity application, this is not a factor which it would be lawful to take into account in reviewing the position. Full and fearless compliance with the investigative duties to which the Coroner is subject by statute, limited only to the extent that public interest immunity is properly available and does not prevent compliance with those duties, is in the interests of all concerned.

Protective Security: General Duty

90. On 22 March 2017, a terrorist attack took place on Westminster Bridge. Khalid Masood drove a hired vehicle, a Hyundai Tucson, into pedestrians on the south side of Westminster Bridge. He killed four and injured more than forty pedestrians before crashing the vehicle and continuing the attack on foot with knives.

91. This sadly represented part of a clear and increasing trend of the use of vehicles by terrorists. It was foreshadowed not only by a significant number of previous vehicle as weapon attacks over the years (see list at DC8342) but also by propaganda encouraging the use of vehicles in locations with the "maximum number of pedestrians and least number of vehicles" (see summary at DC8208/3 of the article entitled "The Ultimate Mowing Machine").

92. The use of vehicles as weapons represented a newer concern than the use of vehicles to carry explosives to the vicinity of a building (day 31, p 97). It was nevertheless a concern which should have been well established by the time of the attacks in Nice in July 2016.

93. It is obvious – indeed, almost axiomatic - that vehicle as weapon attacks are likely, by their nature, to take place on or around roads. It is also obvious that measures which may mitigate against the risk to buildings from explosives, while valuable in themselves, are not necessarily likely to protect pedestrians from vehicles.

94. On behalf of the families, we submit that CTI are plainly right to say both that there was an arguable breach of the general duty, and that failings should be recognised.

95. The description of the current systems by CTI is noted and agreed.

96. The families agree with and endorse the systems failings identified by CTI at paragraph 44. Of particular concern to the families was the evidence of Siwan Hayward, which was clear: highway authorities do not systematically risk assess roads to identify the risk of vehicle as weapon attack. [Day 31, p 201] They could do so, although this would require the input of counter-terrorism security advisers. [Day 30, p 223]

97. In relation to the first systemic failing, it is clear that the focus of counter-terrorism security advisers is on *"crowded places"*. This is a concept which originally focussed on quite geographically defined areas like buildings or particular installations [DACSO, D'Orsi, day 28, p 88]. London Bridge did not fit the criteria for a crowded place at all, and in fact did not fit in any national criteria [PS Hone, day 29, p 156]. When it was put to Sarah Nacey that this was an *"obvious flaw"*, she accepted that it was something that the Home Office and CT Policing *"have recognised, and are looking to rectify"* [Nacey, day 31 p 169 l 3]; this amounts to an admitted rather than an arguable systemic issue.

98. London Bridge was not an isolated anomaly. PS Hone's evidence was that *"I had other sites that didn't fit the national criteria, including London Bridge, it wasn't the only location that didn't fit the criteria that I was talking about at various security groups."* [Day 29 p 164] It was only because City of London Police are *"forward thinking"* that PS Hone was given the freedom to enhance protections above the national criteria and use *"a more intelligent way of deploying"*. [Day 29 p 164] While he is to be commended for his approach, such reliance on individuals is far from satisfactory as a system.

99. In relation to the second systemic failing, the lack of any systems specifically designed to address protective security on highways was clear. It is extraordinary that assessment of where hostile vehicle mitigation measures are required was not, and still is not, conducted by reference to streets, given that any vehicle attack targeting pedestrians will almost inevitably begin with a vehicle driving from a road on to a pavement or into a pedestrian area. CTI are right to identify the lack of any system to achieve this.

100. The effect of this is that highway authorities such as Transport for London have not received any advice about crowded streets. Conversations in early 2018 about the vulnerability and attractiveness of streets that did not include premises that were [themselves] attractive features "dried up" [Day 31, p 29].

101. In relation to the third systemic failing, the families also agree. While there are undoubtedly a range of issues to be considered, the speed with which barriers were erected after 3 June 2017 demonstrates that the issues with delay were systemic and institutional rather than practical.

102. There is a clear causative link between the failure to establish a system and the deaths on London Bridge itself:

(i) It is likely that in any systematic risk assessment process, London Bridge would have been identified immediately and prioritised for urgent action. It had a large number of features identifiable as attractive to terrorists: an iconic location, comparatively light/fast moving traffic even at peak times, wide pavements which were crowded with pedestrians at peak times, low kerbs, a lack of street furniture or other obstacles, and a long, straight stretch of road with no escape routes such as side streets, doorways or (as there might be on bridges) parapets. PC Hone's evidence was that although there are other roads that have the same characteristics, *"in terms of the City of London, [London Bridge] stuck out"* [Day 29, p 153]

(For the avoidance of doubt, the families accept that there would have been no justification for limiting any risk-assessment to bridges, but note that some London Bridges, including London and Westminster Bridges, exhibit the above characteristics far more markedly than most other London roads. In

particular the width of the river and the limited number of bridges means that there are few other roads in the capital which have such long stretches without any means of escape, and on which there are likely to be found so many pedestrians.)

(ii) It is likely that in any systematic risk assessment process, proper and proactive steps would have been taken to introduce temporary vehicle mitigation and that options other than the National Barrier Asset or permanent solutions would have been considered. Had Transport for London been involved as the Highway Authority, the evidence is that "categorically" action would have been taken [Day 31, pp 7 – 8] and that Transport for London has access to *"a huge range of vehicle restraint barriers, crash barriers, street furniture, planters, so we would have been able to work on the advice of a counter terrorism security advisor about measures that could have been put in place to reduce the vulnerability of that location."*

(iii) It is likely that the lack of existing systems is partly responsible for the perception by individuals, prior to the attack, that the erection of temporary vehicle mitigation on London Bridge, a site falling outside national criteria, was something which could not have been achieved in the short to medium term other than 'in extremis'. This meant that even when London Bridge was flagged as one of two particularly vulnerable locations to hostile vehicle attack in the City of London, it was not considered that there was a "fast time tactical option". Had a programme of mitigating risks on roads been established by this time, it is likely that the process of assessing, funding, procuring and installing hostile vehicle mitigation, and the options for temporary measures, might in any event have been more familiar and efficient.

(iv) It has not been disputed that hostile vehicle mitigation measures can provide effective protection against vehicle as weapon attacks.

(v) Although not every road requires hostile vehicle mitigation, none of the interested parties has suggested that it is unnecessary or inappropriate on London Bridge. On the contrary, arrangements continue towards installing permanent barriers.

(vi) An appropriate barrier or other measure would directly have saved the life of Christine Archibald: [Riggs, day 2, p 123].

103. However, contrary to the submission of CTI, we submit that the systems issue is of relevance to all of the inquests.

104. The vehicle as weapon attack was plainly a significant part of a wider plan. The use of a vehicle attack followed by a knife attack on foot had been foreshadowed by the similar attack on Westminster Bridge and the Palace of Westminster. It had evidently been some time in the planning as such an attack.

105. It is a real possibility, if not probability, that barriers on the bridge would have deterred the attack entirely. It is also possible that it would have caused the attackers to find a different location altogether where they could carry out their two stage terror attack (eg Oxford Street which had no barriers and was mentioned on the screen of the phone in their van). Having regard to both possibilities, it is highly likely that, had vehicle mitigation been in place, none of the deceased would have been killed.

106. It is sheer speculation to suggest that a knife attack would have been carried out in Boro Bistro even if the vehicle attack had been effectively prevented or deterred.

107. The victims of the knife attack in Boro Bistro are individual human beings. They are not to be treated as proxies for any others who might have died in an entirely different attack, had barriers been in place on the bridge. Any attack would have been a tragedy, but the lives of those at the heart of this inquest might not have been lost in those circumstances.

108. Accordingly, narrative determinations should make reference to the lack of any system for assessing the risk of vehicle as weapon attacks on the road network in each case, notwithstanding the obvious risk. It may be appropriate to vary the formulation: for example, the following words might be added to those proposed by CTI:

> *"It is possible that the attack would not have taken place in the same location or at all if such barriers had been in place."*

Protective Security: Operational Duty

109. Notwithstanding the submissions of CTI, the families submit that the particular warnings which the authorities received about the vulnerability of London Bridge to a vehicle as weapon attack amounted to the identification of a real and immediate risk to life such that an operational duty arose.

110. It is acknowledged that this submission may ultimately be academic. However, it is advanced on the basis that (a) it is submitted it is meritorious, and (b) in any event, the Coroner has not yet received the submissions of the relevant state authorities, and it is possible that the submissions CTI make as to the general duty will not be generally agreed.

111. The basis for identifying a real and immediate risk to life is that PS Hone:

(i) Identified London Bridge as a *"top 5"* 'crowded place' – notwithstanding that it did not fulfil the definition if the national criteria were applied [WS5014/14]

(ii) Raised concerns about London Bridge with the security group [Day 29, p 164]

(iii) Raised the concern with his line manager, a police Superintendent, the day following the Westminster attacks, that *"Apparently London Bridge wasn't even mentioned during last night's SG and I believe that this is our most vulnerable location from marauding vehicle attack along with XXX."* [WS5014/17]

(iv) Added London Bridge to the City of London Corporation estate risk assessment matrix, informing the CoLC that it should be considered the most vulnerable to low sophisticated attacks using a vehicle.

(v) Commissioned a report from Cerastes into London Bridge notwithstanding that it fell outside national criteria; which report said that consideration should be given to the placement of vehicle mitigation measures. To put this another way, Cerastes was asked specifically to give a view on London Bridge, identified a likely proposal for an attack which proved remarkably similar to the attack which was later carried out, and identified vehicle mitigation as a measure which could be taken to mitigate the risk that had been identified.

(vi) Informed the Security Group of receipt of the report [Transcript day 29, p 177] and provided copies of the report to anyone at the Security Group who wanted one, and put copies within Special Branch, with the result that there are likely to have been a number of people who saw it [Transcript day 29, pp 185 – 6]; also shared it with Mr Woolford who was working for the City of London Corporation at that time.

(vii) As a result, formulated a summary with a specific recommendation that consideration should be given to hostile vehicle mitigation on London Bridge. This recommendation was sent to his line manager, in the form of a four page summary of the wider report of which a page is devoted to setting out the reasons for his concerns about London Bridge, and his recommendations [WS5014/33];

(viii) Emailed his line manager following the attack in Manchester, with high importance, while he was on paternity leave, to say *"I HIGHLY RECOMMEND that serious consideration is given to carry out my suggestions from the friendly hostile report."* This was a reference to the above summary [WS5014/34]

112. In all the circumstances, it is clear that the authorities ought reasonably to have known – and did in fact know – that London Bridge was particularly vulnerable to a vehicle as weapon attack.

113. The vulnerability of London Bridge is, in any event, obvious. It was highlighted repeatedly by members of the press, the public and even within public authorities between the attack on Westminster Bridge and the attack on London Bridge: for example -

(i) By TfL staff for whom this appears to have been an immediate thought following the Westminster Bridge attack: WS5011/64 (referring to the attack, they raise the question of the risks "where there are regular concentrations of pedestrians on or near the TLRN" (meaning Transport for London Road Network)

(ii) By Caroline Dwyer on 24 March 2017: [Woolford, day 30, l 24]

(iii) By the BBC News website on 28 March 2017 [DC8333/2]

(iv) By a member of the public commenting on the Talk London forum, also on 28 March 2017 [DC7846/9]. This post was widely shared within the Mayor's office and Transport for London, but although a reassuring reply was prepared, it did not prompt any of those whose input was sought to take active steps to secure that barriers or bollards were installed on London Bridge as the post suggested.

114. It should be noted that the three latter were not commenting on the vulnerability of "bridges" in general, but the obvious vulnerability of London Bridge, of all of the London Bridges, in particular.

115. It should also be noted that the aftermath of the Westminster Attack was a time at which the threat level was at *"severe"*, and that in the immediate wake of an attack there may be considered to be a particular risk of 'copycat' attacks, exhibiting similar methodology. This increases both the reality and the immediacy of the likely threat.

116. In light of these warnings, and the evident nature of the risk, London Bridge should have been identified as a site at risk immediately and steps should have been taken.

117. It is submitted that CTI's analysis at paragraph 46, which is to consider each particular state agent separately does not represent the correct approach.

118. The European Convention on Human Rights is a Council of Europe Convention to which the United Kingdom is a signatory. In the event of an alleged violation of the Convention, proceedings are brought against the government of the United Kingdom on the basis that it has failed to comply with its treaty obligations.

119. Within the national legal framework, responsibility for fulfilling an 'Osman' type duty may devolve on particular national bodies. However, the responsibility remains that of the Government.

120. For this reason, the approach of considering particular state agents, and assessing what they knew and how they acted is not, ultimately, the right one. To take this approach is to permit the Government as a whole to derive advantage from the fact that a multitude of agencies failed to communicate and co-ordinate a response to the

threat. The question which should be asked is whether the public authorities considered collectively took appropriate steps to safeguard life. It is unnecessary (and inappropriate) to apportion blame between public authorities if there is no agreement as to where the responsibility to take action lay, but the operational failure should be acknowledged.

121. In any event, it is submitted that the City of London police were aware, on the information before them, of a real and immediate risk to life. They failed to take reasonable steps to protect life.

122. The submissions above as to causation of the deaths apply equally to the operative duty. Had proper action been taken in response to the real and immediate risk to the lives of those who might fall victim to a terror attack on London Bridge, those lives might have been saved. Likewise, barriers or bollards on the bridge might have prevented the further deaths caused at the south end of the bridge.

123. Accordingly, it is submitted that the wording proposed by CTI might be supplemented, in that the final sentence might read

> *"The failure to implement hostile vehicle mitigation measures on London Bridge was due to a lack of adequate systems for assessing the need for such measures on the bridge and implementing them properly, and a failure by the authorities to put measures in place when the particular risk on London Bridge was raised with them."*

PFD Report

124. The families have no objection to the order of submissions or the timetable proposed.

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24 June 2019