INQUESTS ARISING FROM THE DEATHS

IN THE LONDON BRIDGE AND BOROUGH MARKET TERROR ATTACK

RULING ON ARTICLE 2 AND DETERMINATIONS

Introduction

1. These Inquests concerned the deaths of eight innocent victims of the terrorist attack which took place in the London Bridge and Borough Market area on the evening of 3 June 2017. I conducted the Inquests in the capacity of a judge nominated under paragraph 3 of Schedule 10 to the Coroners and Justice Act 2009 ("CJA"). With the general agreement of Interested Persons, it was decided at an early stage in the proceedings that the Inquests should be held without a jury.

2. At the end of the hearing, it was necessary for me to consider and rule upon certain legal issues and to deliver a determination in relation to each death. I stated my conclusions on the legal issues and recorded my determinations, indicating that more detailed reasons would follow in writing. This Ruling sets out my reasons for deciding the issues of law as I did and for the determinations which I recorded.

3. Although this Ruling includes a brief factual background section and makes reference to relevant features of the evidence in respect of each issue, it is impossible to capture the detail of the evidence in such a document. Therefore, reference should also be made to the very detailed summing-up of the evidence which I delivered on the last two days of the Inquests hearing (transcripts of which can be found on the Inquests website). The summing-up sought to set out the full facts of the deaths of each of the victims as well as details of the attacks on numerous other members of the public.

4. This Ruling necessarily concentrates on the controversial issues set out below. However, these are only part of the story told by the evidence. The Court heard of an attack of extraordinary sustained brutality, committed by three men motivated by a twisted, false theology. The evidence also gave numerous accounts of acts of

remarkable heroism by members of the public, including those who died themselves, and by members of the emergency services. Kirsty Boden and Helen Kennett were off-duty nurses who instinctively went forward to help the injured and were both savagely assaulted. Wayne Marques, Charles Guenigault, Leon McLeod and Ignacio Echeverria bravely faced the attackers at close hand. Various others harried and distracted the terrorists while armed officers were on their way to the scene. The armed officers themselves, arriving at speed, distinguished themselves by their courage and professionalism in the confrontation with the attackers and in its aftermath.

5. After the three terrorists had been shot, the police and other emergency services had to mount a massive operation to search for potential further attackers or devices; to evacuate the public; and to convey the seriously injured to hospital. Although searching questions were properly asked about aspects of that operation and there are lessons to be learned, overall it was well managed, as Superintendent McKibbin explained in his evidence. A hallmark of its success is that many critically injured people were evacuated and received life-saving care. On the evidence, those who could not be saved had all suffered terrible injuries which could not realistically have been treated at the scene. All eight of them had apparently died within 15 minutes of the attack beginning.

The Issues

6. The issues to be decided and the way in which I resolved them can be summarised as follows:

(1) Was the procedural obligation of the state to establish a Convention-compliant investigation under Article 2 of the European Convention on Human Rights ("ECHR") engaged in relation to any or all of the Inquests? Those representing the bereaved families argued that the obligation was engaged, both (a) because there was an arguable case that the authorities investigating Khuram Butt prior to the attack had breached an Article 2 operational duty to take reasonable steps to safeguard the lives of the public and (b) because there was an arguable case that there had been a breach by the state or state bodies of Article 2 general and/or operational duties in connection with protective security measures. I concluded that the procedural obligation was engaged on the former basis; namely, an *arguable*

case of breach of an operational duty in connection with the pre-attack investigation. As a result, it was not necessary for me to decide whether the obligation was engaged by reference to arguable breach of duties concerning protective security. However, in deference to the detailed arguments I had received, I expressed the view that there was an *arguable* case of breach of the Article 2 general duty relevant to the deaths of Xavier Thomas and Christine Archibald. There was not an arguable case of breach of the operational duty in relation to protective security measures.

(2) What should be the form of determination for each of those who died? With the agreement of all Interested Persons who expressed a view, I concluded that the determination in each case should include (a) the short-form conclusion that the deceased person had been unlawfully killed; and (b) a narrative paragraph summarising the means and immediate circumstances of death. Those narrative paragraphs were framed in terms which were agreed by all Interested Persons.

(3) Should the narrative for each of those who died include any criticism of the pre-attack investigation? I concluded that it should not do so. In my judgment, the investigation was generally rigorous and thorough. In the final analysis of the facts and evidence, I was not persuaded that the authorities had missed opportunities which would in practice have led to the attack being prevented and lives being saved. Accordingly, while the narrative ought to include reference to the pre-attack investigation, it should not be critical of that investigation.

(4) Should the narrative for any of those who died include any criticism of policies, procedures or decisions in connection with protective security? I concluded that the narrative for each of Xavier Thomas and Christine Archibald should record that there were weaknesses in the systems for assessing the need for, and promptly implementing, relevant protective security measures (including in this case hostile vehicle mitigation ("HVM") measures on London Bridge). Without such weaknesses, suitable HVM measures may realistically have been present.

(5) Should the narrative for any of those who died include other judgmental conclusions? I concluded that each narrative should recognise that there had been multiple warning signs about the extremist views and conduct of one attacker

(Khuram Butt) which were known to a number of his close family members prior to the attack but which were (in the main) not reported to the authorities.

Relevant Facts in Outline

Background to the attack

7. At the time of the attack, Khuram Butt was aged 27 and had lived in the UK for most of his life. He had started to show signs of Islamic extremism in around late 2013 and early 2014. By the end of 2014, it seems that he was associating with figures from the extremist group Al Muhajiroun ("ALM") and he came to the notice of the Security Service, MI5.

8. In mid-2015, MI5 received intelligence which suggested that Butt aspired to commit an attack in the UK. As a result, a priority investigation was opened into him with an initial priority rating of P2H. In that investigation, Butt was the primary (Tier 1) Subject of Interest ("SOI"). The investigation was a joint operation between MI5 and SO15, the Counter-Terrorism Command of the Metropolitan Police Service ("MPS"). The operation was intelligence-led, meaning that it was guided by intelligence gathered primarily by MI5.

9. From the start of the investigation, a range of means were used to obtain information and intelligence about Butt. The intelligence consistently revealed that he held and expressed extremist views, but never indicated any activity suggesting active planning of an attack. However, it is right to add that he displayed signs of counter-surveillance behaviour throughout the investigation. There were periods during which he disengaged from ALM associates, and periods of re-engagement with them. At one stage, in late 2015 and early 2016, he was believed to have plans to travel overseas, possibly to fight in Syria for the brutal regime of ISIS. Steps were taken to enable the authorities to counter that risk.

10. The investigation remained live right up to the time of the attack. However, it was suspended on two occasions: from 26 February to 24 March 2016; and from 21 March to 5 May 2017. After the end of the second suspension, consideration was being given

to closing the investigation because it had been running for two years without unearthing actual terrorist activity or planning. Coverage of Butt was nevertheless being maintained throughout the month leading up to the attack.

11. It appears that Butt first came into contact with Rachid Redouane in December 2016 and with Youssef Zaghba in January 2017. Neither of those men was known to the Security Service and neither had been investigated for any significant criminal conduct in the UK. Both were relatively recent entrants to the country who had few close friends. Butt associated with them through a gym in Ilford, the Ummah Fitness Centre ("UFC"), and had other apparently social meetings with them through the early months of 2017 (including at one stage regular Sunday swimming trips). There was substantial and regular telephone contact between the three men. MI5 and SO15 had not identified Redouane or Zaghba as associates of Butt prior to the attack, although they had intelligence linking Butt to an associate called "Rashid".

12. The attackers' first action which we can now directly and clearly link to attack preparation was the purchase by Redouane of three large ceramic knives on 15 May 2017. Two weeks' later, on 29 May 2017, they met shortly after midnight outside the UFC gym and went for a walk together while Redouane left his mobile phone on a crate near the gym (an anti-surveillance tactic). On the following day, 30 May 2017, Redouane purchased 12 bottles of wine which were later used to make petrol bombs, using material later found at Redouane's flat. There may have been a further meeting on the evening before the attack, 2 June 2017.

13. On the day of the attack itself, the men were all together by around 4.00pm, outside Butt's apartment block in East London. While there, Butt made a number of calls and web searches to hire a van. He booked with Hertz a Renault Master van, to be collected from B&Q in Romford later that day. The men then drove to that B&Q branch and collected the van. While there, they also purchased 29 large bags of gravel which were found in the back of the van after the attack. They left at shortly after 6.30pm, later returning to Butt's apartment block. There, they loaded the van with some chairs and a suitcase. It seems that the chairs were loaded as part of a "cover story" that the van had been hired to help a friend move house. The suitcase may well have contained the attack paraphernalia.

14. At shortly before 9.00pm, the attackers drove from the Barking area towards the City of London, entering the City at Aldgate just after 9.30pm. They drove in a circuitous manner within the City, which suggests that they might have been lost. At one stage, they parked for a short time before moving on. At 10.00pm, they drove across London Bridge from the north side, continued a short distance down Borough High Street, performed a u-turn and then returned to the north end of London Bridge.

Events of the attack

15. At 10.06pm, the attackers drove south over the Bridge again, this time mounting the east footway repeatedly. The van struck and injured many pedestrians. Xavier Thomas was thrown into the Thames and died quickly due to immersion. Christine Archibald was run over near the south end of the Bridge and suffered fatal injuries. At 10.07pm, the men crashed the van into railings outside the Barrowboy and Banker pub. In the van, they left a mobile phone which was running a directions application set with the destination of Oxford Street. Later investigations also showed that the attackers had made web searches about the Westminster area.

16. After the collision, the three men quickly left the van. They were armed with the ceramic knives (strapped to their wrists) and were wearing what appeared to be suicide vests (but which were in fact reasonably convincing fakes). They began stabbing people at street level, before descending to the courtyard of a restaurant, Boro Bistro. There, they attacked many more people. In this phase of the attack, they fatally wounded Sara Zelenak, James McMullan, Sébastien Bélanger, Alexandre Pigeard and Kirsty Boden.

17. At 10.09pm, the attackers returned to street level, moving south on Borough High Street and attacking further members of the public. Ignacio Echeverría Miralles de Imperial, who intervened to protect others, was fatally stabbed at this stage. Unarmed officers who confronted the attackers were themselves assaulted and injured.

18. At 10.10pm, the attackers turned into Stoney Street, which borders Borough Market. They attacked people in the road there and entered various bars as they moved up the street. Between 10.13pm and 10.14pm they were in Black & Blue restaurant, where

they stabbed three customers. After leaving, they moved back down Stoney Street. Noticing some unarmed officers and members of the public in the covered market area, they charged down Middle Road a short distance before returning. At 10.16pm, they were back in Stoney Street, where they set upon an unsuspecting bystander.

19. While the terrorists were engaged in that attack, an armed response vehicle of the City of London Police ("CoLP") arrived in Stoney Street. On seeing the officers arrive, the attackers immediately charged them, knives raised. They did not respond to verbal commands. The officers responded by firing on the attackers, each of whom fell to the ground. In the period that followed, CoLP and MPS armed officers kept the three men covered with firearms, because they believed them to be wearing suicide vests. The officers fired on Redouane and Butt on further occasions when they made movements which appeared consistent with attempts to detonate.

20. From the start of the attack, emergency calls were received in large numbers, first referring to the van striking people on the Bridge and shortly afterwards also to people having been stabbed. A large-scale operation was mounted by the police forces in the Capital, by the London Ambulance Service ("LAS") and by the London Fire Brigade. It involved hundreds of emergency service personnel attending the scene. The conditions which faced the emergency services for some hours were very challenging. It was not known whether there were further attackers, further potential attack sites or explosive devices. Various well-intentioned but inaccurate reports were received over the night, all of which had to be addressed.

The post-attack investigation

21. The post-attack investigation by SO15 began on the night of the attack. A critical consideration was to determine whether anyone else had been involved in the planning or commission of the attack. After extensive and impressive investigations, both MI5 and SO15 concluded that nobody else had been involved. There was one fragmentary piece of intelligence indicating that another person may have known that an attack was being planned, but nothing to suggest that even that person knew the time, place or details of the attack in advance.

Protective security

22. At the time of the attack, the footways of London Bridge had no physical protective security measures, such as barriers or bollards, in place to protect against "vehicle as weapon" attacks. A pedestrian guardrail which had been present up to 2009/10 had been removed as part of a wider project to de-clutter the London streetscape. The east pavement thus presented a long, broad, unprotected run for the van. The absence of HVM measures was naturally a subject of close consideration in the Inquests, given the increasing prevalence of "vehicle as weapon" attacks in the years running up to June 2017.

23. The roadway and footways of London Bridge are the responsibility of Transport for London ("TfL"), which is the statutory highway and traffic authority and as such has statutory powers to maintain the road surface and to install or remove barriers. The structure of the Bridge is the responsibility of the City of London Corporation ("CoLC"). Because barriers can affect the structure, any installation requires co-ordinated efforts by TfL and the CoLC.

24. The police and central Government cannot mandate the installation of protective security measures. Instead, they have systems for delivering advice and guidance to those responsible for buildings and public spaces. The Office of Security and Counter-Terrorism ("OSCT") at the Home Office and the National Counter-Terrorism Security Office ("NaCTSO") have a set of criteria which are security-sensitive and according to which a limited number of sites are classified as prioritised Crowded Places (in Tiers 1 and 2). There is a network of Counter-Terrorism Security Advisers ("CTSAs") who are police officers based at local forces and who engage proactively with those responsible for prioritised Crowded Places, advising on protective security measures. Sites other than prioritised Crowded Places may be the subject of advice by CTSAs on a discretionary basis (and may be designated locally as Tier 3 sites). There are also various advisory publications readily available, especially about the engineering of protective security (although not limited to that subject).

25. Government publications give a public definition of Crowded Place which has remained constant since 2012. That public definition is in extremely broad terms, as follows:

> "a location or environment to which members of the public have access that may be considered potentially liable to terrorist attack by virtue of its crowd density. What counts as a crowded place is a matter of judgment. Crowded places will be found in a wide range of locations including: sports stadia, pubs, clubs, bars, shopping centres, high streets, visitor attractions, cinemas, theatres and commercial centres. Crowded places can also include the public realm – open spaces such as parks and squares. A crowded place will not necessarily be crowded at all times – crowd densities may vary during the day or night, and may be temporary, as in the case of sporting events or open-air festivals."

Despite the apparently wide scope of that definition, a site will only be a prioritised Crowded Place if it satisfies the sensitive criteria mentioned above. One of the tests involves a requirement for crowd density. It also appears that there is a further test for qualification as a prioritised Crowded Place that the place must have a degree of geographical specificity (which would rule out sections of roadway). The latter test has apparently been justified because of the need for CTSAs to have a particular person (such as an owner) with whom to engage.

26. London Bridge was not, and is not, a prioritised Crowded Place. It did not meet the requisite test of crowd density. Even if it had satisfied that test, London Bridge could not have been classified as a prioritised Crowded Place because it lacked the necessary geographical specificity. On the evidence, CTSAs did not engage with TfL or the CoLC about protective security on London Bridge prior to 2017.

27. PS Hone of the CoLP is a trained CTSA who in 2016 had been appointed to a new role of Counter-Terrorism Co-ordinator for the force. He was working particularly on developing a police tactic for deterring and disrupting terrorist action, called Operation Servator, which involved highly visible deployments of officers. In late 2016 and early 2017, he gave instructions to an outside consultancy, Cerastes Ltd, to review particular areas with a view to advising on this tactic. In January 2017, he identified London

Bridge as an area for study, because he viewed it as a particularly attractive target for terrorists.

28. Following the attack on Westminster Bridge on 22 March 2017, PS Hone emailed his line manager to urge further Servator deployments and pointed out that London Bridge was the location in the City most vulnerable to a "vehicle as weapon" attack. He included the Bridge in a list of the five most vulnerable sites to terrorist attack in the City, explaining that it was an iconic site with predictably large crowds on the east footway.

29. On 27 April 2017, PS Hone received an interim report from Cerastes. The report identified possible attack methods on the sites under consideration. For London Bridge, they set out a method which closely matched that used in the subsequent attack. They recommended that the risk of attack on the Bridge should be countered by further Servator deployments or by the installation of HVM measures.

30. On 8 May 2017, PS Hone told Commander Woolford (a CoLP officer seconded to the CoLC for protective security work) that London Bridge was the most vulnerable site in the City to low sophisticated attack using a vehicle as a weapon. Shortly afterwards, at a CoLP Security Group meeting on 11 May 2017, PS Hone offered copies of the Cerastes interim report to members of the Group and undertook to produce a summary with recommendations. On or just before 16 May 2017, PS Hone produced the promised document. It included a recommendation to install permanent HVM measures to particular technical standards on the Bridge. The document had not been provided to the Security Group at the time of the attack. The permanent measures it proposed would likely have taken a matter of years to install.

31. In the immediate aftermath of the attack, Deputy Assistant Commissioner D'Orsi of the MPS took the decisive step of having barriers installed on a number of London bridges (and another bridge outside the capital). To do this, barrier components from the National Barrier Asset ("NBA") were procured. The installation took around six days to complete, with further refinements made later. DAC D'Orsi explained that she took this step because of concerns about copycat attacks and because it struck her as the morally right course of action. Before her intervention, the NBA could only be called

upon for special events or in response to specific intelligence. Before the London Bridge attack, there had been no specific intelligence to suggest that bridges were particularly under threat. Although there had been a number of "vehicle as weapon" attacks, other attack methods had also been used in the preceding period, including the use of a substantial explosive device in the Manchester Arena attack of May 2017.

Legal Background

32. The legal principles governing the decisions to be made were generally agreed, and can be summarised as follows for present purposes.

Inquest determinations

33. Section 5(1) of the CJA provides that the primary purpose of a coroner's investigation (which includes an inquest) is to ascertain the answers to four factual questions: who the deceased person was; and how, when and where he or she came by his or her death. Section 10(1) states that, at the end of an inquest, the coroner or jury must return a determination which answers those four questions. A Record of Inquest form which appears in the Schedule to the Coroners (Inquests) Rules 2013 must be used for recording the determination. Section 10(2) prohibits a determination from being framed in such a way as to appear to determine any question of criminal liability on the part of a named person or any question of civil liability at all. That form of words permits a conclusion that the deceased person was unlawfully killed, while preventing the determination from naming the person responsible (although the identity of the killer may be apparent from the evidence and any summing-up).

34. The question "how" the deceased person came by his or her death is usually the most significant. In most inquests, it is taken to mean "by what means" the deceased person died, a question addressing the immediate means of death: see *R v North Humberside Coroner, Ex Parte Jamieson* [1995] QB 1 at 24. It is often answered by the coroner or jury briefly stating the circumstances of death in section 3 of the Record of Inquest and writing in section 4 one of the familiar short-form conclusions (such as accident or suicide) as a headline "conclusion as to the death". However, it has always been legitimate to replace the short-form conclusion with a brief narrative.

35. Article 2 of the ECHR, the right to life, has been found by the Strasbourg Courts to include procedural obligations. These include in certain circumstances an obligation on the state to establish independent investigations into deaths. Such investigations must satisfy Convention standards, including a standard of effectiveness. In *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182 at [35]-[38], the House of Lords decided that, where that Article 2 procedural obligation is engaged in relation to a death and it has not been discharged by some process other than the inquest (e.g. a public inquiry or contested criminal trial), the ordinary approach to inquest conclusions must be modified in one respect to satisfy the Convention standard of effectiveness. The words "how the deceased came by his or her death" in the statutory provisions should then be interpreted to mean "by what means and in what circumstances the deceased came by his or her death." In practical terms, this may require the coroner to return or elicit from the jury a narrative conclusion as to death in a more expansive form and in more judgmental terms.

36. Setting aside categories of case where the Article 2 procedural obligation has been held to be automatically engaged (such as violent deaths in state custody and deliberate killings by state agents), it is engaged where on the evidence there is an *arguable* case that the state or its agents committed a breach of a substantive Article 2 duty in relation to the death. See: *R (Humberstone) v Legal Services Commission* [2011] 1 WLR 1460 at [52]-[68] and *R (Letts) v Lord Chancellor* [2015] 1 WLR 4497 at [71]-[91].

37. There was some debate about the threshold suggested by the test of "arguable" breach. Counsel to the Inquests cited the comment of Hickinbottom J in *R (AP) v HM Coroner for Worcestershire* [2011] EWHC 1453 (Admin) at [60], that the threshold was "anything more than fanciful". Counsel for the bereaved families relied on that gloss. Counsel for the Secretary of State and for the MPS submitted that it was potentially misleading, and that the Court should instead apply the test of an arguable or *prima facie* case, familiar in other legal contexts. In my judgment, the difference between the expressions of the test is not very substantial. Each makes clear that a low test is to be applied, which is plainly appropriate as it must be capable of being applied to a limited body of evidence to determine whether a Convention-compliant investigation is required in the first place. It should be observed that, in the case of *Al-Saadoon v MOD*

[2017] QB 1015 (a case relied upon by the Secretary of State), Leggatt J similarly found no real difference between a test expressed as "grounds for suspicion [of breach]" and one expressed as "arguable breach". In my approach to the Article 2 issues in this case, I shall apply a test of "arguable breach", although I should add that I do not consider the controversy over the exact expression of the test to be determinative of any of the issues in this case.

38. If a coroner hearing an inquest decides that the procedural obligation under Article 2 is engaged on any basis, the statutory provisions are interpreted for all purposes in the way set out in the *Middleton* case. If it has concluded that Article 2 is engaged by reference to the conduct of one state agent, the Court should scrutinise the conduct of all state agents and all others with the same intensity: see *R (Sreedharan) v Manchester City Coroner* [2013] EWCA Civ 181 at [23]. By the same token, the broader interpretation of the "how" question applied to the inquest determination must apply equally to the conduct of all state agents and all others alike. As a matter of logic and good sense, the statutory provisions cannot be read and applied in different ways within the same inquest determination. Moreover, to do so could produce misleading and unbalanced conclusions. All Interested Persons who expressed a view on this issue agreed as correct the approach I have just summarised.

39. A conclusion that Article 2 is engaged in relation to an inquest will usually have little, if any, effect upon the scope of inquiry or the conduct of the inquest hearing before the final determination is considered: *R (Smith) v Oxfordshire Asst Deputy Coroner* [2011] AC 1 at [152]-[154]; *Sreedharan* (cited above) at [18(vii)]. The scope of inquiry is a matter of judgment for the coroner, as is the related question of which witnesses should be called to conduct the inquiry. Although the coroner should undertake an inquiry sufficient to answer the statutory questions (notably how the deceased came to die), the evidence will commonly cover a wider scope than strictly necessary for that purpose: see *McDonnell v HM Asst Coroner for West London* [2016] EWHC 3078 at [28]; *Coroner for the Birmingham Inquests (1974) v Hambleton* [2019] 1 WLR 3417 at [46]-[50]. Any properly conducted inquest will therefore usually consider the circumstances of death sufficiently to enable a proper determination on the broader basis set out in the *Middleton* case as well as one on the narrower basis set out in the *Jamieson* case.

Article 2 substantive duties

40. In this case it has been necessary to consider whether the Article 2 procedural obligation is engaged in relation to any or all of the Inquests. Since this case does not fall within any of the categories of case where the procedural obligation is automatically engaged, the critical question is whether on the evidence there is an arguable case that the state, or any state authorities or agents, breached any Article 2 substantive duty in relation to any of the deaths. Thus it has been important to consider the scope and content of the relevant Article 2 substantive duties.

41. Article 2(1), which provides that "everyone's right to life shall be protected by law" requires each Convention member state not only to refrain from unlawful taking of life but also to take appropriate steps to safeguard the lives of those in its jurisdiction. The positive substantive obligations of the state fall into two broad categories: first, a general duty to adopt laws and procedures suitable to safeguard life; and secondly, operational duties which may be owed by state authorities and agents to avert particular threats to lives of individuals or the public at large.

42. One of the best-known, authoritative statements of the general duty is that of the Grand Chamber of the ECtHR in the case of *Oneryildiz v Turkey* (2005) 41 EHRR 20 at [89][90]:

> "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."

In the *Middleton* case (at [2]), Lord Bingham had described the general duty in similar terms as a duty "to establish a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life."

43. The general duty has been recognised to exist in a range of contexts, including a requirement for satisfactory procedures to protect life in the fields of: environmental protection from industrial activity (*Oneryildiz* (cited above); disaster relief (*Budayeva v Russia* (2014) EHRR 2, at [140]-[141]); flood prevention (*Kolyadenko v Russia*

(2013) 56 EHRR 2 at [157]-[158]); planning and conduct of police operations which pose risk to civilians (*Makaratzis v Greece* (2005) 41 EHRR 49 at [59]); regulation and management of healthcare facilities (*Lopes de Sousa Fernandes v Portugal* (2018) 66 EHRR 28 at [166]); measures to protect individuals in public spaces, including from falling trees (*Ciechonska v Poland* (App No. 19776/04) at [59]-[67] and [69]). What the general duty requires varies by context, but it is always concerned with systems and procedures at a reasonably high level, rather than the conduct of individuals or the co-ordination of activities of individuals. I shall return to this theme when I address the general duty in the context of protective security measures.

44. Operational duties are of a different character. In certain types of case, state authorities and/or agents may owe an operational duty to protect an individual, a group or the public at large against specific types of threat or danger. In *Osman v UK* (2000) 29 EHRR 245, the ECtHR recognised that the police could owe an operational duty to protect individuals against reported threats. The Court formulated the critical test as follows (at [116]):

> "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."

45. For a risk to be "real" in this context, it must be more than remote or fanciful. For it to be "immediate", it must be present and continuing (not necessarily a risk which has suddenly arisen). See: *Rabone v Pennine Care NHS Trust* [2012] 2 AC 72 at [38]-[39]. A breach of an operational duty does not require proof that the failure to take reasonable measures probably caused the death. As the expression of the test in *Osman* indicates, it is only necessary to show that the measures which should have been taken might reasonably have been expected to avoid the risk. What must be proved is that the deceased lost a real and substantial chance of survival as a result of the breach: see *Van Colle v Chief Constable of Hertfordshire* [2009] 1 AC 225 at [138].

46. When considering whether an operational duty has been actually or arguably breached, it is important to exclude the wisdom of hindsight from the analysis: see *Bubbins v UK* (2005) 41 EHRR 24 at [147]. It is also important to acknowledge that the duty only requires the state authorities or agents to take reasonable steps within the scope of their powers. The pressure of events and resources must be taken into account when determining what were reasonable steps at any given time: see for instance *Finogenov v Russia* (App No. 18299/03 at [209]). The Court must bear in mind "the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources".

47. The operational duty recognised in *Osman* has been gradually extended by analogy to other types of case, where duties to take reasonable steps to prevent appreciable "real and immediate" risks to life have similarly been identified. In *Keenan v UK* (2001) 33 EHRR 38 at [89]-[91], it was found that there was such an operational duty to take action against the risk of a prisoner killing himself. An equivalent duty has been found to exist to take action to prevent suicide and self-harm by conscripts and by compulsory psychiatric patients. The duty has been found to apply where police operations have given rise to a risk of people killing themselves: see *Makaratzis* [49]-[72]; *Mammadov v Azerbaijan* (2014) 58 EHRR 18 at [113]-[116].

48. In recent years, the ECtHR has had to consider the application of operational duties in the context of terrorist events. In *Tagayeva v Russia* (App No. 26562), the Court considered complaints that action should have been taken to prevent an attack on a school in Beslan, Russia. It concluded that the duty was triggered because the authorities had had material information about the existence of a terrorist threat to educational institutions in the district: see [481]-[492].

49. Operational duties to take protective action do not only arise where the lives of identifiable individuals or groups are foreseeably at risk. Such duties may also arise where there is a threat to society at large from the potential acts of one or more identifiable individuals. None of the Interested Persons disputed this extension of the concept of operational duties, which was recognised in *Mastromatteo v Italy* (App. No. 37703/97, 24.10.02) at [69] and has been confirmed in a series of further cases: *Maiorano v Italy* (App. No. 28634/06, 15.12.09) at [107]; *Choreftakis and Choreftaki*

v Greece (App. No. 46846/08, 17.1.12) at [48]; *Guiliani and Gaggio v Italy* (2012) 54 EHRR 10 at [247]; and *Bljakaj v Croatia* (2016) 62 EHRR 4 at [108]. In *Griffiths v (1) Chief Constable of Suffolk Police and (2) Norfolk and Suffolk NHS Trust* [2018] EWHC 2538 (QB) at [499], Ouseley J characterised the duty as one to protect the general public.

Narrative conclusions in Article 2 inquests

50. Where it has been decided that the Article 2 procedural obligation is engaged in an inquest, the determination should express the findings of the coroner or jury on the key factual issues in the case. These may go beyond the immediate physical means of death and may include broader circumstances, as well as underlying and contributory factors. In *Middleton* at [36], Lord Bingham said that the determination could address (among other matters) the cause(s) of death; any defects in systems which contributed to the death; and any other factors relevant to the circumstances of death. Overall, he said (at [37]) that it should be a "judgmental conclusion of a factual nature". He also stressed that the choice of the form of a narrative determination "must be that of the coroner and his decision should not be disturbed unless strong grounds are shown."

51. Depending on the circumstances, a determination in such an inquest may consist of a short-form conclusion as well as a narrative. The determination must not contravene the statutory prohibition on appearing to determine any question of criminal liability of a named person or any question of civil liability at all. A narrative determination is not limited to circumstances which probably contributed to the death. It may also include reference to matters which may have played a part. See *R (Lewis) v Mid and North Shropshire Coroner* [2010] 1 WLR 1836 at [28]-[29]. It may also include a finding that a circumstance closely related to a death did not contribute to that death: see *R (Worthington) v HM Senior Coroner for Cumbria* [2018] EWHC 3386 (Admin) at [43][52]. As regards the way in which a narrative determination is expressed, it ought not to be too long or complicated. Such a determination may be judgmental or critical. It may refer to failures, errors and weaknesses of systems. See for instance *R (Smith) v Asst Deputy Coroner for Oxfordshire* [2008] 3 WLR 1284.

Article 2: Background to the Decisions

52. A coroner will often make a decision that the Article 2 procedural obligation is or is not engaged at a pre-inquest hearing, sometimes quite early in the coronial proceedings. If that is the course taken, the decision should be kept under review and modified if evidence emerges which requires a different view to be taken. There are some advantages to addressing and resolving the issue at an early stage. In some inquests it may make a difference to the scope of inquiry, although (as observed above) that will not often be the case. In some cases, it may assist members of bereaved families in applications for legal aid.

53. However, there is no immutable rule that a decision on Article 2 engagement must be made at an early pre-inquest stage. It may in principle be deferred until any time up to the point when the coroner comes to consider his or her determinations or the necessary directions to the jury. There may be good reasons for taking that course in particular cases.

54. In these Inquests, the decision was deferred in that way, and no Interested Person has suggested that the approach was illegitimate or inappropriate. It was not necessary to take the decision at an earlier stage, because (as all accepted) the Inquests were conducted with sufficient breadth of scope and rigour to satisfy the requirements of Article 2 in any event. There were positive benefits in deferring the decision, since important evidence on the two topics relevant to the decision (the pre-attack investigation and protective security) was supplied and disclosed in the months immediately before the Inquests hearing. Furthermore, the evidence given at the hearing added very substantially to a proper understanding of the issues.

55. The consequence is that this Ruling must address questions of whether the evidence establishes *arguable* breaches of Article 2 duties at a time when it would in theory be possible to reach final conclusions about whether there were actual breaches of Article 2 duties. It must address those issues of arguable breach because the Court should only adopt the broader approach to narrative conclusions set out in the *Middleton* case if there is an arguable case of breach of one or more Article 2 duties.

56. Furthermore, it is not for me as a coroner to make any findings that Article 2 duties were or were not *actually* breached. Any such findings would be determinations of

civil liability (or would at least be apparent determinations of civil liability) and so prohibited by section 10(2) of the CJA: see *R (Smith) v Asst Deputy Coroner for Oxfordshire* [2008] 3 WLR 1284 at [24]. Insofar as I make any judgmental or critical findings in my determinations, they should not be taken to be findings of an actual breach of any Article 2 duty. They are no more and no less than judgmental factual conclusions of the kind discussed in the *Middleton* case.

Engagement of Article 2: the Pre-Attack Investigation

57. Counsel to the Inquests and counsel for the bereaved families submitted that, on the evidence, there was an arguable case that the investigating authorities (MI5 and SO15) breached an operational duty to take reasonable steps to protect the public at large from a real and immediate risk to life presented by Khuram Butt and his associates. Counsel to the Inquests made clear that they only identified an *arguable* breach, and that in the final analysis the pre-attack investigation ought not to be criticised. Counsel for the families went further, arguing that the pre-attack investigation was *actually* deficient and that opportunities had been lost which could or would have prevented the attack.

58. The arguments that there was an arguable case of breach can be summarised as follows.

59. First, it could be said that the authorities either failed to obtain information or did not give sufficient weight to information in their hands which ought to have caused them to be more concerned about Butt. In particular:

(a) There were two occasions on which reports were made to the authorities about Butt by people who knew him, neither of which led to any action being taken. One in particular was by his brother-in-law, Usman Darr, in September 2015. That report was not even communicated to MI5 by SO15, something the Senior Investigating Officer, Witness M, regarded as unsatisfactory. The opportunity to engage Darr as an informant was lost.

(b) In late 2016, after Butt had been arrested for fraud, his electronic devices were seized. Files included communications with a radical preacher; material

demonstrating a strong interest in violent images, ISIS and extremist rhetoric; a video of Butt slaughtering a cow and gleefully comparing it to the killing of Jewish people; and items showing an interest in working on the transport system. The MI5 officer who gave evidence, Witness L, regarded this material as simply consistent with what was known about Butt already. However, it arguably cast new light upon him as a person with particular interest in violence and the idea of martyrdom.

(c) In early 2017, MI5 assessed that Butt was accessing extremist material and that there had been a growth in his extremist rhetoric. He was associating with ALM figures, some of whom were outside of London. He was deploying anti-surveillance methods, which made coverage more challenging. By the time of a meeting at the UFC on 7 March 2017, he was attempting to obtain an unspecified item and being careful to avoid his exact intentions being detected.

(d) The Potential Lone Actor assessments of Butt made by MI5 (in September 2015 and October 2016) were arguably deficient. The first assessed him to have a weak capability for an attack without very clear reasons, while the second tentatively increased that assessment but again without clear rationale. The first assessed his intent as strong while the second tentatively reduced that assessment, again without there being a good explanation for the variation.

60. Secondly, it could be said that by early 2017 Butt presented a number of risk factors which should have justified increased coverage of his activities. There had been intelligence in mid-2015 indicating that he intended to commit an attack in the UK, intelligence later supported by another strand. By 2016, he had been assessed as probably intending to travel to Syria and fight, an intention which had not been fulfilled. He was a confirmed extremist with links to the ALM leadership and whose rhetoric had been increasing. He had some history of violence and had for instance engaged in a fight in public with an anti-extremist advocate in July 2016. He had not been working for many months, and his daily routine was not well understood.

61. Thirdly, it could be argued that there were material gaps in the coverage of Butt and/or investigative opportunities missed in the months before the attack:

(a) The MI5 and SO15 teams did not regard the UFC gym as a particular investigative priority. Witness L accepted that it could feasibly have been subject to greater coverage. Given that Butt's family described the gym as being a major focal point of his life, it arguably should have been a location for greater coverage. It appears to have been the main location for meetings of the three attackers, and was the subject of a suspicious meeting on at least one occasion (29 May 2017). It was also the location of the significant meeting on 7 March 2017 (discussed below). Furthermore, it is at least arguable that the gym should have been seen as a place of concern since it had been set up by Sajeel Shahid, a person who MI5 regarded as having a significant extremist pedigree.

(b) In the months prior to the attack, Butt was teaching a Quran class at the Ad Deen primary school every weekday afternoon. While the authorities knew that he was teaching such a class, they had not identified the school prior to the attack. Efforts to do so were limited and ineffectual. If the school had been identified, it may well have led to further coverage of Butt's association with Zaghba (who was also teaching there for a time). In addition, the failure to identify the school where Butt was going each afternoon (less than a mile from his home address) speaks volumes about blind spots in investigation coverage. Since Sajeel Shahid had also set up the Ad Deen school, which was being run by his partner of the time, it can be said that the authorities ought to have had a particular interest in that school. Witness L accepted that it would have been possible to "join the dots" in this respect.

(c) In the months leading up to the attack, Butt had substantial telephone contact with Redouane and Zaghba (including using a telephone number clearly attributable to him). Redouane was at meetings with Butt on 7 March and 14 May 2017, and it is possible Zaghba was at meetings on the former date too. Both attended at least some of the Sunday swimming sessions. Looking back, Witness L fairly accepted that MI5 could have identified both Redouane and Zaghba. Although he maintained that they would have been regarded as social associates of Butt, it can fairly be argued that the failure to identify either one raises proper questions about the effectiveness of monitoring.

(d) As Witness L accepted, more work could have been done to identify individuals at the significant meeting on 7 March 2017 (which was at the UFC gym). That was accepted to be a particularly significant meeting, since Butt was being careful about what he said and was apparently trying to obtain something (later assessed as possibly a firearm). In fact, the individuals at the meeting were not the subject of further investigative action. Witness L agreed that this was a potential missed opportunity.

62. Fourthly, it was said to be fairly arguable that additional coverage should have been in place in relation to Butt in the days leading up to the attack and on the day of the attack itself. The recent suspension of the investigation, which had started shortly after the significant meeting on 7 March, had left the authorities with little information about Butt for a period of several weeks. His daily routines were arguably poorly understood. On that basis, the argument was posited that he should have been subject to more intensive direct coverage, at least for a period of time after the suspension of the investigation had come to an end.

63. Fifthly, it was argued that, had additional coverage been in place, it could realistically have led to the attack being stopped. Live coverage of Butt or his telephones on the day of the attack would have shown that he was hiring a van without much advance notice. They could also have revealed the purchase of the 29 bags of gravel and the loading of the van. Witness M said that, if he had been notified by MI5 of the van hiring, he would have had the van stopped, in view of recent vehicle-based attacks in Europe and the general risk posed by Butt.

64. In addition, it was said to be possible that further monitoring and coverage could have led to the authorities seeing other signs of suspicious behaviour on the part of the attackers. Their attack required some planning and some preparation of attack paraphernalia, including the making of petrol bombs and the fake suicide vests. Any sign of such material being prepared would or should have led to immediate intervention.

65. Counsel for the Secretary of State and the MPS took issue with these arguments. In summary, they submitted as follows:

(a) From the start of the investigation, Butt was known to hold extremist views and to associate with others who held similar views. However, it was not a crime to hold such views or even to view extremist material. Careful judgments had to be made about the degree of coverage to be adopted in relation to him, and all those judgments were reasonable.

(b) No opportunity was lost by the failure of the authorities to contact Usman Darr. He knew little or nothing which was not already known to MI5, and it is far from clear that he would have been a willing and reliable informant after his original call.

(c) While more could have been done to identify Redouane and Zaghba, the evidence does not suggest that they did anything in public with Butt which MI5 could have observed and which would have revealed anything more than an innocent, social association. The only occasion on which they behaved suspiciously in public was on the night of 29 May 2017, and it would not have been feasible for MI5 to observe that meeting.

(d) Even if more could have been done to investigate the meeting of 7 March 2017, it cannot be established that further work would have changed the risk profile presented by Butt. There is nothing to suggest that he ever obtained a firearm or that any further intelligence gathering would have yielded evidence of attack planning.

(e) Even if the gym could have been the subject of further monitoring efforts, it cannot be said such steps would have revealed the intended attack. This was a gym with many members, and it is unlikely that the attackers planned an atrocity in open conversations at the gym. The meeting of 29 May 2017, which probably was about the attack, was conducted away from the gym and in the dead of night.

(f) There is no basis for an argument that, on 3 June 2017, MI5 ought to have had the type of coverage in place that would have revealed what are now known to be the acts of attack preparation, notably the hiring of the van. Witness L's evidence was that this would have required highly resource-intensive coverage justified only in

cases where active attack-planning was already suspected. Nothing MI5 knew of Butt and nothing it could realistically have learned about him before 3 June 2017 should have led it to impose such intrusive coverage.

(g) Even if such coverage had been in place, there is no basis for saying that the attackers' public behaviour on 3 June 2017 would have highlighted a real and immediate risk to the lives of the public such as to require action to be taken. Witness L had plausibly said that he would have regarded the hiring of the van as innocent and consistent with a cover story which might well have been revealed by intensive monitoring of the kind posited. Accordingly, MI5 would never have told SO15 of the van hiring and there would have been no question of the van being stopped.

66. In overview, the submission of the Secretary of State and MPS was that the arguable case which the families have sought to construct is based on the wisdom of hindsight and on speculative assumptions about what further investigative steps might have yielded.

67. In my judgment, there is an *arguable* case of a breach of the operational duty in relation to the pre-attack investigation and the Article 2 procedural obligation is therefore engaged in relation to all the Inquests. There is a proper basis for arguing that the assessments of Butt which Witness L sought to defend did not take proper account of all the risk factors he presented. For reasons given by counsel to the Inquests and counsel for the families (as summarised above), there are also proper grounds for arguing that there were troubling blind spots in the coverage and that there should have been substantially increased coverage in the aftermath of the investigation suspension. Finally, it is fairly arguable that increased coverage which led to discovery of the final overt attack preparations (notably the van hiring) should have caused the authorities to appreciate a real and immediate risk to life, to intervene and to stop the van.

68. Although I regard this as an arguable case, I am not ultimately persuaded by the critique of the investigation. As explained in more detail below, I found Witness L to be compelling in his explanation and defence of the investigative steps.

Engagement of Article 2: Protective Security Measures

69. Given my conclusion that the Article 2 procedural obligation is engaged in all the Inquests by reference to the pre-attack investigation, it is not strictly necessary for me to decide whether it is also engaged in any of the Inquests by reference to protective security. However, in deference to the detailed arguments I heard, I shall also express my conclusions on that issue.

Arguments based on the Article 2 general duty

70. Counsel to the Inquests and counsel for the bereaved families submitted that there was an arguable case that the authorities breached their general duty as regards systems of protective security. In particular, they submitted that the systems for assessing vulnerable locations and installing protective security measures were arguably deficient in the period running up to June 2017. Had adequate systems been in place, it was said to be arguable that London Bridge ought to have had some effective HVM measures in place by the time of the attack. They identified three arguable deficiencies in particular:

(a) The systems whereby sites were classified as priority Crowded Place locations for advice on protective security could be criticised as excessively rigid, causing places such as London Bridge not to be considered for advice by CTSAs. If a less rigid approach had been adopted, it was at least possible that London Bridge would have been accorded a priority classification and given protective security advice, given the increasing prevalence of vehicle-based attacks and the expert view of PS Hone that it was the most vulnerable place in the entire City area to such an attack.

(b) There was an absence of clear lines of responsibility and procedures for ensuring that highway authorities considered the vulnerability of key areas for which they were responsible. This second failing arguably compounded the first in the present case, since TfL and the CoLC took the approach that they need not install protective security unless advised by CTSAs, whereas the CTSAs were only required to engage pro-actively with owners of prioritised Crowded Places. While the Secretary of State argued that highway authorities ought to be taking more active responsibility, the legal duties upon them were not clear or specific.

(c) There was a lack of clear procedures for considering promptly the installation of temporary and permanent HVM measures, at a time when such procedures were arguably needed. Although TfL could have procured robust temporary barriers, that facility was apparently not known to police figures such as PS Hone. The police appear to have considered that the only fast-time solution was use of the NBA, which was regarded as impossible in the absence of specific threat intelligence. As a result, in May 2017 PS Hone could only contemplate the installation of permanent HVM measures, which would take years to install. Although DAC D'Orsi tackled this problem in the aftermath of the attack, she did so despite rather than because of the existence of proper systems.

71. It was also submitted to be properly arguable that adequate systems should have led to HVM measures being installed on the Bridge in advance of the attack. If there had been a proper assessment of the risks in 2016, it arguably should have led to a CTSA reaching the conclusion later reached by PS Hone that London Bridge was peculiarly vulnerable and required some form of HVM measures. If there had been procedures for prompt consideration of that recommendation and if all had appreciated that they had ready access to temporary barriers, such barriers arguably should have been in place by 3 June 2017.

72. Counsel for the Secretary of State took issue with this analysis. In the first place, they submitted that the critique outlined above could not establish an arguable breach of the general duty for legal reasons. In that regard, they made two principal points: (a) that the general duty in this context (protection from terrorist action) is satisfied by the state having in place adequate machinery of law enforcement and does not extend to requiring states to have proper systems for physical protective security; and (b) that the general duty operates at a very high level of generality, whereas the criticisms involve a "micro-management" of the systems.

73. In support of the first of those points, attention was drawn to statements in a number of the Strasbourg authorities which are concerned with prevention of crime, to the effect that the general duty in that context requires the state to secure the right to life by putting in place an appropriate legal and administrative framework to deter the commission of crime, backed up by law enforcement machinery: see for instance *Makaratzis* at [57].

It was also argued that the broader statements that the general duty required the state to adopt procedures to safeguard citizens against hazards were statements that had been made in very particular contexts. Cases such as *Oneryildiz* were concerned with protection from environmental hazards. Other cases in which the duty had been characterised in this broad way were about risks to life created by the state itself.

74. In support of the second point, counsel cited observations in cases such as *AP* which recognise that the general duty is concerned with the framework of laws and procedures governing particular areas of life and risks. Given that any allegation of breach of the general duty requires "a concrete assessment of the alleged deficiencies rather than an abstract one" (see *Lopes de Sousa Fernandes* at [188]), it was necessary to ask whether the particular failings being alleged were really defects in a high-level system. In this case, the Secretary of State submitted that the criticisms were in reality directed to the prioritisation of resources.

75. Counsel for the Secretary of State also mounted a defence of the systems on their merits. It was pointed out that the Government has a comprehensive counter-terrorism strategy, CONTEST. Protective security forms part of that strategy, but it needed to be seen in the context of the entire strategy. The Home Office had kept under review its procedures for prioritising places for protective security advice. Those procedures had been changed to adopt a more targeted approach after concerns had arisen that it was counter-productive to have too long a list of priority sites. The systems nevertheless did not ignore other sites, since CTSAs at the local level could choose to give bespoke advice to other sites. There were also comprehensive written materials available for those owning and having responsibility for important sites.

76. The Secretary of State also argued that there is already an appropriate statutory duty on highway authorities to ensure the presence of adequate protective security measures to protect against risks of terrorist attacks. Reference was made to section 17 of the Crime and Disorder Act 1998, which requires public authorities to exercise their powers with a view to reducing crime and disorder (including terrorism). It was submitted that the power of highway authorities (such as TfL) to install barriers on the highway (under section 66(2) of the Highways Act 1980) should be exercised in such a way as to address and minimise risks from terrorism.

77. In my judgment, there is an arguable case of a breach of the Article 2 general duty in respect of protective security, for the reasons given by counsel to the Inquests and counsel for the families.

78. The general duty can in my view require the state to have in place adequate systems for considering and implementing physical protective security measures to counter generally recognised terrorist threats. The duty as framed in the quotations from *Oneryildiz* and *Middleton* can encompass a requirement for such systems. More recent cases in the ECtHR support the view that it does. For instance, in the *Ciechonska* case at [69], the Court stated that the duty required states to adopt "regulations for the protection of people's safety in public spaces and to ensure the effective functioning of that regulatory framework". While that case was concerned with dangers from accidental, rather than deliberate, injury, it would be illogical to say that the duty to ensure the safety of public spaces could not encompass well-understood threats from terrorism. It is easy to see why, in cases about prevention of crime, the Court has characterised the general duty as being to put in place a system of criminal law enforcement. But nothing in the passages which make that point rules out a duty to have adequate systems to implement physical protective security measures against terrorist threat.

79. While I would accept the submission of the Secretary of State that the general duty operates at a reasonably high level of systems and practices, the grounds for arguable breach which have been put forward strike me as criticisms cast at an appropriate level. The first criticism is not that London Bridge was wrongly assessed as lacking priority status, but that the system of prioritisation was too rigid to allow a vulnerable site like London Bridge to be considered at all. The second criticism is not that managers at TfL and the CoLC misunderstood their obligations, but that their obligations were unclear. The third criticism is not that more barrier components should have been available but that systems for determining the need for HVM measures and arranging prompt installation were found wanting.

80. Although the Government has in place a counter-terrorism strategy which overall has evidently been the product of much careful thinking and refinement, I would reject the

suggestion that the criticisms are illegitimate. As regards the criticism of the Crowded Places tests as overly rigid, it is telling to note what Sarah Nacey, the witness put forward by the Home Office to address the issue, said on the topic. She accepted that the suggested criticisms represented a legitimate concern, adding: "I think both of those points could be a fair challenge to the definition" (day 31, p127). She also accepted that the Home Office would need to consider whether the tests were fit for purpose in the light of the evidence heard (day 31, p129 -131). She accepted that it was a matter for concern that London Bridge was not caught by the definition of a priority Crowded Place (day 31, p157-158). Furthermore, the critique of the definition was not a matter of hindsight, as there was contemporaneous evidence of Commander Gyford of the CoLP describing it as excessively rigid.

81. As regards the criticism that there was a lack of clear lines of responsibility for assessing the need for protective security measures, it is noteworthy that DAC D'Orsi expressed concern about the lack of a clear legal duty on those responsible for sites vulnerable to terrorist attack (day 28, p20-22). It is also noteworthy that neither TfL nor the CoLC perceived there to be any duty on them to carry out any general assessment of highways for which they were responsible. Neither of those authorities regarded section 17 of the Crime and Disorder Act 1998 as requiring them to consider physical protective security measures in any proactive or systematic way. In the absence of a clearer legal duty or at least clearer official guidance, I do not regard the views of TfL and CoLC as unreasonable.

82. As regards the criticism that there was a lack of clear procedures for reasonably prompt consideration of both temporary and permanent HVM measures, it is to my mind at least arguable that there should have been greater structural engagement between local authorities and police in relation to protective security. In the event, it took some months for PS Hone's concerns about London Bridge to be communicated to the CoLC and they were not communicated to TfL at all before the attack. Those on the police side did not appreciate that TfL could procure temporary barriers at short notice, while TfL was not aware that London Bridge was regarded as an area of concern. The key individuals, such as PS Hone, Commander Gyford and Mr Woolford, struck me as conscientious and committed to public safety. The concern lies in the systems within which they operated.

83. For those reasons, I consider that the Article 2 procedural obligation would be engaged by reference to protective security in the inquests concerning those who might realistically have been saved by the presence of HVM measures on the Bridge, namely Xavier Thomas and Christine Archibald.

84. Counsel for the bereaved families argued that this conclusion should apply to the other victims of the attack as well. Their argument was that the attackers had determined to carry out a two-stage attack, using a vehicle to mow down large numbers of pedestrians and then proceeding on foot and attacking bystanders with their knives. If there had been HVM measures in place on London Bridge, they would have been unable to carry out the first stage of the attack to their satisfaction in that area and would like have chosen an entirely different location. I am not able to accept that submission, since it rests on a speculative assessment of the mindset and intentions of the attackers. We cannot know what attracted them to mount their attack in the Borough area. For instance, it is possible that they chose the first populous area of central London which they reached, concerned that otherwise their attack might be stopped before it had begun. It is also possible that they were attracted by seeing the large numbers of young people out in and around the bars of the area. Even if the Bridge had had physical protection, it is possible that they would have used the vehicle to strike a group of pedestrians near the south end of the Bridge and continued with their attack on foot from the same approximate location.

Arguments based on Article 2 operational duties

85. Counsel for the families submitted that, as well as there being an arguable case of breach of the Article 2 general duty, there was also an arguable case that one or more public authorities had breached the Article 2 operational duty in failing to take steps to install HVM measures of some kind on London Bridge in advance of the attack. Counsel to the inquests resisted that submission, as did counsel for the relevant public authorities. In my judgment, they were right to do so. I shall express my views in brief, as they have no effect on my conclusions about Article 2 engagement.

86. Counsel for the families argued that London Bridge was a particularly attractive and vulnerable location for a vehicle-based terrorist attack, as foreseen by PS Hone, by the

Cerastes team and by some members of the public in the months before the attack. They then argued that relevant public authorities should for that reason have appreciated that those using the Bridge faced a real and immediate risk of death and should have taken steps within their powers to counter the risk. It was argued that reasonable action should have involved installing temporary HVM measures without delay and commissioning more permanent HVM measures.

87. In my judgment, it cannot be said that any public authority arguably contravened the operational duty.

(a) TfL was unaware of the expert assessments of the Bridge as being especially vulnerable. It expected the police to advise on any terrorist risks and on protective security, an expectation which was reasonable at the relevant times. It cannot fairly be said that TfL ought to have appreciated a real and immediate risk of death to users of the Bridge.

(b) The CoLC was first made aware of the vulnerability of London Bridge in mid May 2017, when Mr Woolford was advised on the subject by PS Hone. At that time, PS Hone told Mr Woolford to await his further advice. It cannot be argued that the CoLC ought to have foreseen the risk before mid-May 2017 or taken urgent action after that time.

(c) As regards the CoLP, it is notable that all Interested Persons who expressed a view (including the families) acknowledged PS Hone as a committed and capable counter-terrorism officer with real expertise in protective security. Nobody criticised his judgments, and I consider that he behaved entirely properly at every stage. When he first raised his concerns about London Bridge, it was in the context of encouraging greater use of Servator deployments (not to urge the immediate installation of HVM measures on the Bridge). Even when he did prepare a report recommending HVM measures, his recommendation was of permanent measures which would have taken years to install. Furthermore, he knew that the recommendation would not be considered by early June 2017.

88. Although counsel for the families submitted that it was wrong to consider the position of different public authorities separately in this way, I would not accept that argument. The test for the operational duty requires one to identify at least one authority which should have appreciated a real and immediate risk to life and taken reasonable action within its powers which could realistically have averted the risk. On my reading of the domestic and Strasbourg case law, that is the way in which the duty has generally been applied.

Form of Determinations

89. On the evidence, there is no question but that each of those who died was the victim of a deliberate attack, inflicted with the intention to kill. As regards Xavier Thomas and Christine Archibald, the evidence establishes that the van was driven deliberately onto the footway, targeting pedestrians. This is clear from the CCTV footage and from the witness evidence, including from Christine Delcros and Tyler Ferguson (respectively, the partners of Xavier and Christine who were with them on the Bridge). As regards the other six individuals, it is apparent from all the evidence that the attackers committed deliberate assaults and were aiming their blows in such a way as to cause fatal or at least very serious injury. It is also evident from their wider course of conduct that the attackers intended to kill the largest possible number of people.

90. In these circumstances, my judgment is that the determination in each case should begin with the short-form conclusion that the deceased person was unlawfully killed. Not only is that conclusion justified on the evidence: it is also right that the determination in each case should recognise that the person was murdered and that the terrorists bear legal and moral responsibility for each death. That would be my view irrespective of whether or not Article 2 had been engaged, and I understand that all Interested Persons were of the same view.

91. The second part of the determination should take the form of a short narrative of the means of death, supplementing the short-form conclusion. I considered that these narratives ought to be capable of being framed in terms agreed by all Interested Persons, and I am pleased to say that proved to be the case. For each of those who died, counsel

to the Inquests put forward a suggested narrative paragraph summarising the immediate facts of the person's death. After some discussions and modest modifications, all Interested Persons were able to agree proposed paragraphs for all eight of those who died. I regard the proposed paragraphs as entirely appropriate and they form part of the determinations. As with the short-form conclusion in each case, this initial narrative paragraph was appropriate irrespective of whether or not Article 2 had been engaged.

92. Finally, on the basis that Article 2 is engaged (for the reasons given above), my judgment is that some further short paragraphs should be added to express conclusions on key issues relevant to the broader circumstances of death. I shall now turn to consider what those conclusions ought to be.

Conclusions in the Determinations concerning the Pre-Attack Investigation

93. What should appear in each determination concerning the pre-attack investigation? It is accepted by all, including the Secretary of State, that if Article 2 is engaged on any basis it is legitimate to include a short paragraph recognising (a) that one of the attackers was an SOI who had been under investigation for two years, during which time he had been subject to varying levels of coverage; (b) that he had not been under live monitoring immediately before the attack; and (c) that the other two attackers had not been identified by the Security Service before the attack. What is controversial is the question whether the determination in each case ought to go on to criticise the pre-attack investigation or say that opportunities to prevent the attack were lost. Counsel to the Inquests, supported by the Security Service and the MPS, submitted that no such criticism should be made.

94. In my judgment, it would be wrong to criticise the investigation. On all the evidence, my conclusion is that the investigative work of MI5 and SO15 was generally thorough and rigorous, and I am not persuaded that investigative opportunities were lost which could realistically have saved the lives of those who died. Therefore, the narrative determinations include the short paragraph which is agreed by all but do not include further, critical findings.

95. The evidence given on behalf of the Security Service (by Witness L) and SO15 (by Witness M) gave an insight into an investigation which evidently involved substantial coverage of Butt over a period of two years. While it is possible to identify information of which the investigators never became aware, it is important to recognise the wealth of material about Butt which they did gather. They became aware of his original intention to commit an attack, and of subsequent verifying information, even though Butt had no doubt sought to keep his plans hidden. They discovered his association with ALM figures and his periods of engaging and disengaging with figures from the organisation. They became aware of his intention to travel and probably to fight with ISIS, and took measures to ensure they would become aware of attempts to do so. They knew he was accessing extremist material and sharing it with others. They became aware of the Regent's Park rally of July 2015 substantially before it was televised in part. They found out when he applied for SIA accreditation (early 2016), and again when he obtained employment on the transport network (May 2016). The altercation in Goodmayes Park (July 2016) came to their attention. They discovered his apparently fraudulent bank reclaims, as a result of which he was arrested and further material gathered in October 2016. Butt's regular use of the UFC gym was known to them. Many of the meetings which have been considered in the post-attack investigation were known to the MI5 team at the time, including those of 7 March 2017, 18 April 2017 and 14 May 2017. Overall, it is striking how much material the investigation did gather. While Witness L was rightly careful to stress that intelligence is generally imperfect and there are almost always gaps in coverage, the MI5 team built up a comprehensive picture of Butt.

96. It is of course tragic that the investigation team did not detect the preparations for the attack, but we must recognise that Butt took careful precautions against surveillance. Planning was in secret and did not need to be substantial, given the low sophistication of the attack. Butt's associates were not known to the UK authorities as criminals or potential extremists, and it may even be that he chose them for that reason.

97. Although some attempts were made to criticise the decision to suspend the investigation on two occasions, I do not consider that any such criticism is justified. As Witness L explained, a security service in a democratic society will at times find that its resources, especially experienced staff, are under very high demand. It must be reasonable at such

times to divert staff to investigations of the highest priority if to do so will minimise the risk from attack plans which are judged to be imminent or to pose greatest threats to the lives of the public. Neither do I accept the suggestion that MI5's procedures are inflexible in this regard. The investigation into Butt was subject to some limitations in one period immediately before being suspended, which shows that MI5 can adjust investigative resource in a manner sensitive to the wider threat picture.

98. As explained above, an argument can fairly be made that more could have been done to identify Redouane and Zaghba as associates of Butt before the attack. Indeed, Witness L accepted as much. However, I accept that it is likely that they would have been regarded as purely social associates. The occasions on which we know they saw Butt in open view were purely or mainly social in nature. For instance, the trip Redouane and Butt took to Leeds on 18 April 2017 is still regarded as having been to buy a car. The barbeque which Redouane attended on 14 May 2017 included various friends and neighbours who had no extremist connections. The only overt meeting with suspicious features which has been identified by all the extensive post-attack investigations was that on 29 May 2017, and I accept the submission of the Secretary of State that it is unlikely that any realistic surveillance would have observed that meeting. Finally, there was nothing about Redouane or Zaghba's antecedents or public conduct (so far as is known) which would have justified their being monitored.

99. It is possible in hindsight to identify further areas of enquiry which should have been pursued, such as further monitoring of Butt's behaviour in and near the gym. Although it was right and proper that such matters were explored in the evidence, it must also be appreciated that the officers in the MI5 team had to make nuanced judgments about the deployment of resources. They had to make those judgments about an SOI who had not demonstrated any attack planning behaviour through two years of extensive coverage. Witness L explained convincingly the difficulty inherent in such judgments, and the impracticality of placing an SOI such as Butt under 24-hour surveillance for protracted periods.

100. Even if some of the further investigative steps should have been taken, it is speculative to suggest that they would have yielded any intelligence of attack planning. On the evidence, preparatory activity before the day of the attack did not take place at Butt's

home, which would necessarily have been the focus for any increased surveillance. The attackers were plainly careful to keep their preparations secret, as demonstrated by their midnight meeting on 29 May 2017 and by the cover story they adopted for the hiring of the van. All the investigative work done since the attack has not revealed any evidence that anyone else knew in advance of the time, place or method of the attack.

101. Overall, it is in my judgment wrong to say that the MI5 team ought to have subjected Butt to such intensive surveillance that they would have discovered his hiring of the van on the day of the attack. Although it can be argued that such surveillance should have been in place, I would ultimately reject the argument as requiring too much of the investigators. If there had been such surveillance on Butt on the day of the attack, it is difficult to envisage in any concrete terms how the attack could have been prevented.

102. If MI5 had discovered that Butt and his two associates had hired a van and were loading it with many bags of gravel, it is to my mind an open question how the investigation team would have responded. Witness L took the view that the investigation team would have done nothing, since the hiring of a van was not inherently suspicious and the cover story (which he considered would have been revealed by intensive surveillance) was plausible. He would not have expected the team to compromise the investigation on this basis. However, although Witness L's views carry weight, he was not on the investigation team and the decision would have been made by others. There is some evidence that the hiring would or should have triggered some action. On my view of Witness M's evidence, he would have regarded the hiring as intrinsically a matter of concern. I appreciate that he only said that he would have ordered the van stopped when he was confronted with a hypothetical scenario in which the hiring was brought to his attention by MI5. However, his explanation for why he would have ordered the stop included reference to the security context in which vehicle-borne attacks were increasingly prevalent.

103. In summary, while I have accepted that an arguable or *prima facie* case can be constructed that the pre-attack investigation was deficient, I would ultimately reject the critique of the investigation. A counter-terrorist investigation of the kind examined in these Inquests involves innumerable difficult judgments about the risk posed by an SOI

and the degree of coverage justified. When an attack succeeds, the post-attack investigation will be informed by the knowledge of the time, place and method of the attack. At that stage, it may be possible to identify lines of enquiry which could have been pursued with all the benefit of hindsight. However, one should only level criticisms if persuaded that the conduct of the investigation was deficient based on what was known at the time. For all the reasons I have given, I consider that it would be wrong to criticise this investigation.

104. Accordingly, each narrative conclusion includes simply the following finding about the pre-attack investigation, a finding which (as noted above) is not contested by the Secretary of State:

> "One of the attackers was a Subject of Interest under active investigation by the Security Service at the time of attack and for around two years before it. He was subject to surveillance in varying degrees but was not the subject of live monitoring in the days immediately before the attack. The other attackers had not been identified before they carried out the attack together."

Coda: Review of Public Interest Immunity Ruling and Other Earlier Decisions

105. Counsel for five of the bereaved families submitted that it would be appropriate for me to review some of the decisions I have previously made in light of all the evidence which has now emerged about the pre-attack investigation.

106. First, it was argued that I should review the ruling on scope of inquiry which was given on an indicative basis at an early pre-inquest hearing. The indicative scope document appended to the ruling stated that the Inquests would consider what was known to the authorities about the attackers prior to the attack, which would include "some consideration" of what was known to MI5 about them. As I understand it, the submission is that I should review whether that ruling set at too low a level the degree to which the Inquests would consider the MI5 investigation. In my judgment, it is unnecessary to review that ruling, for the simple reason that it has not in fact limited the extent to which the MI5 investigation has been considered. In these Inquests, a live MI5 investigation has been subjected to an unprecedented level of examination in a public process which has fully involved the bereaved families. Even if the indicative

scope had been drafted differently (for example by omitting the word "some"), the degree of examination would not realistically have been any greater.

107. Secondly, it was argued that I should consider whether the evidence called for any additional evidential enquiries. No specific enquiry was suggested in the submissions, although I accept that counsel for the families may have in mind evidential enquiries which the Inquests Team might have made given their access to the original investigation documents. In my judgment, there would be no basis for saying that the inquiry was insufficient. As submitted by counsel to the Inquests, they identified for disclosure a wide range of potentially relevant material held by MI5. Limitations on disclosure of information and documents were based on national security considerations and were justified by a full public interest immunity ("PII") process.

108. Thirdly, it was argued that I should review the *Wiley* balancing exercise which I carried out in my OPEN and CLOSED PII rulings in light of all the evidence which emerged during the Inquests. In fact, I have kept my PII rulings under review throughout the Inquests hearing, as I undertook to do. I remain of the view that the national security interests which justified the decisions in the ruling were substantial and very well-reasoned. The PII process was rigorous and took account of the issues which would likely arise during the Inquests. The result is not altered by the evidence which has emerged.

109. Fourthly, it was argued that I should review the decision which is set out in my OPEN PII ruling that the duty of inquiry under the CJA (informed by Article 2 considerations) could be satisfied by inquests held without access to material protected from disclosure by PII. In my judgment, that decision remains valid. These Inquests have shown that it has been possible to carry out a wide-ranging and searching inquiry with the available material. By way of example only, Witness L was subject to detailed questioning for two days. A public inquiry would have been a much less satisfactory process for the bereaved families, as it would probably have involved little or no public examination of MI5 or SO15 witnesses. Moreover, it is not realistic to imagine that even a public inquiry would have been able to examine every aspect of intelligence monitoring or to second-guess every investigative judgment.

Conclusions in the Determinations concerning Protective Security

110. The next issue to be considered is what, if any, conclusions concerning protective security measures should appear in the narrative determinations. In particular, is it appropriate that the determinations should record any critical observation about the systems for installing protective security or about decisions made and action taken in that regard?

111. In my judgment, it is appropriate that the narrative determination for each of Xavier Thomas and Christine Archibald should include the following points: (a) that at the time of the attack there was no form of physical protective security on the Bridge, despite the fact that it was a location particularly vulnerable to vehicle-based attack; and (b) that the failure to implement appropriate HVM measures on the Bridge was due to a lack of adequate systems for assessing the need for such measures and implementing them promptly. The findings have been drafted accordingly, as follows:

> "At the time of the attack described above, there was no form of physical protective security on London Bridge, despite the fact that it was a location which was particularly vulnerable to a terrorist attack using a vehicle as a weapon. There were weaknesses in systems for assessing the need for such measures on the bridge and implementing them promptly. Absent such weaknesses, suitable hostile vehicle mitigation measures may have been present."

112. The proposition that London Bridge was particularly vulnerable to vehicle-based attack is firmly founded in the evidence. PS Hone's report of mid-May 2017 (WS5014/33) makes the points with greatest clarity, but they also appear from his earlier emails and from the Cerastes interim report. Nobody in the Inquests made any attempt to challenge his judgments or present them as alarmist.

113. It is, in my view, appropriate to make a critical finding about the systems in place for assessing the need for HVM measures and installing such measures at a location such as London Bridge. As I have sought to explain above, there are legitimate criticisms to be made of the systems governing protective security. First, the test in place for

identifying priority locations for advice from CTSAs was too rigid, with the result that London Bridge was not the subject of bespoke and pro-active advice before 2017 despite it being a particularly attractive target for terrorists. Secondly, there was a lack of clear lines of responsibility for protective security, with the result that TfL and the CoLC waited for advice from CTSAs rather than assessing sites and roadways for risk and vulnerability. Thirdly, there was a lack of clear procedures for considering promptly the need for temporary and/or permanent HVM measures. To my mind, these points are not merely arguable grounds for a critical finding: they actually justify such a finding individually and collectively.

114. This finding should not appear in the determinations for those who died other than Xavier Thomas and Christine Archibald. As explained above, I am not persuaded by the argument that the installation of HVM measures on the Bridge would or may realistically have prevented the knife attack in the Borough area. That argument strikes me as involving too much inherent speculation about the mindset and intentions of the attackers.

115. It is important to stress two points about the findings recorded in those determinations on the subject of protective security:

(a) First, I have *not* found that there has been an actual breach of the Article 2 general duty by the state. As a matter of law, an inquest determination cannot make such a finding, since it would be a finding appearing to determine a question of civil liability. Furthermore, the test for whether a critical finding should be made in an inquest determination may be materially different from the tests governing breach of Article 2 substantive duties. As explained in the *Middleton* case, a determination following the approach in that case should embody a judgmental conclusion of a factual nature. An inquest determination may make a common sense criticism without determining that an Article 2 substantive duty has been breached. That is what I have done here.

(b) Secondly, I would have taken the view that this critical finding about protective security systems ought to be recorded even if I had held only that the Article 2 procedural obligation was engaged by reference to the pre-attack investigation (and

not by reference to the general duty and protective security systems). So, if for example I had accepted the contention of the Secretary of State that the Article 2 general duty could not encompass a requirement to have in place appropriate systems for assessing and implementing protective security measures, I would still have held that the narrative determinations ought to make the same critical finding about the systems governing protective security.

Other Conclusions in the Determinations

116. Another feature of this case warrants inclusion in the determinations, as a further judgmental conclusion of a factual nature. As I explained in the course of my summing-up, there were many warning signs of Khuram Butt's extremist views and volatile temperament which his family saw or should have seen. His wife and siblings who gave evidence admitted that they should have done more at the time. Overall, I was left unconvinced by their attempts to explain why they did not inform the authorities or at least tackle his behaviour and views more directly. While it is right that an inquiry such as this should scrutinise what was done and not done by state agencies in response to extremist behaviour, it is equally right to examine what was done and not done by those closest to the person in question. In all the circumstances, I consider it appropriate to record the following finding in each of the narrative determinations:

> "Multiple warning signs about the extremist views and conduct of one attacker were known to a number of his close family members in the months and years before the attack. In the main these were not reported to the authorities."

117. For the sake of completeness, I should record that, although there was detailed consideration in the evidence of the conduct of the emergency response by LAS, no Interested Person argued that any of the determinations should include any critical finding on that subject. Counsel for the families accepted that all of the injuries inflicted on those who died were rapidly fatal, such that no decision, action or inaction on the part of LAS could be said to have contributed to any of the deaths. It has therefore not been necessary for me to determine in this Ruling whether any criticism of LAS personnel was justified. My summing-up includes some observations on such topics, including for example that Mr Beasley (the LAS Incident Response Officer) had to deal

with a very difficult situation and chose to remain in an unsafe area in order to keep working on the emergency response.

Final Observations

118. In conclusion, I would like to express my appreciation for the able assistance of all the legal representatives and the co-operative approach taken by all Interested Persons in these Inquests. Most importantly, I would like to acknowledge once again the decency and dignity of the bereaved families. Many family members attended the hearing, showing an acute understanding of the issues, although the process must have been extremely difficult for them. While these Inquests have addressed issues of general public importance, at the heart of the process are eight young people whose lives were senselessly cut short. As we heard in the pen portraits at the start of the hearing, each one was deeply loved and each one is greatly missed.

HH Judge Lucraft QC

Chief Coroner of England & Wales

2 August 2019