

INQUESTS TOUCHING THE DEATHS OF THE VICTIMS OF
THE LONDON BRIDGE TERRORIST ATTACK ON 3 JUNE 2017

SUBMISSIONS OF HERTZ UK LIMITED

1. These brief PFD submissions are made on behalf of Hertz UK Limited ('Hertz'), in response to the submissions of the families of those killed in the terrorist attack on 3 June 2017.

2. Hertz agrees the summary of the relevant law in paragraphs 65-71 of CTI's submissions dated 24 June 2019 and merely respectfully adds a few words with regard to the duty to report. CTI stress that PFD reports will often draw attention to matters of concern or to risks, rather than prescribing particular solutions. As summarised in *Jervis on Coroners* (13th Ed), at 13-124:

'... the duty is imposed upon the coroner to respond to a perceived public interest in reducing or eliminating similar fatalities in future, of whatever kind it may be. That perceived public interest, taken with the fact that a report does not in itself have any direct impact on the situation, requires that [paragraph 7 of Schedule 5 to the Coroners and Justice Act 2009] be interpreted broadly rather than narrowly, so that matters are reported to those who, having more specialist knowledge than the coroner may decide what, if anything, should be done for the future.'

3. See further the Chief Coroner's *Guidance No. 5: Reports to Prevent Future Deaths*, paragraph 24 of which provides (emphasis in original):

*'In some cases the action to be taken following the coroner's concern will be obvious. But it is not for the coroner to express precisely what action should be taken. **A PFD report is a recommendation that action should be taken, but not what that action should be.** The latter is a matter for the person or organisation to whom the PFD report is directed. Hallett LJ expressed it in this way:*

*"However, it is neither necessary, nor appropriate, for a coroner making a report under rule 43 to identify the necessary remedial action. As is apparent from the final words of rule 43(1), the coroner's function is to identify points of concern, not to prescribe solutions." (7/7 Bombings Inquests, *ibid.* p15.)'*

Whilst paragraph 24 of the Guidance refers to the old rule 43, the position is no different under the 2009 Act. See paragraphs 29 and 31 of the Guidance both in this regard and generally; and see further paragraph 34.

4. The Coroner's duty (if engaged) is therefore to report, so that action can be taken, if it is considered necessary, by those having power to do so; not to decide or recommend what action should be taken. It is incumbent on any person (or body) to whom a report is made to consider what measures may be required to address the matters giving rise to the concern which has prompted the report, including, of course, any particular matters to which the Coroner may feel consideration should be given.
5. Hertz accepts that it would be appropriate for the relevant authorities and the British Vehicle Rental and Leasing Association (BVRLA) to consider both (a) whether the current voluntary Rental Vehicle Security Scheme ('RVSS') (or some such similar scheme) should be made mandatory (but see paragraph 11 below); and (b) whether details of all instances of vehicle hire or any particular type of vehicle hire should be notified to the police and/or MI5 so that checks could be made against relevant police and/or security databases.
6. Any such measures would require legislation and would give rise to practical and legal difficulties, and would therefore require careful consideration and specialist input – neither however being reasons for not considering such measures. As Mr Fulbrook said when giving evidence, Hertz is '*absolutely open to engaging with all of the authorities in adapting, identifying any system that is going to help national security*' (Day 33, p.36). And as he also confirmed, there was a willingness in the industry to have a mandatory scheme when the RVSS was under consideration (p.39). There is no reason to doubt that that remains the position.
7. As to the potential challenges inherent in any such measures (which the Chief Coroner may want to bear in mind in framing any report), a mandatory RVSS (or some such similar scheme) might not be difficult to establish, but the vehicle rental sector includes a large number of small operators who, whilst representing a relatively small proportion of the market (in terms of vehicles hired) when compared to Hertz and other larger operators, nevertheless account for a substantial number of hire transactions. Apart from

the potential financial impact of mandatory regulation on such small businesses (perhaps not the most important but nevertheless a relevant consideration), there are likely to be practical problems in rolling out, supervising and enforcing any mandatory scheme.

8. Further, as to any requirement to notify hire transactions to the police and/or MI5 (so that checks could be made against relevant police and/or security databases), no doubt this would be technically feasible (as witness L accepted, see Day 25, p.124) – albeit not without challenges and again likely to impact significantly on smaller hire businesses. There are however real concerns in terms of privacy and data protection; hence, among other reasons, the need for legislation. And perhaps most importantly, it would be necessary to consider how efficacious any such requirement would be – the answer to which would likely depend on the ability of the police / security services to screen notifications and, crucially, respond in the case of any notification giving rise to concern. Such matters in particular would require careful consideration, bearing in mind the vast number of hire transactions in the UK (some 16.2 million car and van rental transactions per annum according to BVRLA figures for 2018).
9. As regards data and technical concerns, Hertz is aware that the BVRLA, in its response to the Chief Coroner’s Regulation 28 Report following the Westminster Terror Attack on 22 March 2017, indicated the willingness of the vehicle rental industry to share data with the authorities but noted that there would need to be protocols and safeguards in place to ensure that personal data was processed in a legally compliant way, and further suggested that considerable resources would need to be allocated to explore the technical means of integrating external data with police and counter terrorism data.
10. Hertz further notes the limitations of the requirements for notification in Spain and Italy. In Spain the prescribed information relating to hire transactions is only required to be provided within 24-hours of the vehicle being hired rather than in ‘real time’; whilst in Italy (where, as Hertz understands it, the legislation is still not in force) car share initiatives, which account for an ever growing number of transactions globally, will (as Hertz understands it) be exempt. It is understood that technical concerns have also held up implementation in Italy. Again, of course none of this means consideration should not be given to the possibility of such a notification requirement in the UK; but it serves to

illustrate the likely challenges that will need to be considered by the authorities and the BVRLA on behalf of the industry.

11. Finally, it is relevant to note the Government's (Department for Transport's) commitment to review the impact and take-up of the RVSS within 12-18 months of its launch, including the case for putting some or all of the Code requirements on a mandatory footing. See the (then) Home Secretary's response dated 26 February 2019 to the Chief Coroner's Regulation 28 Report following the Westminster Terror Attack (WS5022/29-30). No doubt that review will take account of the evidence adduced in these inquests and any further regulation 28 report; equally, in making any report now the Chief Coroner will no doubt want to take account of the intended review.
12. Merely for completeness, Hertz's only other observations relate to two evidential matters raised in the submissions of those families represented by Hogan Lovells:
 - First, as to the suggestion that the Chief Coroner heard evidence of '*a lengthy list of occasions on which terrorists have used rental vehicles*', the list of terror attacks (or alleged terror attacks) involving vehicles over the period 2006-2018 produced by Hogan Lovells comprised 20 terrorist incidents worldwide of which 9 (including the London Bridge attack) involved rental vehicles.
 - Secondly, the suggestion that Hertz did not follow guidance by trying to establish what the van hired by Butt would be used for does not, with respect, take account of the very particular circumstances in which the van was made available for hire, namely at a B&Q store. In such circumstances the vehicle's intended use will generally be clear. As Mr Fulbrook put it, '*for 24/7 we already have an understanding of what they intend to use the vehicle for by the fact of where those vehicles are placed*'. Evidence was heard confirming that Butt and his accomplices loaded the vehicle with gravel which is exactly the type of use expected in a B&Q based location.

HOWARD STEVENS QC
IAN DAVIES (of Kennedys)

6th September 2019