INQUESTS INTO THE DEATHS ARISING FROM
THE FISHMONGERS' HALL AND LONDON BRIDGE TERROR ATTACK

THIRD RULING ON CASE MANAGEMENT AND DIRECTIONS

Introduction

1. These Inquests concern the deaths arising from the attack at Fishmongers' Hall and London Bridge on 29 November 2019. The background to and events of the attack are summarised in my First Ruling dated 5 June 2020, at paras. 5 to 13. This Third Ruling is to address issues of case management raised at the second pre-inquest review ("PIR") hearing, which took place on 12 February 2021 at the Central Criminal Court as a partially remote hearing. A set of directions accompanies this Ruling.

Venue, Listing and Logistics for the Inquests Hearings

2. Following my previous directions, there are to be two hearings; a hearing of the inquests of Jack Merritt and Saskia Jones (the two victims of the attack), immediately followed by a separate and shorter hearing of the inquest of Usman Khan (the attacker). At the first PIR hearing of 16 October 2020, the date of 12 April 2021 was set as the start date for the first hearing. It was intended that both hearings should take place in the Central Criminal Court, using two courtrooms because it would not be possible to accommodate all attendees in one courtroom given the requirements of social distancing (as needed to reduce risks of COVID-19 transmission).

3. In early 2021, the Inquests Team was informed by court managers that it was not possible to provide two courtrooms in the Central Criminal Court, because of the pressures on criminal courts capacity in the current environment. After careful work, the team reached the view that it would not be possible to hold the Inquests using only a single courtroom at the Central Criminal Court. One courtroom would not be sufficient to accommodate the jury, court staff, members of the Inquests Team and principal advocates for Interested Persons, all of whom would need to be physically present. Capacity would also be required for some Interested Persons, press and public to attend.

4. Enquiries were made about a range of other possible venues for the hearings, and at the present time one venue has been identified which is promising. It would provide a single space large enough to take all the participants who might realistically wish to attend, along with space for public and press, while allowing for adequate social distancing. There should also be facilities for other participants to join the hearings by videolink. At the PIR hearing, counsel to the Inquests were not able to identify the venue in public because of commercial sensitivities. However, they indicated that, if the venue was still considered appropriate and likely to be available, Interested Persons would be given details by 26 February 2021 (and earlier if possible).

5. Counsel to the Inquests submitted that, if a suitable venue could be confirmed, the current listing of the Inquests should be retained, for five reasons. First, there is a general obligation to conduct inquests as soon as practicable (under rule 8 of the Coroners (Inquests) Rules 2013 ("the Rules")), which is founded on reasons of good sense and sensitivity to bereaved families. Secondly, all involved have been preparing for and working to the April 2021 listing for some time. Thirdly, any delay would probably be of at least several months and it is far from clear that the public health situation would be better in autumn / winter 2021 than in April to June 2021. Fourthly, most Interested Persons, including importantly the bereaved families of the two victims, support retaining the current listing. Fifthly, a prospective venue has been found which seems likely to be available for the period required.

6. At the PIR hearing, there was broad support for that position and those reasons. No serious opposition was advanced. In the circumstances, I shall direct that the April 2021 listing be maintained, subject to a suitable venue being available for the necessary period. I shall also direct that the Inquests Team should inform Interested Persons by 26 February 2021 if the prospective venue now under consideration is likely to be a viable option and (if so) should give details of that venue.

Naming of Khan Family Members in the Inquests Hearings

7. In my Ruling of 22 October 2020 following the first PIR hearing, I deferred consideration of an application by the representatives of Usman Khan's family. The application was for an order that none of the following should be named in the Inquests hearings except following application on notice: the two sisters of Usman Khan; and

the spouses and children of all Usman Khan's siblings. The basis for this application was that these individuals have no relevance to the Inquests and the order was sought to avoid them being named unnecessarily. I deferred consideration of the application because it was not clear on the basis of material disclosed up to that time whether any of these individuals would be of relevance to the inquiry.

8. Since October 2020, documents have been obtained by the Inquests Team and disclosed to Interested Persons which show that Usman Khan's two sisters may feature in the evidence (even if they are not called as witnesses). I am therefore not prepared to make the order in relation to them. However, on the available material it seems very unlikely that any of the spouses or children of Usman Khan's siblings will need to be considered at all. I shall therefore make the order in respect of those individuals. Of course, the order can be revisited if further material is obtained which suggests that any of them is going to feature in the evidence.

Anonymity and Special Measures Applications

9. In advance of the PIR hearing, four applications were made for anonymity / special measures. These were in respect of (a) Witness Q, who was Usman Khan's partner from 2010 until some time in 2013 or 2014; (b) TM, who acted as a theological mentor to Usman Khan under the Home Office Desistance and Disengagement Programme ("DDP") and saw him for two intervention sessions (in April and August 2019); and (c) M1 and M2, who were successively the practical mentors for Usman Khan under the DDP. Each of the applications seeks orders that the applicant be identified by pseudonym and his/her identifying details be withheld in connection with the Inquests. TM also seeks orders that, if he is called as a witness, he should be provided with a private route in and out of court and give evidence screened from all persons save the Coroner, jury, Interested Persons in the relevant inquest(s) and their legal representatives. My understanding from their statements is that Witness Q, M1 and M2 would seek the same special measures (although they are unrepresented and have accordingly not presented their applications with the same level of detail).

10. The applications for anonymity were resisted by representatives of media organisations and by journalists who attended the hearing. The journalists also argued that any screening order should permit accredited members of the press to see the individuals

give evidence (if they are called as witnesses), on terms that they are not permitted to publish identifying details of the individuals.

11. The legal principles governing applications for anonymity and special measures are addressed at paras. 42 to 43 of my First Ruling, while those governing orders for screening of witnesses are addressed at paras. 29 to 33 of my Second Ruling. Since those Rulings, the Court of Appeal has handed down its judgment in *Chief Constable of West Yorkshire v Dyer* [2020] EWCA Civ 1375. The Court's approach to screening orders (at paras. 87 to 89) is consistent with that outlined in my Second Ruling. Simplifying considerably, where an order for anonymity or special measures is not justified to protect an applicant's Article 2 or Article 3 rights to life and protection from serious harm, a court considering an application is required to undertake a highly fact-sensitive balancing exercise which sets the interests in favour of the application against countervailing interests. This balancing exercise should take account of Article 8 (privacy) rights of the applicant and Article 10 (free speech) rights of media organisations reporting on the case. It should give proper weight to the important principle of open justice as it applies in the context of the case.

Witness Q

12. The evidence filed by Witness Q does not establish that she would face a real and immediate risk of death or serious harm if the orders sought were not made. Instead, she fears that if she were named in connection with the Inquests, she and her family would suffer stigma as a result of her association with Usman Khan. She stresses that her own association with him ended long before the attack which these Inquests are to consider, and that her name has not appeared in any reports in connection with him.

13. In opposition to her anonymity application, the media organisations argue that she is a significant figure in the narrative of Usman Khan's life whose name should not be edited out of the Inquests. They point out that there is no clear evidence of harm or risk of harm, and that anonymity applications should not be granted on the basis of speculative fears of abuse.

14. After careful consideration, I have decided to grant Witness Q's application for anonymity and her application for special measures (subject to a point I shall make

about accredited press seeing screened witnesses), for the following reasons. First, she is a figure of only marginal significance to the Inquests, since her contact with Usman Khan ceased at least four years before he was released from prison and at least five years before the attack. Anonymising her will not significantly affect open and accessible reporting of the Inquests, because she is not likely to feature in the evidence to any great extent. Secondly, she has not been named publicly in connection with Usman Khan and she has an unusual name. I accept her evidence that she has genuine fears of shame and stigma in her community if named in reporting of the case, and those fears are plainly more than fanciful. Thirdly, she now has a new family who may likewise suffer from the association with Usman Khan, despite that association being remote.

15. I have given weight to the interest in open justice. That interest may have justified rejecting Witness Q's anonymity application if she had been a more significant figure in the evidence and if she had retained a connection with Usman Khan up to and beyond the time of his release from prison. However, when all the circumstances are taken into account, the application is justified.

TM, M1 and M2

16. I shall consider the applications of the three mentors together, because they raise very similar questions. These individuals do not base their applications on the prospect of their facing a real and immediate risk of death or serious harm if named and identified. They give evidence that, if associated with this counter-extremism programme, they might face abuse or reprisals either from hard-line Islamists or from far-right groups. TM in particular cites evidence of menacing and distressing comments posted online and in social media forums, both in relation to himself and in relation to others involved in comparable work. A senior witness from the Home Office has filed statements testifying that efforts to recruit and retain mentors for the DDP would be adversely affected if their identities were routinely revealed in court proceedings.

17. Media organisations have taken issue with these applications, pointing out that these individuals are significant to the case and that anonymising them risks making the reporting of evidence about them less engaging and accessible. They warn the Court

against being too ready to accept that people participating in a socially valuable programme would be targeted if identified, or that recruitment would suffer as a result.

18. In my judgment, these applications should be allowed (subject to the point I shall make concerning screening and the media). First, the particular evidence in this case indicates that the applicants have genuine fears of abuse or even attack if they were to be named as DDP mentors in this high-profile case. The concern is not speculative, but founded on specific and documented examples. Secondly, the Home Office has provided credible evidence that ready identification of mentors in such a case would make it materially more difficult to obtain and retain suitable individuals for the programme. Thirdly, anonymising these witnesses and granting the special measures requested will not affect the ability of Interested Persons to test their evidence or the ability of the public to understand their evidence. I acknowledge that the absence of names will make reports less engaging, but I am clear in my conclusion that the factors in favour of the applications outweigh that consideration.

Screening of witnesses and the media

19. My provisional view is that the journalists present in court at the PIR hearing made a good point in arguing that accredited members of the press should be permitted to see anonymised witnesses give evidence unless there is a proper basis for refusing that permission in particular cases. There will be some witnesses who should not be seen even by responsible journalists, and I can for instance imagine that serving officers of the Security Service and some police officers in covert roles may fall into that category. However, there will be others who can justify being anonymised and screened from the public at large but can have no sensible objection to being seen by accredited reporters who are subject to proper restrictions or undertakings. All members of the Court of Appeal made this point in the *Dyer* case (cited above) at paras. 105 and 152.

20. Therefore, I shall make the orders sought by the applicants (Witness Q, TM, M1 and M2), but subject to a provision that accredited members of the press may apply to see these witnesses give evidence. As regards special measures orders which I have already made in my directions dated 5 June and 22 October 2020, I shall likewise give accredited members of the press the option to apply to see the affected witnesses give evidence. Any such applications should be made by 4 March 2021, so that they may

be answered and considered at a further PIR hearing. If any such applications are granted, I would expect it to be at least on terms that no information tending to identify anonymised witnesses should be published.

Procedures for Disclosure and Use of Sensitive Material

21. At the PIR hearing I received submissions on various aspects of the procedures for disclosure and use of sensitive material. Public authorities, including police forces, HM Prisons and Probation Service ("HMPPS") and the Security Service, hold material relevant to these Inquests which attracts security sensitivities. I am concerned to ensure that relevant evidence is obtained and disclosed to Interested Persons so far as that is consonant with the demands of national security.

22. First of all, there is material held by the Security Service concerning its investigations into and monitoring of Usman Khan before, during and after his time in prison. As set out in my First Ruling (para. 28), the Inquests Team began enquiries about this material at an early stage. As soon as the Security Service had completed its Post-Attack Review, counsel to the Inquests read the report and the underlying investigation documents. They identified topics and documents of potential relevance, applying a low threshold of relevance. A witness statement was then prepared by a senior officer of the Service (Witness A), giving evidence of its work and of its knowledge of and involvement in the case of Usman Khan. Following further meetings with the Inquests Team, the statement has been finalised and disclosed to Interested Persons. The position of the Security Service is that it contains as much relevant evidence as can be made public without unacceptable harm to national security interests.

23. Security cleared members of the Inquests Team have identified to the Security Service a quantity of investigation documents which would be relevant and be disclosable in the Inquests if there were no security concern. The Government Legal Department has indicated that a public interest immunity ("PII") application will be made in respect of all the identified documents. The intention is that that the application will be heard on 25 March 2021. To allow for proper preparation for the hearing, I shall direct that the application is filed in OPEN and CLOSED parts by 11 March 2021.

24. Secondly, it is understood that there are other public authorities which intend making PII applications in respect of documents or contents of documents. Where there have been indications of prospective applications, specific contents have been provisionally redacted from disclosed documents (on the understanding that the redactions will be removed if PII claims are not upheld). In the interests of consistency and efficiency, it is desirable that all PII claims are considered together so far as possible. Accordingly, I shall direct that any other Interested Person or other public authority wishing to claim PII in respect of otherwise disclosable documents should make an application by 11 March 2021 for hearing with the Government's application on 25 March 2021.

25. Thirdly, there are further categories of documents in respect of which the Government objects to some parts being put into the public domain but is content for those parts to be seen by Interested Persons in the inquests of the two victims of the attack. These include reports of DDP mentors, the Mercury Intelligence Record for Usman Khan and Security Intelligence Reports about him. With a view to disclosing as much relevant material as possible to Interested Persons, the Inquests Team provisionally agreed with the Government Legal Department an "In Camera" disclosure regime. The agreement was subject to the Court's approval.

26. In summary, the proposed disclosure regime would work as follows for the several categories of documents to which it applies. For each document, a public version is to be disclosed to all Interested Persons, while a confidential version is to be disclosed to Interested Persons in the inquests of the victims who have signed a special form of undertaking. Some sections of text which are visible (but shaded) in the confidential versions of the documents are redacted (and so not visible) in the public versions. If any legal representative wishes to deploy the confidential content of these documents in the Inquests hearings, he/she must give notice, so as to allow the Government to consider making an application for the relevant part of the hearing to be in camera, pursuant to rule 11(4) of the Rules.

27. The effect of this process is to reduce the amount of material for which PII is being claimed and so to increase the amount of material disclosed to Interested Persons. In short, the position of the Government is that there is some material which can be revealed to Interested Persons but which it would or might object to being made public.

Rule 11(4) implicitly recognises that some evidence in an inquest may fall into that category, because it permits hearings to take place in camera on grounds of national security despite it being clear that Interested Persons cannot be excluded from such hearings (see *R (Secretary of State for the Home Department) v Inner West London Assistant Deputy Coroner* [2011] 1 WLR 2564).

28. Although the "In Camera" disclosure process is a novel one, it is plainly one which the court has jurisdiction to sanction. Under rules 14 and 15 of the Rules, a coroner has wide-ranging powers to limit and control disclosure, including a specific power to disclose redacted versions of documents. It is well-established that undertakings as to confidentiality can be required as a precondition to disclosure (see para. 26 of my First Ruling). In this instance, the proposed regime would involve the court imposing controls in order to increase the scope of disclosure and further the interests of a comprehensive inquiry. In approving this regime in principle, the court would not be prejudging any future issue as to whether the material marked as confidential can be revealed in public. Neither would the court be shutting out any Interested Person from arguing that specific content of documents should be taken out of the process entirely. In all the circumstances, it is clearly in the interests of justice to approve the process in principle, and I do so.

29. In relation to this topic, I need to address the position of the Khan family and their legal representatives. The Government's present position is that the Khan family should not be provided with the confidential versions of documents within the In Camera process, but it is content for those versions to be seen by counsel and three named solicitors acting for Ms Begum (mother of Usman Khan). The Khan family's representatives are content with that position at the moment, while reserving the right to seek further directions. I am content to endorse that compromise at present, pending any further submissions.

30. Finally, the provisional agreement between the Inquests Team and the Government Legal Department has involved the confidential versions of documents being placed in secure locations on the document management system and marked not for printing. Although Mr Rule submitted that the restriction on printing may cause some inconvenience, my current view is that legal representatives should be able to manage

with electronic versions, given that they will be able to print the public versions of the documents and will be able to view the confidential documents on their laptop computers during the hearing.

Security Service Witness(es)

Witness A

31. An application for anonymity and special measures is to be made in relation to Witness A, the senior officer of the Security Service who it is intended will give evidence as a "corporate witness" concerning the investigations and knowledge of the Service. The intention is that that application should be resolved at the hearing listed for 25 March 2021. In order that the application can be properly considered by Interested Persons and the media, I shall direct that it be filed by 11 March 2021.

32. It was also proposed that there should be a direction that advocates wishing to examine Witness A should file lists of topic areas for their questioning, with counsel to the Inquests filing a list first and representatives of Interested Persons filing their lists shortly afterwards. There are good reasons for such a direction. In my experience, witnesses from the Security Service who give evidence in a case such as this need to make difficult judgments about how much information can be revealed without compromising sensitive methods, sources of information or continuing investigations. Advance notice of topic areas enables the witness to consider the judgments to be made, and can be expected to result in fuller answers being given. The proposed direction would not require topic lists to be exhaustive or descend to the detail of specific questions. It would not prevent advocates following further lines of enquiry. No Interested Person took issue with the proposal, and I shall make a direction accordingly. This should not be seen as a precedent for other public authorities to seek similar directions in respect of their witnesses, since it would be a cumbersome obligation to impose more generally and there are special reasons for adopting it in respect of this Security Service witness.

Further Security Service Officers

33. Counsel for the families of Saskia Jones and Jack Merritt submitted that I should require the Security Service to provide witness statements from further officers, in addition to

Witness A. Specifically, they argued that I should direct the provision of statements from officers directly involved in investigations into Usman Khan, with a view to calling those officers as witnesses if and to the extent that they have relevant evidence to give.

34. Their submission, in a nutshell, was that these individuals could provide more direct and so more valuable evidence of the Service's investigative work: the decisions as regards coverage of Usman Khan; the information it received and assessments it made about him and the threat he posed; its communications with police and probation officers. Mr Rule submitted that the evidence of the officers would meet a threshold of relevance and that concerns about national security cannot justify ruling out calling such witnesses. Mr Armstrong gave examples of pieces of information which he pointed out had been received by the Security Service (according to the statement of Witness A) and which may or may not have been shared with police and probation officers. He submitted that Interested Persons should be able to raise with the Security Service officers most directly involved questions of what they knew and how much they communicated to others.

35. Counsel to the Inquests and counsel for the Secretary of State submitted on a provisional basis that the Service should not be required to provide statements from further officers. First, they submitted that the evidence of Witness A had given as full an account of the Security Service investigations into and knowledge of Usman Khan as the Security Service considered could be given without compromising national security. This evidence would enable the Inquests to explore what information the Security Service had and what it communicated (or did not communicate) to partner agencies to assist them in their key decisions about managing Usman Khan. If and to the extent that the Government's PII application is refused, further evidence may yet be provided. Secondly, if the PII claim is upheld there would be serious objections to the further officers giving evidence, since in practice almost any attempt to question them about the views they formed and the coverage they put in place would require them to go into information, sources or capabilities which they could not reveal. Thirdly, the virtue of calling a corporate witness in the way proposed is that that person is able to do the necessary preparatory work in order to give as much information as possible, consistent with national security and whatever decision I shall have made on

the PII claim. This is a major task which, it is said, cannot realistically be given to various individual officers at different levels.

36. Despite advancing those provisional submissions on the substantive issue of whether I should call for further statements, counsel to the Inquests and counsel for the Secretary of State did not ask me to make a definitive decision now. They submitted that I should defer the issue to the next hearing, at which I shall be considering the Government's PII application.

37. In my judgment, it is appropriate to defer this issue to the next hearing. The question of whether I should call for further evidence is, like most questions concerning selection of witnesses, a matter of judgment: see *R (Maguire) v Assistant Coroner for West Yorkshire (East)* [2018] EWCA Civ 6. Whether it would be sensible or valuable to call for statements from these further witnesses will depend heavily upon the resolution of the PII application. It will only be when I have addressed the investigation documents and made decisions about whether and to what extent they should be disclosed that I shall be able to reach an informed view about whether evidence from the operational officers would add materially, having regard to such limitations on disclosure as I shall have accepted. Furthermore, as Ms Leek QC for the Secretary of State points out, it would be disproportionate and a waste of important resources to require her team to devote weeks of work to taking statements from officers by reference to investigation documents when it is not known what, if any, of the content of those documents can be put in the public domain.

38. I appreciate that the disadvantage of deferring the issue in this way is that, if I do later order the production of statements, they may be produced at around or shortly before the start of the Inquests. However, that would still ensure that all Interested Persons would have the statements at least three to four weeks before the hearing reached a point at which the statements needed to be deployed. In my judgment, that would provide sufficient time for the relevant legal teams, each of which has a complement of experienced solicitors and counsel, to prepare the examination of relevant witnesses.

Witness Selection and Timetabling

39. The Inquests Team circulated a second draft list of witnesses for the hearings on 26 October 2020. In the preparation of that list, submissions made by Interested Persons up to that point had been taken into account. Several of the legal teams made relatively confined submissions on the second draft list. In view of the further disclosure which has taken place over recent weeks, counsel to the Inquests proposed that Interested Persons should be given a further period of two weeks to file any further submissions on the list. A draft witness timetable would then be produced. This proposal was generally welcomed, and it is reflected in the directions accompanying this Ruling.

HH Judge Lucraft QC
Recorder of London

18 February 2021