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

FOURTH RULING ON CASE MANAGEMENT AND DIRECTIONS

General Introduction

1. On 29 November 2019, Saskia Jones and Jack Merritt were killed in a terror attack at Fishmongers' Hall in London. Shortly afterwards, the attacker Usman Khan was shot dead by police firearms officers on London Bridge. These Inquests concern those three deaths.

2. Usman Khan had been convicted in January 2012 of preparation for acts of terrorism, contrary to section 5(1) of the Terrorism Act 2006, having been arrested and remanded in custody on 27 December 2010. He had been one of the subjects of Operation Aragorn, an investigation focussing on the activities of Islamist radicals in the Stoke-on-Trent area, which had resulted in a search of his home in July 2008. Subsequently, he had been investigated in Operation Guava, an investigation which led to his conviction. Operation Guava was concerned with a network of predominantly dual British-Bangladeshi nationals, comprising groups in Stoke-on-Trent, Cardiff and London. The basis of Usman Khan's conviction was that he had been planning to establish a jihadist training centre in Pakistan, and that some of those trained might return to the UK and engage in terrorist activity.

3. Usman Khan initially received an indeterminate sentence but, on appeal, a sentence of 16 years' imprisonment was passed with an extension period of five years. The notification provisions of the Counter-Terrorism Act 2008 were to continue to apply for 30 years. Whilst in custody, Khan was detained successively in seven establishments in the Category A estate. Following his release from prison on licence on 24 December 2018, Khan was managed on statutory Multi-Agency Public Protection Arrangements ("MAPPA").

4. In this Ruling I shall address six topics which were considered at a hearing on 25 March 2021:

a. Claims for Public Interest Immunity ("PII").

b. Whether or not the deaths can be adequately investigated by inquests, having regard to the outcome of the PII Claims.

c. The application for anonymity and special measures in respect of Witness A, a Deputy Director of MI5.

d. Whether or not other officers of MI5 should be called as witnesses in the Inquests.

e. Whether or not accredited journalists should be permitted to see screened witnesses when they are giving evidence.

f. Various other case management issues.

Public Interest Immunity Claims

Introduction

5. There are two claims for PII before the Court, both of which relate to material created or obtained in the investigations of the police and Security Service into Usman Khan (before and after his release from prison).

   a. On 12 March 2021, the Secretary of State for the Home Department ("the Secretary of State") signed a certificate on behalf of the Crown. The certificate states that there is a volume of material in respect of which she is under a duty to claim PII.

   b. An application supported by witness evidence has been made by a senior officer on behalf of the Chief Constable of West Midlands Police ("the Chief Constable"). The Chief Constable considers that he is also under a duty to claim PII.

6. Both the claims are made on the basis of national security considerations, and the principal claim is that of the Secretary of State. It encompasses both Security Service material and documents of other authorities (including police forces) which contain MI5 equities. The claim is that some documents should be entirely withheld from disclosure to Interested Persons ("IPs") in the Inquests, while others should be disclosed with some redactions.

7. At the hearing on 25 March 2021, submissions on the PII claims were made in OPEN and CLOSED sessions. All IPs addressed the significance of investigation materials and the principles governing PII claims in the OPEN session. In the CLOSED session, counsel for the Secretary of State and counsel for the Chief Constable advanced the claims with detailed reference to the documents which are the subject of the claims, after which counsel to the Inquests responded.

8. In advance of the hearing, I had received OPEN written submissions from the PII applicants, from IPs with an interest in the PII claims and from counsel to the Inquests. I had also received detailed CLOSED written submissions from the PII applicants, followed by equally detailed CLOSED written submissions from counsel to the Inquests and further CLOSED written submissions in response from the Secretary of State. As a result of that exchange of submissions, the Secretary of State modified her application in various respects, agreeing to the disclosure of some documents for which PII had previously been claimed and agreeing to more limited redactions of some documents than previously. Further modifications were made to the PII claim during and immediately after the hearing on 25 March 2021.

9. For reasons given in more detail below, I have decided that the PII claims should be upheld over the remaining documents and sections of documents for which PII is claimed. In the course of the CLOSED hearing, I considered those documents in great detail. I shall keep the PII claims under review as the Inquests proceed and, if information comes to light which affects the assessment of PII in respect of any documents or classes of material, I shall reconsider my decisions. In making those decisions, I have taken account of the material which has been and is to be disclosed to IPs as well as to the extended gist of MI5 material which appears in the witness statement of Witness A. As explained below, I consider that to be a very good gist.

10. This OPEN Ruling sets out my approach to the PII claims as a matter of legal principle. I shall also give a summary of my reasons for my decisions on the PII claims, to the limited extent that they can be revealed in the public domain. In a separate CLOSED Ruling, I shall record my fuller reasons, with specific reference to the documents.

Background

11. To set this application in context, I shall first describe the procedure which has been adopted by the Inquests Team in dealing with counter-terrorism police and the Security Service in relation to security-sensitive material. This procedure has been followed with my involvement and approval, and IPs have been updated at each preliminary hearing (as set out in previous rulings).

12. From the early stages of their appointment, the developed-vetted members of the Inquests Team commenced a comprehensive review of potentially relevant material held by the counter-terrorism police and the Security Service. In the periods immediately before and following his release from prison, Usman Khan was subject to a joint investigation by West Midlands Police Counter-Terrorism Unit and the Security Service. Staffordshire Police Special Branch were also involved. The Security Service took responsibility for disclosure of most relevant material held by it and/or other agencies of the United Kingdom Intelligence Community ("UKIC"). During the extended review process, each member of my team (Jonathan Hough QC, Sinéad Lester and Aaron Moss) reviewed the documents independently.

13. MI5 conducted a Post-Attack Review ("PAR"), producing a report which summarised and referenced the contents of all the relevant investigation documents. Both the PAR Report and the underlying documents were provided to and reviewed by the members of my team. In meetings with MI5, they identified topics and information which were considered potentially relevant to the Inquests, having adopted a low threshold of relevance. As explained by counsel to the Inquests in their OPEN submissions, the team took the view that relevance extended not only to the substantive information in the report and documents, but also included what MI5 knew (and when); what information it passed to other bodies (and when); and what procedures MI5 adopted for its investigations, actions and sharing of information.

14. The Security Service then produced a draft statement of Witness A. Substantial parts of that statement were intended to serve as a gist of the material and information which the Inquests team had identified as relevant (to the extent that the material and information could be revealed openly).

15. In further meetings, the Inquests team made comments to the Security Service on the sufficiency of the gist in Witness A's statement and sought to press for further information to be provided by means of the statement. As a result, changes were made to Witness A's statement, the effect of which was that additional information was included.

16. The statement of Witness A was disclosed to IPs in advance of the pre-inquest review hearing on 12 February 2021. The Secretary of State's position is that, taken together with all the other material being disclosed in the Inquests, this statement provides as much relevant evidence as can be provided without unacceptable damage to national security (subject to the oral evidence to be given by the witness in due course). The statement provides evidence of (i) the Security Service's work and its procedures in general; (ii) its post-attack investigations; and (iii) its pre-attack investigations and its knowledge of Usman Khan both before and after the attack.

17. The Inquests team identified a number of Security Service and sensitive police documents which would fall for disclosure on grounds of relevance alone (taking account of the information provided by Witness A's statement, but ignoring national security considerations). In doing so, the team again applied a low threshold of relevance and considered possible ways in which the Court and IPs might conceivably wish to explore, amplify and challenge Witness A's evidence.

18. Following this process, the Secretary of State and the Chief Constable made their PII claims in respect of various documents which the Inquests Team had indicated would fall for disclosure on the basis of their relevance assessment.

19. As set out above, in the process of preparing for and conducting the PII hearing, the Secretary of State accepted that her PII claim should be abandoned in respect of some documents and that in other respects it should be adjusted. In recording this, I make no criticism of the Secretary of State. To the contrary, this state of affairs is indicative of a PII process which in this case has worked well, and suggests that both clients and lawyers have applied their minds carefully to considering what can properly be disclosed.

Legal Principles

20. Disclosure in an inquest is a staged process. At the first stage, the coroner gathers material relevant to his/her investigation, using statutory powers as necessary to obtain that material. The second stage is for the coroner to disclose relevant material to IPs, taking account of any proper objections to onward disclosure. See: *Worcestershire County Council and another v HM Coroner for the County of Worcestershire* [2013] EWHC 1711 (QB).

21. Schedule 5 to the Coroners and Justice Act 2009 ("CJA") governs the powers of coroners. It provides (by paragraph 1) that orders may be made requiring the provision of evidence and production of documents in connection with coronial investigations. Paragraph 2(1) of the Schedule states that a person "may not be required to give, produce or provide any evidence or document under paragraph 1 if – (a) he or she could not be required to do so in civil proceedings in any court in England and Wales…" Paragraph 2(2) adds that the "rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to an investigation or inquest under this Part as they apply in relation to civil proceedings in a court in England and Wales". Accordingly, in principle, a valid PII claim may be a basis for refusing to provide material to a coroner, although (as I shall explain) that is not what ordinarily happens in cases of the present kind.

22. Rule 13 of the Coroners (Inquests) Rules 2013 ("the Rules") provides for disclosure of relevant documents to IPs upon request to a coroner, subject to various qualifications. One of the qualifications appears in rule 15, which provides that disclosure may be refused where there is a legal prohibition on disclosure. Rule 14(b) further permits a coroner to disclose a document in redacted form. Those rules enable a coroner who has received material over which PII is claimed to withhold it from disclosure where the claim is made out.

23. The usual practice which has been adopted in inquests involving security-sensitive material is for a nominated judge to be appointed and for the material to be provided to the judge and/or to security-cleared counsel and solicitors to the inquest. Any objection to onward disclosure is then made by a PII claim which is advanced by application to the coroner: see *SSHD v HM Senior Coroner for Surrey* [2017] 4 WLR 191 at [41] to [48];

Chief Coroner Guidance No. 30, [24] to [33]. That is what has happened in the present case. It is well-established and not in dispute that I have jurisdiction to consider PII claims and to order or withhold disclosure depending on whether the claims are established.

24. The principles governing PII in civil proceedings are well-known, as set out in *Conway v Rimmer* [1968] AC 910 at 952 and *R v Chief Constable of West Midlands Police, Ex Parte Wiley* [1995] 1 AC 274. In an inquest the same principles are to be established, but with proper regard to the distinctive features and objectives of inquest proceedings. Consideration of a PII claim requires a balance to be struck between competing public interests. In the present case, it is necessary to balance the public interest in avoiding asserted forms of damage to national security against the public interest in all potentially relevant evidence being disclosed and deployed within the coronial investigation.

25. In *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2009] 1 WLR 2653 (Div. Ct.) at [34], Thomas LJ suggested that four questions be posed in turn when considering a PII claim:

    a. Is there a public interest in bringing the material for which PII has been claimed into the public domain?

    b. Will disclosure of that material bring about a real risk of serious harm to an important public interest, and if so, which interest?

    c. Can the real risk of serious harm to the important public interest be protected by other methods or more limited disclosure?

    d. If the alternatives are insufficient, where does the balance of the public interest lie?

26. The assessment of harm to the public interest is the responsibility of the public authority making the claim for PII: see *Al Rawi v Security Service and Others* [2012] 1 AC 531 at [147] – [149]. However, it is for the Court to determine whether the claim to PII is properly justified (*Conway* at 985 and *Wiley* at 289). As Mr Pitchers QC for the family of Saskia Jones rightly stresses, it is important that the Court should exercise independent judgment and should not simply "salute a ministerial flag" (*Mohamed v Secretary of State for the Home Department* [2014] 3 All ER 760 at [20]). It is also important for the Court

to keep in mind that the open justice principle applies to inquests, and that allowing a PII claim entails some restriction on open justice (the degree of which will vary based on the detail of the claim).

27. The Secretary of State and the Chief Constable draw attention to two considerations which justify showing respect to their judgments on the potential effects of disclosure on national security interests. First, Ministers and law enforcement agencies have access to a broad range of evidence, experience and expertise on matters of national security, which informs their judgments. Secondly, Ministers are constitutionally responsible, and politically accountable, for those judgments and their consequences. See for example *CCSU v Minister for the Civil Service* [1985] AC 374 at 402 and 412; *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153 at [50] to [53]; *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2011] QB 218 (CA) at [129] to [135].

28. In addition, and as submitted by the Secretary of State, there are a series of statements of high authority to the effect that disclosure should not usually be made if it would cause significant harm to national security: see *Duncan v Cammell Laird & Co Ltd* [1942] AC 624 at 642 to 643; *Conway* at 940, 952 and 954; the *CCSU* case at 955; *Balfour v FCO* [1994] 1 WLR 68 at 688 to 689.

29. As I have said, it is necessary to take account of the particular public interests served by inquests. A number of counsel in the hearing cited Lord Bingham's well-known summary of those interests in *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653 at [31]:

> "to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others."

30. Probably the most comprehensive and authoritative summary of the legal principles governing PII claims based on national security in the context of an inquest appears in the judgment of Goldring LJ in *Secretary of State for Foreign and Commonwealth Affairs*

v Assistant Deputy Coroner for Inner North London [2013] EWHC 3724 (Admin). His Lordship identified nine principles, as follows:

a. "[It] is axiomatic… that public justice is of fundamental importance. Even in cases in which national security is said to be at stake, it is for courts, not the Government, to decide whether or not PII should prevent disclosure of a document or part of a document." [53]

b. The context of the *Wiley* balancing exercise is critical. An exercise which balances national security against the proper administration of justice raises its own particular considerations which may not apply in cases where the public interest served by the claim is not that of national security. [54]

c. "[When] the Secretary of State claims that disclosure would have the real risk of damaging national security, the authorities make it clear that there must be evidence to support his assertion. If there is not, the claim fails at the first hurdle." [55]

d. "[If] there is such evidence and its disclosure would have a sufficiently grave effect on national security, that would normally be the end of the matter. There could be no disclosure. If the claimed damage to national security is not 'plain and substantial enough to render it inappropriate to carry out the balancing exercise,' then it must be carried out." [56]

e. "[When] carrying out the balancing exercise, the Secretary of State's view regarding the nature and extent of damage to national security which will flow from disclosure should be accepted unless there are cogent or solid reasons to reject it. If there are, those reasons must be set out." Otherwise, the balancing exercise must be carried out on the basis that the Secretary of State's view of the nature and extent of damage to national security is correct. [57]

f. It is usually a given that the Secretary of State knows more about national security than the coroner, whereas the coroner knows more about the proper administration of justice than the Secretary of State. [58]

g. "[A] real and significant risk of damage to national security will generally, but not invariably, preclude disclosure." The decision is for the coroner, not the Secretary of State. [59]

h. For a coroner to reject a PII claim backed by a ministerial Certificate, he/she must conclude "that the damage to national security as assessed by the Secretary of State [is] outweighed by the damage to the administration of justice by upholding the Certificate." [60]

i. It is incumbent on a coroner to explain how he/she arrives at such a decision, particularly if ordering disclosure in the knowledge that doing so entails a real and significant risk to national security. [61]

31. There is no power in an inquest to hold CLOSED material procedures, such as may be carried out in some civil proceedings and in inquiries under the Inquiries Act 2005. Any evidence taken into account by the coroner (or a jury) in an inquest must have been provided to IPs. See: *R (Secretary of State for the Home Department) v Inner West London Assistant Deputy Coroner* [2011] 1 WLR 2564. Accordingly, where a PII claim has been upheld, the material for which PII was claimed is not taken into account for most purposes. However, it is legitimate for a coroner who has upheld a PII claim to take account of the material in order to ensure that no question is later asked which he/she knows (from CLOSED material) would be misleading or based on a false premise. That is the approach which Dame Heather Hallett took in the London Bombings Inquests and which the Divisional Court approved. HH Judge Hilliard QC took the same approach in the Perepilichnyy inquest, and I took it in the London Bridge / Borough Market Inquests. I intend to take the same approach in this case.

Discussion

32. Following the hearing of 12 February 2021, I directed that any written applications for PII should be made by 11 March 2021. In the event, all OPEN documents in support of the claims were prepared and circulated by that date but I received some CLOSED material at a later date (though by prior agreement with my team). The hearing of the PII claims was held more than two clear weeks before the date on which the main Inquests is due to commence.

33. I should stress that, in making my decisions on the PII claims, I have not given any weight to any consideration whether rejecting those claims (in whole or in part) might require the Inquests to be delayed or otherwise disrupted. The approach I took at all times was that, if proper application of the legal principles led to the conclusion that disclosure should be ordered which might cause the Inquests to be delayed, that is what should happen.

34. Before the OPEN and CLOSED sessions of the hearing, I reviewed all the material over which PII is claimed, as well as considering all the submissions. While many of the documents were specifically discussed in the CLOSED session by the advocates, I have had a full overview of the material and have personally considered specifically what should and should not be disclosed.

35. For each document in respect of which PII is claimed, I have considered both the damage to national security which it is said would flow from disclosure and the effect on the inquest proceedings if the material is withheld from disclosure. In the latter regard, I have taken account of the other material which is and will be available in evidence, including the large amount of documentary material and witness evidence from counter-terrorism police, HM Prisons and Probation Service ("HMPPS") and other state agencies, as well as the statement of Witness A.

36. With those considerations in mind, I undertook the task set out in the authorities. During the CLOSED session of the hearing, I considered at length both the categories of material for which PII was claimed and many of the individual documents. The CLOSED hearing commenced at 2.15pm and the Court sat through until after 5.30pm, despite all the considerable detail of the written submissions and my extensive pre-reading.

37. For reasons given in more detail in the CLOSED Ruling, my decision is that, after taking account of the various respects in which the PII claims have been modified during the process, the balance of the claims should be upheld. The risks of harm identified by the Secretary of State in the Sensitive Schedule, and by the Chief Constable in his application and evidence, are very real and readily understood. The reasoning explaining why disclosure of each document would damage national security interests (in particular, the fight against terrorism) is cogent. Furthermore, every effort has been made to provide as much material as possible, including by (a) disclosure of documents in the ordinary

inquest disclosure process, subject to confidentiality undertakings, (b) disclosure of more sensitive documents in the "in camera" process discussed in my Third Ruling, (c) disclosure of documents with (generally very limited) redactions and (d) gisting of material (notably in the substantial statement of Witness A).

38. I have taken account of the relevance of the various documents which are the subject of the claim and the effect on the Inquests of withholding them from disclosure or permitting redactions based on PII, bearing in mind the other material which will be in evidence. Balancing that effect against the harm to national security interests which would arise from disclosure, I have concluded that the claims (as modified) are justified.

39. It is possible in this OPEN document to say little as to the relevance of the documents within the claims or the forms of harm which would arise from disclosure. A version of that same difficulty has been experienced by counsel for the families in making submissions. It is not a straightforward task to make representations on the relevance of material without knowing what that material is. I was nevertheless greatly assisted by the submissions made by counsel for both the families on points of principle.

40. As Mr Pitchers QC submitted on behalf of the family of Saskia Jones, "the burden is strictly to justify the non-disclosure, the departure from open justice and fullness of inquiry, not vice-versa". Such a full inquiry is of importance both in the public interest, and in the personal interests of the families.

41. Mr Armstrong and Mr Nicholls for the family of Jack Merritt submitted that the investigation of the role of MI5 and counter-terrorism police is "central to the family's hope that Jack's inquest should provide them with some form of catharsis and resolution". I acknowledge that the scope of inquiry in these Inquests includes the monitoring of Usman Khan by the police and Security Service after his release from prison, as well as his management by state agencies (including under the MAPPA regime). It is understandable and right that the families of the victims should want the Inquests to consider the investigation into Usman Khan with rigour. I have kept that point in mind when considering the relevance of the material which is the subject of the PII claims.

42. For the family of Saskia Jones, it is emphasised that the determination I make need not be "all or nothing" and that careful consideration should be given of devices such as

redaction and gisting (see *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs* (cited above) at [34]). That is the approach I have adopted, and it is consistent with the approach that the Inquests Team have adopted throughout the PII process. The CLOSED hearing is the culmination of that process. Over a period of months before the hearing, my team engaged in extensive meetings and dialogue with the Secretary of State's and Chief Constable's teams as to what could be disclosed in redacted form or communicated by way of gist. The PII claims before the Court are at the conclusion of that iterative process, and are limited to the material which the Secretary of State and the Chief Constable consider cannot be disclosed in any way.

43. Mr Armstrong and Mr Nicholls properly caution against excessive deference to PII applicants. Although I recognise that the Chief Constable and the Secretary of State, and those advising them, have the expertise in security matters, that is not to say their decisions are conclusive. In advance of the CLOSED hearing, counsel to the Inquests raised extensive questions about security justifications, both in the meetings I have described and in their CLOSED submissions. At the hearing itself, I engaged with counsel for both of the PII applicants to understand exactly how in practical terms the release of documents could assist potential terrorists or hamper efforts to combat terrorism.

44. Although it is not possible to anatomise the kinds of harm which would flow from disclosure of the particular documents which are the subject of these claims, it may assist the reader if I address briefly four types of interest which often arise in cases of this kind and which were discussed by counsel to the Inquests in their OPEN submissions.

45. <u>Damage to intelligence tactics and capabilities</u>: The police and the Security Services rely upon an arsenal of operational tactics and techniques in their fight against terrorism and other serious crime. Detailed descriptions of those tactics and techniques, when and how they are used and their limitations would be of use to those under investigation. Armed with such information, subjects of interest could change their behaviour to avoid detection or make increasingly educated guesses about what is known about them. This point is made by Lord Anderson QC in his report on the 2017 terror attacks at paragraphs 2.4 to 2.6. See also *Attorney-General v Shayler* [2006] EWHC 2285 (Admin) and *R v H* [2004] 2 AC 134 at [18]. In particular, I am aware from the cases I have heard both as a criminal judge and as a coroner that many terrorist suspects are already astute to guard

against surveillance. It cannot be in the public interest to dilute the effectiveness of operational techniques by publicising them.

46. Damage to other operations: As can be seen from the Operation Aragorn and Operation Guava investigations, there are often links between investigations and subjects of interest which span many years. The Security Service and counter-terrorism police are careful to avoid making public the identities of those under investigation, for example because doing so could cause subjects of interest to conceal their activities more effectively. If the material from one investigation were extensively disclosed in the public domain, it might reveal the identities of others who were and remain under investigation.

47. Damage to persons providing information: The Security Service is known to make use of human intelligence, including from informants. Public knowledge that an informant was used in a particular operation could give rise to a direct threat of injury or death to that informant (should they be identified) or it may discourage that informant from providing further useful intelligence. Furthermore, the unmasking of one human source could also cause other informants to be reluctant to assist the police and Security Service in the future. These are public interests of a very high order. See: *Re Scappaticci JR* [2003] NIQB 56 at [19] and *A v Secretary of State for the Home Department* [2003] 1 All ER 816 at [87].

48. Damage to liaison relationships: There are two ways in which the disclosure of information revealing the existence or nature of foreign liaison relationships could harm the public interest. First, there is a public interest in the preservation of such relationships, which are an important part of the nation's protection against crime and terrorism. Secondly, exposure of assistance from foreign organisations may adversely affect diplomatic relations with other states.

Adequacy of Investigation

49. A PII application within an inquest is only necessary where the subject material is relevant (or potentially relevant) to the inquiry to be undertaken. It follows that, having upheld claims to PII covering relevant material, I have had to consider whether it remains possible to conduct a legally sufficient inquiry into how those who died met their deaths.

50. If the effect of upholding a PII claim is that an inquest cannot adequately investigate how the deceased came by their deaths, the proper course for the coroner is to invite the Secretary of State to establish a statutory inquiry under the Inquiries Act 2005. Such an inquiry could receive material in CLOSED session where appropriate. This would be the course to take if the investigation would be seriously incomplete and/or potentially misleading without the deployment of material properly subject to PII: see *R (Litvinenko) v Secretary of State for the Home Department* [2004] HRLR 6.

51. As counsel to the Inquests submitted, a coroner does not necessarily call for a public inquiry just because some relevant documents or some facts may be excluded as the result of a PII claim. In fact, many inquests have been properly conducted after PII claims have been upheld, including the London Bombings Inquests, the Perepilichnyy inquest, the London Bridge Inquests and numerous cases over the years involving the police and the armed forces. The cases where public inquiries have been requested have been striking examples. For instance, in the Litvinenko case, it was (as found by the Divisional Court at [62] to [64]) impossible without PII material even to consider whether the death was the result of an ordinary crime or state-sponsored terrorism. In the Manchester Arena Bombing case, it is known that MI5 had twice received intelligence which could in retrospect be seen to be "highly relevant" to what had been an organised and sophisticated bomb plot (see paragraph 2.37 of Lord Anderson's report, cited above).

52. The starting point is that a coroner is appointed to conduct an inquest and has a statutory responsibility to carry out the necessary investigation under the CJA. It is only where a coroner concludes that he/she is unable to discharge those statutory responsibilities in a satisfactory way that a request should be made for a different form of process to be put in place. That is the approach I have taken in reaching my decision.

53. Although a decision to request a public inquiry at this stage would probably result in a substantial delay in the hearing, with consequent inconvenience and distress to many people involved (notably witnesses), that is not a consideration to which I have given any weight in reaching my decision. If I considered that I could not conduct a legally adequate investigation, I would follow the guidance of the authorities and request the establishment of a public inquiry.

54. As already mentioned, the reason why a public inquiry can consider material which attracts PII is that it can include CLOSED material procedures and can produce a report relying in part on evidence from such procedures. As a matter of fact, it is often the case that a public inquiry with CLOSED material hearings will not leave bereaved families any better informed. Furthermore, the effect of this matter proceeding as a public inquiry would be to remove the jury as tribunal of fact. However, those are not factors which enter into the decision whether or not to call for a public inquiry. First, one should not prejudge the restriction orders which might be made in an inquiry (under section 19 of the 2005 Act), the orders for disclosure which might be made (under rule 12(3) of the Inquiry Rules 2006) or the extent to which information from CLOSED evidence sessions might be gisted or summarised in an OPEN report. Secondly, even if PII material would not be communicated to the bereaved family in a public inquiry, there is still a public interest in relevant material being considered and being taken into account in the conclusions of the process.

55. On behalf of the Merritt family, it was submitted that, if the PII claims were to be wholly or substantially upheld, I should ask the Home Secretary to establish a public inquiry. Mr Nicholls fairly accepted that, in advancing this submission, he is "constrained" because the family do not know the documents to which the claims relate. However, he submitted that a public inquiry under the 2005 Act would be preferable to an inquest because the question of whether the attack could have been prevented is a matter of great importance to the family and the exclusion of PII material prevents it from being fully investigated. He drew attention to a series of questions to which he suggested the PII material might have relevance.

56. On behalf of the family of Saskia Jones, Mr Pitchers QC did not positively take the position that a public inquiry should be sought if the PII claims were largely or wholly upheld. He made clear that such a submission was not being made at the hearing, but that the family reserved their position for the future.

57. As I have said, the question for me to consider now is whether it is possible to conduct a legally sufficient investigation for the purposes of sections 1 and 5 of the CJA. In particular, is it possible adequately to investigate how each of the victims of the attack came by his/her death, bearing in mind that the inquests should investigate the broad circumstances of death and that the pre-attack investigations into Usman Khan are within

the scope of the inquiry? In answering this question, I have had to consider the material which will be given in evidence if the Inquests proceed, and the extent to which we shall be able to examine the investigations into Usman Khan. I have also had to consider the PII material and to what extent the exclusion of such material would affect the quality of the inquiry. In that regard, I have sought to be both rigorous and practical, taking advantage of the very detailed consideration I have given to the PII documents in the CLOSED process.

58. The firm conclusion I have reached, in agreement with the submissions of counsel to the Inquests, counsel for the Secretary of State and counsel for the Chief Constable, is that it is possible and appropriate to carry out an adequate investigation into the deaths within the framework of inquests. Accordingly, I shall not ask the Secretary of State to establish a public inquiry. However, I shall keep that decision under review, taking account of the evidence as it emerges. My reasons for my decision are as follows.

59. First, I acknowledge that the previous examples of cases where inquests were satisfactorily conducted after PII claims had been upheld, and the examples of cases where public inquiries were requested, are only of assistance up to a point. The decision to be made is acutely fact-sensitive. It turns on precisely what material is being withheld from disclosure as a result of the specific PII claims made in this case and on what the effect of the PII claims is likely to be in the context of the topics to be investigated. As I have said, it is not enough that the effect of a PII process is that some material relevant to a significant issue will be withheld: the question is what material is to be withheld and what is the effect in light of all the other evidence.

60. Secondly, as submitted by counsel to the Inquests, the relevance of the PII material needs to be seen in context. Where the withholding of material prevents an inquest properly examining facts central to the deaths, as in the Litvinenko case and the Anthony Grainger inquiry, a request for a public inquiry may be clearly warranted. In this case, there is no suggestion that the PII material would shed any light on how Usman Khan planned, prepared for or carried out the attack. When addressing whether the attack might have been prevented, there is no suggestion that the PII material may contain evidence of attack planning which was there to be seen.

61. Thirdly, there is a vast amount of evidence concerning the management and monitoring of Usman Khan, what was known to law enforcement agencies about him and what risk assessments were formed. This includes huge volumes of prison intelligence material; extensive records from the MAPPA process which drew together intelligence in making decisions about Khan; and substantial material from both West Midlands Police and Staffordshire Police Special Branch who were engaged (with MI5) in the investigations of Usman Khan following his release. By way of example, and addressing questions raised by Mr Armstrong and Mr Nicholls at paragraph 6 of their submissions:

    a. The question is raised whether MI5 shared intelligence from late 2018 indicating that Khan was continuing to radicalise others and had said that he would return to his old ways of terrorist offending. This intelligence features in the prison Mercury Intelligence Record (DC6503/2242) and in MAPPA minutes from December 2018 (DC6409/6), as well as in the profile of Usman Khan held by Staffordshire Police Special Branch (WS5059-2A/13). All the key witnesses can be asked how this intelligence influenced their assessment of Usman Khan.

    b. Reference is made to a Joint Operational Team ("JOT") meeting held between West Midland Police, Staffordshire Special Branch and MI5 on 18 November 2019 and the fact that Witness A says that the meeting noted concerns of Khan becoming isolated and reacting badly to a visit from police officers. The source and currency of these concerns is apparent from the disclosed material, including minutes of a MAPPA meeting on 14 November 2019 (DC6417/5), which include a detailed record of how the various security agencies took account of the concerns. There has also been disclosure of emails between the officers dealing with Khan and their Special Branch colleagues, discussing these matters further (WS5063-JS413). There is a proper question as to why the MAPPA agencies permitted Khan to go to London unaccompanied in the context of this intelligence, but that question can be asked of those who attended the meeting and made the decision.

    c. Reference is made to the fact that Khan had contact with other terrorist offenders (including his Operation Guava co-defendants) while in prison, and the question is raised whether information on this subject was communicated to Staffordshire Police Special Branch or in MAPPA meetings. In fact, the MAPPA Form F for 15 August 2018 described Khan as being one of the main extremists on his prison

wing, responsible for radicalising others and having close associations with named individuals who were notable terrorist offenders (e.g. Brusthom Ziamani): see DC6420/6. This information is discussed in the evidence of Ms Boulton, Khan's NPS offender supervisor.

d. The point is made that, according to Witness A, MI5 assessed that Khan might be acting in a compliant way after his release in order to avoid the scrutiny of the authorities. However, this concern was not peculiar to MI5. It was shared by the other statutory agencies, having been raised in a MAPPA intelligence report in mid-2018 and recorded in MAPPA minutes (DC6406/6).

e. Reference is again made to the JOT meeting of 18 November 2019. Not only is this meeting gisted in some detail in paragraphs 135 to 136 of Witness A's statement. It will also be the subject of evidence from police officers who attended the meeting, including DS Stephenson of Staffordshire Special Branch who provided the police intelligence update at the meeting (see WS5072/12-13) and who had also attended the MAPPA meeting four days previously.

f. Reference is made to the fact that, according to the statement of Witness A, various operational capabilities were directed against Usman Khan. The question is asked whether any signs of planning or preparation were missed. In fact, that question is answered both by the statement of Witness A (which explains at paragraphs 137ff that there was no intelligence which might suggest attack planning, even in retrospect) and indirectly by the evidence from the MPS SO15 investigation into the attack (which identifies no public behaviour indicative of attack preparations).

The availability of this very large amount of evidence is the result of the extensive efforts which have been made to ensure the maximum amount of disclosure and openness, including by innovative means such as the "in camera" disclosure process.

62. Fourthly, the statement of Witness A is a detailed document which identifies the key intelligence that was received by MI5 at each point in time. Having compared it against all the PII material, I regard it as a very good gist and I do not consider that there is anything more in the PII material which would have significantly influenced a fair assessment of the risk posed by Khan. The contents of the statement may be compared against the information available to other law enforcement agencies, enabling questions

to be asked about what information was shared and what assessments were made of the risk Usman Khan presented. For instance, the information can be put to all those who attended the MAPPA meetings leading up to November 2019 and they can be asked in detail about why the various matters of concern did not lead them to decide against permitting Khan to attend the meeting in London or to require him to be accompanied to that meeting.

63. Fifthly, consideration needs to be given to the nature of the attack, which was of the lowest level of sophistication, requiring no network, no communications and no logistics. As the statement of Witness A makes clear, MI5 had no information prior to the attack which (even in retrospect) might have raised a suspicion of attack planning: see paragraphs 137 to 143 of the witness's statement. Even now, after all the extensive police investigations (and MI5's own review), there is no evidence that anyone else knew of Usman Khan's intended attack in advance or that he did anything in public which pointed to attack preparations. See the SIO Report of DCI Brown (DC6603) and the biographical report on Usman Khan (DC6502/42-47).

64. I acknowledge that there may still be questions which IPs might want to explore and which may be limited by the effects of my decision on the PII claims, including for example about operational capabilities which the Security Service might have directed against Usman Khan. However, having regard to all the points above and having considered the content of the PII material in detail, my view is that the inquiry can and will be more than adequate. Indeed, I consider that it is likely to involve an unprecedented public examination of the management and investigation of a terrorist offender following release into the community. As I have said, I shall keep this decision under review, considering any developments which may change the view I have taken.

Anonymity and Special Measures Application in relation to Witness A

65. Witness A is a Deputy Director of MI5. The witness has had a 16-year career with the Security Service and was a senior manager in the section of MI5 responsible for investigating and countering the threat from international terrorism between 2013 and 2015.

66. An application is made by the Secretary of State for Witness A's anonymity and for special measures to be taken when Witness A is called to give evidence. The following orders are sought (in summary):

a. that the witness's name be withheld;

b. that the pseudonym "Witness A" be used;

c. that no question may be asked leading to the witness's identification;

d. that the witness be screened from the court when giving evidence (pursuant to rule 18 of the Rules);

e. that the witness be permitted to enter and exit the hearing room by private means;

f. that electronic devices in the hearing room be turned off during the witness's evidence (with some exceptions);

g. that there should be no recording of the witness's evidence (save for the official recording);

h. that there be no disclosure of the witness's evidence until confirmed by counsel to the Inquests (at breaks in the court day); and

i. that publication of the witness's name and identifying information about the witness in connection with the Inquests and their subject-matter be prohibited under section 11 of the Contempt of Court Act 1981.

67. The legal principles governing applications for anonymity and special measures are addressed at paragraphs 42 to 43 of my First Ruling, while those governing orders for screening of witnesses are addressed at paragraphs 29 to 33 of my Second Ruling and paragraph 11 of my Third Ruling. The principles are not controversial, and I shall not repeat them here.

68. In support of the application I received both OPEN and CLOSED evidence and submissions. The Secretary of State submits that the orders may be properly made on the basis of OPEN materials alone, by reference to (a) the Article 8 rights of the witness,

taking account of the competing interests (including Article 10 rights of reporters); and (b) the common law balancing exercise.

69. As submitted by the Secretary of State, there are in summary five reasons justifying measures to anonymise the witness and screening from the general public. I shall summarise them briefly because they were not disputed by anyone before me.

a. Witness A is a senior intelligence officer and would have good reason to fear for his/her safety and that of his/her family if measures were not taken to prevent him/her being identified in connection with the Inquests. The OPEN threat assessment demonstrates that the witness would be at risk of being targeted and would have a reasonable fear of reprisals if he/she were identified.

b. Revealing the identity of the witness would compromise his/her current role and future career opportunities. Not only would this be unfair to the witness, it could also deprive the UKIC of a valuable asset (a senior officer available for operational posts).

c. To reveal the identity of the witness would affect his/her personal relationships, since Security Service officers are required to keep their professional roles secret in their private lives.

d. The orders sought would not prevent the witness's evidence being given in open court and heard by all participants. They would not limit the amount of evidence to be given about MI5 and its involvement in the case of Usman Khan. Because Witness A was not directly involved in the operation involving Khan, his/her identity and background (other than Service experience, which is covered so far as possible in the statement) are not relevant to his/her evidence.

e. Anonymity and appropriate screening orders would help Witness A to give his/her best evidence, since he/she would not be concerned about the personal and professional consequences that would attend giving evidence in his/her own name.

70. There is a more difficult and contentious issue as to whether Witness A ought to be seen by some of the advocates for IPs (notably those for the bereaved families) and/or by some IPs (notably members of the bereaved families). In the London Bombings Inquests, the

Court permitted IPs and their lawyers to see the Security Service witness despite concerns about that proposal. In the event, there was a chance encounter outside the courtroom between the witness and one of those in court, which provoked great concern on the part of the Security Service. In the Westminster Bridge and London Bridge Inquests, the Security Service witness was screened from all in court (including myself). In the Manchester Arena Inquiry, Sir John Saunders decided in a careful ruling that a small number of identified advocates for bereaved families (but not their clients) should see the Security Service witness.

71. The Secretary of State makes the following submissions in support of her argument that Witness A should be screened from all in court.

a. The tribunal of fact in these cases will be a jury of 11 randomly selected members of the public. They cannot realistically be security cleared, and it would not be acceptable on security grounds for a senior MI5 officer to be seen by 11 members of the general public of whom nothing is known. There would be a material risk of a chance encounter outside court and of the witness's identity being compromised. If the jury as tribunal of fact cannot see the witness, it is difficult to see a justification for others doing so.

b. Enabling the witness to be seen by even a small group of lawyers and/or family members would give rise to a risk of recognition outside court. It would be invidious and inappropriate for the Security Service to check out or clear family members or their legal representatives. (Further submissions were made in CLOSED session about particular concerns relating to the possible identification of the witness.)

c. While there is an acknowledged value to counsel to seeing a witness he/she is examining and there is also value to a bereaved family in looking a significant witness in the eye, these interests are less weighty where (as here) the witness in question is not one whose personal credibility is in issue.

d. Because the hearing in this case will involve jurors, advocates and witnesses in the same courtroom, it is likely to be very difficult in practical terms for Witness A to be effectively screened from everyone in court (including jurors) but not from a few selected lawyers and/or others.

72. The family of Saskia Jones made no substantive submissions in respect of this application. The family of Jack Merritt submitted that the Coroner should generally "scrutinise the application… with considerable care". In relation to screening, they submitted that members of the bereaved families and their advocates should be permitted to see the Security Service witness.

73. As to whether Witness A should receive anonymity, it is submitted for the Merritt family that there should be no assumption that the mere fact of working for MI5 gives rise to a requirement for anonymity. Mr Nicholls cites the fact that police officers engaged in the fight against terrorism and other serious crime regularly give evidence in their own names, and he cites ACC Ward of West Midlands Police who will be doing so in these Inquests. He also points out that the Director-General of MI5 is avowed so that he could give in his own name the evidence which it is intended that Witness A should give.

74. In response to the submission that the Director-General (Ken McCallum) should have been put forward as a witness, the point is made that whoever gives evidence will need to do a significant amount of preparatory work, which is likely to take a number of weeks. It is said that it would be a very bad idea for Mr McCallum to be taken away from his responsibilities at the head of MI5 for such a period of time. An argument to that effect was accepted by Sir John Saunders in the Manchester Arena Inquiry.

75. Mr Nicholls for the Merritt family made a number of telling submissions in favour of his position that the families and their counsel should see the witness. First, it is said that the evidence will be more intelligible to the families and counsel if given by a visible person and not as a "disembodied voice". Secondly, the examination by counsel may be affected through the loss of the visual cues which an advocate can take from a witness. Thirdly, while the witness's credibility may not be in issue, it may be contentious and the non-verbal responses of the witness may inform an assessment of the witness. Fourthly, seeing this significant witness will assist the family in the justified purpose of seeking both accountability and catharsis through the inquest process. Fifthly, permitting the family members and a small number of advocates to see the witness will not give rise to a real or significant risk of the witness's identity being compromised. That would not only require the witness to be encountered outside court but the person seeing the witness to identify him/her publicly in such a way that his/her name or image became public. Such a sequence of events is said to be vanishingly unlikely, since the family members

and the advocates are people of good character, aware of their responsibilities and trusted to keep other information confidential.

76. In answer to the final point, Mr Sheldon QC for the Secretary of State submitted that the risk of a chance encounter outside court is not fanciful or remote, since it happened in the case of the London Bombings Inquests. He pointed out that it was no answer to the concerns of the Security Service to say that in that case no harm had been done. In CLOSED session, he pointed to points of distinction between the application in this case and that in the Manchester Arena Inquiry, which I need to take into account. His submission in summary was that the benefits to the families of permitting them and their counsel to see Witness A are outweighed by the risk (even a low risk) of the witness's identity being compromised, having regard to all the evidence (including OPEN and CLOSED evidence of threats to the witness).

77. For the reasons given by the Secretary of State, the case for Witness A to be granted anonymity and screened at least from the general public and most in court is very clear. As a matter of the common law balancing exercise and/or the competition between Article 8 rights of the witness and countervailing considerations, the interests in favour of the application clearly outweigh the effects upon the important open justice principle of granting the orders sought.

78. As a starting point, I consider that it was and is quite reasonable for the witness to be a person whose identity is secret. I do not consider that it would be practicable or realistic for the Director General to give evidence personally in a case such as this. Having some experience as coroner in similar cases, and being aware of the extent of the information with which the witness will need to be very familiar, I can readily accept that preparation to give evidence is a matter of weeks of work. Even if a witness is very knowledgeable about security sensitivities generally, it is essential that the witness is familiar with all of the facts of this case and other investigations which are linked to it. That is not a straightforward task. It is not reasonable to expect the Director General to be taken away from his other important responsibilities, given that there is another senior officer who is well-equipped to give the evidence.

79. It follows that the witness must be an officer whose identity is not avowed by the Security Service and is closely protected. I accept the submission made on behalf of the Merritt

family that the witness is not entitled to an automatic "class claim" to anonymity. Applications should be considered individually on the evidence and on their merits. In this case, the evidence is substantial and it supports the various reasons given for anonymity and special measures generally. As it is said in the OPEN threat assessment provided by the Secretary of State, the threat from extremists "is significant and constant" but "it is mitigated considerably at the personal level by the fact that the overwhelming majority of UKIC personnel deliberately remain anonymous". It is clear from the evidence that Witness A relies upon that anonymity for protection and requires it for future career opportunities.

80. As regards screening, I shall apply the principles set out in the recent decision of the Court of Appeal in *Chief Constable of West Yorkshire Police v Dyer* [2021] 1 WLR 1233 at [87] to [89] (the Supreme Court having refused permission and endorsed the principles by order dated 30 March 2021). I consider that screening of Witness A from the general public at least would improve the quality of the witness's evidence and would be in keeping with the interests of justice and fair procedure, for all the reasons given by the Secretary of State. Balancing the effects on open justice against the interests protected by screening, I consider that such screening is justified.

81. The question whether the families and/or their counsel should see Witness A giving evidence is more difficult. I accept that the risk of the witness's identity being compromised if the screening is limited in this way is low. I also accept that any logistical difficulties of screening the witness from a select few should be given no real weight. If considerations of principle require them, special arrangements can no doubt be made. However, after anxious consideration I have decided that the other reasons given in favour of the witness being screened from all in court are ultimately persuasive. Having regard to her OPEN and CLOSED submissions, I accept that the Secretary of State has reasonable concerns about enabling a senior officer of the Security Service to be identified by a group of individuals who cannot realistically be security-cleared. The concern would be very acute if the proposal were that the jury should see the witness, and they probably have the greatest claim to a legitimate interest in assessing the demeanour of the witness.

Security Service Witnesses other than Witness A

82. In submissions in advance of the last PIR hearing, in February 2021, the families of both Saskia Jones and Jack Merritt invited me to call evidence from further witnesses of the Security Service in addition to Witness A. The submissions are recorded in some detail at paragraphs 33 to 38 of my Third Ruling. I decided that the issue should be deferred until the hearing of 25 March 2021 (paragraph 37). In summary, I concluded that I would only be able to reach an informed view as to whether such witnesses might add materially to the evidence once I had considered both the documents which were to be the subject of the PII claims and the various arguments concerning potential harm to national security from revealing information beyond that in Witness A's statement and the other disclosed materials.

83. At the hearing on 25 March 2021, both Mr Pitchers QC for the Jones family and Mr Nicholls for the Merritt family renewed their request. Submissions in response were made in both the OPEN and CLOSED sessions of the hearing.

84. Mr Pitchers QC urged me to consider this request separately from the claims for PII, describing the two as "distinct questions". In measured and intelligent submissions, he argued that the operational officers involved in the investigation of Usman Khan would be best placed to give evidence about the assessments made and decisions taken at each turn. He acknowledged that the family could only give general indications of the ways in which such witnesses could add to the evidence, but submitted that calling them would add to the detail and rigour of the investigation. He argued that the officers would be sufficiently experienced and skilled to limit their answers so as not to trespass into areas which would be harmful to national security. He pointed out that they could be granted special measures and given the opportunity to refuse to answer questions or take advice where appropriate.

85. Mr Nicholls stressed the importance to his clients of the Inquests examining the joint investigation of counter-terrorist police and the Security Service, expressing concern that the police and MI5 officers involved would not be giving evidence. Although the point was made in response that the key police officers (e.g. DS Stephenson and DS Jerromes) would in fact be called as witnesses, he pressed his argument concerning MI5 officers. Like Mr Pitchers QC, he urged the court to seek the best evidence of the decisions in the

investigation, pointing out that Witness A was not involved in the decision-making on the ground. He too pointed out that the witnesses could be trusted to maintain secrecy on sensitive subjects without overstepping their limits, and he suggested that any risk in that regard could be mitigated by the witnesses being provided with indicative lists of topics or questions in advance (as is proposed for Witness A).

86. In response, Mr Sheldon QC on behalf of the Security Service submitted that MI5 operational officers should not be called as witnesses. As a preliminary point, he said that a single corporate witness had given evidence on behalf of MI5 in a number of previous major inquests, and that this expedient had been adopted and accepted for good reason. He then made five submissions:

    a. In order to serve the interests of open justice, very great care has to be taken by the Security Service to ensure that evidence is produced which puts the greatest amount of information in the public domain without harming national security and making future attacks more likely. Two consequences follow. First, the evidence cannot be a first-hand, blow-by-blow account of each decision during the investigation, because that would inevitably harm the types of national security interest discussed above. Secondly, the individual giving the evidence must have studied in advance to gain a detailed understanding of the limits of what could be said in OPEN without (for instance) compromising operational techniques, other operations or sources of intelligence.

    b. The exercise of producing a statement which contains such a detailed but carefully limited account and then answering questions on it is enormously time-consuming and resource-intensive. Witness A will spend many weeks in the preparation of evidence, considering how the form and content of specific answers might compromise security interests. It is not practicable for a series of individual officers who were involved at particular stages to be prepared in this way so as to give useful evidence while treading an exceptionally difficult line.

    c. For the reasons given in support of the PII claim, the statement of Witness A is a sufficient gist of the information known to and decisions taken by MI5 during the investigation. For the same reasons, individual officers could not add more information without infringing precisely the interests protected by the PII claim.

d. Particular issues identified by the bereaved families as potentially benefitting from evidence of further MI5 officers do not on analysis engage a requirement for such evidence. First, the appreciation that Khan's apparently compliant behaviour might be manipulative is a matter of MI5's corporate knowledge, risk assessment and decision-making. Secondly, intelligence about Khan's intentions after release which was obtained while he was in prison has been very carefully gisted in the statement of Witness A and could not be explored further without engaging with its nature and source. Thirdly, the understanding that Khan might be intending to relocate to Pakistan was shared by many individuals involved in the investigation (both within and outside MI5) over a lengthy period. It was, again, a matter of institutional knowledge, not knowledge confined to an individual.

e. The critical decision to permit Khan to attend the Learning Together event in London was not taken by a single individual, still less an individual MI5 officer. It was taken collectively. Furthermore, this is not a case in which an MI5 officer received intelligence indicative of attack planning. Instead, the nature of MI5's involvement in the investigation was as a partner of police, contributing to a large pool of knowledge which informed collaborative assessments and decisions. There is already substantial evidence of that knowledge, those assessments and those decisions.

Mr Sheldon QC supplemented those points with further submissions in the CLOSED session.

87. The decision whether to call for evidence from this additional group of witnesses is a matter of judgment of a kind regularly made by coroners: see R (Maguire) v Assistant Coroner for West Yorkshire (East) [2018] EWCA Civ 6 at [3]. I accept the submission of counsel to the Inquest that the judgment should be made with regard to all the circumstances, including (a) the need to carry out a sufficient inquiry; (b) the value of a witness's potential evidence; (c) the other witness and documentary evidence being adduced; (d) the limitations which would attach to the witness's evidence; and (e) practical considerations.

88. Having considered all the submissions and taken account of the PII materials (as I said I would do), I have decided not to seek statements from or call as witnesses further

individuals from the Security Service. In broad terms, I accept the submissions of Mr Sheldon QC. The evidence of Witness A will provide a comprehensive account of the history of MI5's investigations into Usman Khan, to the extent that they can be revealed in the public domain. Having regard to that statement and the evidence which the Inquests will hear from counter-terrorism police officers who worked closely with MI5 throughout the investigations, I do not consider that it would be a valuable exercise to ask further MI5 officers to make statements. It would be exceptionally difficult for the Security Service to prepare those officers in the same way it is having to prepare Witness A for the challenging but valuable task of giving evidence. The additional evidence which it is said the officers could give would concern their thought processes and individual investigative decisions. Quite apart from the fact that the important decisions will be addressed in any event, asking a Security Service officer for his/her individual assessment of all the intelligence up to a specific date would be very likely to call for discussion of material attracting PII. Equally, asking what surveillance capabilities were considered and used (and what were the limitations of such capabilities) is a textbook example of a question calling for an answer harmful to national security interests.

89. Finally on this topic, I should confirm that I have taken into account the effect of my decision concerning Security Service witnesses before reaching my final decision on the adequacy of the proposed investigation within the framework of Inquests.

Screened Witnesses and Accredited Journalists

90. In directions of June 2020, October 2020 and February 2021, I ordered that various sets of witnesses be granted anonymity and screened from the general public if called to give evidence. At the hearing of 12 February 2021, a representative of the media raised the suggestion that accredited journalists might be permitted to see these witnesses. The journalist who made the suggestion is one who has reported on this and similar cases in a very responsible and well-informed way.

91. Counsel to the inquests submitted that the journalist's proposal was consonant with open justice and that there was a lot to be said for it (except in relation to Witness A). They referred to the judgments of Flaux LJ (with whom Lewison LJ agreed) and Males LJ in the *Dyer* case (cited above), which suggested that permitting accredited journalists to see witnesses screened from the wider public should be seriously considered.

92. Ms Barton QC for the City of London Police and Mr Butt QC for the Metropolitan Police raised no objection to the proposal in relation to the officers of those respective forces, provided that the orders I previously made under section 11 of the Contempt of Court Act 1981, prohibiting publication of information liable to identify them, extend to names, physical descriptions and images. I agree that the orders do have that effect, but would be prepared to vary the orders if Ms Barton QC or Mr Butt QC consider that any formal clarification is needed.

93. Mr Bunting for the mother of Usman Khan points out that screening orders made in relation to members of Usman Khan's family are intended to protect them from being troubled in the environs of the court and from having their photographs published. In my view, both of those concerns can be met while agreeing to the proposal made by the media. First, any members of the family called as witnesses should be given appropriately secure and escorted means of entry and exit to court. Secondly, I shall make an order under section 11 of the Contempt of Court Act 1981 supplementing paragraphs 6 to 7 of the directions of 22 October 2020. The order will provide that, if any of the Relevant Khan Family Members (as defined in paragraph 6) gives evidence in the Inquests hearings, there should be no publication of images of them or information liable to identify them by appearance in connection with their attendance at the hearings.

Other Case Management Directions

94. Most other matters of case management were uncontentious. I shall deal briefly with three remaining controversial issues and one point which deserves emphasis:

    a. Philip Bromley: Mr Bromley was the offender manager for Usman Khan up to 2017 and was later the line manager for Kenneth Skelton. Mr Pitchers QC pressed for him to be called as a live witness in the Inquests, while counsel to the Inquests submitted that there were more directly involved witnesses already being called. On balance, I am persuaded by the submissions for this witness to be added to the list of witnesses. However, I shall expect advocates when dealing with this witness and others who were involved in the management of Usman Khan to be focussed in their questioning, addressing the particular involvement of each individual rather than making identical points repeatedly through different witnesses.

b. Dr Jamie Bennett: Dr Bennett is a senior Prison Service official who collaborated in the early stages of the development of the Learning Together programme (from 2015). Mr Armstrong and Mr Nicholls argue for him to be added to the witness list. In my judgment, his statement suggests that he has very limited relevant evidence to give and others can give better evidence of the history of Learning Together and its place in prisons. I am not persuaded to add him to the witness list.

c. Process for passing Usman Khan to participate in Learning Together (November 2017): Mr Armstrong and Mr Nicholls make an important submission on this topic which deserves emphasis. The Inquests will need to consider how it was that Usman Khan was accepted into the Learning Together programme, a course involving close study alongside undergraduates, at a time when he was known to be a dangerous, violent and poorly-behaving prisoner. In particular, I shall be keen to know (i) what general procedures the Prison Service had in place for clearing inmates to participate in comparable courses and (ii) how those procedures were operated in the case of Usman Khan. So far, the Inquests Team has received statements from Mr Machin and Ms Butler explaining what steps they took to clear Khan for the Learning Together course. However, I am not aware of any procedural or guidance documents or any witness evidence explaining what general procedures existed for such checking and clearing. Neither am I aware whether it will be said that the steps described by Mr Machin and Ms Butler were the limit and extent of the steps taken by HMPPS as a whole. I know that my team have been pressing for further evidence on this subject for some weeks, and I would like to stress the importance of their enquiries being comprehensively answered.

d. Scope of Evidence of Police Training Officers: This issue concerns the inquest of Usman Khan only. Mr Bunting submits that, while the training officers from the City of London Police and Metropolitan Police can properly explain what training was given to the principal armed officers, they ought not to give evidence (as contained in their statements) expressing views on whether the officers in the confrontation with Usman Khan acted in accordance with their training. Mr Bunting argues that such evidence ought not to be given by witnesses who lack independence, especially in an Article 2 inquest. Ms Barton QC and Mr Butt QC make a number of points in response: (i) that the training officers have only sought

to answer questions raised by the Inquests Team; (ii) that the evidence they would give on compliance with training is in keeping with similar evidence given in the Westminster and London Bridge Inquests (over which I presided) and is carefully limited; and (iii) that there is no prohibition on a witness in an inquest (even an Article 2 inquest) giving an opinion on the conduct of others employed by the same organisation. I take all those points, each of which is well made. However, I consider on balance that it would be preferable if the training officers give evidence as to what training the relevant officers received (including how they were trained to deal with specific scenarios, which can be put to them). In light of Mr Bunting's objections, my view is that the important evidence can be given in that way.

HH Judge Lucraft QC

Recorder of London

1 April 2021