

IN THE CITY OF LONDON CORONER'S COURT

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

SUBMISSIONS ON BEHALF OF THE CHIEF CONSTABLE OF WEST MIDLANDS POLICE ON MATTERS TO BE LEFT TO THE JURY

A. Introduction

1. The Chief Constable of West Midlands Police (“*the Chief Constable*”) is very grateful for the comprehensive submissions of Counsel to the Inquest (“*CTP*”) and the draft Questionnaire for Jury Determinations in the Inquests Concerning the Deaths of Jack Merritt and Saskia Jones (“*the Jury Questionnaire*”).
2. In broad terms, the Chief Constable:
 - a. Does not quarrel with, but instead respectfully endorses, CTP’s submissions at §§6-10 concerning the legal principles applicable to the matters which should be left to the jury for determination;
 - b. Also agrees with the legal principles concerning, and CTP’s proposals for dealing with, the issue of PFD reports (as set out at §§77-84) and will serve any necessary additional submissions on that issue in due course;
 - c. Agrees that short-form conclusion of unlawful killing should be recorded in each case (each supplemented with a narrative conclusion, as proposed by CTP);
 - d. Does not make submissions on whether the procedural obligation implied in Art.2 ECHR is engaged by reason of an arguable breach by State agencies of the operational duty – that is because it is understood that other State agencies (specifically SSJ/SSHD) agree that there is such an arguable breach in respect of their own conduct: in the light of that fact, then the relevant conduct of *all* agencies (whether State agencies or otherwise) falls to be investigated by the jury;
 - e. Makes some sundry submissions about the formulation of Questions 2, 3 and 5;
 - f. Submits that issues in relation to “the investigation” of Usman Khan may not properly be left to the jury, in particular because there is insufficient evidence for them to assess the nature, extent and quality of the investigation and it would be unsafe for them to do so. Questions of the involvement of State agencies outside of the MAPPA meetings can properly be left. The Chief Constable therefore proposes some rephrasing of Question 4, and the supplemental paragraphs that follow it.

3. These submissions accordingly address the following issues:
 - a. Limited legal submissions to supplement those of CTI;
 - b. Whether the procedural obligation implied in Art.2 ECHR is engaged by reason of an arguable breach by State agencies of the operational duty; and
 - c. Those matters which can properly be left to the jury for determination in the questionnaire.

B. Legal Submissions

4. The relevant legal principles have been set out by CTI at §§6-10 of their submissions. They are adopted and not repeated here.
5. The Chief Constable wishes only to emphasise two points which he invites the Coroner to include in his directions to the jury.
6. First, a narrative conclusion should address the “disputed factual issues at the heart of the case” and the “core issues which the inquest raised”: see *R (Cash) v HM Coroner for Northamptonshire* [2007] 4 All ER 903, at §§52-53, cited with approval by the Court of Appeal in *R (P) v HM Coroner for the District of Avon* [2009] EWCA Civ 1367, at §28.
7. A coroner is “only obliged to investigate those issues which were, or at least appeared arguably to be, central to the cause of death” (emphasis added) and not every issue that had been raised in the inquest: see *R (Allen) v HM Coroner for Inner North London* [2009] EWCA Civ 623, at §40. It is not incumbent on the Coroner – and here, the jury – to investigate, “still less to state his conclusion in relation to, every issue raised..., however peripheral to the main questions to be determined”; he is “required to do no more than focus the investigation and the inquisition on the central issue or issues in the case” (*Allen*, at §33).
8. Secondly, the authorities’ actions or omissions must not be judged with the benefit of hindsight. Lord Bingham rightly cautioned in *Van Colle v Chief Constable of the Hertfordshire Police* [2009] 1 AC 225, at §32 that it is all too easy “to interpret the events which preceded in the light of that knowledge and not as they appeared at the time”. The advice to avoid hindsight appears on some of the considerations and issues to be considered by the jury but we would invite the Coroner, in addition, to include a more general warning against the benefit of hindsight when directing the jury.

C. Article 2

9. The legal principles concerning Art.2 duties and narrative conclusions in Art.2 cases are set out in the submissions of CTI at §§9-10 and are uncontroversial.

10. As to their application, the Chief Constable recognises that threshold for an arguable breach of Art.2 is low, “anything more than fanciful”: see *R (AP) v HM Coroner for Worcestershire* [2011] EWHC 1453 (Admin) at §60.
11. He recognises too that if it is arguable that *any* State agency breached Art.2, the authorities tend to indicate that an Art.2-compliant conclusion should be returned in respect of all material aspects of the evidence, and that a Coroner should not attempt differently to address individual issues – or state or non-state organisations – depending upon whether or not Art.2 was engaged in the relevant respect (see, in particular, *R (Sreedharan) v HM Coroner for Greater Manchester* [2013] EWCA Civ 181 at §23).
12. It is understood the SSHD/SSJ proposes to accept (in respect of HMPPS) that there was an arguable breach by it of the operational duty. In the light of that concession on behalf of HMPPS, and because of §23 of *Sreedharan*, it follows that the relevant conduct of all State and non-State agencies may properly be included in a narrative conclusion (subject, of course, to the centrality of that conduct, evidential sufficiency, and the application of a *Galbraith* plus safety check).
13. In light of the acceptance by a State agency that there is arguably a breach of the operational duty in respect of its own conduct, the enhanced procedural obligation therefore requires that the jury be permitted to return extended narrative conclusions in respect of all relevant conduct as set out above, regardless of the position of WMP. For the avoidance of doubt, there no arguable breach of the general or operational duties in respect of the actions or omissions of any of the Chief Constable’s officers or the systems and processes of WMP. However, the Chief Constable recognises that the development of any such arguments is in the circumstances moot and unnecessary – and so he does not advance them here.
14. Accordingly, the Coroner’s overriding responsibility is to leave such questions and conclusions as enable the jury to answer the following question: by what means and in what circumstances did Saskia Jones and Jack Merritt come by their deaths. In doing so, he should elicit the conclusions of the jury on the key issues relevant to that question. He should do so in a way which makes the jury’s task manageable and ensures that their conclusions will be clear, consistent, readily understood and informative. Questions put to the jury should focus on the central issues.

D. Determinations¹

15. The value of an inquest does not lie solely in the determination returned by the jury or the Coroner. Inquests often cover matters which do not feature in the determination. The different stages of the process – investigating potentially relevant matters, obtaining materials, providing disclosure, instructing experts, and questioning witnesses – are all important. They help bereaved families and the public to understand the events under

¹ CTI have kindly said that their submissions re the means of soliciting the jury’s conclusions are only “provisional submissions” (§§2 and 3).

investigation. They help focus attention on the matters that are of genuine importance and they help answer the four questions that must ultimately be considered: who the deceased were and how, when and where and they died. The determination is the culmination of that process, but it is not its sole purpose.

Question 1: Short-Form Conclusion: Unlawful Killing

16. The Chief Constable agrees with CTF's submissions at §§66-67 that a short-form conclusion of unlawful killing should be recorded in each case. Saskia Jones and Jack Merritt were murdered by Usman Khan in a terrorist attack and this should be recorded, as proposed, by way of Question 1. This is important – it reflects the fact that one person was primarily responsible for the deaths in this case: Usman Khan.
17. The Chief Constable broadly agrees with the substance and extent of the draft questionnaire but makes the following submissions as to amendments.

Question 2: The Basic Facts

18. We agree that the Second Questions should present a short statement setting out the basic facts of the attack and the way in which each victim came to be killed. We suggest some very slight rephrasing of the Second Questions (proposed changes underlined):²

a. **Question 2(a):**

...An attendee of the event, who was on licence having been convicted of an offence under the Terrorism Act 2000, armed with two knives, attacked Jack in the gentlemen's toilets at Fishmongers' Hall. Jack suffered a number of injuries when stabbed. This was part of a terrorist attack. The attacker moved from the toilets and began attacking further attendees of the event and a member of staff at Fishmongers' Hall. Jack moved to a different room at Fishmongers' Hall and was later removed from the building. His injuries were not survivable. Jack was treated by members of the public, police officers, ambulance staff and HEMS doctors. He was assessed as dead at the scene by a doctor.

b. **Question 2(b):**

...An attendee of the event, who was on licence having been convicted of an offence under the Terrorism Act 2000, armed with two knives, attacked Saskia near to the cloakroom at Fishmongers' Hall. Saskia suffered a single stab wound to her neck, and she collapsed near to the place where she was attacked. This was part of a terrorist attack. The attacker moved from that area and began attacking further attendees of the event and a member of staff at Fishmongers' Hall. Saskia's injury was not survivable. Saskia was treated by attendees of the event, police officers and ambulance staff. She was assessed as dead at the scene by a paramedic and a doctor.

² Responding to the invitation in §70 of CTF's submissions.

19. We suggest these amendments in order to avoid any confusion as to the chronology of events (the present sequencing of events might suggest that injuries were sustained later in the chronology than in fact was the case).

Question 3: Management of Usman Khan in the Community

20. When directing the jury about the considerations and issues in the Third, Fourth and Fifth Questions, we invite the Coroner to give a very clear direction that, if they find that one of the considerations or issues posed as a “whether or not” question appears to amount to an omission or failure, he should explain that this alone is not enough for them to answer “yes” to either of the questions asked in the box. They must then address their minds to the question of causation or contribution. By way of example, the jury might decide that consideration was not given to security measures being taken if Usman Khan was to be permitted to attend the event at Fishmongers’ Hall on 29 November 2019 because no one at the MAPPAs meeting thought about security measures at the venue. But they may also think that, had such consideration been given, it would have made no difference (either because such measures would or could have been reasonably discounted or because Fishmongers’ Hall would or could not have put them in place or for some other reason). In those circumstances, the answer to Question 3 would be “No” despite their finding an omission in response to the list of considerations. We ask that this be clearly set out for the jury in relation to the Third, Fourth and Fifth Questions.³

21. We respectfully suggest the following amendments to the considerations/issues listed after Question 3.

22. First, in the second bullet-point:

The fact that, throughout that time, Usman Khan was subject to Multi-Agency Public Protection Arrangements (“MAPPAs”) ~~arrangements~~ which ~~involved~~ included meetings attended by the National Probation Service, counter-terrorist police, police officers responsible for supervising his Part 4 terrorism notifications and other agencies.

23. We suggest changing “involved” to “included” as the MAPPAs process goes beyond the meetings themselves and includes other arrangements such as the completion of the MAPPAs F form. We suggest removing the redundant “arrangements” which features in the acronym and because, although the jury have heard a great deal of evidence about MAPPAs and no doubt the Coroner will remind them what it stands for in his summing up, the full title remains a helpful aide-memoire for them while deliberating.

³ An alternative approach would be to conduct a “Galbraith-plus” exercise to all the considerations and issues listed in the Third to Fifth Questions and then to divide considerations and issues into those which could go to the first “probably” question and those which could go to the second “possibly” question. Although in logic this is required, such a submission has been made, but not favoured, in other inquests and the Chief Constable does not therefore advance it here. But this does leave the lingering vice that the jury will look at each consideration and reach an adverse conclusion and wrongly equate this to the answer “yes” in one of the boxes without engaging in the intellectual exercise required as regards causation.

24. Secondly, we suggest that the following bullet-point be added beneath the existing fourth bullet point:

The fact that, throughout the time from his release from prison (December 2018) to the time of the attack, those responsible for managing Usman Khan in the community had received no intelligence (through their own actions or the actions of others) indicating activity of national concern.

25. As is clear from the third bullet-point under Question 4, an absence of concerning intelligence can be a relevant factor in assessing risk. This is also relevant to Question 3. Where active steps are taken to visit, meet and monitor someone, the fact that nothing of concern arises is a useful piece of information. Such steps were being taken and were well-known to those responsible for managing him in the community:
- a. Usman Khan wore an electronic monitoring tag. Not only did this show that he was complying with his licence conditions, it would also reveal if he was visiting any locations which might have raised questions or issues.
 - b. The Prevent officers and the Probation Service were making regular visits to Usman Khan's home addresses during 2018 and 2019. Not only did they speak to him but they also had the opportunity to have a look around where he was living and spot anything that might have been concerning.
 - c. The Prevent officers and the Probation Service were speaking to those who came into contact with Usman Khan – including Learning Together, his gym manager and staff at the Approved Premises.
 - d. Some of those responsible for managing Usman Khan in the community were also aware that there was an investigation (see for example DS Jon Stephenson, who was aware of the investigation as soon as it began (T/24/7-8); PS Calum Forsyth, who knew that there was an SIO appointed to an ongoing investigation (T/21/58-59); and Nigel Byford who, albeit unaware whether there was an ongoing active investigation by MI5 and WMCTU (as CTI observe at §§32 and 64(c)), said that he was aware that counter-terrorist officers were “linked” and there was a Staffordshire Special Branch “response” (T/23/17-18)). They all knew that no intelligence was ever passed on from any investigation.

26. Thirdly, in the fifth bullet-point:

Whether or not some of those responsible for the management of Usman Khan in the community were properly experienced and had proper access to information.

27. This bullet-point seems to be aimed at encapsulating the concerns raised by and about Sumeet Johal, Kenneth Skeleton and members of the Prevent team that they were newer in their roles and may have lacked sufficient experience and/or access to information. There is no suggestion that such concerns applied to all those responsible for the

management of Usman Khan in the community and as currently drafted this bullet point could therefore lead to possible confusion.

28. Fourthly, in the seventh bullet-point:

Whether or not the decision to permit Usman Khan to attend the Learning Together event at Fishmongers' Hall on 29 November 2019 was properly considered and was a ~~correct~~ reasonable decision when it was made (ignoring hindsight).

29. The word "correct" should be replaced with the word "reasonable" for a number of reasons. First, it is highly unlikely that – in the light of the events which happened – *any* jury would return a conclusion that it was the correct decision to allow Usman Khan to attend Fishmongers' Hall on 29 November 2019. Despite a warning about hindsight, it is impossible, with the knowledge of what happened to find – and read out in front of the families – that it was a "correct" decision. Secondly, although it is acknowledged that the use of the indefinite article does suggest that there might be a number of "correct" decisions, the word "correct" remains a stark binary. Here there is room properly to conclude that it was a reasonable decision (and one of a number of reasonable decisions) that could have been made albeit one that led to a tragic outcome. This is a formulation which represents the task that courts regularly undertake, is clear and can be readily understood.⁴ Thirdly, to assess "correctness", the jury would need a standard, test guidelines or expert evidence against which the decision's correctness could be judged; they do not have any such guidance.

30. Fifthly, in the eighth and final bullet-point:

Whether or not sufficient consideration ~~should have been~~ was given to any further measures being taken if Usman Khan was to be permitted to attend the Learning Together event at Fishmongers' Hall on 29 November 2019 (e.g. arranging an escort, ~~having him met en route~~ or ensuring that security measures were taken at the venue) (again, ignoring hindsight).

31. The suggested change to the first line is to encompass the fact that some consideration *was* given to whether PS Calum Forsyth could or should have escorted Khan to London.

32. As to the second proposed amendment, great care should be given to whether it would be wise to include the words "having him met *en route*". Usman Khan *was met en route*: Simon Larmour met him at Euston station.

33. What has been suggested in evidence is that Usman Khan might have been met *en route* by a police officer who might have searched him (T/21/23-24). This is distinct from the suggestion of an escort, *i.e.* instead of meeting Khan by arrangement, the officer would have surprised Khan on the course of his journey. It was suggested by Mr Armstrong that

⁴ We do not go so far as submitting that the *Bolam* test ought to be applied in this context.

if an officer was taking “a convicted terrorist on a train to a reasonably high-profile significant gathering in London, it wouldn’t take much to get to the reasonable grounds [for suspicion] threshold...[if] he’s got a big coat or a bag” (T/21/24). Taking a convicted terrorist on a planned trip to London by train, to attend an event arranged by Learning Together, in accordance with deliberately amended licence conditions would not give rise to reasonable suspicion. Wearing a big coat – in November – and carrying a bag would also not be sufficient to give rise to reasonable suspicion allowing a search. Insofar as it may be suggested that Khan’s bag could have been searched by consent and if he refused the search, that could give rise to grounds for reasonable suspicion, any such suggestion is misguided: it would be unlawful for an officer to deliberately create the circumstances giving rise to reasonable suspicion such as asking to search a bag and using a refusal as grounds for suspicion.

34. We suggest that the safer approach is to remove these words altogether.

Question 4: The Investigation

35. The relevant test of evidential sufficiency is the ‘*Galbraith*-plus’ test considered in *R (Douglas Williams) v Inner South London Coroner* [1999] 1 All ER 344 at 350e-f, *R (Secretary of State for Justice) v HM Deputy Coroner for the Eastern District of West Yorkshire* [2012] EWHC 1634 (Admin), and in the Chief Coroner’s Law Sheet No. 2, “*Galbraith* plus”.
36. The Coroner must first be satisfied, in the familiar *Galbraith* sense, that there is sufficient evidence upon which a jury properly directed could properly reach a particular conclusion. In addition (described in the *West Yorkshire* case as “the modest gloss or addition”) the Coroner must also be satisfied that it is safe to leave the conclusion to the jury: *ibid*, §§17-25. The two questions for the Coroner therefore are: Is there enough evidence to leave this conclusion to the jury? And, if so, would it be safe on the evidence for the jury to reach this conclusion?
37. There is insufficient evidence for the jury to be asked for *any* determination that assesses the priority investigation (also referred to as the covert investigation, the P-Op and, in the questionnaire and henceforth, “the investigation”). The full evidence about the investigation has been the subject of successful PII applications on behalf of the Government and WMP. These covered, insofar as we are able to say in OPEN submissions, the investigation itself and capabilities that could have been and/or were deployed. It has been recorded in the OPEN evidence that no relevant intelligence emerged from the investigation Usman Khan. As a result, there is (properly) insufficient evidence for the jury to be asked to assess the investigation. They would have to speculate in order to answer the question; they should not be asked to do so. While there is some evidence that relates to the investigation, it would also not be safe to ask them to reach any conclusions as to the investigation itself: they have no means with which to judge it and may conclude that actions should have been taken that either were taken or were discounted for good reason. All of this reflects the fact that the matters mentioned in

§17(a) – (f) relate principally to the management of Khan by MAPPA, and not the issue of the nature, quality and extent of the covert investigation into him. Similarly, the part of CTP's submissions given over to the reason for the inclusion of Question 4 in the Jury Questionnaire - §74(b) of CTP's submissions – do not on analysis relate to the nature, quality and extent of the covert investigation at all. For all of these reasons, questions involving the investigation should not be left to the jury.

38. The Chief Constable recognises, however, that there are matters outside of the MAPPA meetings which can and perhaps should be left for the jury to consider. As a result, he proposes rephrasing the Fourth Question as follows:

Was there any omission or failure ~~in the investigation concerning~~ Usman Khan ~~by agencies of the state~~ outside of the MAPPA meetings which contributed to the deaths of Jack Merritt and Saskia Jones.

[...]

If your answer to the question above is “no”, was there any omission or failure ~~in the investigation concerning~~ Usman Khan ~~by agencies of the state~~ outside of the MAPPA meetings which may have contributed to the deaths of Jack Merritt and Saskia Jones.

39. For the reasons given above, the jury must be discouraged from any sort of evaluation of the investigation. Accordingly, the first and fourth bullet points should be removed entirely.

40. We respectfully suggest the following amendments to the considerations/issues contained within the considerations and issues listed after Question 4.

41. First, in the second bullet-point:

The facts that Usman Khan (a) had committed a serious terrorist offence in 2010; (b) had been the subject of substantial prison intelligence to the effect that he was involved in radicalising others and violence; (c) had been the subject of ~~prison recent~~ intelligence in late 2018 that he had said that he ~~wanted~~ intended to return to his old ways (terrorist ~~activity offending~~) and that he ~~wanted to commit an attack~~ intended to carry out an attack after his release; and (d) had been released from prison as a Category A High Risk offender, with an OASys rating of Very High Risk to the general public.

42. These proposed amendments reflect the fact that it has been conveyed to the jury that the second strand of intelligence (attack planning) had “emanated from the prison establishment” but that the “original owner of the intelligence, the body generating or receiving the intelligence, was not Her Majesty’s Prison and Probation Service” (T/27/56). It may therefore create confusion to describe the intelligence as “prison intelligence” and such a descriptor is not necessary for the jury to weigh up the significance of the intelligence and what was or was not done with it.

43. The amendments to the wording of the intelligence are to bring it in line with what the jury have heard (and seen) about its original wording (see for example DC7500/1 and the various Staffordshire Special Branch Subject Profiles, including DC7481/18-19).

44. Secondly, the third bullet-point should be amended and divided as follows (due to the more significant changes, they are not tracked):

The fact that Usman Khan had complied with his licence conditions and had apparently engaged positively with those responsible for managing him in the community during 2019.

The fact that despite being subjected to a range of monitoring and coverage throughout the period between his release and the day of the attack, there was no intelligence at all indicating any conduct or intentions of any national security concern.

45. These suggestions are made to separate the compliance with licence conditions and overt engagement from the covert work that was being done. They also remove the reference to the investigation for the reasons set out above but leave the jury with the opportunity to assess the relevance of the lack of intelligence arising from the investigation.

46. Thirdly, in the fifth bullet point:

Whether or not ~~those responsible for the investigation of Usman Khan~~ agencies of the state outside the MAPPA meetings, and Learning Together, shared information properly with other agencies.

47. This amendment allows the jury to consider the actions of other state agencies such as MI5, Special Branch and WMCTU as well as Learning Together⁵ while not inviting them to consider anything relating to the investigation itself.

48. Fourthly, in the sixth bullet point:

Whether or not ~~those responsible for the investigation of Usman Khan~~ agencies of the state outside the MAPPA meetings should have raised any concerns or given any advice about ~~him~~ Usman Khan being permitted to attend the Learning Together event on 29 November 2019 (ignoring hindsight).

49. Again, this removes the reference to the investigation for the reasons set out above but leaves the jury with the opportunity to assess the actions of state agencies outside the MAPPA meetings.

50. Fifthly and finally, in the seventh bullet point:

⁵ Kenneth Skelton said that he would have sought a copy of the transcript of Khan's Learning Together interview had he been aware it existed (T/16/103).

Whether or not ~~those responsible for the investigation of Usman Khan~~ agencies of the state outside the MAPPA meetings should have given any advice proposing any further measures being taken if Usman Khan was to be permitted to attend the Learning Together event on 29 November 2019 (e.g. arranging an escort, ~~having him met en route~~ or ensuring security measures were taken at the venue) (again, ignoring hindsight).

51. These amendments again implement the changes outlined above.

Question 5: Security Measure for the Event at Fishmongers' Hall

52. There is only one suggestion in relation to the bullet-points appended to Question 5 and this relates to the sixth and penultimate bullet-point and again seeks to effect the changes covered in the submissions above:

Whether or not those ~~responsible for managing and/or for investigating state agencies involved with~~ Usman Khan ought to have given any advice on security measures to the Learning Together organisers and/or the Fishmongers' Company.

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