

IN THE MATTER OF THE INQUESTS ARISING FROM  
THE FISHMONGER'S HALL AND LONDON BRIDGE TERROR ATTACK

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**WRITTEN SUBMISSIONS OF  
THE FAMILY OF MISS SASKIA JONES  
ON DETERMINATIONS AND DIRECTIONS TO JURY**

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**Introduction**

1. These submissions are provided on behalf of the family of Miss Saskia Jones. We are grateful for the written submissions of CTI and draft proposed questionnaire received on 21 May 2021. Save for the points we make below we gratefully acknowledge the comprehensive and erudite submissions and work done by CTI, and respectfully endorse them. This document is intended to set out any points in respect of which we differ from CTI or where we have additional submissions.
2. We will organise these submissions by following, where possible, the structure of the written submissions of CTI, to assist in cross-referencing.
3. In summary we invite some additional issues and considerations be drawn to the jury's attention; and some amendments to the question format be made to ensure a sufficiently inquiring and detailed response from the jury to avoid overly short or general responses simply in a negative or affirmative single word without explanation. These submissions also reflect the family's concern that there be accountability for all persons whose actions and omissions led to the events being able to occur. In particular, we provide some important concerns that the jury ought to consider in relation to the organising of the event by Learning Together.

**The Law**

4. In light of the very thorough exposition of CTI, with which we are otherwise in full agreement, we need address only one particular feature of the law. This concerns the systemic or general substantive duty to be investigated in an Article 2 inquest.

5. The general or systems duty is an important duty upon the state agencies “to establish a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life” (per Lord Bingham in *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182 at [2]).
6. Lord Rodger explained in *Savage v South Essex Partnership NHS Foundation Trust* [2009] AC 681 that: ‘This will involve, for example, ensuring that competent staff are recruited, that high professional standards are maintained and that suitable systems of working are put in place.’ [45]. The term “appropriate systems of operation” was used by Smith LJ in *R (Humberstone) v Legal Services Commission* [2011] 1 WLR 1460, CA, at [58]. The Chief Coroner has explained “What the general duty requires varies by context, but it is always concerned with systems and procedures at a reasonably high level, rather than the conduct of individuals or the co-ordination of activities of individuals...” [43]<sup>1</sup>. A determination of whether that general duty has been satisfied involves assessing the adequacy of legislation, policies, procedures and systems at a relatively high level of generality, taking into account their overall effect. See the discussion in *R (AP) v HM Coroner for Worcestershire* [2011] EWHC 1453 (Admin), at [52] and [65]-[74].
7. There is no requirement to establish causation of death resulting from a failing of the state’s systems or operations: *Sarjantson v CC Humberside* [2014] QB 411, CA, at [28]; *Opuz v Turkey* (2010) 50 EHRR 28 at [136]; *Lewis v Mid and North Shropshire Coroner* [2010] 1 W.L.R. 1836, CA, at [24].

## **Article 2 in these Inquests**

### *Operational Duty*

8. We welcome and endorse the submissions of CTI in this regard at ¶¶16 to 60. This exposition of the key evidence has greatly truncated the length of this document.
9. By way of additional comment on the causative effect of an escort or other precautionary measures: any steps of which Khan would have been forewarned or otherwise expected might have led to a deterrent effect upon him; i.e. that he would not have attempted this

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<sup>1</sup> Chief Coroner’s Ruling on Article 2 application at the inquests concerning the London Bridge and Borough Market attacks.

attack, on this day, at this event. If he sought a perverse status and/or “martyrdom” by carrying out the attack, this would have been wholly frustrated had he been apprehended in the course of preparations. He faced immediate recall to prison and a further substantial period of imprisonment.

10. Whether or not Khan would have attempted some other atrocity on some other occasion is irrelevant to these inquests.

#### *General or Systemic Duty*

11. We agree that where the Coroner is able to conclude that the investigative duty of the state is engaged (so that the inquest proceeding is required to discharge the duty to consider in what circumstances the death took place) there is no requirement to separately consider whether the basis of arguable breach of a substantive positive obligation (to take all reasonable steps to protect life to the greatest extent practicable) is classified as systemic or operational. Rather the remaining question is simply whether there is some evidence upon which it is proper to leave to the fact-finding process (i.e. the jury, answering the ‘how’ and ‘in what circumstances’ statutory question) identification of particular failures or possible failures that either caused or contributed to death, or otherwise that had the real potential, if such failings had not been in place at the time, to have altered the outcome. In this case there plainly is a proper evidential basis to leave to the jury certain issues that might be categorised as arguable systemic failings. In the alternative, had the law required any separate consideration as to whether a systemic basis for arguing for a breach of Article 2 had arisen, we would have made submissions strongly in the affirmative.
12. We invite the Coroner to adopt additional direction to the jury (and questionnaire terms) that reflect the potential systemic failings that the jury might identify that have the potential to have affected the outcome, in the way in which the system was designed, and operated at the higher general level, to manage offenders with the profile of Usman Khan. This is in no way of course to detract from the considerable evidence of operational failings in the carrying out of the management of Khan within that system and structure. It shall ensure completeness to the inquiry into the state’s actions and omissions in the circumstances affecting the death of Miss Saskia Jones.<sup>2</sup>

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<sup>2</sup> We note in the case of *Makaratzis v Greece* (2005) 41 EHRR 49 (a case concerning a criminal act in police shooting; that CTT’s ¶62 cites) it was said that at “in keeping with the importance of Art.2 in a democratic society, the Court must subject allegations of breach of this provision to the most careful scrutiny, taking

13. In short we would invite, respectfully, a greater prominence or consideration should be given in the questionnaire (and summing-up) to the systems in place at the time in this case that concern in particular:

- a. The allocation of Khan to the Prevent officers of Staffordshire Police in circumstances where it was known or ought to have been known that:
  - i. They had received no training in the management of Part 4 offenders (there being no such training in place locally or nationally);
  - ii. The team brought no counter-terrorist investigative experience (see ¶64 (b) of CTT's submissions);
  - iii. They would be the wrong side of the “sterile corridor” and not have access to the full intelligence picture. There would be no-one in the offender management team sighted of the relevant intelligence and aware of the covert investigation or its details.; and,
  - iv. They were to work closely with an offender manager (from NPS) who was inexperienced in the management of terrorist offenders in the community and the likely practical need to contribute advice or information to matters of management well outside the strict policing of the Part 4 conditions.
- b. Failing to ensure that a rigorous ERG 22+ assessment was carried out in the community, with psychological input (see ¶64 (a) of CTT's submissions) and/or by a specialist not responsible for day-to-day management.
- c. The MAPPa Chair Nigel Byford held only CTC vetting clearance, which may have contributed to his ignorance that Khan was subject to an active investigation by MI5 and WMPCTU and/or as to the second strand of intelligence that Khan had an aspiration to carry out an attack after his release (see ¶64 (c) of CTT's submissions).
- d. The lack of timetabled pre-meetings by MAPPa may have contributed to the failure to share the second strand of intelligence (see ¶64 (d) of CTT's submissions).
- e. The balance of the evidence overwhelmingly suggests that there was no explicit decision-making at MAPPa as to whether or not in principle Khan should be

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into consideration not only the actions of the agents of the state who actually administered the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination” [59] and the court had to examine “whether the operation was regulated and organised in such a way as to minimise to the greatest extent possible any risk to his life”.

permitted to attend the Fishmongers Hall event, nor as to whether any precautionary measures should be taken in the event that he was permitted to attend (see ¶64 (e) of CTT's submissions). This failing may have been contributed to by:

- i. Minutes only being circulated on ViSOR after each meeting (when some participants did not have access); and/or
- ii. The lack of specific guidance as to the decisions which ought generally to require MAPPa approval (which may have ensured that Mr Skelton and/or PS Forsyth raised the matter properly before the Panel); and/or
- iii. The absence of clear recording or reporting of Probation decisions taken to permit conduct otherwise prohibited by the licence conditions, which would have ensured that Mr Skelton was required to record or report such a decision, and enable MAPPa to audit the same. This would enable MAPPa attendees at a particular meeting, and those in attendance at subsequent meetings, to be clear as to whether or not a particular permission had been debated or approved at any previous meeting.

14. We respectfully submit that the matters identified in relation to the general or systemic duty are more than adequately "concrete" manifestations of failings with sufficient causative potency within the meaning of the law (were a determination on the engagement of that duty required in law). The tragic embarrassment of riches with regard to the operational duty should not divert attention from the issues – properly raised – with regard to the general duty.

### **Determinations**

15. We agree the proposed structure with a short-form conclusion of unlawful killing, a short summary of basic facts and then a questionnaire. We make the following additional submissions.

#### *Draft questionnaire*

16. We respectfully submit the following might be improved-

- a. Page 2

- i. 4<sup>th</sup> bullet point. Last line. We respectfully suggest that further clarity is needed to ensure the correct approach to causation in an Article 2 inquest is taken by the jury to its findings. We agree that there is no requirement to prove causation of death resulting from a failing of the state’s systems or operations. However we suggest that what must be considered, at the second stage of inquiry, is not whether an act or omission *may have positively* contributed to the deaths, but rather simply whether if the act or omission had been otherwise there was a realistic prospect that it *could* potentially have made a difference to the outcome. This properly includes therefore failings that one cannot positively say may have contributed to the death, but one can say were missed opportunities to have taken steps that might (could) have made – i.e. had the potential capability to make – a difference. We therefore propose the addition to the line ‘; **that is, it could have had a real prospect of altering the outcome**’.<sup>3</sup>
- ii. 5<sup>th</sup> bullet point. We suggest a slightly more refined definition of the term ‘significant’ contribution. Rather than say to be ‘(rather than minimal)’, should be ‘**(i.e. more than minimal)**’.<sup>4</sup>

b. Page 3

- i. Item e; line 2. For clarity we invite the addition of ‘may have’ so to read ‘...possibility that it **may have** caused or contributed...’. This ensures that missed opportunities capable of altering the outcome are identified rather

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<sup>3</sup> This reflects the test that matters that have the real prospect that they could potentially have made a difference to the outcome are within the A2 duty: *Opuz v Turkey* (2010) 50 EHRR 28 at [136] (‘While the Court cannot conclude with certainty that matters would have turned out differently and that the killing would not have occurred if the authorities had acted otherwise, it recalls that a failure to take reasonable measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the state’); *Lewis v Mid and North Shropshire Coroner* [2010] 1 W.L.R. 1836, CA, at [24] (‘...failing to take measures which “could have had a real prospect of altering the outcome” is within the purview of article 2’); *Sarjantson v CC Humberside* [2014] QB 411, CA, at [28].

<sup>4</sup> See *R (Tainton) v HM Senior Coroner for Preston and West Lancashire* [2016] 4 WLR 157 confirming that to be “causative” only requires there to be a more than minimal or trivial contribution to the death [41] (‘the question is whether, on the balance of probabilities, the conduct in question more than minimally, negligibly or trivially contributed to death’); [62]; *R v Hughes* [2013] UKSC 56 at [22] (‘Where there are multiple legally effective causes, whether of a road traffic accident or of any other event, it suffices if the act or omission under consideration is a significant (or substantial) cause, in the sense that it is not de minimis or minimal. It need not be the only or the principal cause. It must, however, be a cause which is more than de minimis, more than minimal: see *R. v Hennigan* (1971) 55 Cr. App. R. 262; [1971] R.T.R. 305’); and [33] (‘which contributed in some more than minimal way to the death’).

than only those matters which are found to possibly have positively caused or contributed.

- ii. Item g. line 4. Invite addition to the permissible factual judgments the words '**missed opportunity**'. [See for example the Chief Coroner's Guidance Note No.17 at paragraph 34].

17. Question 2(b):

- a. Line 3 of the proposed narrative. The family respectfully ask that the line 'Saskia was at the event as a supporter of the Learning Together programme, having previously volunteered for it' be replaced by the sentence 'Saskia was invited to attend having previously volunteered for Learning Together whilst she studied at Cambridge University'.
- b. Line 8-9. We suggest for clarity (as it may go to motivations of Khan) the narrative should record the fact that the porter was injured when actively seeking to intervene, so to read '...Hall, when he tried to intervene'.

18. Question 3: top two boxes on the left:

- a. The family is concerned that the existing structure may lead to a series of unedifying "yes/no" answers, without any explanation or particularity provided.
- b. In order to avoid such an outcome, the following alternative phrasing is suggested:
  - i. Top left box: 'Were there any omissions or failures in the management of Usman Khan (as an offender in the community) by agencies of the state which contributed to the deaths of Jack Merritt and Saskia Jones?  
If yes, please specify in the box opposite.  
If no, please consider the question posed in the box immediately below in relation to that omission or failure.'
  - ii. Second box down on the left: 'Were there any omissions or failures in the management of Usman Khan (as an offender in the community) by agencies of the state which may have contributed to the deaths of Jack Merritt and Saskia Jones?  
If yes, please specify in the box opposite.  
If none, please state "no" in the box opposite.'

19. Question 3 Notes:

- a. Third bullet point; line 3. We invite the addition after ‘radicalising others and violence’, of the words ‘including at a time when engaging with officers and education including Learning Together’. This provides context to the bullet point that follows in relation to compliance post-release.
- b. Fifth bullet point. Please add the words ‘including intelligence’ to end, so as to read ‘...information including intelligence’.
- c. Final bullet point. We invite addition to the examples provided of ‘e.g. visiting him at his property in the days or day preceding the trip, notifying local police in London,...’.
- d. New bullet point. We invite the addition in relation to MAPPAs:
  - i. “Whether the Chair of MAPPAs had an appropriate level of security clearance.
  - ii. The fact that there was no time scheduled for a pre-meeting before every MAPPAs meeting to enable discussion of sensitive matters of intelligence.
  - iii. The absence of a clear policy guidance as to the sort of decisions requiring specific MAPPAs approval.
  - iv. The fact that minutes of MAPPAs meetings were shared to attendees only by uploading onto ViSOR, a system to which some attendees did not have access between meetings”
- e. New bullet point. We invite addition of the issue:
 

‘Whether or not appropriate persons were involved in risk assessment and evaluation of risk factors by the ERG; in particular whether the person carrying out the updated ERG should have been someone other than the offender manager (responsible for day-to-day management of Usman Khan) and/or whether there should have been expert psychological input’
- f. New bullet point. We invite addition of the issue:
 

‘Whether or not the Prevent police officers involved in management of Khan had sufficient training and/or guidance and/or competence to fulfil the role of public protection in the monitoring and management of him’
- g. New bullet point. We invite addition of the issue:
 

‘Whether the frequency of visits by Prevent police officers after the move to private accommodation on 24 September 2019 was appropriate’.
- h. New bullet point. We invite addition of the issue:

‘The fact that Usman Khan remained unemployed, was socially isolated and, after August 2019, was not having any contact with mentors.’

20. Question 4: top two boxes: mirror amendments as per submissions made above in relation to question 3.

21. Question 4: notes:

- a. Final bullet point. We invite addition to the examples provided of ‘e.g. visiting him at his property in the days or day preceding the trip, notifying local police in London,...’

22. Question 5: top two boxes: mirror amendments as per submissions made above in relation to questions 3 and 4.

23. Question 5: notes:

- a. We suggest that this be retitled ‘Organisation of and Security Measures for the Event at Fishmongers’ Hall’. ...
- b. New first bullet point. We consider it essential that the jury considers the approach taken by Learning Together not only in relation to passing on attendee information to Fishmongers’ Company but in discharging its own obligations to employees and invitees to consider the risk created and inform reasonable steps to be requested or taken, capable of contributing to that which occurred being prevented. The fact that there is a wealth of evidence to suggest major failings by state agencies should not deflect appropriate critical attention away from the organisers of the event. We suggest the relevant issues for further bullet points are:
  - i. ‘The fact that Learning Together were aware that Usman Khan was a TACT offender, released as a Category A prisoner at the end of 2018.’
  - ii. ‘Whether or not Learning Together obtained or accepted further information about Usman Khan relevant to risks he might pose in attending an event such as that held at Fishmonger’s Hall, and whether they took account of it.’
  - iii. ‘The fact that Learning Together were the employer of Jack Merritt and others attending the event.’
  - iv. ‘The fact that Learning Together were the organisers of the event, to which around 100 people were to attend.’

- v. ‘The fact that Learning Together were responsible for selecting the invitees to the event, which included persons of some public profile.’
  - vi. ‘The fact that Learning Together did not carry out or cause to be carried out any risk assessment for the event; nor give any consideration themselves to the same.’
  - vii. ‘The fact that Learning Together did not take steps to satisfy themselves about the security arrangements to be in place at Fishmongers’ Hall’.
- c. 3<sup>rd</sup> bullet point:
- i. Line 2: insert word ‘some’ so reads ‘...programme, but (b) **some** were also...’<sup>5</sup>
  - ii. Line 3: insert words at end ‘**but not specifically terrorist or Category A offenders**’.

**HENRY PITCHERS QC**

**PHILIP RULE**

No5 Chambers

24 May 2021

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<sup>5</sup> E.g., Sandra Bufano did not know there were ex-offenders or a TACT offender in attendance [T/5/39-40]. Jeffrey Stevelman likewise did not know there were offenders attending [T/6/133-134]. Commodore Williamson said the FC did not have knowledge of Usman Khan as a convicted terrorist, or of high-risk offenders attending [T/10/76-78]; [T/10/88-91]; [T/10/99-100].