

**INQUESTS ARISING FROM THE DEATHS AT FISHMONGERS HALL 29.11.19**

**RE: STAFFS 'PREVENT' OFFICERS**

**SUBMISSIONS ON BEHALF OF STAFFORDSHIRE PREVENT OFFICERS  
AS TO CONCLUSIONS**

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**CTI submissions**

Law

1. The law as set out by CTI is agreed. The conclusion invited as to the engagement of Article 2 is not contested.

**Questionnaire**

2. No representations are made as to questions 1, 2 or 5.
3. As to question 3 (management of Usman Khan in the community) it is submitted that the evidence distilled in this note below:
  - may inform the bullet points to be included for the jury in answering question 3;
  - may inform the summing up on the issues touching upon question 3; and
  - stands as resistance to any alterations that may be sought to the questionnaire that touch upon the Prevent officers adversely (i.e. in light of the submissions below, themes adverse to the Prevent Team as pursued by some I.P.'s in questioning do not survive the *Galbraith plus*<sup>1</sup> test.)

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<sup>1</sup> Chief Coroner's Law Sheet No.2: coroner must therefore first be satisfied that there is enough evidence, in the familiar Galbraith sense that there is sufficient evidence upon which a jury properly directed could properly reach a particular conclusion, in addition the coroner must also be satisfied that it is safe to leave the conclusion to the jury

### Question 3

#### Attendance at the Fishmongers event

##### Permission and decision on attendance

4. There is no basis to frame any question in relation to the granting of permission to attend the Fishmongers event as having been taken by the Staffs Prevent Team. A suggestion made in questioning that Calum Forsyth agreed it with Ken Skelton is neither supported by the evidence nor was that within his power or role.
  
5. The evidence establishes that:
  - the licence terms prohibited attendance<sup>2</sup>, as well as travel by rail, without approval of the Probation Supervising Officer (or Offender Manager, 'OM' for short), thus the risks were already managed by the status quo being a complete prohibition on attendance<sup>3</sup>, a prohibition which could only be displaced by OM approval;
  - the licence was the sole mechanism controlling UK's freedoms and permitting control of the same, not Part 4 CTA 2008;<sup>4</sup>
  - approval was a matter for Probation alone in its *execution*<sup>5</sup>;
  - as with any permission decision, the approval was a matter for Probation and/or MAPPA in practice<sup>6</sup>, not Prevent;
  - Staffs Prevent Officers had no role in *permissions* under the licence, only *compliance* with its conditions.<sup>7</sup> There is no evidence that the licence conditions were ever breached.

##### Securing a decision on attendance from MAPPA

6. The evidence of Johal and Skelton correctly accepted that the responsibility for raising with MAPPA the question of attendance at the Fishmongers event rested

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<sup>2</sup> DC5644/2, T/15/206 (Johal)

<sup>3</sup> DC6417/3, T/15/207 (Johal),

<sup>4</sup> T/17/62 (Skelton), T/26/220 (Jerromes)

<sup>5</sup> T/15/208 (Johal), T/17/65 (Skelton)

<sup>6</sup> T/15/207 (Johal), T/17/65 (Skelton), T/19/59 (Flynn), T/20/126 (Forsyth)

<sup>7</sup> T/17/64–64 (Skelton), T/21/99(Forsyth)

with the OM. The responsibility for seeking and divining MAPPA's decision on the question of attendance (at 10 out of 10 on the scale in the present circumstances) fell to the OM.<sup>8</sup>

7. If MAPPA failed, declined or was not properly invited or engaged to give a decision on Fishmonger attendance or its travel arrangements then the decision reverts to a permission one for Probation under the licence.<sup>9</sup> There is no route by which the attendance at Fishmongers can be framed as a Prevent Team action or omission.

#### Responsible authorities seized of the plan

8. MAPPA was aware of the Fishmongers attendance, and the detailed arrangements for UK to travel there alone.<sup>10</sup> Special Branch were aware of the same, and were given as many details of the event as they having sought.<sup>11</sup> The attendance and detailed travel arrangements were escalated as far as MI5.<sup>12</sup> MI5 and the investigation had means to influence and reach into MAPPA, the bridge was the CTU officers not Prevent.<sup>13</sup> It was accepted by Stephenson that the investigation should have fed advice into MAPPA<sup>14</sup>, but WMCTU could not say they would have objected to an unescorted trip even knowing the characteristics of the visit, venue and attendees<sup>15</sup> – and WMCTU had primacy in the investigation.
9. The evidence establishes that Staffs SB, MAPPA, WMCTU and MI5 were aware of the event and the arrangements made that UK should travel on the train alone and be met at Euston by a LT volunteer. In the November MAPPA, the detailed travel arrangements were raised and put on record.<sup>16</sup> MAPPA and the investigation, as well as the November 2019 JOT being seized of the details - even

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<sup>8</sup> T/15/207–208 (Johal), T/17/65, 67, 73 (Skelton)

<sup>9</sup> T/15/209 (Johal)

<sup>10</sup> T/17/83 (Skelton), DC7490-T pg14 point 7, pg18 (Stephenson), DC6415/5 (Aug MAPPA) DC6417/5 (Nov MAPPA)

<sup>11</sup> DC7490-T p14, p18

<sup>12</sup> DC7505

<sup>13</sup> T/22/218 (Witness A)

<sup>14</sup> T/24/97 (Stephenson)

<sup>15</sup> T/26/57 (Chambers), T/26/179 – 180 (Jerromes),

<sup>16</sup> DC6417/5

if final details arrived at MI5 by the 22nd<sup>17</sup> - no tasking, order, advice, or direction was given to Prevent to do other than had been clearly communicated was the plan.<sup>18</sup>

### *MAPPA constitution*

10. WMCTU were considered part of MAPPA by the Chair. The concept of a lesser 'friend' role did not exist at the time. Jerromes attended and contributed to MAPPA meetings, took notes on UK<sup>19</sup> and contributed, and was considered by the Chair an 'integral part of that management'<sup>20</sup> not a mere passenger or outside friend.<sup>21</sup> Jerromes agreed that at the time he got no sense that others did not consider him a full member and that the concept of someone not part of the management attending was not how it was seen at the time.<sup>22</sup>

### Accompanying on journey

11. Forsyth declining to accompany UK on the journey was not the risk management decision (which fell to MAPPA) but rather a logistical and welfare one *for* UK.<sup>23</sup> It was presented to Forsyth as being for UK's 'comfort and reassurance'<sup>24</sup> subject to a check that UK was 'happy'. This occurred at the time of discussion of UK's self-entitlement, arrogance, and status issues as discussed in MAPPA.<sup>25</sup> Prevent's resource based decision not to accompany was not a security escort decision. If a vacuum is created by any omission by MAPPA positively to decide that security issue, that does not render the security decision as having been taken by Prevent. If the position is that MAPPA has not made a decision, then probation decide under the licence, consistent with the final discretion being with probation,

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<sup>17</sup> T/22/115

<sup>18</sup> T/23/145 (Byford), T/26/277 (Hessell), T/17/84 (Skelton), amongst others

<sup>19</sup> DC7527/1, 6, 10-11

<sup>20</sup> T/23/143 (Byford)

<sup>21</sup> T/23/140 (Byford)

<sup>22</sup> T/26/226 (Jerromes)

<sup>23</sup> T/17/84-86

<sup>24</sup> DC6695/131

<sup>25</sup> DC6415/5 and WS5087-ELH1 (Aug MAPPA)

irrespective of MAPPA.<sup>26</sup> The sentiment that such decisions were left to Prevent does not reflect the evidence.

12. When solo travel was first mentioned at the August MAPPA Forsyth commented on UK's element of status and its intersection with Cambridge LT – the panel discussed UK's level of engagement, self-entitlement, status, and (by Harthill's handwritten note) 'arrogance'<sup>27</sup>. Thus at first mention Forsyth contributed and was witness to critical thinking surrounding UK and LT upon Skelton's mention of the event.

13. On the facts of this case as adduced, protective measures during the journey taken by UK are a red herring as they would never have arisen. This is because if such protective measures had been thought necessary then permission to attend at all would have been refused.<sup>28</sup>

#### Not pre-decided

14. The fact that some arrangements may have been made, and the fact that Forsyth was not opposed when learning of it is nothing to the point because:

- the decision was for probation and MAPPA; and
- even if a decision had been made, including arrangements through a third party, by analogy with the dumper truck presentation<sup>29</sup> and by Byford's admission<sup>30</sup> that would not mean the matter is decided nor would it divest MAPPA of any of its responsibility to scrutinise and intervene if thought appropriate.

#### **Second strand**

15. The Prevent Team were not detectives and did not have access to the same intel as the investigation.<sup>31</sup> Forsyth and the Prevent Team did not have the 'attack

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<sup>26</sup> WE5051 (Byford) Paras 14, 23

<sup>27</sup> DC6415/5 – 6, WS5087-ELH1 pg3

<sup>28</sup> T/23/145–146 (Byford), confirmed by WMCTU witnesses e.g. T/26/56 (Chambers), T/26/194 (Jerromes)

<sup>29</sup> DC6415/6

<sup>30</sup> T/23/144

<sup>31</sup> T/26/244 (Jerromes)

aspiration' second strand of intelligence.<sup>32</sup> This is only slightly controversial. The only suggestion he did so was made by Hessell. Hessell's evidence on the point was without the benefit of any note to that effect and from memory only<sup>33</sup> and he said he did *not* remember it being said or who said it.<sup>34</sup> Leggatt J's judgment in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) (at CTI submissions, para 51(c)) as to the fallibility of human memory, particularly when set against contemporaneous records, and on past beliefs being influenced when a person is presented with new information, is apposite.

16. The only subject profile Forsyth could have seen omitted this strand.<sup>35</sup> Had Forsyth been given the second strand it was not his role to disclose it to MAPPA, indeed he would not be permitted to do so.<sup>36</sup>

#### **Prevent Team Part 4 role and execution**

17. UK was not a Prevent subject.<sup>37</sup>

18. The Prevent Team role regarding UK had four elements: Part 4 notification, licence compliance, completing tasks allocated (e.g. photograph DVDs), and reporting content of visits.<sup>38</sup>

#### Notification, licence compliance, task completion

19. Part 4 itself is concerned with notification only.<sup>39</sup> There is no evidence that notification duties were ever breached. There is no evidence of any licence breach in the run up to the attack. There is no evidence of any task allocated that was left incomplete.

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<sup>32</sup> T/24/164 (Stephenson)

<sup>33</sup> T/25/73–74

<sup>34</sup> T/25/77

<sup>35</sup> DC5183/10

<sup>36</sup> T/25/112 (Hessell)

<sup>37</sup> T/21/97 (Forsyth)

<sup>38</sup> T/21/100 (CF)

<sup>39</sup> DC55/11, T/17/59 – 61

## Reporting content of visits

20. The full extent of the direction they were given as agreed by Forsyth, Stephenson and Hessel in evidence was to 'ensure that the recent and future interactions with Khan are documented on SPIN to keep the Op Desk informed'<sup>40</sup>

- they had no direct part in the Priority operation<sup>41</sup>
- their reports were helpful<sup>42</sup> and comprehensive<sup>43</sup>

21. The reports submitted captured adverse attitudes or behaviours.<sup>44</sup>

22. The good overt behaviour of UK experienced by Prevent officers matched that observed by the other overt body, probation.<sup>45</sup>

## General management

23. There is nothing in Part 4 on offender management, and no powers granted to police officers in respect of management in the community.<sup>46</sup> Any management element would be found only in policy, procedures, experience or practice.<sup>47</sup> There is nothing in the CTA 2008 which provides for visiting, and the Prevent Team met and exceeded the frequency of visits requirement as set out in the policy.<sup>48</sup>

24. Forsyth fed into MAPPA elements of UKs behaviour relevant to its management of UK even where he himself did not conclude they formed a danger: being like a teenager, not being motivated, being focused on status,<sup>49</sup>; needing to be more proactively occupied, spending time at home on xbox and not pushing for employment.<sup>50</sup>

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<sup>40</sup> DC7441/159, TS/21/124 (CF), T24/161-162 (JS), T/25/69 (CH)

<sup>41</sup> T22/214 (Witness A)

<sup>42</sup> T/22/217 (Witness A)

<sup>43</sup> DC7438/119, DC7438/206, DC7438/216, DC7441/342, TS/24/163 (Stephenson)

<sup>44</sup> T/17/55 (Skelton)

<sup>45</sup> T/17/56 (Skelton)

<sup>46</sup> DC5514; T/21/101, 106; TS/21/105

<sup>47</sup> T/26/221 (Hessell)

<sup>48</sup> DC5514 and *ibid.*

<sup>49</sup> DC6415/5

<sup>50</sup> DC6416/5

### Isolating issue

25. The fact that UK may have become isolated was reported by the Prevent Team in effective ways, both by direct reporting into SB and Forsyth raising it at MAPPA.<sup>51</sup> The fact that Forsyth was not himself concerned or of the view it was isolation did not inhibit him reporting the matter fully to SB and MAPPA.

26. When the isolating issue was reported to SB and MAPPA<sup>52</sup>, it was escalated (as far as MI5<sup>53</sup>) in a way that dropped Prevent out of the picture.<sup>54</sup> The isolating concern was maintained by the police to whom Prevent reported it in spite of Forsyth's differing view<sup>55</sup>. Forsyth had different information, intel, and expertise and as such it is explicable that his view might be different. Given the differing view was not adopted there is no basis upon which it could be said to have caused or contributed to the deaths or formed a circumstance in which the deaths could have been avoided.

### Xbox visit unhappiness

27. Khan being 'unhappy' about having his games photographed was reported<sup>56</sup>, mentioned at the Daily Management Meeting the next day<sup>57</sup>, and in any event emailed to SB 10 days before the Fishmongers event.<sup>58</sup> There is no basis to suggest failure in respect of reporting of the 14.11.19 Xbox interaction.

### Transfer of role to Team 7 - December 2019

28. The transfer of the Part 4 management of UK was nought to do with any deficiency, inefficiency or failure by the Prevent Team, nor by reason of lack of

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<sup>51</sup> DC6415/5, DC6416/5, WS5063-JS410, DC7538/34, 43

<sup>52</sup> WS5063-JS410, WS5063-JS405A, DC64117/5

<sup>53</sup> WS5063/14 para 7.1.16

<sup>54</sup> T/21/136 (CF), WS5063-JS410, T/24/166 (Stephenson)

<sup>55</sup> WS5063-JS405A, DC7490-T p16

<sup>56</sup> DC7356

<sup>57</sup> T/21/130

<sup>58</sup> WS5063-JS423

resource or capacity for the UK job. Rather it was because with more RTOs inbound resources would become a problem, and the benefits of a regional approach from WMCTU T7 were preferred.<sup>59</sup>

### **Question 3 bullet point amendments**

Proposed amendments to existing bullet points in bold and underline:

Bullet 1:

- The fact that, throughout the time from his release from prison (December 2018) to the time of the attack, Usman Khan was managed by the National Probation Service **and the licence was the legal mechanism that provided for controls on his behaviour.**<sup>60</sup>

Bullet 2:

- The facts that **(a)** throughout that time, Usman Khan was subject to MAPPA arrangements which involved meetings attended by the National Probation Service, counter-terrorist police, police officers responsible for supervising his Part 4 terrorism notifications and other agencies; **and (b) MAPPA was notified of Khan's attendance at LT and the travel plans by probation whose role it was to raise such matters.**<sup>61</sup>

Bullet 4:

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

Bullet 8

- Whether or not consideration should have been 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

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<sup>59</sup> T/25/80 (Hessell)

<sup>60</sup> see submissions at paras 5–7 above. For the same reasons and pursuant to the facts in paras (17–19 and 23–24) above this bullet point is correct as it stands in identifying NPS alone.

<sup>61</sup> See submissions at paras 6–10 above.

security measures were taken at the venue) (again, ignoring hindsight); or if a need for any protective measures meant he should not have been permitted to travel at all rendering such further measures irrelevant.<sup>62</sup>

#### **Question 4**

##### **Investigative failure**

29. While investigators took advantage of Prevent's Part 4 visits to Khan to gain information, Prevent were not part of the investigation and as such no question or answer as to investigative failures should be framed as to include them.

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**3 Raymond Buildings**

**23 May 2021**

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<sup>62</sup> See para 13 above