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

SECOND RULING ON CASE MANAGEMENT AND DIRECTIONS

Introduction

1. These Inquests concern the deaths arising from the attack at Fishmongers' Hall and London Bridge on 29 November 2019. The background to and events of the attack are summarised at paragraphs 5 to 13 of my first Ruling dated 5 June 2020, which is available on the Inquests website.[1]

2. As explained in that first Ruling, a pre-inquest review ("PIR") hearing was originally scheduled to take place in April 2020, but had to be vacated as a result of the COVID-19 pandemic. Instead, Interested Persons ("IPs") filed written submissions and I produced the June 2020 Ruling and a set of initial Directions to resolve a number of procedural issues which could fairly be resolved on paper. Some issues were left over for the first PIR hearing.

3. On 16 October 2020, the first PIR hearing took place before me at the Central Criminal Court, with IPs represented at the hearing. Since a number of IPs and legal representatives participated in the hearing by live link, I took the view that it was preferable for me to give my decisions and reasons by a written ruling. Accordingly, I am now producing this Ruling to address the significant issues of law and case management which were discussed at the hearing. It is accompanied by a set of Directions. Both documents will be published on the Inquests website.

Organisation of the Inquests

4. There is no dispute that the inquests of Jack Merritt and Saskia Jones, the victims of the attack, should be the subject of a single hearing, and I have already made a direction to that effect. However, an issue has arisen as to whether the inquest of Usman Khan, the perpetrator of the attack, should be the subject of a separate hearing

[1] See: https://fishmongershallinquests.independent.gov.uk/wp-content/uploads/2020/07/FH-June-2020-Ruling.pdf.

or part of a single hearing along with the inquests of the two victims. Counsel to the Inquests have consistently submitted that Usman Khan's inquest should be the subject of a separate hearing, held directly after the hearing of the inquests of Jack Merritt and Saskia Jones and before a new jury. The families of the victims support that proposal, as do all other IPs who have expressed a view on the subject, apart from the family of Usman Khan. While the Khan family originally argued strongly for a single hearing of all the Inquests, Mr Bunting on their behalf indicated at the PIR hearing that he was no longer advancing that submission. In those circumstances, I can deal with the issue relatively briefly in this Ruling.

5. It is common ground that this issue is one of case management discretion, to be decided by reference to all the circumstances of the case and having regard to the legitimate interests of all IPs and considerations of procedural fairness. Taking all those matters into account, I have decided that there should be two hearings as proposed by counsel to the Inquests, for the following reasons.

6. First, the families of Saskia Jones and Jack Merritt are strongly in favour of their inquests being the subject of a hearing separate from the hearing of Usman Khan's inquest. Their wishes should be given considerable weight, especially since their preferences are well-reasoned. They have made the point that it would be distressing for them to have to participate in a hearing which was extended to examine in detail how Usman Khan came to be shot. Quite reasonably, they wish the hearing of the inquests of Saskia and Jack to focus upon issues relevant to how they came to be killed.

7. Secondly, the inquests of the two victims of the attack raise issues which are quite distinct from those raised by the inquest of the attacker. To simplify greatly, the inquests of the victims require consideration of how the attack took place, the emergency response (including the provision of medical care to the victims) and whether opportunities were missed to prevent Usman Khan committing the attack or to put in place better security at Fishmongers' Hall. The inquest of the attacker, meanwhile, will principally examine the events on London Bridge in which he came to be killed.

8. Thirdly, there will be no practical difficulty and no unfairness in organising these Inquests into two separate hearings as suggested. The first hearing can consider events in the Hall on the day of the attack, the emergency response and the background and management of Usman Khan. The second hearing can receive brief introductory evidence to set the scene, followed by very detailed evidence of events on London Bridge and some evidence from the Senior Investigating Officer concerning the life and background of Usman Khan. There is likely to be very little duplication of evidence or recalling of witnesses.

9. Before leaving this topic, I should make some further observations concerning the scope of the three Inquests. Subject to the basic requirement for an inquest to involve a full inquiry into how the deceased person came to die, it is a matter of judgment for the coroner to determine the ambit of inquiry: see for example *R (Maguire) v Assistant Coroner for West Yorkshire (Eastern Area)* [2018] EWCA Civ 6 at [2]-[3] and *R (Hambleton) v Coroner for the Birmingham Inquests (1974)* [2019] 1 WLR 3417 at [47]-[52].

10. As set out in the Indicative Scope document (attached to the June 2020 Directions), the inquests of the victims of the attack will consider events in Fishmongers' Hall (see Section B) while the inquest of the attacker will address events on London Bridge (see Section C). Meanwhile, Section A of the Indicative Scope document recognises that "[f]or all the inquests it will be appropriate to consider <u>some evidence</u> about the background to the attacks" [emphasis added], including Usman Khan's life and background, his management and monitoring as a former terrorist offender, etc.

11. It is important to stress that the extent to which the topics in Section A will be considered will differ as between the inquests of the victims and the inquest of Usman Khan. Properly conducted inquests of the victims need to consider the circumstances in which they died, which include how the attack was planned and executed and whether opportunities were lost which might have saved their lives. If the procedural obligation under Article 2, ECHR, is found to be engaged in those inquests, it may be necessary for the jury's determinations to address questions of whether such opportunities were lost. Meanwhile, a proper inquest into the circumstances in which Usman Khan came to die can legitimately focus upon the confrontation in which he

was killed (including considering whether armed officers acted lawfully and reasonably). Such a focus is consistent with both the statutory requirement for the inquest to consider how Usman Khan came to die (section 5 of the Coroners and Justice Act 2009 ("CJA")) and with the demands of Article 2 that the use of lethal force by state agents be subject to rigorous and independent investigation. The inquest of Usman Khan can and should address the background to the attack and events in Fishmongers' Hall relatively briefly, whereas the inquests of the victims will consider those subjects in far greater detail.

Involvement of the Khan Family in the Inquests of Saskia Jones and Jack Merritt

12. By the Directions of 5 June 2020, I recognised members of the Khan family as IPs in the inquest of Usman Khan. The effect is that they will receive full disclosure of documents in relation to all the Inquests, with the exception of a small number of documents related solely to the deaths of the victims (mainly post-mortem examination and medical materials). They will have full rights to participate in the hearing of Usman Khan's inquest, which will provide a full and thorough investigation into the circumstances of his death.

13. Parveen Begum, mother of Usman Khan, now applies for IP status in the inquests of Jack Merritt and Saskia Jones. The application is based solely on section 47(2)(m) of the CJA, which provides that IP status should be accorded to "any… person who the senior coroner thinks has a sufficient interest". In the alternative to that application, Mrs Begum applies for a direction that her legal representatives be permitted, within the inquests of the victims of the attack, to ask questions of witnesses on issues of importance to the Khan family.

14. It is common ground that section 47(2)(m) confers on a coroner a discretion to recognise individuals and organisations as IPs based on the sufficiency of their interest in the particular inquest, itself an inquiry into a particular death. The expression "sufficient interest" is not to be read in a technical way but equates to a reasonable and substantial interest in the inquest. In determining an application based on section 47(2)(m), a coroner is required to consider whether the applicant has a concern to intervene which is genuinely directed to the proper scope of the inquiry and whether the applicant has a close similarity with any of the categories of person

who are entitled to recognition as IPs under one of the provisions of section 47(2)(a) to (l). See *R v HM Coroner for the Southern District of Greater London, Ex Parte Driscoll* (1995) 159 JP 45; *R v Coroner of the Queen's Household, Ex Parte Al Fayed* (1999) 58 BMLR 205; *R (Southall Black Sisters) v HM Coroner for West Yorkshire* [2002] EWHC 1914 (Admin) at [48] and following; and *R (Platts) v South Yorkshire Coroner* [2008] EWHC 2502 (Admin). The ruling of Hallett LJ in the London Bombings Inquests following a PIR hearing of 26-30 April 2010 at [119]-[121] summarises the principles. In refusing applications for IP status by survivors of the bombings, Hallett LJ acknowledged that the survivors could play a role in the inquests, but that they had not established a sufficient interest to justify their being accorded IP status.

15. In advancing the application on behalf of Mrs Begum, Mr Bunting makes three submissions. First, he submits that the inquests of the victims will consider the background to the attack, including whether it could have been avoided, and that that issue is one of importance to the Khan family. If Usman Khan had been prevented from carrying out the attack, he would not have been killed. Mr Bunting even goes so far as to submit that whether the attack could have been prevented bears upon the issue of whether use of force against Usman Khan was lawful. Secondly, he submits that the threshold test for a person to be accorded IP status is undemanding, requiring only a reasonable and proper interest. Thirdly, he argues that Mrs Begum satisfies that test in that she has a proper interest in exploring the background to the attack and whether it could have been prevented.

16. Counsel to the Inquests submit that Mrs Begum should not be accorded IP status. While recognising that the Khan family may have some interest in aspects of the evidence to be heard in the inquests of the victims, they submit that the same can be said of many witnesses in inquests generally. The Khan family do not have the real and substantial general interest in the investigation into how Jack Merritt and Saskia Jones died which is contemplated in the authorities. Putting it simply, counsel to the Inquests observe that the family of a killer is not normally accorded IP status in the inquest of his or her victim.

17. Counsel to the Inquests point out that the Khan family can still have a legal representative present in the inquests of the victims, and that representative may make submissions where appropriate (just as Hallett LJ recognised that the survivors could make submissions in the inquests before her). They also submit that the Khan family's representative will be entitled to ask questions of any member of that family who is called to give evidence, and they cite rule 21(c) of the Coroners (Inquests) Rules 2013 ("the Rules") as recognising that position. Finally, they propose that I can and should permit the Khan family's representative to ask questions of other witnesses upon application to me, where the family can claim to have a proper interest to serve in asking questions beyond those asked by others.

18. Mr Henry Pitchers QC, representing the family of Saskia Jones, submits that Mrs Begum's application for IP status should be refused for the reasons given by counsel to the Inquests. He also resists my giving any indication now that the Khan family's representative may ask questions of any witness in the inquests of the victims. He contends that rule 21 does not itself accord a right for a witness to be examined by his or her own representative but provides that, where a witness happens to be an IP, his or her representative may question the witness last in order. However, he accepts that if during the inquests a circumstance arose which justified an application by the Khan family for some level of involvement, it should be addressed at the time.

19. Mr Nick Armstrong, representing the family of Jack Merritt, takes broadly the same position as Mr Pitchers. He stresses that members of the Khan family, according to their witness statements, have little to add to the factual narrative and so have no real interest save in there being a proper inquiry into Usman Khan's death. He adds that any involvement of the Khan family's lawyers in the inquests of the victims would be distressing to the members of the bereaved families.

20. In my judgment, the application of Mrs Begum for IP status in the inquests of the victims of the attack should be refused. She has a substantial and legitimate interest in the investigation into how her son died, but not in the investigation of how Saskia Jones and Jack Merritt died. I would reject the submission that a determination of the lawfulness of the killing of Usman Khan requires or involves consideration of whether he could and should have been prevented from commencing his attack. As a

matter of domestic homicide law, the lawfulness of the killing of Usman Khan concerns what the armed officers honestly believed about the threat he posed and the reasonableness of their response. As a matter of Article 2, ECHR, the state did not owe a duty to Usman Khan to prevent him from perpetrating an attack and so exposing himself to defensive action by police.

21. There are however some aspects of the evidence which is likely to be heard in the inquests of the victims in which Khan family members may have an interest. Members of the family were seeing Usman Khan regularly in the weeks and months before the attack. They claim to have perceived no sign that he might commit an attack. As is apparent from the submissions made for this PIR hearing, questions are likely to be asked of them and of others who saw Usman Khan regularly over that period (e.g. mentors and PREVENT officers) suggesting that he behaved unusually and perhaps even that there were warning signs there to be seen. If such suggestions were held to be well-founded, there may even be potential criticisms to be made of Khan family members for not contacting the authorities. Of course, I have formed no view to that effect at this stage and it may be that there is no basis for criticising any member of the family. But I can certainly say that it may be unfair to criticise the Khan family after precluding them from asking any questions of relevant witnesses.

22. In my view, it would be right now to recognise that the Khan family's representatives may have a limited role in the inquests of the victims, while carefully but fairly circumscribing that role. The starting-point is that neither the Rules nor the common law limit the categories of person whom a coroner may permit to make submissions or question witnesses. Rule 19 requires a coroner to permit IPs to ask (relevant) questions of witnesses, but it does not prevent a coroner from permitting others to do so. Indeed, when a coroner has counsel to the inquests asking questions of witnesses, he or she is exercising a case management power to allow a person who is not an IP to question witnesses. Rule 21 at least envisages that a witness may be represented and his or her advocate may ask questions of him or her.

23. Given the role and interests of the Khan family, I can say now that it would be appropriate to permit their legal representative to ask any appropriate and relevant questions of any Khan family member who gives evidence. As to whether their legal

representative should be permitted to ask questions of any other witnesses, I consider that the right approach is as follows. If the representative of the Khan family considers, after hearing a witness's evidence, that questions need to be asked to protect proper interests of the Khan family, a brief request may be made and I shall permit the questions if and to the extent that a proper basis is indicated.

24. I note from the submissions of Mr Bunting that it is the firm intention of Mrs Begum and other members of the Khan family not to attend the hearings of the Inquests except on any days they are themselves called as witnesses. That makes sense, since otherwise the point of the screening application of the Khan family (discussed below) would be negated. Since their representative will be playing no more than a very occasional and marginal part in the inquests of the victims, his or her position in court should reflect that limited role. If, as likely for reasons of social distancing, there is to be a main courtroom and a second courtroom served by a live link, the Khan family's representative should be given a seat in that second courtroom.

Applications for Special Measures by Members of the Khan Family

25. Following the June 2020 Ruling, an application was made for anonymity and special measures on behalf of "immediate family members" of Usman Khan, supported by written submissions and a statement from one of his brothers. The application appeared on its face to extend to the parents of Usman Khan, his six siblings and any spouses and children of those siblings. The applicants requested orders that they be anonymised and not identified by name in the Inquests, with associated orders for reporting restrictions under section 11 of the Contempt of Court Act 1981. They also sought an order that, if any of them were to be called as a witness, they should be screened from press and public, pursuant to rule 18 of the Rules (but not screened from myself, the jury, legal representatives or IPs). The applications for anonymity were resisted in written submissions by counsel to the Inquests, by a number of IPs and by three media organisations; Times Newspapers Ltd, Independent Television News and the BBC.

26. In his written and oral submissions for the PIR hearing, Mr Bunting modified the application in a realistic and sensible manner. He no longer seeks any order for family members to be granted anonymity, subject (in the case of some family

members) to screening orders being made. He maintains the application for an order for any of the relevant Khan family members who give evidence to be screened. He seeks an order that any Khan family members called to give evidence be enabled to arrive at and leave court by appropriate, non-public routes. He also asks for an order that none of the following should be named in the Inquests hearings except following application to me on notice: Usman Khan's sisters; the spouses of all Usman Khan's siblings; and the children of all Usman Khan's siblings.

27. Counsel to the Inquests supported the applications for screening and for non-public routes to be provided. As to naming of Khan family members, they supported the application to the extent that none of the children of Usman Khan's siblings should be named in the Inquests except following an on-notice application. They submitted that the question whether to make a similar order in relation to Usman Khan's sisters or the spouses of Usman Khan's siblings should be deferred to the next hearing, by which time it would be apparent whether or not any of those individuals was likely to feature significantly in the evidence. There was no opposition to those submissions from among IPs.

28. In measured submissions for the media organisations, Ms Angela Patrick acknowledged that the orders now being sought were much more proportionate than those requested by the original application. However, she urged me to scrutinise the screening application carefully and to give appropriate weight to the important principle of open justice.

29. The application in respect of prospective screening orders is made under rule 18 of the Rules, which provides as follows (in relevant part):

> "(1) A coroner may direct that a witness may give evidence at an inquest hearing from behind a screen.
>
> (2) A direction may not be given under paragraph (1) unless the coroner determines that giving evidence in the way proposed would be likely to improve the quality of the evidence given by the witness or allow the inquest to proceed more expediently.
>
> (3) In making that determination the coroner must consider all the circumstances of the case, including in particular –

(a) any views expressed by the witness or an interested person;

(b) whether it would be in the interests of justice or national security to allow evidence to be given from behind a screen; and

(c) whether giving evidence from behind a screen would impede the effectiveness of questioning of the witness by an interested person or a representative of an interested person."

30. Rule 18 requires me to consider whether either of the threshold conditions in sub-paragraph (2) is satisfied; whether screening of each relevant witness would be likely to (a) improve the quality of the evidence given by the witness or (b) allow the inquest(s) to proceed more expediently. In making that decision, I have to consider all the circumstances of the case, including the specific matters set out in sub-paragraph (3). If the threshold determination is made, there is then a discretion whether or not to order screening of a witness.

31. Making an order for screening of a witness involves a restriction of open justice, such that any order requires cogent justification. As recognised in rightly famous passages in *Scott v Scott* [1913] AC 417 at 476-78 and *Attorney-General v Leveller Magazine Ltd* [1979] AC 440 at 449-50, our courts have always recognised openness of the justice system as an important virtue, both as a safeguard and to maintain public confidence. When facing any application for special measures which would intrude upon open justice, as a matter of domestic common law it is necessary for a coroner to carry out a fact-sensitive balancing exercise, taking into account all the considerations for and against the order, including the important principle of open justice. This form of balancing exercise must be accommodated within any consideration of an application for screens: see *R (Dyer) v HM Asst Coroner for West Yorkshire (Western)* [2019] EWHC 2897 (Admin) at [25]-[26].[2]

32. The legal approach to an application for screens may also be affected by relevant rights under the ECHR. If refusal of a screening order would put the witness at a real and immediate risk of death or serious harm, the coroner will ordinarily owe a duty to

[2] This decision is currently the subject of an appeal, but I understand that the legal principles set out in this Ruling were not in dispute before the Court of Appeal.

make the order as an incident of the state's responsibility to take reasonable protective action under Article 2 and/or Article 3. See *Re Officer L* [2007] 1 WLR 2135 at [29].

33. An application for screens will often engage both the witness's rights to private and family life under Article 8 and countervailing rights of media organisations under Article 10 to report on the proceedings in an uninhibited manner. Where that is the case, the competing rights should be balanced in a rigorous way, taking "into account the evaluation of the principle of open justice as applied to the facts of the case and the potential value of the information in question [i.e. any information which would be withheld by virtue of the proposed order] in advancing that purpose, as against the harm the disclosure might cause the maintenance of an effective judicial process or to the legitimate interests of others": see *R (T) v West Yorkshire (Western Area) Coroner* [2018] 2 WLR 211 at [63]. That balancing exercise and the comparable exercise under common law principles will often take account of the same considerations and lead to the same result.

34. In my judgment, it would be right for me to order that any of the members of the Khan family to whom the application relates who is called to give evidence should be screened from the general public and from the press. I am not satisfied that a refusal to order screens would expose any of these individuals to a real and immediate risk of death or serious harm, so engaging Article 2 or Article 3 rights. However, the evidence in support of the application does make clear that the family members in question have suffered very considerable fear, anxiety and distress since the attack. Without going into the detail of the evidence (which would be counter-productive), the effects of the attack and the surrounding publicity have been felt by them very deeply and have affected their lives in a number of important respects. They are understandably anxious about giving evidence and suffering unwelcome attention and stigma as a result.

35. The evidence I have received satisfies me that ordering screens would improve the quality of the evidence which would be given by these members of the Khan family, because their stress and anxiety would be alleviated. I am also satisfied that it would be in the interests of justice to order screening, and that in my discretion I ought to do so. As I have said, this decision involves balancing the countervailing interests. The

important principle of open justice must be taken into consideration, but with appropriate regard to the facts that (a) these are not absolutely central witnesses; (b) they will not be anonymised; (c) their evidence will be heard by all in court and can be reported freely; and (d) all IPs and legal representatives will be able to see them give evidence and question them face to face. As against the interest in open justice as it applies here, I set the interests of the witnesses in giving evidence with as little distress as possible and the value to the inquiry of receiving the best evidence of these witnesses. In my judgment, that balance favours the making of a screening order. A proper exercise of balancing the Article 8 rights of the witnesses against Article 10 rights of press and public involves the same factors being weighed against each other and leads to the same result.

36. The application for an order that these witnesses be enabled to enter and leave court by appropriate, non-public routes, is even more clearly justified. Such an order does not impinge upon open justice and serves the same interests as the order for screens. It was not resisted by anyone.

37. Finally, the application for an order that various Khan family members should not be named except after application on notice raises somewhat different considerations. Mr Bunting's argument, in a nutshell, is that the individuals concerned have no obvious relevance to the narrative of events which will be considered in the Inquests. Rather than arguing now over whether they can properly seek any degree of anonymity in the Inquests hearings, he asks for an order that they should not be named in the hearings except after an application on notice. He accepts that they can properly be named in documents disclosed to IPs (which are disclosed subject to undertakings to keep them confidential until deployed in open court).

38. I take the view that such an order ought to be made now in respect of the children of Usman Khan's siblings, since it is very unlikely that they will have any significance in the Inquests. As regards the sisters of Usman Khan and the spouses of his siblings, I consider that the application should be deferred, for consideration at the next PIR hearing, at which point it should be clear from further disclosed material whether any of them ought to feature in the evidence.

Article 2, ECHR

39. In the June 2020 Ruling, at paragraphs 76 to 86, I addressed the question of whether the state's procedural obligation under Article 2, ECHR, to conduct a Convention-compliant investigation is engaged in relation to these Inquests. As I explained there, the obligation is undoubtedly engaged in the inquest of Usman Khan, since the authorities make clear that it is engaged wherever a person dies as a result of deliberate use of lethal force by state agents. It is only engaged in the inquests of Jack Merritt and Saskia Jones if and when there is an arguable case on the available material that the state or its agents breached one of the substantive positive duties to safeguard life under Article 2. I concluded that I was not satisfied that an arguable case had been made out on the material available at that stage, but I indicated that I would keep the matter under review. In addition, I stressed that I would conduct all the Inquests with sufficient scope and rigour to satisfy the requirements of Article 2 in any event.

40. Following circulation of that Ruling, the families of Saskia Jones and Jack Merritt asked that I reconsider the decision on Article 2 engagement at the first PIR hearing. I accordingly received written and oral submissions on the subject.

41. There is no dispute about the legal principles to be applied, which are set out in the submissions of counsel to the Inquests at paragraphs 13 to 14. The procedural obligation is engaged if and only if there is an arguable case on the available material that the state or its agents breached either the general duty or the operational duty to safeguard life which have been established by the Convention case-law. The general duty is one to "establish a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonable practicable, protect life" (see *R (Middleton) v West Somerset Coroner* [2004] AC 182 at [2]). It operates at a relatively high level and requires a concrete rather than abstract assessment of alleged deficiencies. The operational duty is one which requires state agents and agencies to take reasonable measures to avert particular threats to life if and when they know or ought to know of a "real and immediate" risk to life (see *Osman v UK* (2000) 29 EHRR 245 at [115]-[116]). Within that carefully formulated test, the word "real" means more than remote and "immediate" means present and continuing (see *Rabone v Pennine Care NHS Trust* [2012] 2 AC 72 at [38]-[39]). The operational duty can

require action to protect an individual or individuals against an appreciable risk to their lives or action to protect society at large from an appreciable risk emanating from one or more particular individuals.

42. Against that legal background, I have considered carefully the submissions of Mr Pitchers and Mr Armstrong to decide whether an arguable case of breach of these duties is established at present. I shall address the main grounds put forward in turn.

43. First, it is argued that security measures at Fishmongers' Hall were at least arguably deficient, given that the Learning Together event was to be attended by individuals who had been convicted of serious crimes in the past, including Usman Khan (a terrorist offender released one year previously). It is suggested in particular that there should have been further checks on entrance and/or a metal detector. I accept that these are proper areas for inquiry, but not that at this stage there is an arguable case that the state or its agents breached Article 2 duties in these regards. The Fishmongers' Company, which was responsible for security, is a private entity and does not owe Convention obligations. Even if it did, I am not in a position to say now that its systems were arguably defective or that the Company arguably should have appreciated a real and immediate risk of a fatal attack at the Learning Together event.

44. Secondly, there are said to be arguable grounds for criticising the safeguarding procedures of the University of Cambridge. However, the University has extensive and detailed documented procedures, and no clear argument has been advanced to point to concrete deficiencies in those procedures. As regards the operational duty, and even ignoring the fact that the Learning Together CIC was an entity distinct from the University, I am not aware of evidence to found an arguable case that University staff were or should have been aware that Khan posed a real, lethal threat.

45. Thirdly, it is argued that Usman Khan himself showed signs of unusual behaviour in the period before the attack. Mr Pitchers points to evidence that he was not happy about officers taking photographs of his computer games and that he asked them to leave his flat. Reference is also made to descriptions of him seeming low in mood and withdrawn. However, this evidence does not in my judgment provide an arguable

case that any specific state agents or agencies ought to have appreciated the risk of an attack and taken further action.

46. Fourthly, reliance is placed on the fact that Usman Khan was a former terrorist offender and was the subject of extensive restrictions and monitoring. Mr Pitchers points out that Khan's visit to London was the subject of express permission but that no step was taken to notify London police forces or the Fishmongers' Company. It is certainly right that substantial systems were in place to manage Khan as an offender, including MAPPA arrangements. There is at present no clearly arguable case that those systems were defective in their conception or implementation. While Mr Pitchers is right to say that communications concerning the visit will need to be examined in the Inquests, I am not presently satisfied that there is an arguable case that those responsible for managing Khan ought to have perceived in him a real and immediate lethal threat to other attendees of the Learning Together event (or the general public in London, for that matter).

47. Fifthly, Mr Armstrong makes the submission that Usman Khan was a prisoner who had exhibited poor behaviour before being accepted into the Learning Together programme in 2017. He argues that, but for Khan's acceptance into the programme, he would never have been at Fishmongers' Hall on 29 November 2019. In my judgment, the difficulty with this argument is that the decision to accept Khan into this prison education programme was separated by over two years and numerous causal steps from the events at Fishmongers' Hall in London. The operational duty to take reasonable action to avert an appreciable "real and immediate risk" was not arguably breached on this basis.

48. In summary, I presently consider that I cannot find the Article 2 procedural obligation to be engaged in the inquests of Saskia Jones and Jack Merritt. I shall keep the issue under review, and it can be reconsidered at the next PIR hearing or at the hearing of the inquests. I shall continue to keep an entirely open mind. In the meantime, these inquests will continue to be conducted with no less rigour and no less broad ambit than if Article 2 had been found to be engaged.

Enquiries of the Inquests Team and Disclosure of Documents to Interested Persons

49. In the June 2020 Ruling at paragraphs 21 to 28, I set out the legal framework within which the Inquests Team would seek relevant material and disclose it to IPs. Shortly before the PIR hearing, BDB Pitmans LLP as solicitors to the Inquests circulated a detailed Update Note informing IPs of the enquiries made by the Inquests Team and of progress in giving disclosure of documents. The Note makes clear that very considerable work has been done by the Inquests Team, assisted by the SO15 team of Operation Bemadam.

50. Mr Pitchers and Mr Armstrong, on behalf of the families of the victims of the attack, recognised that substantial work had been done and that the task was a large one. However, they pointed out that there had been relatively limited disclosure of prisons and probation records concerning Usman Khan. They stressed that these documents are important to the issues of what foreseeable risks he posed and whether he was properly managed and monitored after release.

51. In response, counsel to the Inquests gave details of the various categories of prisons and probation documents which they envisage will be disclosed by the end of October 2020 and November 2020 respectively. In short, their position is that the bulk of such material can and will be disclosed by the end of November 2020.

52. It is right that I acknowledge both the efforts already made to disclose a large amount of evidence to IPs and the importance of the further disclosure identified during the PIR hearing. No doubt the Inquests Team will continue their efforts, and I would strongly encourage all organisations and public authorities which are responsible for assisting to prioritise that assistance over coming months. In particular, I was grateful for the assurance by Mr Neil Sheldon QC, counsel for the Home Secretary and Secretary of State for Justice, that his clients will expedite their review of MAPPA materials and prison intelligence records so that those materials can be disclosed by the end of November at the latest (subject to any redaction on grounds of relevance or for proper claims to public interest immunity).

Criminal Investigation and Potential Prosecutions

53. As counsel to the Inquests explained, it is usual (but not always the case) that any homicide prosecution in connection with a death will take place before the inquest, to avoid any risk of the inquest hearing causing any prejudice to the criminal proceedings. Accordingly, Schedule 1 to the CJA contains provisions enabling prosecuting authorities to call for inquests to be suspended pending pre-charge investigation and pending any subsequent prosecution. So far, no request has been made by any investigating force or by the CPS to suspend these Inquests and no indication has been received that such a request will be made. Nevertheless, in order to avoid the disruption of a late request for a suspension, the Inquests Team have been corresponding with all relevant authorities to ascertain their positions.

54. As explained in the June 2020 Ruling, the counter-terrorist investigation into the attack has been conducted by SO15 within the Metropolitan Police Service. According to the SO15 team, there is no apparent prospect of any person being charged with an offence involving complicity in the attack, since all the investigations to date indicate that Usman Khan planned and executed it alone and without the involvement of any other person.

55. The City of London Corporation, as health and safety enforcement authority, and the Independent Office for Police Conduct have similarly confirmed that they have no intention to request suspension of any of these Inquests.

56. The City of London Police is the force leading the criminal investigation into the facts leading to the deaths, which includes (but is not limited to) the direct arrangements for the Learning Together event at Fishmongers' Hall. On behalf of that force, Ms Barton QC explained that an investigation file had recently been submitted to the CPS and that, as is routine, discussions were taking place between the investigating force and the CPS as to what, if any, offences might be disclosed by the investigations. She said that her client was acutely aware of the need to make a decision quickly as to whether a prosecution should be pursued before any of the Inquests. As she acknowledged, a late request to suspend the Inquests (or any of them) would cause considerable distress to the bereaved families and many others, not to mention great inconvenience and wasted costs.

57. Of course, nothing must be said or done to impede the work of the investigating and prosecuting authorities, or to prejudice any potential prosecution. All I can do is to encourage those authorities to make their position clear as soon as possible.

Arrangements for the Main Inquests Hearings and a further PIR Hearing

58. During the course of the PIR hearing, I confirmed that the main hearings of these Inquests should commence on 12 April 2021. The logistical arrangements for those hearings, including the courtrooms and live links required, will need to be kept under careful review as Government regulations and guidance develop over the coming months.

59. There should be a further PIR hearing in the Inquests, to be listed shortly. It seems to me that a Friday in January 2021 would be an appropriate time for the hearing, since there should by then have been substantial further disclosure but there would be more than two months of preparation time remaining before the hearings themselves. However, I am aware that other factors may bear upon the fixing of that hearing, such as whether and when any public interest immunity application might be made.

Selection of Witnesses for the Inquests

60. A draft list of witnesses for both prospective hearings was circulated to IPs at the end of July and submissions in response have recently been received. Counsel to the inquests indicated that a revised draft list would be issued shortly. In those circumstances, I did not at the PIR hearing consider any submissions as to selection of witnesses. I would hope that most such representations can be resolved by correspondence, but I shall consider any outstanding issues at the next PIR hearing.

HH Judge Mark Lucraft QC
Recorder of London and Chief Coroner of England and Wales

22 October 2020