PUBLIC INQUIRY INTO THE DEATH OF JERMAINE BAKER

RULING ON RESTRICTION ORDER APPLICATIONS UNDER SECTION 19 INQUIRIES ACT 2005 INCLUDING ORDERS FOR ANONYMITY, NON-DISCLOSURE AND REDACTION 26 MARCH 2021

---

1. On the morning of 11 December 2015, Jermaine Baker was fatally wounded by one bullet fired by an MPS officer, known thus far as W80, when he and other MPS officers thwarted a planned escape by a dangerous and prolific criminal, Izzet Eren, who was in transit from HMP Wormwood Scrubs to Wood Green Crown Court. An inquest into the death of Jermaine Baker was duly set up. In February 2020, the inquest into Mr Baker's death was suspended under Schedule 1(3) of the Criminal Justice Act 2009 and this Public Inquiry was established under the provisions of the Inquiries Act 2005 by the Home Secretary. The Inquiry's terms of reference need not be set out for the purposes of this ruling.

2. Ahead of the Inquiry's substantive hearings, and by way of a preliminary hearing on 15 and 16 March 2021, I heard submissions, in support of and against applications for restriction orders pursuant to s19 of the Inquiries Act 2005 ("the Act"). Those applications fell into three broad categories a) applications for the redaction of documents, b) applications for non-disclosure of documents and c) anonymity applications for witnesses to the Inquiry.

3. During an open session on 15 March 2021 I heard submissions from Counsel to the Inquiry, the family of Jermaine Baker, the Metropolitan Police Service (MPS), the National Crime Agency (NCA), W80 (all of whom are core participants) and Serco (who is not a core participant). On 16 March 2021, in closed session, I heard further submissions from Counsel to the Inquiry, the MPS, the NCA and Serco. I was assisted by open and closed bundles of witness statements and documents. In addition, I had helpful written submissions from the Guardian which emphasised the importance of openness and transparency in an Inquiry, which I have borne in mind throughout.

4. On 19 March 2021, with one exception, my decisions in relation to the applications were circulated. My reasons for those decisions appear below. There is a closed addendum to this ruling providing further reasons based upon closed material with regards to the applications by the NCA and the MPS application for witness EG39 only. For the remaining applications in which I received, or heard submissions about, closed material my decision was based wholly or predominantly upon the open applications and the open material. The closed material I received did not undermine or contradict the open applications or my reasons set out below.

The Law

5. The legal principles for the granting of restriction orders in a public inquiry, both in the context of redactions of evidence and the context of anonymity, were set out by Counsel to the Inquiry in written submissions dated 11 March 2021. Miss Blackwell QC, as Counsel to the Inquiry, set out these principles in some detail during her oral submissions (see pages 7-22 of the transcript). Although other counsel sought to emphasise some points over others, the principles themselves were not in dispute. I have not repeated that full rehearsal of the law in this ruling, but I have accepted and taken account of the principles as set out.

6. There are a few points which I will emphasise in this ruling because they are either central to the applications or weigh particularly heavily in my reasoning.

    a. The starting point, under s18 of the Act, is a presumption that the Inquiry will be held in public. This includes the ability for members of the public to see and hear proceedings, and to view or obtain copies of documents given, produced or provided to the Inquiry.

    b. Under s19 of the Act, an order can be made restricting attendance at Inquiry hearings or the disclosure of documents to core participants or to members of the public more broadly. This may also include granting anonymity to a witness by restricting disclosure and publication of their identity.

    c. An order under s19 of the Act must specify only those restrictions that are required in all the circumstances.

    d. Under s17(3) of the Act there is a statutory duty placed on me, as Chairman, to act with fairness when making any decision as to the procedure or conduct of the Inquiry, including in resolving the applications before me.

7. In an inquiry, the public interest in disclosure is in a full and open investigation being conducted with all potentially relevant evidence available to core participants. In *R (Amin) v SSHD* [2004] 1 AC 653 at [31], Lord Bingham characterised the purposes of the state's investigation into a circumstances of an individual's death as follows:

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

8. I have kept in mind throughout that the general and unassailable principle of open justice applies to inquiries, and favours the disclosure and deployment of relevant evidence in a public hearing, such that the granting of a restriction order involves some infringement of the open justice principle.

Applications for non-disclosure or redaction of documents

9. I have received applications to restrict disclosure of documents in whole or in part, through the application of redactions. If granted those orders would restrict both disclosure of those documents to core participants and their publication.

10. An order for the non-disclosure of part or all of a document may be made under s19(3)(a) where it is required by any statutory provision, enforceable obligation or rule of law. Alternatively, it may be made under s19(3)(b) where I consider such an order to be conducive to the Inquiry fulfilling its terms of reference or to be otherwise in the public interest, having regard to s19(4) and s19(5).

11. In oral submissions Mr Sheldon QC emphasised that the applications for redaction or nondisclosure by the NCA are made primarily under s19(3)(a) on the basis that they are required by statutory provision, enforceable community obligation or other rule of law, with the public interest as a supplementary or alternative ground. All of the other applications before me relied primarily upon the public interest in the non-disclosure or redactions sought.

12. Section 22(2) of the Act states that *"the rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to any inquiry as they apply in relation to civil proceedings in a court in the relevant part of the United Kingdom".*

13. Where it is in the public interest to restrict disclosure of documents to core participants and/or the publication of documents, that decision could arguably be made under s19(3)(a) or (b). I note, and follow, the decisions of other tribunals that it is not necessary in most cases to distinguish between the test for public interest immunity, as it would apply pursuant to s19(3)(a) and the test for harm to the public interest in s19(3)(b). Both will normally produce the same outcome (see *R (Metropolitan Police Service) v The Chairman of the Inquiry into the Death of Azelle Rodney* [2012] EWHC 2783 Admin at [38] per Pitchford LJ; the *Ruling of Sir Christopher Pitchford, as Chairman of the Undercover Policing Inquiry, on the legal approach to restriction orders* at [29] and [71]).

14. When considering public interest immunity, the independent judgment of the Court is recognised to be critical: even in the context of national security, the Court does not simply salute a ministerial flag (see *Mohamed v Secretary of State for the Home Department* [2014] 3 All ER 760 at [20]).

Applications for anonymity

15. It is within my power to grant anonymity to a witness participating in this Inquiry by making an order restricting the disclosure and/or publication of their name or other identifying details in documents held by this Inquiry. I am also asked to ensure the anonymity of those witnesses who may be asked to give live evidence to the Inquiry by

specifying within the order a number of special measures, including but not limited to the use of screens.

16. In deciding the applications before me I have been mindful of:

    a. My responsibilities under Article 2, Article 3 and Article 8 of the European Convention on Human Rights ("ECHR") (by virtue of s19(3)(a) and s6 of the Human Rights Act 1998);

    b. The common law duty of fairness;

    c. My statutory duty under s17(3) to act with fairness;

    d. The factors set out in s19(4), including the extent to which any restriction order might inhibit the allaying of public concern by this Inquiry, any risk of harm or damage (as defined by s19(5)) that could be avoided by a restriction order and the likely effect of any order on the conduct of this Inquiry.

17. Although there will be some overlap between my duties under the ECHR and the common law, the test for anonymity under the common law is broader in scope. For example, under the common law, it is relevant to consider the subjective fears of the person concerned, whatever their degree of objective justification. The House of Lords held in *Re Officer L,* which related to the anonymity of soldiers during the Bloody Sunday public inquiry, at [22]:

> *" The principles which apply to a tribunal's common law duty of fairness towards the persons whom it proposes to call to give evidence before it are distinct and in some respects different from those which govern a decision made in respect of an article 2 risk. They entail consideration of concerns other than the risk to life, although as the Court of Appeal said in paragraph 8 of its judgment in the Widgery Soldiers case, an allegation of unfairness which involves a risk to the lives of witnesses is pre-eminently one that the court must consider with the most anxious scrutiny. Subjective fears, even if not well founded, can be taken into account, as the Court of Appeal said in the earlier case of R v Lord Saville of Newdigate, ex p A [2000] 1 WLR 1855. It is unfair and wrong that witnesses should be avoidably subjected to fears arising from giving evidence, the more so if that has an adverse impact on their health. It is possible to envisage a range of other matters which could make for unfairness in relation of witnesses. Whether it is necessary to require witnesses to give evidence without anonymity is to be determined, as the tribunal correctly apprehended, by balancing a number of factors which need to be weighed in order to reach a determination."*

18. The House of Lords approved (at [26]) the formulation of eight factors (at [14]) which should be considered in balancing an applicant's fear with the interests of justice:

    a. the seriousness of the applicant's fear and its impact on him or her;

    b. the reason for the applicant's fear;

c. the likely effect of granting anonymity in removing or reducing that fear;

d. the effect on the public's perception of the impartiality of the Inquiry, having regard to the factors which led to the Minister's decision to hold a public inquiry and to its terms of reference;

e. the likely effect on the applicant of refusing his or her application in whole or in part;

f. the likely effect on the Inquiry's ability to arrive at the truth if it refuses or grants the application in whole or in part;

g. the likely effect on the ability of the public to follow the evidence if the Panel refuses or grants the application in whole or in part;

h. the fact that the answer to [whether there is an objectively justified risk of harm] was [in *Officer L*] 'no'.

19. A risk of harm falling short of real and immediate risk of death (for Article 2) or of serious harm (such as might engage Article 3 rights) may nonetheless be relevant to the balancing exercise under the common law: see *Sunday Newspaper Ltd's Application (Judgment No. 2)* (2012) NIQB 26 at [17].

20. When seeking to strike the right balance under the common law test, I may consider all the consequences of granting and of refusing the orders sought. For example, in an application for anonymity by a police officer who does specialist work, a relevant factor may be that identification of the officer would prevent them continuing in their current role and would deprive the force of a valuable resource (see *R v Bedfordshire Coroner, Ex Parte Local Sunday Newspapers* (2000) 164 JP 283).

21. When applying the common law test, I am also required to take proper account of the fundamental principle of open justice. The open justice principle holds that the administration of justice should generally take place in the open, as a safeguard and to maintain public confidence (see *Scott v Scott* [1913] AC 417 at 437-39 and 476-78; *A-G v Leveller Magazine Ltd* [1979] AC 440 at 449-50). In more recent times, courts applying this principle have recognised that giving names and personalities to witnesses is an important aspect of openness in the justice system (see *In re Guardian News and Media Ltd* [2010] 2 AC 697 at [63]). In that case, Lord Rodger formulated the balancing act as [52]

> *"whether there is sufficient public interest in publishing a report of the proceedings which identifies [the applicant] to justify any resulting curtailment of his right and his family's right to respect for their private and family life."*

22. Where a witness seeks to justify anonymity by reference to his/her rights under Article 8 of the Convention, a tribunal usually has to perform a balancing exercise which weighs those rights against the rights of media organisations under Article 10 (see *In re S (A Child)* [2005] 1 AC 593 at [16]-[17]; *SSHD v AP (No. 2)* [2010] 1 WLR 1652 at [7]).

23. This balancing exercise is "*highly fact-specific*" and "*must take into account the evaluation of the purpose of the principle of open justice as applied to the facts of the case and the potential value of the information in question 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])

24. As I have observed above, there is no or no significant difference between any of the submissions as to the law which applies, or as to how I should approach my task. The differences lie in how I should perform the balancing exercise which will determine the outcome of these various applications – the balancing exercise which lies between the powerful factors of a) the public interest in the openness of the Inquiry process and b) the need to minimise (i) the risk of harm to witnesses and (ii) the risk of any damage to effective methods of detection and investigation used by law enforcement agencies.

25. These twin factors have rightly been at the forefront of all the submissions, written and oral, which I have read and listened to with care. And I bear in mind that the principle – and presumption - of transparency and openness is even more important in an Inquiry in which it is acknowledged, even by those whose approach to the Restriction Order applications differ, that my terms of reference require me to investigate in closed hearings some areas of evidence which cannot be heard in public.

26. I now turn to the various applications, which I will deal with by reference to the party which has made them.

Rulings

I- Applications by the NCA

27. I have received five applications for restriction orders from the NCA. Those applications relate to a) the non-disclosure of documents b) the redaction of documents and c) anonymity for two witnesses- Witness C and SE11.

28. Inevitably, given the nature of these applications, the open material upon which reliance is placed by the NCA is brief and limited in scope. It is supplemented in every case by closed material and/or schedules. Not surprisingly, the family are unable to make detailed representations in relation to the NCA's applications, but instead urge me to study the applications with particular care and scrutiny, effectively seeking to put me in their shoes, in order to examine firstly whether they should be granted at all and secondly whether there is any further material which can and should be disclosed in accordance with the overriding principle of openness.

29. I note and accept Mr Sheldon QC's point that this Inquiry was established as such precisely because material such as that which I have had to consider could not otherwise have been considered, tested or subjected to rigorous examination in an inquest. The establishment of

the Inquiry has made possible scrutiny of all material, including closed material. The evidence will be tested and explored by independent Counsel to the Inquiry in front of an impartial tribunal. I hope this will be of some comfort to Jermaine Baker's family, although I understand that it is not the easiest concept with which to come to terms.

Applications for the non-disclosure and/or redaction of documents

30. The NCA makes applications for:

    a. Redaction of documents relating to a misconduct interview with police officer FE16 (at IPC0000400_009, 029 and 043, IPC0000402_009 and IPC0000404_003);
    b. Non-disclosure of the statements and exhibits of Witness C who provided the corporate witness statement for the NCA explaining ;
    c. Non-disclosure of the witness statement and exhibits of Witness SE11, and nondisclosure of the evidence filed in support of SE11's application for anonymity;
    d. Non-disclosure of the witness statement of Stephen Smart.

31. The open written applications were made under both s19(3)(a) and s19(3)(b), on the basis that the orders sought were in the public interest to avoid the risk of harm and damage including a) death or serious injury, b) revelation of sensitive investigative techniques and abilities, c) compromising the sensitive collaborative relationship between the NCA and partner agencies and d) the ability of offenders to evade detection or prosecution if disclosure of the material were made. In oral submissions Mr Sheldon QC confirmed that the applications were made primarily under s19(3)(a) and were required by statutory provision, enforceable community obligation or other rule of law.

32. During the closed session I have carried out the careful exercise of testing and analysis, described by Miss Kaufmann QC as a calibration, or fine-tuning of the risks which are said to arise from disclosure. I am satisfied that, as Mr Sheldon QC said, although both subsections of s19(3) were engaged, to a greater or lesser extent, s19(3)(a) is engaged throughout, and to that extent, the statutory discretion does not arise for consideration.

33. As a result of that finding, I am satisfied that the orders for redaction and non-disclosure sought should by the NCA be granted in the terms sought. As a result of s19(3)(a) there is no further material which can be disclosed and no further reasons which can be included in this open ruling. Further reasons are provided in a closed addendum to this ruling.

Applications for anonymity

34. The NCA has applied for anonymity for Witness C, a serving NCA officer who has provided a corporate witness statement relating to matters both general and specific to this case. Witness C did not play any role in Operation Ankaa, or any related operation.

35. I have carefully reviewed the contents of Witness C's statement and the supporting material provided with the closed application. I have considered whether any disclosure can be made in connection with this particular application. For reasons which are, by necessity, developed in a closed addendum to this ruling, I am satisfied that the order sought is necessary.

36. I do, however, agree with Miss Kaufmann QC's submission that there can be some disclosure of Witness C's corporate role. To that extent, Mr Sheldon QC and Miss Blackwell QC suggested a form of words which I am happy to adopt, namely that Witness C be described as a Senior Manager in the NCA's Intelligence Command.

37. The NCA has applied for anonymity for SE11. SE11 was a law enforcement officer who dealt with the intelligence received and how it was handled and disseminated on the morning of 11/12/15. SE11 was also heavily engaged in targeting Turkish Organised Crime Networks (OCNs), including but not confined to the Tottenham Turks. I have considered with care SE11's witness statement and other closed material available to me and I am quite satisfied that SE11 faces a continuing threat to his life and a threat of harm from OCNs in general and that his subjective fears, expressed in closed material, have a sound objective basis. The application is well founded and accordingly, I make the order sought in the terms drafted. Further reasons will be provided in the closed addendum to this ruling.

II. MPS

Applications for the non-disclosure and/or redaction of documents

38. The MPS Application 1 dated 01/09/20 relates to the non-disclosure of evidence contained in documents relating to the location of vehicles used by MASTS (Mobile Armed Support to Surveillance) during the conduct of police operations.

39. The order is sought on the basis that disclosure would undermine the tactical efficiency of MASTS. Wisely, the family acknowledge the force in this submission and do not oppose the application. I, however, am not here to rubber-stamp applications whether they are opposed or not, and, as enjoined by the family, am slow to deprive them of the opportunity to scrutinise choices made in relation to police tactics and deployment which may have played a part in Jermaine Baker's death. I am however satisfied that this application is well made, and will be granted. The redaction sought is narrow in focus and, whilst this evidence is peripherally relevant, I accept that its disclosure would be of assistance to anyone trying to pre-empt or defeat police armed tactics which would put both officers and the public at greater risk.

40. The MPS withdrew two applications previously known as applications 3 and 4. As a result I turn to applications 2 and 5 dated 06/10/20 and 30/11/20. These applications were made on behalf of the MPS on the basis that material which related to a Small Teams Intervention Capability (STIC) was both sensitive and irrelevant. In submissions before me Mr Butt QC accepted that there was STIC available during the operation in which Mr Baker was killed. It seems to me that if there was a STIC available, it is not open to Mr Butt QC to argue that

material which relates to the deployment of STICs is necessarily irrelevant. It is potentially relevant. It may not prove to be relevant on the facts of this particular case, but I am not going to prevent the family's legal team from exploring the material which exists in relation to it. Issues of sensitivity can be addressed by carefully defining the circumstances in which the material can be examined. To that end, the fall-back position adopted by Mr Butt QC in the event that his primary submission on relevance failed is, in my judgment, one which balances the parties' competing interests and ensures that an appropriate degree of openness and transparency is maintained. Accordingly, the Inquiry Legal Team will make, and communicate to core participants, arrangements for legal representatives to inspect the material relating to STIC and make representations about its relevance.

41. The MPS application 6 dated 18/01/21 relates to the type of technical equipment fitted to the Audi KM13 YPT, the car in which Mr Baker was shot, for the purpose of surveillance. The quality and operation of the sound reproduction and listening equipment which was used during Operation Ankaa is clearly highly relevant, it remains to be seen whether the precise make and model of the equipment is also relevant. The outcome of this application will depend in part upon the content of a report, which is currently in preparation, from two witnesses experienced in installing and monitoring covert audio probes. This application will be revisited upon receipt of that report. It can be dealt with on or before the final Preliminary Hearing which will take place on 04/05/21. Until a final determination has been made, the current redactions will stand.

Anonymity applications

42. Anonymity applications need to be scrutinised with the utmost care, and on a witness-bywitness basis. I have in mind in considering each of these applications, the legal framework which is set out in the introduction to this ruling, and the matters to which I must have regard when deciding whether my discretion is engaged and if so, how it should be exercised.

43. Although the witnesses can be broken down into various 'categories', based upon their role at the time of Mr Baker's death (for example covert surveillance support officers, counter terrorism specialist firearms officers etc), it does not follow that all within a particular category will receive or be refused anonymity.

44. If the applications of witnesses who fall into a particular category are dealt with in the same way, it is only because a correct application of the relevant principles of general application, as set out above, to each individual has resulted in such an outcome. For example, the operational risks for officers in similar roles will be broadly consistent. Nonetheless, I have taken each application in turn. I have considered, in relation to each application, the basis on which the application is made, their personal circumstances, their current employment and their subjective fears. For each I have considered the supporting evidence for their application. In some cases the Inquiry Legal Team and/or myself have asked for additional evidence to be obtained.

45. The individual determinations are fact-sensitive. Whilst they are governed by the approach adopted in previous Inquests and Inquiries, to which reference has been made in both skeleton arguments and oral submissions, they are not governed by the decisions themselves. Those decisions were made on the facts as found in those previous Inquests and Inquiries. For example, a robust approach to anonymity applications in the Grainger Inquiry, upon which heavy reliance is placed by the family, may have been easier to justify where, as there, the risk which the Chairman had to consider was, albeit ongoing, from one named, and highly dangerous individual to one police officer. In this case, there is material – and it is for me to evaluate it – that over 5 years after the event, there remains a significant and heightened current risk from an OCN, the Tottenham Turks, whose tentacles are spread locally, and overseas. The risk from the Tottenham Turks is not specific to any one officer;

    it does not diminish with time because it is the aim of the serving officers who seek anonymity to disrupt serious armed crime, whether committed by the Tottenham Turks or other OCNs, which is an aim which is not shared by those whose activities they seek to disrupt.

46. The Tottenham Turks OCN was the subject of both Operation Utara and Operation Ankaa. The risk that they continue to pose is highly pertinent. There is nothing to suggest that it will dissipate any time soon. The Inquiry Legal Team asked for up to date intelligence reports about the activities of the Tottenham Turks which has firmly established that Izzet Eren is indeed no longer in custody in the UK or Turkey, having escaped from the Turkish prison to which he was deported after being sentenced in the UK. Izzet Eren's whereabouts are currently unknown. What is clear is that he continues to be an influential figure in the OCN issuing orders from wherever he is based. This OCN continues to be involved in the obtaining and use of firearms and in 2020 they were linked to three lethal barrelled firearm discharges and were named on four threats to life. The MPS have concluded that "*the network continues to have the capability and propensity to commit serious criminality, involving the use of firearms, targeting rivals of the network or to maintain current drug markets controlled by them.*

47. The risk from the Tottenham Turks arises from the role of the MPS and its officers in conducting operations intended to disrupt their criminal operations. In submissions before me Mr Butt QC, on behalf of the MPS, and Mr Penny QC, on behalf of W80, did not seek to persuade me that the risk posed by the Tottenham Turks was sufficiently real or imminent as to engage Article 2. They did however submit, as did Miss Blackwell QC, that the risk posed by the Tottenham Turks remained central to my decisions in this case. Section 19(3)(b) requires me to have regard to "*any risk of harm or damage that could be avoided or reduced by"* the orders sought. Harm or damage includes "*death or injury".*

48. The risk comes from a sophisticated and dangerous OCN that has proven itself capable of obtaining weapons and shown itself willing to use them. The Tottenham Turks have also shown themselves to be willing and able to make use of individuals unconnected with their OCN and therefore as yet unidentified to carry out attacks on those in positions of authority on its behalf. The attempt escape of Izzet Eren being one example. My assessment of risk has considered not just whether something could or might happen but also the gravity of

that risk and the potential consequences if it did materialise. In this case, the intelligence about the danger posed by the OCN indicates that the potential harm to individuals were the risk to materialise is of the highest significance and possibly fatal.

49. It appears to me that the question of the future operational effectiveness of the serving officers for whom anonymity applications have been made, and of their units as a whole, is bound up with the risk posed by the Tottenham Turks. Many of the officers who are the subjects of the MPS anonymity applications remain in units which are regularly deployed against OCNs and, therefore, could conceivably be deployed in an operation touching upon the Tottenham Turks. In the days leading up to these applications being made, the MPS confirmed the high probability that both the surveillance officers and the CTSFOs will be deployed against this and other North London OCNs in the near future.

50. Miss Kaufmann QC on behalf of the family acknowledges that it is difficult to resist applications for anonymity if there is a proper evidential basis for finding more than a fanciful risk to life or limb or of a threat to effective policing. She makes the point that there is an understandable and natural reluctance for witnesses – not merely police officers – to be identified, and urges careful scrutiny. She also pointed out that it is difficult to evaluate subjective fears for personal/family safety when they are not soundly based on objective grounds.

51. It seems to me that where an unreasoned risk assessment is made, it can have the effect of increasing subjective fears, just as if the risk assessment was low, that might well have the effect of settling subjective concerns and fears. So the importance of an informed and realistic risk assessment cannot be overstated.

52. Miss Kaufmann QC also made the point, subsequently clarified, that serving covert surveillance and support officers had made statements in their own names in the criminal proceedings relating to the remaining conspirators. This, if true, would be a highly relevant matter to be weighed in the balance – but in fact, the point applies to one officer alone, FE12, whose position is dealt with below. She also posed, rhetorically, the question why would the Tottenham Turks want to take out covert surveillance officers and CTSFO's now, over 5 years after the event, when there would be more to replace them. The chances, she submits, of recognition of such officers is remote and depends on a degree of determination which has not hitherto been revealed; she submits that the risk of recognition can be satisfactorily mitigated by appropriate measures in relation to the use of mobile phones and a restriction on the taking of photographs.

53. Against the opportunity to take such risk-reducing measures, she submits that it is difficult to see how there is more than a fanciful risk to operational effectiveness. To make restriction orders of the kind sought, even if the risk is more than fanciful, impinges upon accountability. Mr Butt QC on the other hand, submits that to adopt this approach is to underestimate the threat to such officers based not upon the desire to avenge the death of Jermaine Baker, for which there is no evidence, but upon the desire of OCNs such as the Tottenham Turks to ensure that their serious and sophisticated criminal enterprises and the scope of their activities are not adversely affected.

54. One further matter which needs to be emphasised at this stage is this; there is no material whatsoever to indicate that Jermaine Baker was a member of the Tottenham Turks or was linked to organised crime. He may have wanted to ingratiate himself with those who were, but all the material tends to support the view that he was recruited, or offered his services for reward to do a specific job for the Tottenham Turks on this occasion only. Nor is there any specific material to suggest that his death which occurred 5 years and 3 months ago is seen as a particular reason for a revenge attack on any MPS officer who was engaged in Operation Ankaa, whose remit was to prevent the springing of Izzet Eren, one of, if not the leader of the Tottenham Turks. That is the background against which the adequacy or otherwise of the risk assessments, which place so much emphasis on the threat posed by the Tottenham Turks to the officers who were involved in Operation Ankaa must be considered. It is unfortunate to say the least that for far too long the MPS, one of whose officers, W80, had shot and killed Jermaine Baker, did nothing to dispel, and may well have been responsible for perpetuating the myth that even though Jermaine Baker was involved in serious crime on the morning of 11/12/15, he was by no stretch of the imagination someone who could be described as a 'major player'. Mr Butt QC's concession to this effect in the course of open submissions, as well as his fulsome apology on behalf

    of the MPS, may have been long overdue, but it was both welcome and, in my judgment, unreserved.

55. In each case, the MPS have applied for an order in the following terms for each of the officers set out below:

    a. The witness' name and address to be withheld;

    b. The witness to be referred to by cipher only;

    c. The witness to give evidence screened from members of the public and the media;

    d. The witness' image not to be broadcast during any live stream or publication of his/her evidence;

    e. The witness not to be asked questions which might lead to their identification;

    f. The witness to be permitted to enter and leave the Inquiry room through a route not available to members of the public.

    g. The media to be prohibited from publishing the witness' identity or image or other identifying feature pursuant to s11 of the Contempt of Court Act 1981.

56. I will deal in more detail below with the effect that my rulings will have on the media and press representatives.

57. I will now address the individual applications; for the ease of presentation, I will group my rulings by reference to the officers' roles, but as already indicated, each application will be considered and adjudicated upon separately and on its merits.

Serving covert surveillance and support officers (FE3, FE 5, FE6, FE10, FE11 and FE12)

58. Covert surveillance officers are highly trained, at considerable public expense, and of necessity work at close quarters with those who are the object of their surveillance. Mr Butt QC submitted that they cannot wear disguises in order to work covertly and their main protection is their anonymity. In this case, none of these officers saw the fatal shooting, none is accused of any wrong-doing, most saw the Audi car for only a few seconds and were able to give an accurate description of its location.

59. I am satisfied, for all the reasons set out above, that the Tottenham Turks do continue to pose a risk of significant harm, and potentially death, to serving covert surveillance and support officers who are or have been engaged in operations aimed at disrupting their criminal activities. I am also satisfied that the operational effectiveness of the covert surveillance and support officers for whom anonymity applications are made would be undermined were they to be identified. I note in particular that each of these officers could be deployed against the Tottenham Turks, or affiliated OCNs, at any time.

60. **FE3** was a surveillance officer in covert policing command; he was part of the team conducting armed surveillance of the Audi and was in his vehicle at the time of its interception; he did not see the shooting. Evidence suggests that he regularly works on subjects linked to counter-terrorism and serious crime. His work involves the infiltration of hostile and sensitive environments. He is attached to the unit MO3, whose teams also have responsibility for surveillance of terrorist subjects and networks.

61. Any disclosure of his identity is said severely to compromise his position and could well prevent him performing his specialist role currently and in future covert deployments. In 2016, he sought anonymity, but thereafter his wish for anonymity was not followed up by the MPS. Miss Kaufmann QC submitted that FE3 and FE6 were originally content to make statements in their own name, and that if that was the case when the risk of a revenge attack was far greater than it is now, their applications for anonymity are correspondingly weaker.

62. In my judgment, if I accept that the failure to apply initially for anonymity was that of the MPS, and am otherwise satisfied that the balancing exercise comes down in favour of anonymity, it would be wrong to penalise FE3 (and FE6, who is in the same position as far as his earlier request for anonymity is concerned) for the failings of their superiors.

63. Subjectively, FE3 is concerned for his and his family's safety, and fears reprisals from the OCN. Mr Butt QC submits that upon an application of the common law "*Officer L*" principles as I shall describe them, officers' subjective and objective fears for their and their families' safety and the impact upon their deployability in their current capacities, the anonymity measures sought are appropriate and fair, and would not impact upon the ability of the Inquiry to do its job and get to the truth of what happened and why.

64. The open risk assessment for FE3 is as follows:

    a. risk of harm to the officer and their family if their name was identified – high

    b. operational risk – high

65. It is noted that FE3 could not be identified through open research. It is convenient at this point to address the criticisms of the risk assessments carried out in respect of those MPS officers who seek anonymity, the validity of which is to some extent conceded by Mr Butt QC. I have already touched upon the mischief which can be caused by risk assessments which lack individuality and have a 'one for all' flavour and which did not always reveal the level of critical judgment and analysis which a Coroner or Chairman is entitled to expect in making these important decisions. Whilst I have of course taken these assessments into account, the weight that I have been able to attach to the individual risk assessments is necessarily limited, and in no case, has the existence or strength (or weakness) of such a risk assessment been a decisive factor in the exercise of my discretion.

66. In my judgment, whether one carries out the balancing exercise by reference to statutory criteria (under s19(4) and (5)), or the *Officer L* principles or a combination of both, I am driven to the conclusion that the risk of identification if FE3 forfeited his anonymity is real, and that there would exist a far more than fanciful risk to his safety if he were identified. Whilst it could be mitigated by the 'alternative measures' advocated by Miss Kaufmann QC, that risk would not be reduced either subjectively or objectively to an acceptable level, and that in all the circumstances, his application for anonymity is well founded in statute and at common law, having had regard to FE3's convention rights. Accordingly, the application is granted in the terms sought.

67. **FE5** is a surveillance officer in unit MO3. He was part of a team conducting armed surveillance during Operation Ankaa and did not see the shooting. The open risk assessment is as follows:

    a. risk of harm to the officer and their family if their name was identified – high

    b. operational risk – high

68. Subjectively, FE5 has the same concerns as FE3, and also fears media intrusion into his life. In his case, there is a closed risk assessment which I have taken into consideration in my assessment process but which has not materially informed my decision. Based upon the risks posed to FE5 by his identification and the operational risks, I reach a similar conclusion as that set out for FE3 and for the same reasons.

69. **FE6**, like FE3 and FE5 is posted in MO3 and did not see the shooting. His current and ongoing role is similar to that of FE3 and FE5. In his case, there is no open risk assessment. There is closed material in support of this application which has informed my decision. Although FE6 had indicated a wish for anonymity as long ago as 2016 (see FE3), more recently, he was uncertain about whether to apply for 'special measures'. He has decided to do so, having spoken to others in a similar and senior position. Applying the same approach as above for FE3 and FE5, I reach a similar conclusion for the same reasons.

70. **FE7** had a similar role to FE3, FE5 and FE6; his role remains similar, but he now works in Royalty and Special Protection Command. It is essential to his deployment in that capacity that he is not recognised publicly as a police officer. The open risk assessment is as follows:

    a. risk of harm to the officer and their family if their name was identified – high

b. operational risk – high

71. He is identifiable online in his true name and it is stated that any reasonable researcher would have little difficulty in identifying personal information about him, including his home address and personal images of him. He fears retribution from the Tottenham Turks, and is concerned for the safety and privacy of his family and himself. There is closed material in support of this application which I have taken into consideration in my assessment process. Applying the same approach as above, I reach a similar conclusion for the same reasons.

72. **FE10** had a similar role to FE3, FE5, FE6 and FE7; he works as a dedicated surveillance officer in covert roles attached to MO3 Covert Policing and is still routinely deployed against OCNs both connected and unconnected with Turkish and other foreign criminality. The open risk assessment is as follows:

    a. risk of harm to the officer and their family if their name was identified – high

    b. operational risk – high

73. There is closed material in support of this application which I have taken into consideration in my assessment process. Applying the same approach as above, I reach a similar conclusion for the same reasons.

74. **FE11** had a similar role to FE3, FE5, FE6, FE7 and FE10; his current role is similar to FE10, as are the risk assessments:

    a. risk of harm to the officer and their family if their name was identified – high

    b. operational risk – high

75. There is closed material in support of this application which I have taken into consideration in my assessment process. Applying the same approach as above, I reach a similar conclusion for the same reasons.

76. **FE12** was part of the team at the covert monitoring post listening to the live feed from the Audi; he did not see the shooting. He is a trained surveillance officer; although not in a dedicated covert role, he participates in many covert deployments in individual investigations, and has continued to do so since 2015.

77. There is no intelligence of him being at risk of reprisals from Turkish OCN, and he would not easily be found from open research. Nevertheless the personal, family and operational risk are assessed as high, in the event of him being identified. It is, however, of significance, although not of itself determinative of the application, that he was not given a cipher in the IPCC (now IOPC) report into Mr Baker's shooting. Furthermore, a witness statement by FE12 made following the arrest of the surviving conspirators was made initially in his own name, and only subsequently anonymised by cipher. I have asked for a further statement from FE12 to explain why this statement was given in his own name to assist me in

performing the delicate balancing exercise in his case. In his case, alone, I will defer a decision on his application for anonymity until I am more fully informed.

Serving counter-terrorism specialist firearms officers (P2, R116, S105, V68, W97, W108, W109, W112, Q89)

78. Counter-terrorism specialist firearms officers (CTSFOs) need to deploy in close proximity to dangerous and armed criminals and may be deployed at short notice against OCNs. Although there was some uncertainty whether such officers were deployed covertly, that issue has been clarified and I am satisfied that such officers are deployed covertly and that the scope of their activity is national, and not simply London-based, or even land-based, because of their association with counter-terrorism activity.

79. I am satisfied that there could be a significant impact upon operational effectiveness of their unit as a whole if their identities were divulged. Furthermore, the impact upon operational effectiveness is not confined to future activity, but also to current and ongoing operations.

80. As with surveillance officers, there are implications from the point of view of the costs of training as well as the potential impact upon recruitment for this highly specialist and riskladen occupation within the MPS.

81. Miss Kaufmann QC did not accept that CTSFOs would be at risk if they lost their anonymity and queried why there would be any point in targeting them, as there would simply be more to replace them. She suggested there was little if any risk of such officers being recognised as giving evidence in this Inquiry, because recognition is so notoriously difficult and unreliable; she also submitted that such risk as there was could be addressed by banning phones or photography. She did, however, accept that once it was clear that the risk assessment related not to retribution for the shooting of Jermaine Baker, but to retribution for interrupting OCN activity and/or operational effectiveness, there would be no justification in differentiating in principle between CTSFOs and Covert surveillance officers, CTSFOs were in fact closer to the scene of Mr Baker's death. Miss Kaufmann QC acknowledged that if there were a real risk, even if that were low, but the consequences were high or serious, then orders for anonymity would follow, even though, in her submission, that would impinge upon the accountability of such officers.

82. Before I turn to the individual applications within this category, I can say that if by 'impinge upon accountability', Miss Kaufmann QC is suggesting that somehow the Inquiry will be prevented from carrying out the fullest investigation of these officers' actions and omissions, I do not agree. In my judgment, if anonymity were granted to all or any of these officers, it would not affect the ability of the Inquiry to carry out its terms of reference fairly and judicially, and in determining the individual applications, the principles outlined above are equally relevant, whether they are for or against the granting of anonymity.

83. **P2** was in the rear of the Bravo car, which attended Bracknell Close where Mr Baker was shot. P2 restrained Gokay Sogucakli. A risk assessment has been undertaken in general terms for all serving CTSFOs (the wisdom of which I have already questioned, and which

has been rightly criticised by Miss Kaufmann QC) which comes to the following conclusions: identification would have a severe impact upon their ability to operate covertly and may compromise others.

84. For the sake of brevity, I mention it specifically only in the case of P2, the first officer to be considered under this heading, but I have it in mind (albeit for reasons already stated, to a limited extent) in each of the CTSFOs' applications. There is a difference between performing both overt and covert functions and being publicly identified in a high profile Inquiry; the MPS have confirmed that such officers would no longer be deployable covertly if they lost their anonymity.

85. P2 had pictures taken at the scene of Mr Baker's death which have appeared in the media. Quite apart from the risk of harm to him, there is said to be a medium likelihood of risk to his colleagues and the public, with high impact; by way of general risk assessment, there is said to be a medium risk of MPS officers being discouraged to volunteer to carry firearms, with high impact; there is a high likelihood of high impact on public confidence; there is a low risk of financial consequences of having to train new officers; finally P2's partner is also a serving police officer.

86. In my judgment, making due allowance for the limitation to be placed on the value of the CTSFO 'group' risk assessment, the balancing exercise which statute and common law enjoin me to carry out, together with a need to ensure protection of P2's convention rights, comes down firmly in favour of granting P2's application in the terms sought and I so order.

87. **R116** was the driver of the Alpha car, which attended Bracknell Close. He gave first aid to Jermaine Baker. There is said to be a credible fear his home address and family details could be easily identified. There is said to be a strong risk of retribution. For the avoidance of doubt, retribution where feared by P2, or any of these officers relates not to punishment for the death of Jermaine Baker, but for the disruption of serious criminal and/or terroristrelated activity. In my judgment, applying the principles set out above, I am satisfied that the appropriate order in R116's case is in the terms sought.

88. **S105** was the officer commanding the Bravo team. S105 approached the Audi and pointed a firearm at the driver. Video footage was taken at the scene which showed him, albeit with his face covered; there may, it is submitted, be footage of him unmasked. He has an unusual surname which increases the risk of identification. Applying the same principles as above, I am satisfied that the appropriate order in the case of S105 in the terms sought.

89. **V68** was the front seat passenger in the Charlie vehicle, which attended Bracknell Close. He approached the driver of the Audi and tried to smash the window; he has an unusual surname, capable of easy identification if it is known. There is closed material in support of this application which I have taken into consideration in my assessment process. Applying the same principles as above, I am satisfied that the appropriate order in the case of V68 is in the terms sought.

90. **W97** carried out a reconnoitre of the areas around HMP Wormwood Scrubs and Wood Green Crown Court, but was not present at the shooting. He is now a serving covert officer with the GMP; his partner is also a serving officer with a covert role; identification of him is said to allow for identification of her, thereby limiting their potential effectiveness. Applying the same principles as above, I am satisfied that the appropriate order in the case of W97 is in the terms sought.

91. **W108** was the driver of the Bravo vehicle who, like R116, gave first aid to Jermaine Baker. His unmasked picture was taken at the scene and appeared on the internet. He is now a CTSFO in the Thames Valley Police, a smaller force than the MPS, where his identification may be easier. His partner has a high profile security job with a national corporation. Applying the same principles as above, I am satisfied that the appropriate order in the case of W108 is in the terms sought.

92. **W109** was a passenger in the Charlie vehicle who restrained Nathan Mason. W109's partly concealed face was photographed at the scene. There is closed material in support of this application which I have taken into consideration in my assessment process. Applying the same principles as above, I am satisfied that the appropriate order in the case of W109 is in the terms sought.

93. **W112** was a passenger in the Bravo vehicle who assisted W109 in the removal and restraint of Nathan Mason. He also administered first aid to Jermaine Baker. He is a full-time CTSFO; his partner has a 'high-flying career' who, together with his seriously ill parent, would be negatively affected by the risks associated with his identification. Applying the same principles as above, I am satisfied that the appropriate order in the case of W112 is in the terms sought.

94. **Q89** was the driver of the Delta vehicle and administered first aid to Jermaine Baker. He too is a full time CTSFO who appeared in photographs at the scene which could lead to his identification, putting himself and his family at risk, and leading to his withdrawal from CTSFO work. In his case too, applying the same principles as above, I am satisfied that the appropriate order in the case of Q89 is in the terms sought.

Retired counter-terrorism specialist firearms officers (S111, V64, K78, S48, V112)

95. As with serving officers, applications for restriction orders from retired officers fall to be considered separately. All the more so because, as Miss Kaufmann QC submits and Mr Butt QC concedes, arguments about deployability and operational effectiveness may no longer apply. However, their specific circumstances need to be considered carefully to ensure that their ability to carry out their current employment is not affected and their statutory, convention and common law rights are preserved.

96. **S111** was the Operational Firearms Commander for Team Bravo and was present at the scene of the shooting assisting in the provision of first aid to Jermaine Baker. Open but properly redacted material provided by S111's employer makes clear that there is a very

real risk that if identified in these proceedings that he would no longer be able to continue in his current role. From that, and from closed material which I have seen and scrutinised with care, I am satisfied that, despite his retirement, his Article 8 rights would be infringed if his identity were revealed and that no measure short of the order sought will suffice to preserve them.

97. **V64** was the Operational Firearms Commander for Team Alpha; he was not present at the time of the shooting or involved in the immediate aftermath. Closed material reveals to me the nature of his current employment and his family circumstances, but does not persuade me that anonymity is necessary or that a failure to allow it would amount to a breach of his statutory, Common Law or Article 8 rights. I would, if a request were made, be minded to grant special measures prohibiting broadcasting of his image and the use of a separate entrance/exit.

98. **S48** was the Firearms Tactical Advisor on 11/12/15 and was present in C3000. Since he retired, he now works for the Ministry of Defence as a National Tactical Firearms Commander and there are in his case, issues of national security arising. In addition, Mr Butt QC has confirmed, following my request for further information that his wife, who is also a serving officer, shares his surname. In my judgment, contrary to the submissions advanced by Miss Kaufmann QC, his position can be distinguished from that of officers such as Detective Inspector Keely Smith and Detective Superintendent Craig Turner. I have concluded that his statutory, Article 8 and Common Law rights can only be protected by granting the restriction order in the terms sought.

99. **K78** drove the Charlie vehicle and restrained Gokay Sogucakli during the armed intervention. He is now retired from the MPS, and I have considered closed material relating to his current employment and personal circumstances. I agree with Miss Kaufmann QC that the merits of the application for anonymity depend not on any risk arising from this case but upon any risk faced by his current role and circumstances. I am not satisfied that the subjective fears which he expresses for himself and his family are sufficiently borne out by the objective reality of the situation so that his common law and Article 8 rights can only be protected by a grant of anonymity and screens. I am however minded, having regard to the closed material, if application is made, to grant special measures prohibiting broadcasting of his image and the use of a separate entrance/exit.

100. **V112** drove the control vehicle and assisted in providing first aid to Jermaine Baker. He has retired from the MPS and in his case too, I have considered closed submissions and material relating to his personal circumstances and employment. Miss Kaufmann QC's submissions on the merits of K78's application apply equally to this application. In my judgment, I consider that the chances of his identification are very remote, but that the consequences of his identification, upon which I do not propose to elaborate in an open ruling, are such that, although the order sought is not required to ensure that his statutory, convention and common law rights are preserved, I would be minded, if asked, to grant special measures prohibiting broadcasting of his image and the use of a separate entrance/exit.

Turkish speaking officer

101. **FE25** was part of the Covert Monitoring Post listening to the live feed from the Audi in which Mr Baker was present; he did not see the shooting. He is currently posted to Counter Terrorism Command but in a non-covert role. A risk assessment reveals that he is discoverable by on-line research in his own name. the open risk assessments in his case do not make the case for anonymity in his case any more pressing or justified, and largely inform the approach to this application by the family of Mr Baker. However, the closed material in FE25's case puts a different complexion upon the application. I have carefully considered whether any of that material can properly be disclosed to the family of Mr Baker, but I am satisfied that it cannot. In my judgment, only by affording him the measures sought can his statutory, convention and common law rights be adequately protected.

Tactical Firearms Commander (FE16)

102. **FE16** was the Tactical Firearms Commander for Operation Ankaa; he was involved in its planning and was present throughout in room C3000. He was the subject of a recommendation by the IOPC that his role in Operation Ankaa gave rise to a case to answer on misconduct, to which his decision to retire was closely linked. His evidence will go directly to many of the questions to be answered within the Inquiry's terms of reference, and as such is a, if not the central witness to the Inquiry, which has to focus upon matters beyond the actual circumstances of the shooting itself. As a retired police officer, the question of risk to MPS operational effectiveness does not arise. As an experienced officer, he would have given evidence during his career in his own name. The risk assessment suggests a low risk of physical harm and a medium risk of interference with his family. Nonetheless he entertains subjective concerns for his safety.

103. There is limited closed material which does not establish any risk to FE16 or others in his new role, or personal life were he to be identified. The application is resisted by the family principally on the basis that his subjective fears cannot justify anonymity given that he is one of the two most important witnesses in the Inquiry. In my judgment, and as will be seen when I deal with W80's application, if the subjective fears were substantially borne out by objective reasoning, there might well be good reason for finding that the preservation

of his statutory, common law and/or ECHR rights necessitated the restriction order sought, irrespective of his importance as a witness. However, in my judgment, whilst I fall short of concluding that there is no objective reasoning behind his subjective fears, the balancing exercise in his case comes down firmly in favour of finding that refusal of the measures sought would not infringe his statutory, common law or Convention rights. Accordingly, the application of FE16 is refused. Mr Butt QC invited me to consider an alternative measure to his principal application – namely an order prohibiting broadcasting of FE16's image and the use of a separate exit/entrance. In my judgment, such a measure is reasonable and necessary for the protection of those rights, and, I would be minded to grant such an order.

Intelligence Officer (FE19)

104. **FE19**, who is also a trained surveillance officer, was present in room C3000 at the relevant time, and therefore was not present at the shooting. He is not employed in a dedicated covert role but participates not infrequently in covert deployments in individual investigations. He accepts that he would usually give evidence in his own name.

105. When his application for anonymity was made, there was a lack of evidence as to the extent to which he was expected to work in covert deployment, and had there been no further evidence, then, notwithstanding the risk assessments which as to harm and operational risk were described as high, there would have been insufficient material upon which to base a finding that the making of the order sought was necessary and/or appropriate in order to ensure compliance with FE19's statutory, common law and Convention rights.

106. The family sought to resist the application initially on the basis that he was not in a dedicated covert role. They now accept that the recent evidence of the extent of his covert deployment – as often as 12 times since the beginning of 2021 – means that he cannot be distinguished in principle from other covert surveillance officers; nevertheless Miss Kaufmann QC asks me, as she must, if her opposition is to succeed, to conclude that FE19's subjective concerns for his own and his family's safety if his identity were revealed are unreasonable. In my judgment, the more covert work which an officer undertakes, the more likely he is to fear for his safety if his anonymity is lost, and the more soundly based an objective risk assessment is likely to be. In my judgment, given the current state of the evidence, FE19's statutory, common law and convention rights are wholly compatible with the order for anonymity/screens which he seeks, and I so order.

Technical Support Officer (EG39)

107. **EG39** is the officer who was responsible for checking the audio equipment in the Audi and the reception at room C3000. From closed material, I am satisfied that Mr Butt QC's description of his position as 'unique' is indeed apt, and that for once the use of the word 'unique' is not misplaced. In those circumstances, an approach fit for the situation has to be devised. Further reasons for my decision are contained in a closed addendum to this ruling.

108. Mr Butt QC suggested that EG39 should be seen when giving evidence by no one apart from my team and me. I agree that the application should succeed on the grounds of MPS capability and issues around the personal safety of EG39, but I think that I should in the interests of fairness to all core participants, in particular the family of Jermaine Baker, go a little further. It seems to me that the demeanour of the witness – indeed all witnesses – insofar as it is of relevance, is of importance primarily to the fact-finder (see *Dyer* at para 103), in this case me. In all the circumstances, I see no reason why, if Miss Kaufmann QC is not to see EG39 whilst he is giving evidence, nor should or need Counsel to the Inquiry, and I rule accordingly. I do however, rule that the Solicitor to the Inquiry will be permitted to see the evidence of EG39 in order to assist me with necessary practical matters.

III. W80

109. W80 applies for an order in the following terms:

a. Not to be identified by his name or collar number;

b. To be allowed to give evidence from behind a screen so as to be visible only to myself, legal representatives and approved family members;

c. A prohibition on the publication of W80's identity or any fact that could lead to his identification including the publication of any photograph or images.

110. The evidence relied upon in support of this application is set out in W80's witness statements dated 03/03/16, 17/01/19 and 31/08/20. The risk assessment appears at MPS0003472. I have also read the various interviews undertaken with W80 in connection with disciplinary matters and am aware of mental health issues which appear to have affected W80 in the aftermath of the shooting of Jermaine Baker, referred to in his witness statement dated 05/02/21.

111. The application is made on Common Law grounds, on the basis that it falls within the criteria of s19 and on the basis that to deny the application would breach W80's Human Rights under Articles 2 and 8 of the ECHR. As set out above, while Mr Penny QC did not concede the argument on Article 2, he did not press it before me.

112. The family oppose the application on the basis that the risk assessment is unhelpful and undetailed and that W80 is at no greater risk of physical harm than any other CTSFO, that because he is not currently working in that capacity, there is no threat to the operational effectiveness of the MPS, and that the likelihood of media interest is not disproportionate, having regard to his role in the incident. In addition, it is submitted that because W80 fired the shot, that because the IOPC has found a disciplinary case to answer, and that were he to face criminal proceedings, he would do so in his own name, those factors in favour of openness outweigh the arguments in favour of anonymity.

113. It is not necessary to set out the legal principles again; they apply with equal force as to the other applications. I am not persuaded that because W80 would lose anonymity if he were a defendant in criminal proceedings (which I am prepared to accept for the purpose of argument, although there is precedent where national security is at stake for a defendant to stand trial anonymously), the application can be approached differently. If that were so, then the bar for claiming anonymity would become unduly high and beyond that contemplated either by statute or authority. This was a point advanced by Miss Kaufmann QC in written submissions, but following discussion during the course of her oral submissions, it was a point which was no longer pursued. It seems to me that, if there are good subjective and objective reasons for preserving anonymity for a person who has caused the death of the person which is the subject of the Inquiry, the fact that such a person will lose anonymity in the event of a recommendation to consider prosecution being made and acted upon is a powerful reason for not prejudging that question at this stage. However, in my judgment whilst only limited store can be placed by the risk assessment, the public and private interest comes down clearly in favour of

granting the application in the terms sought, subject only to any representations to be made by the Media (to be able to see W80), to which I have already referred.

114. There was some difference in the terms of the orders sought by the MPS for serving CTSFOs that they represent and the terms of the order sought for W80, including the use of a separate entrance and exit. I agree with the submission of Miss Blackwell QC, which was adopted by Mr Penny QC, that there are no grounds for distinguishing between W80 and other serving CTSFOs in the terms of the order sought. Having regard to my duty under s17(3) of the Act I will make an order for W80 in the same terms as other serving CTSFOs. III. Serco

Application for redaction

115. Serco apply for the redaction of the route taken from HMP Wormwood Scrubs to Wood Green Crown Court. The application is made on the basis that disclosure of the route may encourage or assist in further escape attempts by prisoners, with the consequent risk of violence to Serco employees. This is a straightforward and unopposed application. Whereas the entirety of the route is not relevant to my terms of reference, it will be necessary to know and consider the actual and anticipated route near to Wood Green Crown Court as it relates to the known position of those who were engaged in the operation to spring Izzet Eren, including of course Jermaine Baker. A form of words has been suggested which addresses the concerns of all interested parties, which I am happy to approve.

Applications for anonymity (JBI-1, JBI-2, JBI-6, JBI-7, JBI-8, JBI-9, JBI-10, JBI-11, JBI-14)

116. All these applications are made on behalf of Serco employees with present or past 'forward-facing' roles which bring them into contact on a daily basis with prisoners, some of whom are very dangerous criminals. It is submitted that their role can be likened to that of some of the MPS officers. It is submitted that prison escort staff have been subjected in the past to violence and harassment. They have a fear of interference with their Article 8 rights, should prisoners or members of the public approach them about this Inquiry. All these applications have at their heart the witness statement of Pete Masters (who doesn't himself seek a restriction order) to the effect that although staff who wear name tags are regularly in contact with prisoners, if their names were publicly known, Serco would no longer be able to control the purpose to which the names would be used, or provide the right level of safeguarding. Because the planned escape would have included violence towards Serco employees, this demonstrates the risk to staff.

117. In my judgment, as a general proposition, I accept the submissions of Miss Blackwell QC and Miss Kaufmann QC which are to this effect; this statement does not provide any objective basis for the fear of harm or damage on the part of Serco officers. Mere evidence of contact, however regular and close it may be, between prisoners and Serco employees is insufficient to establish this. Nor is there any evidence that reprisals could or would be sought by OCN members in general, or Tottenham Turks in particular. In my judgment these officers are no more at risk from fallout from the shooting of Jermaine Baker, which,

by the time of the Inquiry, will have taken place 5 ½ years earlier, than they are from every day contact with prisoners.

118. Quite simply, Serco were not involved in the planning of Operation Ankaa or aware of it until after it had been carried out. They are witnesses of peripheral relevance at best (and in fact, there is only any likelihood of one – JBI-2 – being called to give evidence). It was therefore submitted on behalf of Serco that the public interest in the disclosure of the names of the Serco officers was minimal and that the impartiality of the Inquiry or its ability to get to the truth would not be adversely affected. Whilst that may be true, those points, without more, are dwarfed by the overriding interest in open justice. In my judgment, absent interference with statutory, common law or Convention rights, a witness will find it very difficult to persuade a Coroner or Chairman that the public interest in open justice is overridden by the peripheral relevance of a witness, whose identification would add little if anything to the value of his or her evidence. With those observations, I now turn to the individual applications.

119. **JBI-1** was a 'load marshal' on 11/12/15; he did not play a role in the transport of prisoners. He is now a prison custody officer whose regular job involves driving prisoners to and from prisons to courts and police stations. He has an uncommon surname which makes him concerned that it would be recognised by his passengers who might ask him about the incident and subject him and his family to risk of verbal or physical attack.

120. The family object to this application on the basis that there is no objective basis for his concerns.

121. I note that JBI-1-is not on the witness list; Serco's role is not one which necessitated or involved cooperation with the MPS and in my judgment, there are no grounds to expect violence or retribution, nor any reason to believe that he or his family are subject to any increased risk, notwithstanding the closed material which I have considered with care. Subjective fears which are unsupported by an objective basis whilst relevant to the exercise which I have to perform will inevitably carry less weight than where a sound objective basis for fear exists. The fact that he has an uncommon surname is a factor which I have borne in mind but in my judgment it places neither him or his family at risk.

122. Serco have failed to demonstrate that the order is necessary or appropriate. Accordingly the application is refused.

123. **JBI-2** fulfils a front facing role for Serco. JBI-2 believed that she and her family would be at risk of physical harm, harassment intimidation or unsolicited approaches from members of the public or associates of Jermaine Baker, whether in or outside prison; in addition, she fears reprisals because she 'worked closely' with MPS officers to foil the escape of Izzet Eren. In fact, by the time she became involved, the escape plan had been foiled; upon Eren's arrival at Wood Green Crown Court, his 'cell' in the prison van was searched, at which point his mobile phone was discovered. That seems, subject to correction, to be the extent of her involvement. I note also that she felt intimidated when she escorted Eren into the dock for his sentencing hearing because of the presence of adult

males in the public gallery, but I have no reason to believe that it was a hearing or an atmosphere which was out of the ordinary for Serco employees.

124. I have considered this application with care, including the closed material and, whilst JBI-2 is on the witness list and for the purpose of this ruling, I assume she will give evidence, her subjective fears are, with respect, without any objective basis; whilst I am prepared to accept that they are genuine, in the absence of any objective basis, they carry limited weight and my conclusions are the same as in the case of JBI-1.

125. Serco have failed to demonstrate that the order is necessary or appropriate. Accordingly, the application is refused.

126. **JBI-6** was the Collator at HMP Wormwood Scrubs who was engaged in the loading of prisoners onto the van. She was not concerned with or present during their transportation.

127. She no longer works for Serco and, in common with the remaining Serco witnesses, she is not on the witness list and has provided no evidence in support of her application, nor evidence that she seeks anonymity. Indeed Miss Simcock, during the course of her submissions, conceded that the applications in relation to all former employees (there were originally ten applications in all, but several were abandoned) were made on the basis that Serco felt 'duty bound' to make the applications.

128. I feel duty bound to apply the law as set out above; this application has no evidential basis whatsoever and is refused.

129. **JBI-7** was a Deputy Manager who organised the response in Serco and re-tasked the vans. She was not involved in the transport of prisoners. She no longer works for Serco and has provided no evidence in support of her application. She is not on the witness list; I have no reason or basis for differing in my approach to this application from those made by or on behalf of other former Serco employees, and it is refused.

130. **JBI-8** was Regional Operations Manager at Serco's Greenford base and was informed of the incident after the event; he was not involved in the transport of prisoners. He no longer works for Serco and has provided no evidence in support of his application. He is not on the witness list; I have no reason or basis for differing in my approach to this application from those made by or on behalf of other former Serco employees, and it is refused.

131. **JBI-9** was a driver; he no longer works for Serco and has provided no evidence in support of his application. He is not on the witness list; I have no reason or basis for differing in my approach to this application from those made by or on behalf of other Serco employees, and it is refused.

132. **JBI-10** was a Prison Custody Officer in the van carrying Izzet Eren. He no longer works for Serco and has provided no evidence in support of his application. He is not on the

witness list; I have no reason or basis for differing in my approach to this application from those made by or on behalf of other former Serco employees and it is refused.

133. **JBI-11** was an Investigation and Security Manager with PECS and carried out internal investigation reviews; he had no involvement in the incident and did not have a direct role with prisoners. He no longer works for Serco and has provided no evidence in support of his application. He is not on the witness list. I have no reason for differing in my approach to this application from those made by or on behalf of other former Serco employees, and it is refused.

IV. The role of the media

134. The written applications from the MPS expressly applied for the witnesses for whom they seek anonymity to be screened from members of the press as well as members of the public. I received written submissions from members of the press indicating that, in accordance with the decision of the Court of Appeal in *Chief Constable of West Yorkshire Police v Dyer* [2020] EWCA Civ 1375 they would like to be permitted to see anonymous witnesses whilst they give evidence.

135. In submissions before me Mr Butt QC confirmed that he did not ask me to deviate from the approach suggested by the Court of Appeal in *Dyer*. His concern was not that members of the press may reveal the identity of an anonymous witness but that individuals may pose as members of the press in order to gain access to the identity of an anonymous witness.

136. As a result, in conjunction with this ruling, I will make directions setting out a timetable by which members of the press may apply to the Inquiry to be present during the evidence of some or all of the anonymous witnesses. Core participants will be provided with the opportunity to raise any objections to any applications, with reasons. If necessary, I will rule on those applications on or before the date of the next and final Preliminary Hearing, on 04/05/2021.

137. In concluding my Ruling, I would like to pay tribute to the measured and helpful way in which all Counsel have made and responded to submissions, both orally and in writing, in what is inevitably a delicate and difficult situation. The spirit of cooperation and commitment with which all core participants, and their legal advisers have worked to enable this Preliminary Hearing to proceed, on the due date and with considerable professional skill and expediency, is something for which they are all to be congratulated. Every silver lining, however, has a cloud and I feel equally bound to observe that Serco's initial attitude to these applications – although not, I emphasise, that of their Counsel who realised that she could not make bricks without straw, and did so very attractively – appears to have been that all they had to do was say the magic words 'restriction order' or 'anonymity' and their wish would be granted. They could not have been more wrong, as these rulings have shown. Their Legal Department initially displayed scant understanding of the law and principles which govern the making of Restriction Orders in Public Inquiries. It was only after the instruction of external solicitors and counsel that some applications were abandoned and only those which had even the remotest prospect of success were

maintained. But the fact remains that prior to that, up to the week before the hearing, they had taken up not insignificant and precious time in the preparation for this Hearing for all core participants and for my legal team. A little research would or ought to have led them to realise far earlier the wholly unsustainable position which they were adopting.

HH Clement Goldstone QC

Chairman, Jermaine Baker Inquiry

26 March 2021