

**IN THE MATTER OF THE PUBLIC INQUIRY  
INTO THE DEATH OF JERMAINE BAKER**

**BEFORE HH CLEMENT GOLDSTONE QC**

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**OPENING STATEMENT  
SERVED ON BEHALF OF  
THE COMMISSIONER OF POLICE  
OF THE METROPOLIS**

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**INTRODUCTION**

1. The Commissioner recognises that Jermaine Baker was not in possession of a real firearm when he was shot by W80 on 11.12.15. Whilst Mr Baker was engaged in very serious criminality that day, this does not detract from the fact that his death was a tragedy. The Metropolitan Police Service (MPS) deeply regrets that he was fatally shot. The Commissioner conveys her sincere condolences to Mr Baker's family.
2. The background to this case concerns the activities of organised criminals including Izzet Eren and his cousin Ozcan Eren. It is accepted by all CPs that the Erens were involved in serious and organised crime in 2015 and for a substantial prior period. They were at the top of a highly dangerous organised criminal network (OCN), which was actively involved in amongst other activities drug dealing, arms dealing and executions both on the streets of London and internationally.
3. It is clear that Izzet Eren was planning on killing one of his enemies when he was arrested by police with Erwin Amoah Gyamfi on 13.10.15. Both men were in possession of deadly weapons that day. The guns were loaded and ready to fire. It was this arrest and remand into custody which brought about the escape plot.

4. Jermaine Baker was not a member of the OCN known as the “Tottenham Turks”. He was, however, a willing participant in its audacious and highly dangerous criminal plot on 11.12.15.
5. The Specialist Crime Command (in 2015 known as SCD7) of the MPS is obliged to robustly challenge organised criminality of this kind. If criminals such as these are not dealt with by the police, then people will die. If Izzet Eren and Erwin Amoyaw Gyamfi had not been arrested on 13.10.15 it seems highly likely there would have been a brutal murder with the inevitable series of reprisals that follow. The history of the Tottenham Turks vividly demonstrates this pattern.
6. As the experts fairly accept at Expert Report (XR) [105] [INQ0000004], the challenge the MPS faces in relation to tackling organised crime and firearms related crime is unparalleled in other parts of the UK.
7. It is against the above background that on 30.10.15, the MPS received **non evidential** intelligence that there was a plan to break Izzet Eren out from custody on 11.12.15. It is significant that a previous plot had not succeeded but the OCN was determined to try again at the next opportunity.
8. The plot put SCD7 in a very difficult position as to what to do with this non evidential intelligence. Operation Ankaa was established to deal with the threat the escape plot posed.
9. It was apparent to the officers planning the policing response that if the OCN’s escape plot was disrupted (by way of a video link hearing for instance) then it would not be abandoned. The escape was likely to be attempted on a later occasion by arranging a hospital visit or similar. Were this to happen then the police would have to respond without the protections provided on 11.12.15. This would have significantly increased the risk to everyone. For this reason, and to protect the public in the longer term, the MPS made the decision to allow the conspiracy to proceed and arrest the subjects once there was evidential sufficiency **if this could be achieved safely**.

10. The MPS submits that this difficult decision was a reasonable one and that the tactics implemented on 11.12.15 were both reasonable and consistent with Approved Professional Practice (APP) and the National Police Firearms Training Curriculum (NPFTC). They reflected MPS training which itself followed national guidance and training.
11. This opening will address the key headings within the terms of reference of the inquiry. It is divided between the areas of (I) planning, (II) information, (III) implementation, (IV) action after the shooting and (V) practice, policies and procedures.

## **I. PLANNING**

*What plans were made for the conduct of the operation by the MPS between 13.10.15 and 11.12.15 including the strategic and tactical plan*

12. As the experts note, there was a well-developed command structure for Operation Ankaa. The proposed operation was sophisticated, complex and well-resourced. It was an operation that had had been briefed upwards to the most senior levels within the Specialist Crime and Operations Directorate of the MPS, see ('XR') at [501] and [503].
13. The experts agree with (the IPCC expert) Mr Hartley's conclusion that *the* [Strategic Firearms Commander] *SFC* and [Tactical Firearms Commander] *TFC* made regular reviews, assessments and plans throughout the planning phase using a variety of sources of information and intelligence [and that they] summarised key information as per APP in the structure of Identity, Capability and Intent. This was good practice and in keeping with national guidance and MPS policy: XR [427].

### **i. Record Keeping**

14. The MPS accepts that there were shortcomings in relation to some areas of record keeping. It is important to note that officers were at times restricted as to what could be formally noted and or recorded during the planning and implementation phase, however, the MPS accepts that this is not a complete answer. In particular the MPS

notes and accepts what the experts say in their report about the failure to minute the meetings held on 10.11.15 and 03.12.15. Reminders will be sent to all MPS SFCs and TFCs as to the need to minute such meetings where appropriate and in relation to the importance of record keeping more generally. This is already set out within APP and the NPFTC which forms an integral part of MPS training.

15. The Inquiry experts express concern at [966] as to the *number of versions of the MPS FA forms in existence as well as various briefing information and intelligence documents*. This is, however, a consequence of the nature of disclosure in any complex inquest or inquiry such as this. The ILT has in the interests of transparency uploaded the FA forms and briefings when they have been attached to emails or provided by different bodies such as the IOPC etc. For the avoidance of doubt, the following FA forms were created during Operation Ankaa. They represent the forms that were required. There are no unnecessary duplicates created by the commanders:

- i. FA2 for the TSU deployment (planned for 07.12.15) dated 04.12.15 **[IPC0001080]**,
- ii. FA3 for the TSU deployment (planned for 07.12.15) dated 04.12.15 **[IPC0001079]**,
- iii. FA5 for the TSU deployment (planned for 07.12.15) dated 03.12.15 **[IPC0001081]**,
- iv. FA3 for the TSU deployment on 08.12.15 (updated authorization when the date for the TSU deployment changed) dated 04.12.15 **[IPC0001088]**
- v. FA2 for the 11.12.15 deployment dated 07.12.15 **[IPC0001123]** updated 10.12.15 **[IPC0001086]**,
- vi. FA3 for the 11.12.15 deployment dated 10.12.15 **[IPC0001142]**,
- vii. FA5 for the 11.12.15 deployment dated 09.12.15 **[IPC0001133]**.

**(i) THE TACTICAL PLAN**

16. The overarching TFC Neil Williams (cipher FE16) was a career detective with extensive experience of firearms operations who had at the time of Operation Ankaa passed the Strategic Firearms Commander's (SFC) course. He was occupationally and operationally competent and accredited for the role he undertook, see XR [87].

17. Operation Ankaa called for sophisticated and elaborate planning and the evidence shows that this was in place. It is unlikely to assist the chairman or CPs to fully document the planning chronology in this document. A short summary is set out below, however, for completeness.
18. The evidence shows that meetings were held between (amongst others) the TFC, SFC, Senior Investigating Officer (SIO) and Tactical Adviser and in particular on 10.11.15 and 03.12.15. It is clear that, at these meetings, options were considered which included disruption of the escape plot, the importance of audio surveillance being placed in the vehicle to enable an interception as opposed to an intervention (see below) and exploration of earlier arrest opportunities.
19. Tactical advice was obtained from a highly experienced tactical adviser, S48. This presented a number of options for the TFC to consider. The tactical advice submitted within the FA5 dealt with enhanced protection of the escorted prison vehicle, armed arrest options for the occupants of the stolen Audi and protection and response options to the court premises, together with overt armed tactical options and contingencies.
20. FA2 forms were completed for both the deployment on 08.12.15 when armed officers supported the Technical Support Unit (TSU) deployment, and the deployment on 11.12.15. These were updated appropriately.
21. In relation to the 11.12.15 deployment, the FA2 considers operational opportunities to remove the threat prior to the deployment, including locating weapons beforehand and earlier arrest opportunities. The FA2 notes, however, that the suspects and location of the weapon are unknown. The document also considers an option to *video link to the court appearance or change courts* but this is discounted as the planned operation would:

*provide the best opportunity to remove the threat posed by the Erens in the long term to the communities of London and to purely disrupt Friday's plan will leave vulnerabilities should an attempt be planned at a hospital visit for example when we do not have the same quality of intelligence or operational*

*assets if we are to remove one side of this long running feud we will make a substantial difference to gun crime and provide sustained public protection in Haringey and Hackney [IPC0001086\_005].*

22. The FA2 makes application for two separate armed deployments in relation to (i) the Audi KM13YPT (the mission car) and (ii) the SERCO van which Izzet Eren was to be transported in. It notes identified individuals at risk as: *General public, SERCO or other custodians, police officers [armed and unarmed] subjects seeking to effect the escape and Izzet Eren and any other prisoners on the SERCO van [IPC0001086\_011].* The risk to each of the above was said to be low. FE16 noted in his 16.12.15 witness statement that the risk to armed officers and the subjects increased to medium at the stage he called State Amber [MPS0000071]. This was also the assessment of DI Smith the ground TFC (cipher FE1) who stated in her statement that the risk to all was low during state Green but at state Amber *the risk to the armed officers and the subjects of KM13YPT I considered to be medium as a strike was imminent [MPS0000094].*

23. In relation to SERCO or other custodians (and the prisoners on the van) the TFC records that *we have good control of the Audi A6 and the prison van and these will never be allowed to come close to each other.* Neil Williams explains that as soon as the van had passed the A1 junction, he would request the switch to an overt response, and this would need to be in place at least before the vehicle reached Finchley [MPS0000071].

24. The FA2 notes that:

*if we ever did lose control of the Audi or intelligence suggests the use of another vehicle then we have the options of SFOs on the van and the option of overt ARV support as well. [IPC0001086\_0012].*

25. This was reflected by the overt disruption contingency which states

*should there be a lack of control of the Audi and intelligence suggests that the attempt is still taking place we have the added contingency of deploying over[t*

*assets around the SERCO van...May frustrate evidential opportunities, however, this is not the main objective. [IPC0001086\_0023].*

26. In relation to the subjects the FA2 states that they *may be subjected to an armed interception / intervention if circumstances dictate....The subjects own actions will dictate the level of police response which will be directly proportionate to the threat the pose to the public / police [IPC0001086\_014].*
27. The initial working strategy sets the overarching principle as *the preservation of life and protection of the public, armed police and unknown subjects. The aim is to protect the public in the most appropriate method balancing the risk of harm to the public in the short and longer term. The FA2 sets out a hierarchy of objectives which includes minimise risk to the general public (1), Minimise risk to the subjects (4) and secure and preserve evidence leading to arrest and prosecution of offenders (7). [IPC0001086\_0017].*
28. The proposed plan was to conduct surveillance operations of which two would have Mobile Armed Support to Surveillance (MASTS) *with a view to gather intelligence / evidence in relation to the planned offence as outlined or other opportunities to arrest and disrupt the escape plan. The TFC considered the generic tactical options set out within APP including do nothing, arrest now, take mitigating action, wait for further intelligence, conduct unarmed surveillance and conduct static observation, but concluded, having applied the National Decision Model, that these options did not meet the threat assessment or operational aims. The TFC considered relevant resources in this regard including APP and MPS policy. [IPC0001086\_0025].*

**(ii) THE STRATEGIC PLAN**

29. The SFC was Superintendent Craig Turner (cipher FE14). He is described by the inquiry experts as a *very experienced career detective with extensive experience as a SIO, TFC and SFC. The experts confirm that he was occupationally and operationally competent and accredited for the role he undertook, XR [87].* Shortly after Operation Ankaa, in February 2016, he passed the specialist SFC course - a highly demanding additional command module.

30. The FA3 records that the SFC required that the SIO should continue to develop the identities of unknown subjects [IOPC0000255\_009]. Had these been discovered, this could have allowed for other arrest opportunities; however it was not possible to identify the other conspirators before 11.12.15.
31. The overarching principle is recorded by the SFC *as the preservation of life and protection of the public, armed police and unknown subjects. The aim is to protect the public in the most appropriate method balancing the risk of harm to the public in the short and longer term.* The SFC considered that the tactical plan would meet the TFC's threat and risk assessment which he adopted. He concluded that the plan would *protect the public in the long term by leading to the arrest and conviction of those involved* [IOPC0000255\_009].
32. The SFC agreed that the proposed method would be proportionate to the serious crime being undertaken. He stated that deployment of firearms would be justified and proportionate to achieve the safety of the public and police [IOPC0000255\_018].
33. The SFC considered and approved the TFC's considerations for and against approving the tactical plan at [IOPC0000255\_019]. These included arrests taking place potentially increasing the risk to public safety, the risk of compromise and the subjects making off either in a vehicle or on foot. The SFC was satisfied the TFC's plan met the threat and risk assessment which he adopted and noted again that the plan would *protect the public in the long term.*
34. The SFC set parameters which included that no intervention was to take place within premises unless to prevent immediate loss to life or serious harm and contingencies in the event that (a) control of the mission car was lost (b) the prison van reached Wood Green before the subjects were intercepted and (c) to deal with the threat of an attack upon the court building itself [IOPC0000255\_0023].
35. The SFC confirms in his witness statement that he approved the TFC's working strategy to minimize risk to (1) the public (2) SERCO and prisoners on the van (3) unarmed police (4) armed police and (5) unknown subjects. The SFC stated that his

aim was *the sustained long term protection of the public using the most appropriate methods whilst balancing the risk of harm to all.*

36. Unsurprisingly given the above, the SFC concluded that the APP test for deployment of firearms was met. The Inquiry experts agree that the criteria were *clearly met*, XR [356].

**(iii) Double Hatting / separation of roles**

37. At various points in their report the experts express concern that DCI Neil Williams (TFC) was the line manager to DI Robert Murray (the SIO). There is no stricture in APP or the NPFTC against this. Current APP provides that in protracted investigations where the proposed SFC or TFC has performed core investigative roles, they may still assume a firearms command role.

38. At the time of Operation Ankaa, DCI Williams was not a SIO on Operation Utara or any operation.

39. The SFC, Craig Turner, was entirely separate from the proactive investigation, as he was at the time an officer in the Flying Squad rather than the Central Task Force where the SIO and TFC were from.

**(iv) Was the above planning reasonable, in particular having regard to the need to minimise to the greatest possible extent the risk to life**

40. The above question cannot be separated from that which follows: *In particular, was it reasonable to plan to permit the conspiracy to proceed to the point of arrest.*

41. As the experts fairly note at XR [429] *it is important to keep the very important role undertaken by the specialist crime command in disrupting Organised Crime, removing weapons and drugs from the streets of London, investigating organised criminal activity, arresting suspects and reducing threats of violence.*

42. The OCN the MPS was tackling in this operation was one of the most dangerous gangs within the UK. It had repeatedly proven its capability for using deadly violence on the streets of London. The mindset of the gang is demonstrated by the plot to break Izzet Eren out from custody. The public are entitled to expect that the police will robustly challenge dangerous and brazen criminality such as this.
43. It is clear from the planning summarised above that the MPS had to balance serious considerations when it learned of the escape plot on 30.10.15. The terms of reference correctly ask whether the planning and the decision to allow the plot to proceed were **reasonable**, not whether other commanders or the chairman could have come to a different decision. Preventing the police from tackling criminals such as the Erens could have repercussions for public safety in the future.
44. As set out above, the intelligence that had been provided in advance of 11.12.15 was non evidential. Specialist crime officers attempted to identify the unknown subjects in advance of the sentencing hearing which might have allowed for earlier arrest opportunities, but this was not possible.
45. Those involved in the planning of Operation Ankaa considered alternatives to allowing the escape plot to proceed but concluded that these would not meet the TFC or SFC's working strategy. The question of alternatives was addressed by Commander Duncan Ball upon being notified of the operation [FEO0000061\_1]. The alternatives recorded as having been considered in the FA2 and FA3 are summarised above. In short there were means of disrupting the escape plot, however, four significant consequences would have followed a disruption:
- i. Izzet and Ozcan Eren and others involved in the escape plot would not have been arrested and prosecuted. All conspirators either pleaded guilty or were convicted after trial of their role in the escape plot and received substantial custodial sentences.
  - ii. The deadly gang war would not have been disrupted by the removal of these high-echelon figures
  - iii. There was a significant risk that if the plot were disrupted on 11.12.15 then an escape would be attempted at a later date when the subjects were not under

surveillance control. Izzet Eren's determination was subsequently demonstrated by his escape from custody in Turkey. This would have increased the risk to the public, prison custodians, police and the subjects themselves.

- iv. The opportunity to recover firearms would have been lost.
- v. There remained the possibility that Izzet Eren would attempt to carry out the attack he was planning on 13.10.15 if he were to escape from custody.

46. This was also addressed within the FA5 which states at [IPC0001133]:

*To solely thwart offences being committed is not appropriate in these circumstances. Police have identified possible suspect(s). Making contact with the transported subject(s) or conducting overt surveillance may simply shift the timing of the offence to a time when the subjects are not under police control thus endangering victims/public at a later date. It does not satisfy the strategic intention of the operation, which is to protect life. However this options should not be dismissed and as a contingency may have to be implemented...Any decision must always be balanced against the risk to the public if further offences are being committed which are within police control to prevent.*

47. All of the above implications and considerations would have increased the threat to life in the longer term. The commanders were obliged to consider sustained public protection when deciding how to deal with the clear threat posed by the escape plot. The APP in force at the time is not at present on Relativity but the relevant content is set out at various points within the NPFTC including at [COP000002\_0046 to 47]. It is also summarised within the experts' report at [439].

48. APP and the NPFTC recognises that “*action taken to mitigate risk in the short term may only serve to displace or delay that risk and may not address the longer term public safety considerations.*” This was the position in relation to the risk of a subsequent escape plot if the 11.12.15 attempt was disrupted and allowing the OCN's criminality to continue unchecked. APP and NPFTC both state that “*It may only be possible to effectively eliminate risk to the public through the detention, successful prosecution and subsequent lengthy imprisonment of the subjects, particularly where*

*there are committed or recidivist offenders.” This was most certainly the case in relation to the Erens.*

49. The national guidance cautions that “*it may not be possible to develop a plan to secure sufficient evidence without risk.*” A balanced approach is urged which recognises it would be appropriate to assess risk in both the short and longer term.

50. Commanders are entitled to take into account the strength of the evidence available and consider whether:

*there is sufficient evidence to warrant the detention and prosecution of the subjects*

*overt police action at an early stage will reduce the likelihood of a successful prosecution*

*early overt police action will notify the subject(s) of the covert police operation and result in reduced control and intelligence opportunities*

*the longer-term public interest will be served by the activation of the tactical arrest plan at this stage.*

51. All of the above matters were directly applicable to Operation Ankaa. The OCN planning the escape plot was comprised of determined and dangerous recidivist offenders. An aborted plot on 29.10.15 after a court appearance that day had merely served to strengthen their determination.

52. By allowing the escape plot to proceed to the point of arrest, this made the prospect of an armed arrest likely. Allowing the plot to proceed also raised the possibility of an attack upon the van occurring, however this was effectively removed by the TFC’s plan which would ensure that the van never came into contact with the “mission car” as set out above.

53. The following matters, however, told in favour of allowing the plot to proceed and the TFC and SFC were required to take these into consideration applying APP and the approved national training.
- i. Disruption was unlikely to remove intent.
  - ii. If the plot were disrupted this would have compromised the intelligence and police would no longer know when or where a future plot was to be attempted.
  - iii. It was reasonable to suppose that a firearm would be used in any future attempt in order to intimidate the guards. This would require a police firearms response.
  - iv. If Izzet Eren were suddenly (for example) taken to hospital as part of a possible escape plot, this would require fast time mobilisation of armed resources possibly in the middle of the night. Opportunities for detailed operation planning would be curtailed or removed. It would result in an armed policing operation that would pose far greater risks to all parties.
  - v. It would be uncertain that the officers deployed at short notice would have been trained in the tactics necessary (van escort and possible dynamic intervention itself a higher risk tactic, see below)
  - vi. Merely disrupting the plot would mean that none of the conspirators including senior OCN member arranging murders on the streets of London would be arrested.
  - vii. If Eren did manage to escape, the repercussions could have been very serious not least because he was actively planning murder.
54. Faced with such cogent reasons for permitting the plot to continue it is unsurprising that senior officers including Commander Ball were content for the operation to proceed though it must be recognised that these officers were not within the self-contained firearms chain of command.
55. It is submitted that the decision to allow the plot to continue to the point of arrest was at least a reasonable option open to the SFC and TFC having regard to the need to minimise to the greatest extent possible the risk to life. APP and the NPFTC required risk to be considered in the short and longer term. The matters summarised above were powerful factors in favour of the decisions which were made in this case. This is

reflected in the finding of the IPCC expert, Mr Hartley who concluded at [IPC0000385\_0014]:

*Advance opportunities were explored and the correct decisions were made to maintain the current operation as the best method to achieve strategy. There was no early intervention option available consistent with the strategy....The authority for the three-element surveillance MAST operation was well founded and the most appropriate tactic to give best chance of achieving the strategy as set.*

56. Whilst the inquiry experts have raised a number of important matters in their report they have not expressly disagreed with this conclusion, see XR [143]. It is plainly a reasonable interpretation of the planning.

**(v) Early CPS advice**

57. The experts ask at [644] whether those planning Operation Ankaa should have obtained early CPS advice, primarily to assist with tipping points in the operation. It is accepted that such advice was not obtained.
58. The highly experienced officers who planned Operations Utara and Ankaa have never known CPS advice to be obtained in a case such as this.
59. It should be noted that specialist crime officers sought on many occasions to parallel the sensitive intelligence into that which could be used in evidence. In particular applications were made for surveillance upon Izzet Eren at HMP Wormwood Scrubs, covert listening and tracking devices were placed in the Audi KM13YPT, an external camera was used to monitor the vehicle, and surveillance operations were mounted against the known subjects. Despite these efforts, by 10 December 2015 there was no evidence which could be presented to the CPS.
60. Had the officers requested CPS advice in this case, it is difficult to see what guidance could have been given. The section of the Director's Guidance set out at XR [644] concerns *charging* of suspects. It is issued under S37A of PACE 1984 for the purpose

of enabling custody officers to decide how persons should be dealt with and as to the information to be sent to the CPS for a charging decision. Whilst the Charging Guidance at [7] relates to “*early investigative advice*” this would not seem to cover Operation Ankaa in its planning phase. This was not a homicide or serious sexual investigation (to which specific CPS policy applied). The guidance envisages that [w]herever practicable, [the referral] *should take place within 24 hours in cases where the suspect is being detained in custody or within 7 days where released on bail.* Before 11.12.15, the subjects who were to conduct the breakout had neither been arrested nor identified. It is unclear how the CPS could have advised on such a speculative basis. No sensible advice could be given without knowing what if any evidence would be gleaned on 11.12.15.

61. The MPS will however arrange a meeting with Special Casework Directorate of the CPS to discuss whether this might be an area upon which the CPS could assist in an appropriate case in future.

**(vi) Were those responsible for the implementation of the Operation appropriately briefed.**

62. This document will primarily consider the fact that the “*06:58 intelligence*” was not briefed to the firearms officers on 11.12.15. This was the focus of the IOPC investigation relating to briefings and is one of the key areas considered by the Inquiry experts.
63. In addition to each team attending a bespoke briefing at circa 05:00 on 11.12.15, earlier briefings were held. This reflects best practice and was an important means by which the different strands of this complex operation were aware of what each element was doing. In particular a tape recorded briefing was held at New Scotland Yard on 10.12.15 and the CTSFOs attended a separate briefing at their Leman Street base at 03:00.

**a. The New Scotland Yard Briefing 10.12.15**

64. The purpose of the 10.12.15 meeting was to ensure that at least a representative from each strand of the operation was present and aware of the overarching plan and how the elements would fit together. This was explicitly stated by the TFC in his introduction to the briefing, see [IPC0000257\_001-002]:

*It is very important we get everybody together today because this operation is being run with four separate strands, all of which are interlinked. It is very important that everyone knows where each strand sits in the overall operation objectives. And not only just in terms of which different units sit where, but also individually it is very important that people know as individuals what their roles and responsibilities are, where they sit in the greater scheme of things...So that is the reason why I have asked you all here today...I know everyone is not here, for example we've not got all surveillance operatives here, or all the firearms operatives here, ... but we've got representatives from all the units here, go away speak with their colleagues and team members.... So that is the reason why I have asked everyone to come this afternoon.*

65. It is accepted that only one CTSFO was present, namely W80. Various of the CTSFOs had other duties at the time of the meeting (including outside of London) and as their duties the next day were to begin before 03:00, there was a clear need to ensure a suitable rest period in advance of deployment. Arrangements had been made for the CTSFOs to stay in a nearby hotel the night before in this regard. There was in any event a representative from MO19 present. As the TFC explained, his expectation was that the briefing would be relayed by representative(s) from each strand.
66. An attendance list for the 10.12.15 briefing was kept (though it is noted W80 is not recorded within it) [MPS000556]. It is clear from the attendance list and transcript that representatives from the key strands of the operation were present including the SFC, TFC, SIO, SCD7 officers, surveillance officers and C3000 staff.

67. Mr Hartley stated that the decision to hold this briefing was “*good practice*” the Inquiry experts agree and further state that they considered such a briefing “*essential*”, XR [511] to [512].

**b. Briefings on 11.12.15**

68. On the day of the deployment, a briefing was held for the firearms officers at 03:00. This was not tape recorded. The MPS understands that this is not required by national policy. The MPS will of course review its procedure in this regard should there be any relevant findings or recommendations from the Chairman.

69. A comprehensive briefing was held for each of the teams at around 05:00. The briefing that was most relevant for this inquiry was the “Lincoln Road Patrol Base” briefing which included the CTSFO MASTS team deployed in relation to the Audi KM13YPT.

70. The Lincoln Road briefing was initially conducted by the Ground TFC assigned to the MASTS deployment, DI Smith and in accordance with APP involved both the case officer Gary Kinch and the OFC, S105. As to the intelligence relating to whether the subjects would be armed, S105 stated:

*you've heard about the weapons that these guys have got access to in the past, please treat these people as armed until we know otherwise.*

71. On this important point the experts state that the language was *very appropriate* [639].

72. The experts have queried why the officers were not told that the Audi A6 had tinted windows. The evidence shows that the vehicle did not have tinted windows. The ground TFC noted at 08:44 *it was confirmed that the Audi did not have blacked out windows* see statement at MPS0000094 and log at [IPC0000149\_0036]. This has been clarified by a subsequent statement from Catherine Samy from whom the vehicle was stolen [not yet on Relativity] see also photographs at [IPC0000675] – [IPC0000680].

73. Whist the Audi's windows were not tinted the surveillance team noted that they were steamed up. This was conveyed to the CTSFOs (see for example witness statement of S111 the Alpha Car OFC at [MPS0000037]).

**(vii) The 06:58 update and the “firearms enabled” transmission**

74. The Inquiry will examine in detail both in CLOSED and OPEN, intelligence received by the MPS shortly before 07:00 that the subjects had by the previous evening only been able to obtain an imitation firearm. This was passed to the TFC by FE19 at around 06:58.

75. As the last formal briefing to have been given to the Audi MASTS team was the 5AM Lincoln Road Patrol Base briefing, it would of course have been impossible to have briefed this as it significantly post-dated the recorded briefing.

76. To the extent that the Inquiry experts express uncertainty about when the “imitation firearm intelligence” was received, the chronology is apparent from the evidence. DCI Williams states in his 16.12.15 detailed statement that:

*at At 6.58 am I was made aware that intelligence indicated that the subjects would have access to at least an imitation firearm at the time they intended to commit the offence. The intelligence was not precise as to whether they had current physical possession of any firearm at that moment in time.*

77. This reflects the entry in DCI Williams' handwritten log which records at 06:58:

*intelligence suggests they will have at least an imitation firearm at time of offence: No intel they have it now [MPS0003577\_006].*

78. The above reflects what is recorded in the gist (see below):

*By the evening of 10 December 2015 information indicated that only a replica firearm was available to them.*

79. It follows from the above therefore that this intelligence appears to have been historic (dating back to the evening of 10.12.15) but not passed on to the MPS until 06:58 the following day. It is understood why the Inquiry experts query at [545] whether the intelligence was received by the MPS on 10.12.15 based on paragraph [81] of the IOPC report. The manner in which the IOPC phrased the report has been commented upon by the MPS and the Chairman amongst others. For the avoidance of doubt the MPS did not receive any intelligence about imitation firearms until shortly before 07:00 on 11.12.15 as set out above.
80. Receipt of this intelligence required judgement by the TFC to be considered in real-time. It would have been possible to have passed this on to the CTSFOs, however, the new information was not inconsistent with *please treat these people as armed until we know otherwise*.
81. Had the 06:58 update been disseminated to the CTSFOs, it is unclear what they would do with this information. A form of words must neither overstate nor understate the threat. An update such as “*the intelligence indicates that **as of last night** the subjects only had an imitation firearm*” was unlikely to have been of use to an AFO if a firearm was produced. There remained at least reason to suppose that a real firearm could have been obtained in the interim. The NPFTC requires that AFOs treat all firearms as real and loaded until proved otherwise, see for example Module B2 **Participates in Operations While Armed** which states:
- TREAT ALL FIREARMS AS REAL AND LOADED** until it is proved otherwise (normally when in possession of the police) [COP0000012\_0040].*
82. There are restrictions as to what can be said about intelligence in OPEN. The circumstances as to how intelligence was received and when it was passed on to the MPS will need to be explored in CLOSED.
83. Very shortly after 06:58, however, up to date evidence was received from the probe which changed the intelligence picture. The TFC’s log records that at 07:06 he was informed that the following had been heard within the car, see log at [MPS0003577\_006]:

*From FE12 best attack 2 teams discussion re bringing real ting i.e. f/a*  
*“shoot lock 3 times”*  
*“if he presses alarm, we’re gone”*

84. This suggested that the subjects were in possession of a real firearm capable of *shooting the lock*. The log reflects the conversation within the Audi at around this time including: *You see that... side door just shoot the lock three times.*
85. Explaining the significance and limitations of the 06:58 update would have been rendered impossible by this new contemporaneous evidence. The reference to *shoot the lock three times* suggested a real as opposed to imitation firearms capability. If the 06:58 intelligence was disseminated, so must the 07:06 evidence have been. To present confusing and contradictory information to the CTSFOs would have been dangerous. The correct advice remained *treat these people as armed until we know otherwise*. That was how the CTSFOs had been briefed.
86. It was a reasonable assumption that, if security staff were going to be intimidated into releasing the prisoner, then a real or imitation firearm would be used. Under APP and the NPFTC, absent very specific intelligence to the contrary any firearm would have to be treated as real unless proved to be otherwise. There was no such *very specific intelligence*. Such intelligence as there was relating to imitation firearms appeared to be contradicted by contemporaneous information.
87. FE16 agreed that Bill Scammel (the CLIO Loggist) could update the surveillance team at around 07:29. As this was sent out on the surveillance channel, this would have been heard by the CTSFOs. Whilst the transmission was not audio recorded, it has been recorded within the CLIO log as *Team advised that intelligence suggests that any offence will be FIREARM enabled.*
88. Much has been said about the last two words of the above transmission. It is accepted that “firearms enabled” is not a term that features within APP or the NPFTC. Neither is it a term that had been agreed upon in advance. The MPS accepts that it is preferable that only terminology set out in APP, MPS guidance or that has been briefed is used

and will remind officers involved in such operations of this in the future. It is a term that will be familiar to anyone working in the criminal justice system.

89. In the event, however, this transmission did not materially alter the intelligence picture and was consistent with the intelligence. The MPS notes the experts' conclusion that the term *does not appear to have increased the threat assessment of the CTSFOs*, XR p225 (10).
90. State Amber was not called until around 09:00. At around the time of the *firearms enabled* transmission, the Audi was in the vicinity of Dalby's Crescent N17 [IPC0000278\_0007]. Izzet Eren had not been loaded onto the SERCO van due to a delay at the prison (this did not occur until 08:27) [IPC0000278\_0011]. There was opportunity for the CTSFOs or surveillance officers to have requested clarification of this term if this was required. As the experts conclude at [637] the transmission would have conveyed an indication that the command team believed the subjects possessed / had access to a firearm of some sort. It is submitted that this reflected the intelligence and evidence available to the TFC and the need to treat this as real unless proved otherwise.
91. Whether one considers the picture (i) at the time authorisation was given by the SFC, (ii) at 06:58 (iii) at 07:06 or (iv) later, the criteria for the deployment of AFOs (*that there was reason to suppose officers may have to protect themselves from a person who is in possession of or has immediate access to a firearm or other potentially lethal weapon or is otherwise so dangerous that the deployment of armed officers is considered to be appropriate or....as an operational contingency in a specific operation based on the threat assessment* [COP0000013\_0025]) was amply made out. The experts' conclusions in this regard at XR [307] are noted.

## **II. INFORMATION**

92. The terms of reference at 2.1 to 2.6 ask what information was known to the MPS, how it was received, disseminated and evaluated, and whether the handling of the information was reasonable having regard to the need to minimise to the greatest extent possible the risk to life.

93. The MPS does not repeat the matters set out above, in particular where this relates to the specific intelligence updates already addressed.

**i. What information / intelligence was known by those within the MPS by 11.12.15**

94. As to “sensitive intelligence” it will be of great frustration to Mr Baker’s family that there are strict restrictions upon what can be said about this in OPEN.

95. All CPs have a “gist” provided by the NCA which states:

*In the days and weeks prior to 11 December 2015 information indicated that the persons planning the escape of Izzet Eren were attempting to source a firearm, but despite numerous attempts they were not successful. By the evening of 10 December 2015 information indicated that only a replica firearm was available to them. No information was known about the involvement of Mr Baker, Mr Mason and Mr Sougucakli, prior to the interdiction on 11 December 2015.*

96. It is apparent from the evidence that this intelligence was not “evidential” in that it could not be used in the arrest or prosecution of any person.

97. There are restrictions upon how the MPS can handle such sensitive intelligence. It would be received by either FE19, Gary Kinch or Andrew Sparks. Once received the intelligence would be passed on to the SIO and shared with the TFC. Other officers would receive parts of the intelligence on a need to know basis if required for example on a surveillance deployment.

98. The sensitive intelligence will be rigorously examined in CLOSED hearings. The MPS has over the past three years been entitled to inspect this material at a secure (non MPS) location and will shortly be provided with access to some of the material at a secure MPS location. It would be inappropriate to say more in OPEN.

99. As set out above, specialist crime officers sought to develop the intelligence in the days which followed its receipt. Despite these efforts it was not possible to obtain evidence which would allow earlier arrests of the subjects.
100. It is submitted that the intelligence handling was reasonable, in particular having regard to the need to minimise to the greatest possible extent the risk to life.

### III. THE EVENTS OF 11.12.15 (IMPLEMENTATION)

101. It is thought that the principal issue the MPS can assist the chairman with in this regard is likely to be the tactic that was implemented at 09:00 which has been variously described as a *fast time extraction* and *dynamic intervention and extraction*. This document will also consider the use of swear words by firearms officers and the use of allegedly contradictory commands.

#### i. The tactic used at 09:00

102. The experts express concern about MASTS having been described as a “tactic” by the IOPC in its report into this case. It is important to note that this is a comment on the IOPC’s use of terminology and various issues from the Grainger Inquiry and not a comment upon the MPS’ understanding in 2015 of how a MASTS platform should be used. The FA5 and approach to MASTS during Operation Ankaa is consistent with the content of APP and the NPFTC.

#### a. Consideration of alternatives

103. The use of the tactic known as an **extraction** was not a pre-determined outcome of the armed deployment on 11.12.15.
104. The suggestion that there was either an “**intervention**” or a form of “**dynamic intervention**” in this case is wrong. These are specific terms as defined within APP and the NPFTC and it is important that they are not conflated with the lower risk decisive action which was planned for.

105. The evidence shows that alternatives were considered both in terms of avoiding an armed deployment (see above) and that possible alternative tactics were considered.
106. Alternatives to extraction were clearly set out in the FA5 which stated in terms at [IPC0001133\_0010] (emphasis added):

*Once the vehicle has come to rest the subjects can be dealt with by utilising a number of tactics, these include Armed Enquiry, Containment, Communication and Extraction.*

*This will be determined by the application of the NDM based upon factors such as numbers of subjects their actions and the perceived level of threat.*

107. Having set out relevant implications and considerations, the FA5 states (emphasis added):

*On many MASTS based deployments a Covert armed vehicle interception utilizing 'Enforced Stop' and 'Extraction' is often the preferred tactical option. It is accepted that this is a rapidly implemented tactic to dominate the occupants of the vehicle – its use must be proportionate to the threat posed. On some occasions it may be appropriate not to immediately extract occupants but to contain them and call them out under control.*

#### **b. Intervention v interception**

108. It has been suggested at times that an **intervention** was implemented on 11.12.15 and that this too was a pre-determined outcome of the operation. This is not correct. The precise definition of the term is provided in the NPFTC see [COP0000004\_0006] which sets out the importance of not confusing the terms. In short an **interception** is an arrest **before** an offence is committed. An **intervention** is an arrest **during** the commission of the offence where victims are present and the subjects is physically in a position to carry out the threat. An intervention is not an option the MPS would normally plan to undertake and was not advised in this operation due to the risk posed to the police and public [IPC0001133\_0015]. The use of the word **intervention** to

describe the arrest implemented on 11.12.15 is wrong. The careful planning by the MPS set out above was designed to avoid an intervention. By placing the probe in the vehicle, the MPS was utilising sophisticated methods to obtain evidence that would enable the officers to arrest before the offence was committed.

109. Assuming that the Audi KM13YPT was used as the “mission car” and there was evidential sufficiency before the SERCO van reached the junction of the A1, then it was likely that the MASTS team would be called upon to perform an interception. This was the plan.

**c. The specific tactic to be implemented by the CTSFOs**

110. The starting point for the relevant considerations which apply in deciding which tactic would be implemented is the NPFTC. As set out above, a MASTS deployment is not a tactic but a flexible platform from which a number of tactics can be delivered. A MASTS should, however, provide an arrest capability and the planning of a MASTS deployment should include options and or contingencies to intercept or intervene see D8.2 (MASTS – basic) [COP0000004\_003 and \_006].
111. The NPFTC reflects the content of both the FA5 and MPS training in place at the relevant time. It provides that once a vehicle is stationary *the subjects may be dealt with by either and armed enquiry, containment and callout, extraction or a critical shot* [COP0000004\_0025].
112. The options which are likely to be considered in this inquiry are “containment and callout” and “extraction” the viability of each is considered below.

**i. Containment and callout**

113. NPFTC Module D8.2 envisages that a vehicle being contained will be blocked from the front and rear, see for example [COP0000004\_0025] and figure 9.
114. More general guidance relating to containment is provided within NPFTC Module D3 (Deals With Subjects in Vehicles). This provides *inter alia* at [COP0000014\_0009]:

*If the assessment of the threat is such that officers should not approach the vehicle the following procedure should be adopted.*

*Prior to any communication with the subject(s) officers should ensure that the vehicle is sufficiently contained. This may necessitate police resources being deployed to create a sterile area by preventing traffic and member[s] of the public approaching from the front or rear of the stationary vehicle.*

**ii. Extraction**

115. As set out above, the tactic implemented on 11.12.15 is known as a natural stop, extraction. NPFTC Modules D8.2 (MASTS) and D3 (Deals with Subjects in Vehicle) provide the curriculum relating to extraction. Both documents state that (emphasis added):

*the purpose of an extraction is to minimise risk to both the subject and the officers, preserve evidence, and rapidly gain control thereby neutralizing any threat.*

116. This same language is used throughout the curriculum see for example Module C2 (TFC) at [COP00000010\_071] and F2 (Provides Tactical Advice) [COP00000013\_0040] and remains in the 2020 guidance see for example [COP00000003\_0017].

117. The recommendation in Grainger as cited by the Inquiry experts at [684] and the comment at [686] that *we are of the opinion that when an armed intervention tactic considered high risk is employed, that the Article 2 test of absolute necessity should be applied* would (if accepted by the Chairman) be a national recommendation. As set out above, this does not reflect the content of the NPFTC at the time of Operation Ankaa (nor today) which refers to extraction as a tactic that minimises risk (though see below in relation to the circumstances of this case).

118. As set out above, it is wrong to refer to what occurred on 11.12.15 as an intervention which is a higher risk form of decisive action. In this case the tactical advice within the FA5 correctly set out the implications and considerations which applied to the available tactics thus:

*On many MASTS based deployments a Covert armed vehicle interception utilizing 'Enforced Stop' and 'Extraction' is often the preferred tactical option. It is accepted that this is a rapidly implemented tactic to dominate the occupants of the vehicle – its use must be proportionate to the threat posed. On some occasions it may be appropriate not to immediately extract occupants but to contain them and call them out under control.*

119. The experts agree at XR [415] that the FA5 contained tactical advice that *appeared to be thoroughly considered, well recorded and compliant with local and national training and guidance.*

120. The suspects had parked on a residential street chosen by them at 08:00. This was an hour before the TFC moved to state Amber. There was no way of knowing in advance of the car's arrival in Bracknell Close that this was where the Audi would settle. There was no opportunity to put a containment in before the Audi had parked in Bracknell Close. The situation as it evolved presented extraction as the safest tactical option to implement. It would not have been possible to contain the Audi or safe to call the occupants out from cover in Bracknell Close. The following are relevant in this regard:

- i. The Audi would not have been sufficiently contained with the 3 cars pulled up in front. There was no way to prevent the public from approaching the vehicle and in particular from the rear (where there was a gate immediately behind and residential properties nearby) or from the side.
- ii. The intelligence suggested that the subjects were unlikely to be compliant. To attempt a containment would allow them to prepare a response, increasing the risk to subjects and officers.
- iii. If the subjects were to be called out from behind the police cars then it would not have been possible to use Hatton (tyre deflation) rounds increasing the risk that the subjects would attempt to ram their way out.

- iv. A pursuit on the streets of London would have been dangerous.
  - v. If the subjects were to be called out from behind the police cars then it would not have been possible to use TASER as the officers would have been beyond the operational range of the device.
121. Extraction was the safest option. The MPS submits that it was the only viable option, and in any event, it was certainly a reasonable tactic to have been implemented in the circumstances of the case.
122. It is noted that this was the conclusion of the highly experienced commanders in this case and the tactical adviser. This is also the view of Mr Hartley who explains the advantages of extraction over containment in this case at [IPC0000385\_0029] and Mr Nicholson of the College of Policing who comes to the same conclusion that extraction was the appropriate choice at [MPS0000039\_0005]. There is a very considerable weight of opinion in this direction.
123. As set out above extraction was not inevitable. Various options were available to the TFC from within the SCO19 toolbox and as set out in the FA5. This included containment and callout, however, this was unlikely to be appropriate as matters presented on 11.12.15.
124. NPFTC recognises the need for flexibility in relation to which tactic will ultimately be implemented and the role of the CTSFOs in this regard in particular during a MASTS deployment, see for instance Module D8 (MASTS) at [COP0000004\_0028]:

*As with all firearms operations the TFC will have approved the tactical plan supported by a number of contingencies. However, immediately prior to implementation of the tactic circumstances can change that may result in deployed officers dynamically reassessing the plan and implementing a contingency or other tactic.*

*Known information, intelligence and subject profile will influence the tactical plan. Relevant profiled subject behaviour may include the likelihood of cooperation, their prior experience of police tactics upon arrest, surveillance*

*awareness and use of violence. As the number of subjects increases it may be necessary to increase the number of officers deployed.*

125. This reflects the conclusions of Mr Hartley who states when explaining why extraction was the preferred tactic in this case: *the decision to extract can also be a dynamic decision based on assessment of the information and intelligence presented at point of contact* [IPC0000385\_0029].
126. The reference to BUGEE-C/L at XR [709] to [712] is noted. The mnemonic appears to have emerged after the relevant events. It is important to ensure that the commanders in Operation Ankaa are judged by principles as they were commonly understood at the time. The reference to guidance in APP which includes elements of BUGEE-C/L needs to be viewed in proper context. This guidance appears within APP dealing with ***Environmental and behavioural influencers*** such as *hearing impairment, difficulty in understanding English, effects of drugs or alcohol, medical conditions and learning difficulties*. There were no such environmental or behavioural influencers in this case. This is correctly set out within the MPS SOP see [IPC0000083\_0003] and is reflected in how the content is produced within NPFTC Module C2 (TFC) at [COP0000010\_0096].
127. This approach is reflected in the evidence of Kevin Nicholson from the College of Policing who states in his 25.07.16 witness statement [MPS0000099\_003]:

*Whilst not specifically detailed in the curriculum it is widely acknowledged that, where there is no information or intelligence to suggest that a subject(s) are emotionally or mentally distressed (EMD), it may be advantageous to approach them quickly and as covertly as possible. Albeit it anecdotal, operational learning and experience suggest that, in the right circumstances, the element of surprise and presence removes a subjects reaction time and ability to prepare for 'fight or flight'*

### **iii. Dynamic intervention**

128. The experts comment at XR [874]:

*The authors of this report are of the view that dynamic interventions, whether into a structure or vehicle, should only be undertaken in extremis. This would include immediate intervention to save life, or in certain situations, to secure essential evidence required to link individuals to a particular crime. However, in the latter case this must be considered alongside the risks to all of those involved.*

129. This is an important part of the report and is central to the experts' analysis of the tactic implemented. The authors of the report refer to the tactic used as a form of *dynamic intervention* throughout the report, see for example (emphasis added):

*What took place was a '**dynamic intervention and extraction**' of subjects in a stationary vehicle, [627].*

*We are very concerned that a **dynamic intervention and extraction** of subjects from either a static or moving vehicle, may have been the default tactic that was always envisaged [682]*

*in the case under review, there is a lack of documented assessment indicating that a **dynamic intervention** on a stationary (or moving) vehicle is a high risk (albeit sometimes high benefit) option [685].*

*The **interception** that took place at Bracknell Close on 11 December 2015, was in a busy residential area. This '**dynamic intervention and extraction**' was the method that had been envisaged from the very first planning meeting [976].*

130. The experts continue to refer to the tactic as **dynamic intervention** in both the first [INQ0000005] and second [INQ0000016] addendum reports.
131. There was no dynamic intervention on 11.12.15, neither was it envisaged one would take place.

132. A dynamic intervention is defined within the NPFTC module D8.2 (MASTS) as (emphasis added):

*Where the tactical plan or contingencies require **intervention**, consideration should be given to the use of MASTS officers who are also trained in Module D9, Dynamic intervention. Dynamic intervention training better prepares officers for dynamic operations **where subjects and potential victims may be in close proximity and an imminent threat exists** [COP0000004\_0006].*

133. An overview of Dynamic Intervention is provided within Module B2 (emphasis added):

*D9 Prepares For and Participates in Dynamic Entry or Intervention The implications of initiating the tactical options of dynamic intervention and dynamic entry should not be underestimated. full consideration must be taken into account of the need to plan thoroughly and train regularly for these methods. Of all the tactics likely to be employed by armed police those of dynamic intervention and dynamic entry are most likely to be scrutinised under Human Rights legislation. **Dynamic intervention to rescue hostages should be distinguished from a dynamic entry to arrest and secure readily disposable evidence, both of which are intended to protect life.** To be successful, both dynamic intervention and dynamic entry require a high degree of teamwork and rehearsed methods. They create, by their nature, a situation in which decision making under stress becomes critical and individual officers tasked with undertaking such an entry require a high level of skill and adaptability.*

134. NPFTC Module D8 (MASTS) states that if tactical plan requires intervention, the use of officers trained in dynamic intervention should be considered [COP0000004\_006]. It is clear that the tactic deployed on 11.12.15 was not a dynamic intervention, not least of all as the subjects were arrested **before** the offence was committed. The tactics used are those within **D3.1 Deals with Stationary Vehicles, Content 5, Extraction** see [COP0000014\_0010-14] and can be carried out by all AFOs as opposed to dynamic intervention which is confined to more highly trained officers (in the MPS CTSFOs) see NPFTC C2 (TFC) [COP0000010\_0068 and 071].

135. The experts are judging the tactic used on 11.12.15 by standards that apply to more high-risk tactics. It is respectfully submitted that this is a material error.
136. Insofar as the proposed test at XR [874] relates to a *dynamic intervention*, however, the MPS respectfully agrees. The test would be in accordance with APP and the NPFTC which provides:
- Dynamic intervention to rescue hostages should be distinguished from a dynamic entry to arrest and secure readily disposable evidence, both of which are intended to protect life.*
137. If dynamic intervention had been envisaged it would have required further tactical advice. In accordance with APP and MPS policy, it would only have been implemented by the MPS to save life, preserve evidence and arrest dangerous subjects in extreme circumstances.
138. If a test similar to that set out at XR [874] were proposed wherever an **extraction** is planned, this would require a change to national training and APP. As set out above nothing in APP or the NPFTC at present supports an “*extremis*” test for extraction. The NPFTC consistently refers to extraction as a tactic which *minimises the risk to the subject*. An “*extremis*” test is used at times in the NPFTC but in relation to exceptional circumstances such as officers undertaking roles for which they are not competent see [COP0000010\_0068].
139. The MPS training at the time was in line with the NPFTC in relation to extraction, see for instance [IPC00000225\_008], which reproduces the content relating to containment and call out and extraction within CTSFO training (and in relation to dynamic intervention).
140. In any event on the facts of this case and for the reasons set out above the requirement proposed within the “*extremis test*” *to secure essential evidence required to link individuals to a particular crime* would have been met.

**d. The actions of the officers during the arrest phase**

141. The MPS intends to briefly address the questions of apparently contradictory commands and the use of profane language.
142. The extraction was implemented in accordance with the NPFTC which (as set out above) notes in relation to MASTS that (emphasis added):

*where an extraction is to be conducted it remains largely the same as described in Module D3. However given the resources of a MASTS team it may be possible to deal with several subjects in a vehicle simultaneously ...the subject should be physically extracted from the vehicle in a proportionate manner and detained. This should be accompanied by appropriate verbal commands [COP0000004\_0026].*

143. Whilst there is a trained order for the removal of subjects (where practicable), a MASTS team extraction will require different commands to be given to different occupants of the vehicle at the same time as they are dealt with by the officers.
144. The MPS notes that the experts express concern that apparently contradictory commands were given during the interception on 11.12.15. The following section from the audio transcript is cited as containing the relevant commands within the report:

*00.13 put your hands on the dashboard*

*...*

*00.19 you...fucking put your hands up....take your hands out your pockets*

*00.23 put your fucking hands up now.*

145. It is noted that there is a delay between each of these commands which are clearly directed at different occupants of the vehicle.
146. It should also be noted that on any view these later apparently contradictory commands were after the shot was fired and could therefore not have been causative.

147. The MPS notes and endorses the relevant content from APP:

*It is not helpful or possible to require the exact instructions that an AFO will issue to be agreed and approved at the briefing stage. It is impossible at this stage to know what the subject will be doing at the point that they are confronted by police. Even if it were, they could respond in a number of ways which could require a variety of secondary instructions. These could not be pre-determined or 'memorised' by each officer. To attempt to do so may increase operational risk as it constrains officers from adapting what they say to the changing circumstances they face. The agreed terminology may be irrelevant or inappropriate at the point of contact and increase confusion on the part of the subject. Such a rigid approach does not cater for subjects who do not understand what is being said to them, for any number of reasons. The instructions to all occupants of the vehicle are rarely likely to be exactly the same due to a number of factors, including but not exclusively; where they are sitting in the vehicle and how much of their hands can be seen. what they can put their hands on to demonstrate compliance what they do in response to being challenged.*

148. The MPS will continue to train all AFOs in accordance with the NPFTC and APP, that subjects must be given clear and appropriate commands but it is not possible to require exact instructions to be approved in advance. As a MASTS arrest option can involve officers giving commands to multiple occupants at the same time it is inevitable that different subjects will be addressed during such an interception or intervention.
149. The MPS will continue to work with experts such as Mr Arundale to seek to find ways to ensure that these difficult operations are conducted in the safest way possible.

**i. The use of profane language**

150. The MPS does not formally train officers to use swear words during armed arrests. It is accepted, however, this is a practice amongst some officers. The inquiry experts accept at XR [892]:

*We clearly understand that there can be situations where a 'strongly' stated command, underscored with a swear word, can reinforce the urgency of compliance with the direction. That is very different from the integrated and culturally practiced use of such language as part of every dynamic intervention.*

151. There is no guidance in APP as to whether swear words should or should not be used. Clearly AFOs will in certain circumstances require close control upon a subject in order to ensure that they comply with commands to ensure the safety of all parties. It is often said that officers performing forms of decisive action will seek to “dominate” the subjects.
152. It is accepted that (a) there is no evidence either way as to whether the use of profanities is of assistance or not (b) the use of profanity by police officers can cause public concern and (c) it would be of real benefit for this matter to be reviewed by the MPS and the College of Policing. The MPS will work with the Chairman and the College to ensure that this is done.

**ii. The decision to shoot Jermaine Baker**

153. As set out at [1] above, it is of course accepted that Mr Baker was not in possession of a real firearm on 11.12.15. The loss to Mr Baker’s family is unimaginable. We are committed to learning any and all lessons that arise from his tragic death. The MPS however is of the unequivocal view that the evidence strongly supports the conclusion that W80 honestly and reasonably believed that Mr Baker was about to produce a firearm and that he used force on that basis and in lawful self defence. As W80 is separately represented in these proceedings it is not considered necessary to say any more on this point in opening.

154. The MPS submits therefore that the operation was conducted on the ground reasonably, with regard in particular to the need to minimise, to the greatest extent possible, the risk to life.

**iii. Assistance and medical treatment given to Jermaine Baker**

155. It is clear from all of the evidence that Mr Baker's injury was un-survivable. It is also clear that all that could have been done by the officers, the London Ambulance Service and London Helicopter Emergency Medical Service to save his life was done. It is not thought that more can usefully be added in this document.

**IV. PRACTICES POLICIES AND PROCEDURES**

156. The experts state that:

*the Code of Ethics is not referred to in the MPS SOP dated July 2014. Neither is it shown as being central to the use of the National Decision Making (sic) Model as it should have been. Therefore, the Code of Ethics may not have been embedded as effectively as it could have, within SCO7 and SCO19 at the time of the incident under review.*

157. Whilst it is correct that the July 2014 MPS Firearms SOP does not reference the Code of Ethics, this is unsurprising as the Code of Ethics was not published by the College of Policing until July 2014. The SOP has been updated.

158. The experts state in their concluding comments that:

*the MPS Armed Policing SOP and associated training material were not in 2015 compliant with the APP armed policing nor the later (2019) recommendations arising out of the Grainger Inquiry in relation to MASTS. We do not know if these matters have been subsequently addressed by the MPS.*

159. The experts do not explain which parts of the MPS SOP or training material were not compliant, nor which section of the APP in force at the time is relied upon. The MPS

of course could not in 2015 have predicted the 2019 changes. The MPS will respond further if this criticism is explained. This is not at present therefore accepted.

160. The MPS looks forward to working with the Chairman and all CPs to assist in this important inquiry.

**Matthew Butt QC**

**Daniel Futter**

**Eva Niculiu**

**Ruby Shrimpton**

**24.05.21**