

PUBLIC INQUIRY INTO THE DEATH OF JERMAINE BAKER

PROVISIONAL DETERMINATION OF GOKAY SOGUCAKLI'S AND NATHAN MASON'S APPLICATIONS FOR CORE PARTICIPANT STATUS

1. In my capacity as Chairman of the Jermaine Baker Public Inquiry, I directed that any individual or organisation seeking core participant to make an application by no later than 27 March 2020. At the preliminary hearing on 28 July 2020, this date was extended to August 2020.
2. On 21 May 2021, the Inquiry received an application on behalf of Gokay Sogucakli in which he seeks core participant status in this Inquiry.
3. On 27 May 2021, the Inquiry received written submissions from the National Crime Association (NCA) and written comments from the Metropolitan Police Service (MPS) in response to that application. Both Core Participants object to Mr Sogucakli being granted core participant status in this Inquiry. No other Core Participants have made any submissions in response to his application.
4. On 2 June 2021 the Inquiry received an application on behalf of Nathan Mason in which he too seeks core participant status in the Inquiry.
5. The following day, submissions were invited from Core Participants on that second application, subject to the confirmation that the Inquiry Team recognised the similarity of the applications and that many of the arguments made by Core Participants against Mr Sogucakli's application could be applied to Mr Mason's application without the need for further written submissions.
6. I have considered both applications and responsive submissions carefully and set out my decision below.

Background

Gokay Sogucakli

7. The Solicitors to the Inquiry wrote to Mr Sogucakli on 22 April 2021 in accordance with Rule 9 of the Inquiry Rules 2006 (the Rules) requesting that he give oral evidence to the Inquiry regarding the events on 11 December 2015 and that in advance of giving evidence, he provide a written statement setting out his recollection of the events. The Inquiry also advised Mr Sogucakli that he may wish to take independent legal advice in connection with this request and provided information about potential legal expense funding for this.

8. The Inquiry received a response from Mr Sogucakli on 29 April 2021 in which he confirmed that he would be willing to assist the Inquiry and that he wished the law firm Imran Khan and Partners (IKP) to represent him.
9. On 13 May 2021, Daniel Cooper of IKP confirmed that he was instructed to represent Mr Sogucakli. The Solicitors to the Inquiry provided Mr Cooper with access to electronic material the Inquiry was sharing with them in connection with the request for a statement in accordance with Rule 9 of the Inquiry Rules 2006 (the Rules). They also provided the list of topics to address in the statement on 18 May 2021. On 21 May 2021 the Solicitors to the Inquiry received the application for core participant status.

Nathan Mason

10. Likewise, the Solicitors to the Inquiry wrote to Mr Mason on 13 May 2021 in accordance with a request under Rule 9 to give evidence at the forthcoming hearing. The same information was given to Mr Mason in respect of his ability to take independent legal advice which would potentially be at public expense. A further letter setting out the detailed topics which Mr Mason should first address in a statement was sent on 24 May 2021 upon Mr Mason's instruction of Deborah Nicholson of Markel Law as his legal representative. Documentation relevant to the witness statement request was also shared with his legal representative electronically.
11. Ms Nicholson made an application for and was granted section 40 legal expense funding in respect of work to be undertaken representing Mr Mason in preparing his statement and giving evidence.
12. An application for core participant status was made on behalf of Mr Mason by way of letter dated 2 June 2021. In that letter, Gareth Martin of Markel Law indicated that Mr Mason had first contacted his firm on Friday 21 May 2021 and that the firm had subsequently confirmed their instruction to the Solicitors to the Inquiry on 24 May 2021, the next working day.

Rule 5

13. Rule 5 of the Rules provides that:
 - (1) The chairman **may** designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.
 - (2) In deciding whether to designate a person as a core participant, the chairman **must** in particular consider whether—
 - (a) the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;

(b) the person has a significant interest in an important aspect of the matters to which the inquiry relates; or

(c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.

14. I note that both applications have been made significantly after the extended deadline of 25 August 2020. Although the applications are late, they seem to have been made directly as a result of recent contact from the Inquiry regarding Mr Sogucakli and Mr Mason's willingness to assist the Inquiry and provide evidence relating to the events on 11 December 2015. Bearing this in mind, I consider it appropriate to consider and determine both late application.
15. Rule 5(1) states that I **may** designate a person as a core participant **at any time** during the course of the Inquiry and under section 17(1) of the Inquiries Act 2005 (the Act), I have a wide discretion as to the conduct and procedure of this Inquiry. In making any decision as to the procedure or conduct of an inquiry under section 17(3), I **must** act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).

The applications

16. Mr Sogucakli's application is put on the basis that upon consideration of the Terms of Reference (ToR), the facts of this case and the material shared with Mr Sogucakli in relation to his witness statement, I should now designate Mr Sogucakli as a core participant. In particular, reference is made to ToR 1.5 which states:

1.5. In particular, was it reasonable to plan to permit the conspiracy to proceed to the point of arrest

17. It is stated in the application that that Mr Sogucakli is not simply a witness to the events in question but that he played a direct and significant role in relation to the matters to which the inquiry relates. Further, it may be said that his actions and conduct either solely or jointly with the police were responsible for the death of Mr Baker. As a result he will be, as opposed to may be, the subject of explicit or significant criticism during the inquiry proceedings.
18. Mr Mason's application is made without specific reference to the ToR. On his behalf it is said that he has a significant interest in understanding the planning and implementation of the police operation as well as the policies and procedures adopted, including the training and competency of officers involved in the operation given that it has had a profound and long-lasting impact on his mental health and well-being. It is further said that, given his presence in the Audi vehicle, it is not unreasonable to suggest that Mr Mason and his actions in the lead up to and on the day of the incident may be subject to explicit criticism during the inquiry proceedings or in any report.

Provisional determination

19. I am minded to refuse the applications. In determining the applications, the matters listed in Rule 5(2) must be considered, but the list is not exhaustive and other relevant matters can also be taken into account. Furthermore, I am mindful that I have a wide discretion regarding the designation of core participants.
20. Although they are separate applications, concerning separate individuals and advanced by separate legal teams, my reasons for refusing the applications are the same in both cases. Both individuals, on the information of which I am currently aware, played comparable roles in the events with which this Inquiry is concerned. Therefore, although I have considered the applications separately and on their own merits, I deal with them together for the purposes of this provisional determination. My provisional reasons for refusing the applications are:
- a. First, I accept the submission made on behalf of the NCA that Mr Sogucakli's role in this Inquiry is limited to his factual account of what took place at or around the time of Mr Baker's death. I consider that the same is true of Mr Mason. The involvement of the applicants does not, in my judgment, amount to a "*significant interest in an important aspect of the matters to which the Inquiry relates*" for the purposes of Rule 5(2)(b); the fact that, absent the conspiracy, there would have been no fatal shooting and therefore no Inquiry, does not elevate the involvement of the applicants to a 'significant interest.
 - b. Second, the Inquiry's Terms of Reference do not require me to examine the planning of the criminal conspiracy in its own right. Indeed, five individuals including both Mr Sogucakli and Mr Mason have pleaded guilty or have been convicted for their involvement in that conspiracy. The only extent to which I will conduct an inquiry into the criminal conspiracy is to the extent that the information about that conspiracy was known, or might have been known, to law enforcement agencies. I therefore do not consider that either applicant played a direct or significant role in matters in relation to which the Inquiry relates, within the meaning of Rule 5(2)(a).
 - c. Third, any potential criticism of Mr Sogucakli and/or Mr Mason is likely to go no further than any criticism implied by their convictions in respect of the events on and before 11 December 2015. I accept the submission made on behalf of the NCA that any effort to go behind those convictions would represent an inappropriate collateral attack on the decision of the criminal court. If the applicants are potentially to be criticised, explicitly or significantly, in my report, they will be given notice of that fact and given the opportunity to answer it, if necessary at public expense.
 - d. Fourth, most appropriately, both applicants may participate in proceedings as represented witnesses. The Inquiry Team indicated to both Mr Sogucakli and Mr Mason, when asking them to provide evidence to the Inquiry, that they might apply for funding for associated legal costs. I will consider any

further application on its merits. The applicants will also receive disclosure, as witnesses, of any material which they need fairly to see in order to participate in that capacity. This procedure can properly be achieved without any necessity to grant either Applicant the status of Core Participant.

- e. Fifth, both applications were made late in the day. In the eight months between the extended deadline for Core Participant applications passing, and the Solicitors to the Inquiry seeking witness statements from the applicants, no applications for Core Participant status were made. The Inquiry proceedings have been well publicised in the national press. There was no reason that Mr Sogucakli or Mr Mason should not have made an earlier application, had they wished to be Core Participants. Were it not for this final reason, I would still be minded to refuse the applications, but this reason strengthens my conclusions.

21. Being minded to refuse the applications, I would like to provide Mr Sogucakli and Mr Mason with an opportunity to renew their applications for Core Participant status if so advised. This is therefore a provisional ruling. If either applicant wishes to renew his application, he should do so in writing by 4pm on 9 June 2021. If the application is not renewed, I will confirm this provisional ruling and issue a final determination of the application.

HH Clement Goldstone QC

4 June 2021