

PUBLIC INQUIRY INTO THE DEATH OF JERMAINE BAKER

FINAL RULING ON NATHAN MASON'S APPLICATION FOR CORE PARTICIPANT STATUS

Introduction

1. This is a ruling on the application for Core Participant status made on behalf of Nathan Mason.
2. On 4 June 2021 I handed down a written provisional determination in respect of his application and the application of Mr Gokay Sogucakli. In that document, in which I stated that I was minded to refuse both applications, and indicated that I would allow either applicant to renew their application in writing by 4pm on 9 June 2021.
3. For reasons which I set out in that document, I provisionally determined that both Mr Mason and Mr Soguckali should participate in the Inquiry proceedings as represented witnesses. I noted that both applicants had been informed that they might apply for funding at public expense of legal costs associated with their involvement in the Inquiry.
4. Mr Sogucakli did not renew his application.
5. On 9 June 2021, Markel Law acting on behalf of Mr Mason did renew their client's application in writing. Having reviewed those written submissions, I determined that I should hear oral submissions and listed the application for the morning of 17 June 2021.
6. On 16 June 2021, written submissions were prepared and circulated by Counsel to the Inquiry ("CTI"). CTI did not support the application, for the reasons set out in that document.

7. On 17 June 2021, oral submissions were made by CTI and leading counsel for the Metropolitan Police Service (“MPS”) and the National Crime Agency (“NCA”), as well as by Ms Maya Sikand QC on behalf of Mr Mason.
8. I indicated in the hearing on the morning of 17 June 2021 that I would refuse the application, with written reasons to follow. This document records those reasons.
9. I intend this document to be read alongside my Provisional Determination of 4 June 2021. I have not set out the procedural history and summary of this application again (§1-5, §10-12 and §18), nor have I repeated my summary of the law (§13-15). In this Ruling I shall cross-refer to other paragraphs of the Provisional Determination which continue to form part of my reasoning for refusing the application.
10. When Ms Sikand QC made the renewed oral application, it was put on a narrower basis than either of the applications which had been made in writing. It is that narrower application which I must determine.
11. Ms Sikand conceded that:

“the focus here in terms of Mr Mason’s role is paragraph 3, and that is what the terms of reference describe as I think implementation. 3.1, “what occurred on 11 December 2015, of course that is not just what occurred through the eyes of the Metropolitan Police Service, but what actually occurred, which may be two different things.

“...and so Mr Mason is intimately connected with what occurred on 11 December, its build up, he is there during the course of the shooting and obviously the aftermath, so looking at 3.3, what was done on the ground, in particular the actions of the officers during the arrest phase.

“... Again, 3.5, was the command and control of the operation conducted reasonably, in particular having regard to the need to minimise to the greatest possible extent the risk to life?

... Those are the core aspects I would say of paragraph 3, which shows that Mr Mason is intimately bound up with what this inquiry is looking into. It may be that what occurred after the shooting is something he can also, at paragraph 4, assist the inquiry in determining.”

12. Thus, it was submitted, Mr Mason fell squarely within the ‘significant role’ which should allow him to be afforded Core Participation status.
13. Neil Sheldon QC for the NCA, having originally opposed the application in written submissions referred to in my provisional ruling, indicated that his client was now neutral on this application because it was put on a far narrower basis than the original written application.
14. Matthew Butt QC for the MPS observed that the application as put by Ms Sikand QC was different to the earlier broader construction, but, maintaining his original objection, asserted that nevertheless, Mr Mason was in “classically the position of a witness and not a core participant”.
15. Leading Counsel to the Inquiry, Kate Blackwell QC, made oral submissions that even where an individual has a significant interest in an important aspect of the matters to which the inquiry relates, I, as Chairman retain a discretion as to whether or not to designate somebody a Core Participant. Ms Blackwell QC urged me to give full consideration to the nature of the contribution which Mr Mason might make as a Core Participant, in contrast to his contribution as a witness whose legal representation is funded at public expense. I was reminded that I must act with fairness and that I may also take into the additional costs to which the public purse might be put, not simply because of costs of representation as a Core Participant, as opposed to a represented witness, but also because of any lengthening of the Inquiry hearing timetable CTI did not in all the circumstances consider that the application for Core Participant status should be granted, and submitted that the public interest as well as the private interest of Mr Mason would be met by affording him the status of a represented witness.

REASONS

16. I refuse the renewed application, for these reasons:
 - a. I accept Ms Sikand QC’s submission that Mr Mason does have a significant interest in the events that occurred in Bracknell Close on the morning of 11

December 2015. However, that is not determinative of the application and I retain a very wide discretion, as Ms Sikand QC accepted, as to whether it should be granted.

- b. I do not accept Ms Sikand QC's submission that Mr Mason should be able to ask questions of W80 when W80 gives oral evidence. Mr Mason is silent in his witness statement to the IPCC about the actions of the officer who shot Mr Baker and confirmed that he did not see the shooting. To the extent that his factual account of what occurred in Bracknell Close and the actions of himself and others in the car differs from that of W80 and other officers at the scene, his written and oral evidence will inform both the questions to be asked of officers and any conclusions I may reach.
- c. I maintain the reasons which I set out at §20(c) and (d) of my Provisional Determination, concerning potential criticism of Mr Mason and that he is most appropriately involved in the Inquiry as a represented witness. I incorporate those reasons here. Those reasons continue to provide strong support to my decision.
- d. Although the renewed written application behalf of Mr Mason put reliance on Article 2 ECHR, Ms Sikand QC did not do so when making the application orally. This is against the background that in their written submissions, CTI said that Mr Mason had not identified any authority which supported his proposition that the Article 2 procedural duty was engaged in respect of his involvement on 11 December 2015. Ms Sikand QC accepted that no authority had been relied upon and said that the matter of Mr Mason's Article 2 rights did not need to be determined, since it was clear that Article 2 was engaged otherwise on the facts of Mr Baker's death. I accept that last point, of course, but I do not accept that necessitates the grant of core participant status to Mr Mason in order to participate in this Inquiry to the limited extent that he can.
- e. I now accept, without reservation, that the timing of the application does not provide any reason to refuse the application. Ms Sikand QC made the point

well that, as a prisoner, he was not to know about the Inquiry's protocol and its deadlines. His involvement with the IPCC had ended and he was not approached by the Inquiry until this year, since the Inquiry already held a detailed witness statement to which I have already referred, which he had provided to the IPCC shortly after the death of Jermaine Baker. Furthermore, having heard Ms Sikand QC's submissions on the timing of the application, Mr Butt QC abandoned any criticism of Mr Mason's application, insofar as it was based on its timing.

- f. In the course of submissions, Ms Sikand QC indicated that Mr Mason wished to see the witness statements of W80 before providing his evidence. Mr Mason should of course have all material which is relevant to the statement he is being asked to provide and I am content to provide this evidence that has been requested. I directed that this be provided to those representing Mr Mason yesterday, after the hearing. I see no reason why the fact that Mr Mason is not a Core Participant should limit the extent to which he can assist the Inquiry in providing his evidence.
- g. I will of course keep this matter under review. As the Inquiry progresses and I hear evidence, if it appears to me that Mr Mason could assist the Inquiry to fulfil its Terms of Reference as a Core Participant in a way that he could not as a represented witness, then I shall make that known to Mr Mason and those representing him.

17. I have asked myself whether there is any respect in which Mr Mason's contribution to the Inquiry could be enhanced by him being granted Core Participant status as opposed to that as a represented witness. In my judgment, there is no such respect and in all the circumstances, I am satisfied that Mr Mason can and should engage with and participate in the Inquiry without Core Participant designation.

HH Clement Goldstone QC

18 June 2021