IN THE MATTER OF THE JERMAINE BAKER INQUIRY

CLOSING WRITTEN SUBMISSIONS

ON BEHALF OF W80

Essential Position

1. The essential submissions on behalf of W80 may be summarised as follows:

(i) The applicable legal principles have been correctly identified by Counsel to the Inquiry. Most pertinently on behalf of W80, the question whether the death of JB was lawful or unlawful falls to be determined by reference to the principles applicable to the defence of self-defence under the criminal law. It is submitted that those principles are accurately summarised at paragraph 29 of the Written Submissions of CTI on the Applicable Legal Framework. The analysis offered by HHJ Teague QC at paras 6.1 to 6.13 of the Anthony Grainger Inquiry is unassailable. It is also consistent with the analysis of the Court of Appeal reflected in the judgment of the Master of the Rolls in *Duggan* (in particular, at paras 92 to 97).

(ii) Applying that test, whatever other criticisms and factual findings may form part of the Inquiry's conclusions in respect of its Terms of Reference, it is submitted that the killing of Jermaine Baker ('JB') was lawful. In the simplest terms, this is because the evidence demonstrates that on the morning of 11 December 2015, W80 fired one round from his firearm because he genuinely and honestly believed, based upon the information which had been provided to him and upon what he perceived JB to be doing when challenged, that there was an imminent threat to his life and to the life of his colleagues.

(iii) The intelligence which was actually provided to W80 and other firearms officers over the course of the week prior to the extraction which took place in Bracknell was overwhelming and was compelling in one direction only; resulting in the fact that, that as Mr Burrows put it, the officers had *"good reason"* to consider the situation into which they were ultimately deployed in Bracknell Close at 0900 on 11 December 2015 a terrifying and frightening

proposition: *"In this case they believed they were going up against the door of a car, in a narrow channel, where someone had potentially -- the officers had good reason to believe did have -- a high-powered weapon of the nature of a Skorpion, an Uzi or a MAC 10, which when the trigger was squeezed for one second, 12 rounds would have been discharged. That is a frightening proposition and when W80 and others say that they were terrified at that point, I think they have every reason to believe that, albeit it is what they are trained for and what they do."*[1] As Mr Arundale confirmed when asked questions on behalf of the MPS, the criminals under investigation in Operation Utara at the time were amongst the most dangerous that the police faced[2]. The situation which confronted the S019 officers when they were deployed in Bracknell Close in the prevailing circumstances should be judged against that background. The intelligence received overnight about the inability of the offenders to obtain a real firearm was not disseminated to the firearms officers.

(iv) The account offered by W80 since the moments after the death of JB has, given the circumstances, been consistent and comprehensible throughout. Such criticisms as were levelled at his honesty, his consistency, the reason for his behaviour in the aftermath of the shooting and the theories which were floated challenging his credibility during the course of the Inquiry do not withstand careful analysis.

(v) As will be familiar to the Inquiry, it is critical to resist the temptations of hindsight and in his case in particular to take into account any distortions of recollection or perception in his account of events which are a recognised feature of such encounters. Mr Burrows provided uncontroverted evidence and singular expertise on this issue (See also the observations of HHJ Teague QC in the Grainger Report at 6.14 to 6.20). There is precious little tangible or reliable material upon which it can be argued that W80 here acted with the requisite unlawful malice attached to criminal responsibility for homicide. The expert witnesses have been emphatic about the background and the circumstances in which W80 and his colleagues were deployed into Bracknell Close on the morning of 11 December 2015. Whilst the decision to press the trigger was clearly a deliberate decision made by W80 based upon what he perceived at the time, the circumstances in which he chose to do so are

[1] 21st July page 180 line 11
[2] 22nd July page 14 line 22-25

overwhelmingly indicative of a genuinely held belief that he and others in that moment were in imminent danger for their lives.

(vi) The evidence of the reconstruction carried the matter forward little (as was demonstrated by the final question posed by the Chairman during the evidence of the three experts).

(vii) The audio evidence obtained by the Inquiry has assisted in identifying the timing of the strikes to the window(s) and of the shot, but with regard to words spoken by the officers the final transcript is necessarily incomplete given the circumstances (for reasons readily understandable from the technical evidence of Mr Brown INQ00039_60[3]) and the fact that the two recording devices were within the vehicle. Listening to the recordings which do exist with the unassisted human ear is a necessarily limited exercise. There are self-evidently words spoken and instructions shouted in the lead up to and after the shooting which it has simply been impossible to identify on the agreed transcript. It is, however, significant that the transcripts independently prepared by the two experts using specialist equipment each contained transcriptions described as probable interpretations (and, importantly, at different times in the sequence) of the expression which W80 had stated he used prior to the delivery of the shot (See INQ00034_0002 at 29.44 *"(Put your hands on the dashboard)"* (French) and 29.51 "*((Put)) (your hands) ((on the)) [unclear]* (Barry)).

(viii) The evidence of the Inquiry Experts in connection with the flawed approach of the IOPC in connection with the criticisms it had made of W80 remains undisturbed; furthermore, the experts conclusions were maintained and reinforced in light of all of the evidence they heard at the Inquiry (which was comprehensive and included both the evidence of W80 and the available evidence regarding the audio product). The experts gave critical evidence on the issues in respect of which W80 has been criticised (timing of the shot, the time available for decision making, and the vulnerability felt by officers deployed in a dynamic extraction in these circumstances and the effect of perceptual phenomena).

W80 – Chronology of Involvement

[3] 23 July page 42 line18- page 44 line 4

2. The Inquiry heard detailed evidence from W80 on 20 July 2021. On that date he was asked comprehensive questions about the details of his account and the statements he has made over the preceding five and a half years. However complex the chain of events which led to him standing at the passenger window of the Audi vehicle, the reason which W80 gave for having fired the shot at JB remains ultimately a simple one – namely, that he genuinely and honestly feared for his life and that of his colleagues because of what he perceived at that moment about the movement of JB's hands towards the man bag which JB was wearing.

3. A brief of chronology of the important details of W80's involvement in these events may however be derived from the evidence and it is hoped may be of some assistance to the Inquiry. This chronology has been sourced by reference to documents before the Inquiry and oral evidence given to the Inquiry:

6.12.15 – Recruited by S105 to perform reconnaissance (30.6.21 p12, 15-16). W8 performed recce with V68.

Intelligence: *I cannot remember precisely what information I was given but it included information that members of an organised crime network ('OCN') were going to use firearms to attack a prison van delivering prisoners to Wood Green Crown Court and assist a specific prisoner who was in custody for a firearms offence to break free from the prison van. Once at Leman Street I was given a briefing by V64. This was a verbal briefing and was not recorded.*[4]

7.12.15 - Maps prepared by W80 at Leman Street including identification of holding positions in the vicinity of Wood Green Crown Court (MPS0003438)[5]

8.12.15 - 6 am and 8.20 am[6] - Briefings for technical deployment on the Audi in car park.

Operation completed (W80 deployed in van without windows[7]).

[4] SLA00006 para 6, 20 July page 21-22
[5] 20 July page 26 line22 – page 36 line13
[6] IPC0000206 – delivered by DS Alexander and V64 (Sgt. Darren Stewart)
[7] 20 July page 48 line 5-22

Intelligence delivered at some stage though W80 unsure when. W80 indicated in a redacted section of the transcript that he understood this information to have come from a highly reliable source[8]:

I was given information that the suspect in custody, who was to be broken out, had said words to the effect of he did not want boys on the job and wanted experienced people.

Although he did not recall briefing to this effect on 8 December 2015, DC Kinch (who participated in the briefing on 10 December 2015) did acknowledge that there was indeed intelligence to this effect during the planning of the operation on 11 December 2015[9].

1713hrs – Email (MPS0003441) *"Subjects for Fridays op ANKAA"* together with attachments forwarded by S105 to W80 and K78 containing a wealth of intelligence about offences committed and weaponry used by the Tottenham Turks (note this e-mail also contained the images of Ozcan Eren wearing a man bag (pages 47, 48, 82, 83, 106, 108 of 119) which were later to feature in the Powerpoint briefing sheets prepared for the briefings of 10th December at NSY (IPC000071_0005) and 11th December 0500 at Lincoln Road (IPC000039_00005) in which Eren was described as a criminal armourer[10]

9.12.15 Recce performed with W112 and N79[11]

10.12.15 – Briefing at NSY[12]. S105 asked W80 to attend the 10.12.15 briefing because he was annual leave/engaged with childcare[13]. S105 did not regard it as necessary or desirable for other CTSFOs to attend the 10.12.15 briefing[14]. Briefing included the following statements by briefing officers:

[8] 20 July page 45 – page 47 line 9
[9] 1 July page 134 line 6
[10] INQ00004_213 at para 927
[11] 20 July page 48 line 23
[12] IPC000257(Transcript) and IPC000071 (Powerpoint presentation including images)
[13] 30 June page 22
[14] 30 June page 23

FE16: ..

…This is an operation, an armed operation, that has been authorised… in response to intelligence that we have received about an intended conspiracy to break free a very dangerous man er on route to prison tomorrow.

I know everyone is not here, for example we've not got all surveillance operatives here, or all the firearms operatives here, because obviously they are out doing their day to day responsibilities, but we've got representatives from all the units here."

..

The individual, as I said earlier, is a dangerous individual, his associates are dangerous individuals and we believe by removing these threats we can make a long term impact. There are some tensions between rival Turkish groups in North East London, the people coming together to carry out this offence tomorrow will be dangerous individuals

DC Kinch: *So the information then, the operation ANKAA targets particular subjects who are believed to be involved in facilitating the escape of a prisoner from lawful custody. On Friday 11 December, tomorrow, Izzet Eren and Erwin Amoyaw-Gyamfi will appear in custody at Wood Green Crown Court. To be sentenced in relation to an offence of possession of firearms with intend to endanger life. That occurred on 13th October this year. They are currently on remand at Wormwood Scrubs. Intelligence is that Izzet Eren intends to escape from custody whilst in transit and Ozcan Eren, who is his brother, has access to a vehicle, which is parked in a car park on Eastern Road, Wood Green. Our investigations have highlighted a black Audi A6 estate, KM13 YPT, this has been identified in a car park in Eastern Road. And it is believed that this is the vehicle they intend to use during the execution of this offence. These are our two subjects that are in custody. Izzet Eren on your left, Erwin Amoyaw-Gyamfi on the right. These are recent photographs from their arrest in October. Our main subject tomorrow, our only certainty for us, is that Ozcan Eren will be involved in this escape. He seems to be the person who is doing the organising.*

…

The intel cell, has two separate numbers…

FE16 *…*

We have got good intelligence control around these subjects

…

Hopefully in an ideal world we will maintain control and we will arrest some very dangerous individuals for very serious offences.

At some point on 10 December W80 was also informed that the same individual who had supplied the machine pistol to the prisoner who was to

appear at Wood Green Crown Court for the offence of possession of a firearm and who was to be broken out of the prison van was believed to have supplied firearms to the OCN intending to attack the prison van and effect the break out[15] (cf. similarity with the information contained in the FA2 – IPC00006_0004 third para from bottom).

11.12.15

0300 hrs – Briefing at Leman Street. Briefing note prepared by V64 (IPC000537) which the witness stated he had followed verbatim in delivering the briefing[16]:

"On Tuesday 13th October 2015, Izzet EREN and Erwin Gyamfi were stopped by armed police on a stolen motorbike travelling south from Haringey towards Hackney in Stamford Hill, N16. They were in possession of two loaded weapons with the safety catches off; a Tokarev 9mm pistol containing six rounds of ammunition and a Scorpion machine pistol with a full magazine

...

Reliable and high-grade intelligence indicates that there is an ongoing conspiracy to assist Izzet Eren in escaping from custody on Friday, 11 December 2015. The intelligence suggests that those seeking to carry out this offence will be in possession of firearms and other weapons."

"The intelligence indicates that the attempt to free the defendant will be focused on the prisoner van transporting him from Wormwood Scrubs prison and before he reaches the confines of the court building. It is not known whether Gyamfi will also be assisted in escaping.

...

Izzet Eren is a senior member of a familial Turkish crime group who had returned to the UK in breach of a deportation order having been sentenced for drugs trafficking offences. The Erens represent the Tottenham element of a long-running feud with the rival Hackney Turks, which has seen numerous shootings and murders dating back to 2009 in both London and Turkey."

[15] SLA000006 para 13 and 20 July page 58 line 14-22

[16] 30 June page 212 line 9

"Given the antecedents of this criminal network and the fact that any successful attempt would involve considerable threat and duress to any custodians, it is assessed that firearms will be used to effect the escape."

At the Inquiry W80's evidence, when asked about his state of mind at the end of the briefing was "*Given everything that I sort of -- all the information that I had at that stage, I was fairly certain that they'd have firearms with them.*"[17] He confirmed, when asked, that he believed those to be live firearms. A little later he confirmed that he believed that those firearms would be in the vehicle which V64 had described as being the mission vehicle.

0500 - Briefing at Lincoln Road

FE 1 (DI Smith): ...

On the 13th October this year as a result of a spontaneous operation, we arrested both Izzet Eren and Erwin Amoyaw-Gyamfi; who were sat on a high powered motorbike travelling towards the Hackney area, were with two automatic firearms in their possession which were loaded. One of which had the safety off ready to go.
...
This is Izzet Eren's brother. He has a family address at [Redacted DPA] which is just round the corner from Wood Green Crown Court.
...

It was established at the Inquiry that this was at least the third time that W80 had seen the photographs of Ozcan Eren (together with man bag)[18]

S105: *…Any sort of vehicle pursuit at all, you've heard about the weapons that these guys have got access to in the past and what they can [inaudible]. [inaudible] vehicles to pursue please, please treat these people as armed until we know otherwise…*

[17] 20 July page 73 line 18
[18] 20 July page 80 line 1-24

W80 was asked, following the 0500 hrs briefing which had included reference to the MASTS tactic, whether he understood the Audi to be the mission vehicle[19]. He agreed indicating that he understood it was anticipated the Audi would be used to transport the armed conspirators in their attack upon the prison vehicle. He stated, "*V64 had said in his briefing that they would have firearms and use firearms to effect the escape. That, with all the other information that I had, then I was expecting there to be live firearms in that vehicle"*[20]

W80 confirmed that his state of mind was as identified in his witness statement (SLA000006 para 20):

"At the end of this briefing my state of mind was that the attack was likely to happen, that it would be undertaken by a group of experienced and dangerous individuals who would be armed and would use firearms in the course of the offence. The fact that the main suspect had previously been caught in possession of a loaded machine pistol caused my threat assessment to be very high. Based on the information given at the briefing I believed that the suspects would be armed with weapons, possibly machine pistols, to enable the attack. Whilst we undertake a lot of operations where the intelligence is that a suspect may be in possession of firearms, it is fairly rare where the intelligence is that the suspect may be armed with a machine pistol. In this operation there was the added factor that the main suspect had actually been arrested in possession of a loaded machine pistol in the past."

W80 confirmed at the Inquiry that his threat assessment was very high (*"pretty near… my sort of top scale"*), that he had never previously been deployed on an operation in which the intelligence indicated that the suspect may be armed with a machine pistol[21].

W80 indicated that when he heard the "*firearms enabled"* message at 0728hrs he understood it to refer to live firearms and his threat assessment was almost at the top of the scale (*"It was now probably at the very upper levels now of my personal risk assessment and threat assessment."*[22])

[19] 20 July page 75 line 22
[20] 20 July page 76 line 22
[21] 20 July page 82 line 8
[22] 20 July page 100 line 4

0900: Bracknell Close

The following core matters about events at 0900 may be derived from the evidence:

(i) W80's decision to leave the Benelli shotgun and select the carbine is not criticised by the expert witnesses[23]. Mr Arundale described W80's decision, in light of the briefing W80 had received and W80's understanding of the threat, as *"completely understandable and acceptable"*.

(ii) As to the tactics adopted, the evidence is clear that W80, together with the other SO19 officers who were not in a command role, were following the interception and extraction tactic which had been decided upon by others. It does not appear that W80 had any role to play in that decision-making which has been heavily criticised during the course of the Inquiry.

(iii) W80 accepted that the tactics may have been adapted had the firearms officers received information (via the surveillance officers over the radio) that there was another vehicle parked close and adjacent to the Audi. He agreed that it was a reasonable assumption that had information been received about the proximity of another vehicle, someone may have asked "how close".[24]

(iv) W80 was not first to the passenger side of the Audi and it was therefore not his decision to attempt to smash the passenger of the window of the Audi with the butt of a rifle (that decision having been made by S111). W80 explained that the reason that he did not carry the window breaker was his preference for having two hands on his weapon[25]. His evidence was that, had he been first to the car, his preference may well have been to try the door in order to improve vision into the vehicle[26].

(v) W80's threat assessment when the SO19 vehicles entered Bracknell Close was *"at the top end of very high"*[27]

[23] 21 July page 202 line 8 – page 203 line 5
[24] 20 July page 120 line 13-page 121 line 12
[25] 20 July page 124 line 15-25
[26] 20 July page 134 line 24-page 135 line 7
[27] 20 July page 125 line 11

(vi) W80 was tested in this area when he was asked a series of questions about his threat assessment and the intelligence to which he had had access. Specifically, he was referred to passages in his previous witness statements and invited to explain his belief that weaponry would be used by the offenders. He stated: "*I had been told these were dangerous individuals, I had been told that. My perception was that on confronted by armed police that they wouldn't surrender and they would try and fight their way out.*" It was suggested to him that specific intelligence that the offenders would be likely to fight their way out would be necessary to reach that state of mind. He responded, *"With everything that I had been told that -- I believed that they would try and fight their way out."*[28] It is submitted that the Inquiry may wish to consider this particular exchange both against the background of the evidence of the expert witnesses that the subjects of Operation Utara were amongst the worst criminals in the United Kingdom[29] and the capabilities of the weaponry which the officers had *"good reason"* to believe would be in the possession of the offenders[30]. The Inquiry has also considered a wealth of other material which indicates the level and intensity of criminality involved in the activities of the Tottenham Turks and other gangs in North London at this time.

(vii) As to why he fired the shot, W80 was consistent that he chose to do so because he perceived that JB's hands were moving towards the man bag on his chest – the exact position of which on Mr Baker W80 was not sure of[31].

(viii) Asked why he did not wait until he saw any part of a weapon he responded, "*my training is that action beats reaction, so I couldn't wait until Mr Baker's hands reached the bag… I couldn't wait for his hands to reach the bag.*"[32]He was challenged by way of a suggestion that he could have waited "a few seconds more" to establish whether a weapon was to be taken from the bag. His response was, "*No, my training is that -- is that his actions could beat my reactions, so I reacted to his actions moving towards the bag…. Given all the information, I was sure that there was a gun in that bag, and that is*

[28] 20 July page 130 line 22- 131 line 5
[29] 22 July page 14 line 21-25
[30] 21 July page 180 line 13
[31] 20 July page 143 line 11- page 148 line 20
[32] 20 July page 151 line 10-16

why I decided to fire." The expert witnesses commented upon the training of police officers in this regard[33]

(ix) W80 was asked whether in those circumstances he was in fact trained to fire twice. His response was that he was trained to fire once and then reassess[34]. The accuracy of this evidence was subsequently confirmed by the expert witnesses[35].

(x) Further scenarios (Mistake in pulling the trigger, Accident as the door was opened) were put to witness – each of which was denied by the witness, who confirmed that he fired the shot deliberately and as soon as his finger was placed on the trigger[36].

(xi) Extracts of the audio footage from the recording devices within the vehicle were played to the witness whilst the agreed transcript was displayed. He was asked to consider his recollection of what he had shouted towards JB during the deployment (*'Put your hands on the dashboard'*) and how often; he was also asked to consider whether the loud noise at 5 seconds was the noise of the shot he had fired. The witness was asked to consider whether, with the human ear in the court room, it was possible to hear the words he had used being said on the recording. He agreed that it was not. Later, however, during the witness's evidence, but still on this topic, W80 was also asked to consider the transcript AF/5 which had been prepared by Mr French (IPC000362) using the specialist equipment available to him, followed by, later again, a comparison document prepared by Mr Barry (who also used specialist equipment) which sought to compare the separate findings of the two experts (INQ0000034)[37]. It was pointed out that IPC0000362 did contain the probable interpretation of *"(Put your hands on the dashboard .. so I can see em)"* at 00.13 secs on the timings in that document. In addition, it was later pointed out that the comparison document prepared by Mr Barry (INQ000034_0002) contained not only Mr French's probable interpretation of those words (as above), but also at a different (and separate) time on the

[33] 21 July page 207 line 2 to page 210 line 4
[34] 20 July page 152 line 7 to 9
[35] 22 July page 89 line 19 to page 91 line 11. See also INQ00004_217 at paras 940-948
[36] 20 July page 152 line 10- page 154 line 11
[37] 20 July page 154 line 13 – page 158 line 23; page 178 line 3- page 179 line 1; page 182 line 17- page 183 line 8

recording) the probable interpretation of the words, *"((Put)) (your hands) ((on the)) [unclear]"*. The time markings on Mr Berry's comparison document are, respectively, at 29.44 and 29.51

(xii) When asked questions by the Chairman, W80 accepted the proposition that whilst clarity in instructions given by armed officers was important, the words he had used, *"Put your hands on the dashboard"*, were arguably in conflict with *"Put your hands up"*. He also stated that there had been no discussion between the officers as to what words should be used. When asked how the officers avoid inconsistency of instructions to multiple subjects, the witness responded "*You are taught to, having got a view of the subject, to direct them -- to direct them in response to your perception of what is going on."*[38]. It may be noted that this is indeed an accurate account of the training which is delivered to firearms officers (as was subsequently confirmed later *in extenso* to the Inquiry by Chief Firearms Officer Philip Taylor – see the passage of evidence elicited on 29 July 2021)[39]. In this regard, it is also worth noting that in his statement under caution (IPC0001075_003/4) W80 explained that he was standing very close to JB and that he believed that JB was aware of his shout as he was standing directly in front of JB, notwithstanding what other people were shouting[40].

(xiii) W80 accepted that he had spoken to S105 in Bracknell Close in the aftermath of the shooting although he could not recall the words he had used. He was referred to what S105 had recorded in his witness statement about that conversation. S105 had later recorded that W80 *"said words to the effect of 'he moved his hands up to his chest area', whilst physically demonstrating the move."*. The witness was then asked whether the fact that S105's record of this conversation did not include reference to the man bag indicated it had not been said by W80 in Bracknell Close. He agreed with this suggestion but said that at the time he was giving a sort of account of what happened and may not have said it for whatever reason[41]. This aspect of the evidence is one in respect of which the Inquiry may wish to have to regard to the evidence of Mr Burrows regarding the effect of trauma upon

[38] 20 July page 180 line 22 – page 181 line 25
[39] 29 July page 68 line 17 – page 78 line 17
[40] IPC0001075_0003-4
[41] 20 July page 161 line 16

perception and the advice which is contained in APP under *"Providing Accounts"* (*Effects of Trauma on Memory: A person involved in a traumatic or life-threatening encounter may experience a range of responses that could affect their perception, memory and recall of key events. These perceptual distortions may then affect the person's ability, immediately after the incident, to recall what happened accurately, including what may be regarded as important details*) (COP0000036_0023). Hence, the existence of the post-incident procedure provided for by APP whereby an initial brief account is provided on the day followed by a detailed account after 48 hours.

(xiv) On this topic, it should also be noted that the evidence of S111 was that in conversation with W80 in the immediate aftermath of the shooting, S111 stated that he had asked W80 if he was the shooter. W80 had said Yes. S111 was asked if W80 had said anything else, "*Yes, he said the male was going for something in his chest bag."*[42] This evidence was in accordance with the content of the witness statement of S111 (MPS000037_0007 (made on 14.12.15) which was in the following terms: *"As all this is going on, I ask R116 is he the shooter he says 'NO'. I then ask W80 'are you the shooter' he says 'Yes'. I ask him if he is OK he says 'Yes' and then informs me (B) the male he was going for something in his chest bag."*

The Conduct of W80 in the aftermath of the shooting

4. The Inquiry will wish to consider the evidence of the conduct of W80 in the aftermath of the shooting.

5. On the evening of Friday 11 September W80, in accordance with the PIP and in common with the other officers who had been present at the shooting, made a short witness statement (MPS0000123).

6. On the evening of 13 December 2015, he received two missed calls from Superintendent Dobinson, whom he later contacted. At that point, he was told that he was to be suspended and that the IOPC intended to interview him under caution for the offence of murder. The witness explained the shock and despair he felt at the time in his witness statement and was asked briefly

[42] 14 July page 95 line 12-24

about these matters during the Inquiry. The suggestion was put to him during the Inquiry that the shame and despair he was feeling was grounded in the fact that he had realised he had a made a terrible mistake. The Inquiry will recall the confused exchange which ensued as to the meaning of the terrible mistake during the evidence of W80[43]. Whether the witness properly understood the point which was being made to him through questioning during that section of the evidence may have been unclear, but what was clear was that his state of mind at the moment he discharged the weapon was not that he was making a mistake - rather that it was a deliberate action in response to what he perceived at the time.

7. The Inquiry will choose its own approach but it may wish to determine its findings about the circumstances of what actually took place in Bracknell Close before seeking to place excess weight on the significance or otherwise of the conduct of W80 in the aftermath of these events. The impact of an event of this nature is enormously significant for all of those concerned, and of course all of those affected. The Inquiry will wish to take into account everything it has learnt about W80, his character, his record as a police officer and its own assessment of him when he came to give evidence.

8. The Inquiry heard a body of evidence from his police officer colleagues as to the character of W80. S105 was taken to a section of witness statement which explained that he had taken the decision to seek to recruit W80 to his team:

"I have known him for a couple of years. I have been present on several occasions during firearms training delivered by him as an instructor. I have known him go out of his way to make himself available for extra tuition and instruction for those that need it or ask for it. I worked with him on the operation back in August 2015 in west London. I was so impressed with his ability, competence, professional friendly attitude that when a space arose on my firearms team, I visited my chief inspector to ask if W80 could fill it. I wanted him on my team as he is level headed and hard working, he is very experienced and is extremely well thought of within our department. I knew he would be a positive addition to my team."

9. S105 went on to say that this assessment reflected his experience of W80 as of 11 December 2015 and that if he had thought otherwise he would not have recruited W80 to his team[44].

10. A similar assessment of W80 had been given by every officer who was asked about him during the Inquiry. Further material dealing with his character is contained within the witness statements collected for the Inquiry:

[43] 20 July page 168 line 13 to page 170 line 2.
[44] 30 June page 142 line7

(i) W109 was taken to a witness statement of 5 Feb 2016 (MPS0000110) in which the following passage appears:

"I have known W80 for about 3 years now and mainly as a firearms instructor. He has taught me on several firearms courses and is by far one of the most professional and competent firearms officers I know. As a person he is lovely, bubbly and always has the time of day for you. I didn't know him outside of work but W80 was the type of person you could go to with a question and you knew he'd know the answer."

In evidence the witness described W80 as sound-minded and someone to trust and rely on[45]

(ii) S111 described W80's demeanour on the morning of 11 December 2015 as *"Normal. No different than any other day. I have known him for 20 years and he has always been very level-headed, very professional and a really good guy."*[46]

(iii) R116 was referred to his witness statement (MPS0000115_0004) related his experience of W80[47] describing W80 as calm, approachable and patient in his training role. He also understood W80 to have vast operational experience and regarded him as an extremely professional and conscientious officer. The passage in his witness statement is in the following terms:

"*I first encountered W80 when I joined 5C019 to undertake my initial firearms training. He was an instructor on the course and had already been an AFO for some time. I remember him being one of the better instructors on the course. He was extremely calm, approachable and patient with his teaching methods and I found he was able to explain certain situations/dilemma' s that we were faced with extremely well, using his vast operational experience to do so. After completion of this course I occasionally encountered W80 on ARV continuation training. His methods and personality remained the same and as my experience within the department grew he was able to push my level of training to a higher standard, helping me improve in both shooting and searching techniques. Although I saw W80 in passing and on various operational deployments I did not work with him again until I became an SFO, when at the time he was a serving member of green team. We deployed together on a variety of j obs and his character remained unchanged in the fact that he is an extremely professional and conscientious officer, always looking to perform to the best of his ability. W80 gave a thorough and in depth briefing on the day of the*

[45] 14 July page 204 line 8
[46] 14 July page 38 line 20
[47] 15 July page 2 line 23 – page 4 line 8

incident, it was clear that he had taken his time in both the reconnaissance and planning of the job."

(iv) Ronan O'Connor (K78) had made a witness statement (MPS000012) in which he had stated that on 11 December 2015 W80 had been his *"usual calm professional self"*. In evidence he confirmed this assessment describing W80 as having been "*his normal level-headed sense, very calm, very conscientious"*[48] and later elaborated *"the consummate professional, very calm, level headed and a good operator"*[49]. He was also asked about W80's demeanour during the recce of 6.12.15 when he described W80 as having been "*his usual calm, quiet and competent self…upbeat and professional"*[50].

11. The Inquiry has investigated the conduct of W80 in the aftermath of being told that he was to be suspended and investigated for murder to the fullest possible extent. The circumstances in which he was suspended or informed of when the interview was to take place were outwith his control. It is perhaps understandable that senior officers should have one eye on welfare considerations in these circumstances – particularly if the officer to be suspended is known to the senior officer. The handling of that matter was not under W80's control.

12. When giving evidence to the Inquiry W80 did, however, agree with the proposition that at that time of his disappearance his mental state was low and his physical state was fragile[51]. The Inquiry may regard that proposition as being something of an understatement. But in assessing its significance, the Inquiry may well wish to consider the chain of events which had led to W80 being visited by Superintendent Dobinson on the evening of 13th December 2015 against the background of what it knows about what had gone before during the course of this police operation, the particular role W80 had been asked (and agreed) to perform in its execution and the decisions which had been made in the management of that operation; furthermore, it will no doubt wish to consider what it has been able to discover about the individual and its own assessment of him as a career officer.

Expert Opinion

[48] 15 July page 95 line 16
[49] 15 July 129 line 18
[50] MPS000012_0001
[51] 20 July page 171 line 5

13. At the outset of the Inquiry, it was submitted that the Inquiry would wish to consider with care the content of the evidence of Mr Arundale and Mr Burrows. It was further noted that the independent Inquiry Experts had urged caution in relation to criticisms as have hitherto been levelled against W80 by the IPCC in relation to:

- The timing of the fatal shot
- The time that W80 had available for decision-making
- Their general expectations of W80 (See Report page 225, Conclusion 15)

14. Each of these issues was examined by the witnesses both in their report and when asked questions during the Inquiry. In particular, the Inquiry may wish to consider the evidence of the witnesses in connection with the time available for decision making and the importance of the effect of perceptual phenomena on an officer's recollection and/or retelling of an event which is over in seconds. It is notable that this was an area discussed by HHJ Teague QC in the Anthony Grainger Report (See the discussion at paragraphs 6.17 to 6.20). It is also a matter on which Mr Burrows was able to give helpful evidence to the inquiry.

15. In the event then, it is submitted that the evidence given by Mr Arundale and Mr Burrows was of particular importance in connection with W80 in the following regards:

(i) Their criticism of the analysis conducted by the IOPC on the circumstances in which the shot came to be fired. Various aspects of this analysis were undermined by the expert evidence. This is dealt with at length in their report (see INQ00004_196 at para 846-848, 869-883, 913-916) and was addressed in evidence during the Inquiry when the experts were taken to their conclusions on behalf of W80, and they reiterated their views.

(ii) When asked about the conclusions and recommendations of the IOPC, Mr Arundale indicated that the joint experts had disagreed with the findings of the IOPC and dealt with their criticisms of the IOPC in the following way in evidence[52]:

> *"We certainly felt that all the issues in relation to the decision making and what happened seemed to be focused in on W80 as an individual. They didn't necessarily take into account the fact and the circumstances surrounding the actual deployment, the threat the officer was facing, the dynamic situation that was ongoing, the noise, the stress, the speed of the situation itself, it didn't feel to us that there was any pause or gap really in relation to the events as they were unfolding, which gave the officer plenty of time to pause and consider what was happening. The officer -- of course we were present for the officer giving evidence as well for this, it was a dynamic situation. The officers were rushing forward and a lot was happening at the time and we didn't feel that there was obvious gaps there necessarily that could have led to a wholly different situation, if you accept the officer's articulation of the threat that he felt at that point in time."*

(iii) In connection with the timing of the shot, Mr Arundale explained the basis of the maxim which features in the firearms officer's training that 'action beats reaction':

> *" Put it extremely simply, quite clearly if an officer perceives a threat and they are not ready to react, they have to see the action, they have to make a mental decision to react and there is a physical act to follow it. That, by its very nature, is not going to happen at the same speed as the subject if they have already made a decision to make a hostile act.*
>
> *...*
>
> *The other great danger with these situations is where subjects have been told to comply, put their hands up or put their hands on a dashboard, the very act of doing those movements can be the same act that a subject would be doing if they were making a threat against the officer. All of these things add to that difficult and confused situation.*
>
> *Quite often, the scenario is proposed: why don't you wait until you can actually see a weapon? Well, quite often by the time an AFO sees a weapon, it is too late for them to react and protect themselves and any third parties at the scene. But this is a very, very difficult situation for the AFO to assess and judge.*
>
> *There is a lot of research which will give you specifications of fractions of a second that officers can take to react and fire, but the overall basic principle is that the AFO should try and reduce those difficulties by being ready, by assessing the situation, by de-escalation and giving appropriate and non-conflicting commands, but it is accepted phenomenon, but there are limits to it. It shouldn't be used as excuse, it should be used as a valid explanation for the officers' actions."*[53]

[52] 21 July page 207 line 12
[53] 21 July page 208 line 17

The witness also confirmed that this issue had also been examined in the Anthony Grainger Inquiry in which he had given evidence[54] (See Grainger para 6.104 to 6.106).

(iv) The experts were asked about their opinion about the circumstances in which a dynamic intervention or extraction should occur. They expressed the view that this should take place only *in extremis* and went on to explain their reasoning. They were referred to and adopted paras 874, 878, 879 and 883 of the Report (INQ00004_0203) and explained that in their view the effect of the officers being required to conduct a 'dynamic intervention' in these circumstances would:

> "878-879 *This context, together with the briefing and intelligence updates, both formal and informal and W80's experience and training, contribute to decision making under stress. In combination, an officer's interpretation of any sudden movement by any of the occupants of the Audi would in the circumstances increase the acute sense of vulnerability of an officer."*[55]

> *"883. In these situations, an officer's response will be determined by:*
>
> - *Prior information or intelligence regarding the individual, weaponry available to them and their intent*
> - *The actions of others during the dynamics of the intervention*
> - *Dynamically assessed threats and risks to which they and others are being immediately exposed*
> - *Situational and contextual cues as to the action about to be taken by the subject they are confronting*
> - *Their assessment of the time available to make decisions and take positive action."*[56]

(v) It should be noted that in their report the experts go on, in this context, to cite the findings of the Anthony Grainger inquiry (at para 1.68) and academic research in this area (see Report paras 879-880).

(vi) Overall, the experts confirmed that throughout their research they had not found evidence to justify the IOPC's conclusions and recommendations about W80[57] and were more critical of the way in which Operation Ankaa as a whole was planned and organised.

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[54] 21 July page 209 line 24 – page 210 line 5
[55] 21 July page 211 line 20
[56] 21 July page 212 line 17
[57] 21 July page 213 line 7 to13

(vii) Finally, the experts were further referred by CTI to paragraph 780 of their report in which they urged caution in relation to the analysis of IOPC in connection with the timing of the shot, the time that W80 had available for decision making, the views expressed by the IOPC on the expression *"Show me your hands"* and their general expectations of an AFO in the situation which W80 was facing. Counsel further confirmed with the witnesses that they had been present whilst W80 had given evidence and explained why he had fired the shot[58].

(viii) Timing of the shot: In response to further questions on behalf of W80 the experts confirmed the content of paragraphs 910, 918, 920, 923-926 and 938 of their report which had focussed in particular on the timing of the shot:

> *"Q Can I then take you, please, to paragraph 938, that is straight to your conclusion, if I may, once you considered the suggestion that more time, albeit fractions of a second, should have been taken. You say this in your report:*
>
> > *"Waiting fractions of a second in a situation where W80 was locked in a small corridor between two vehicles would, for the reasons we have explained above, have placed him a very vulnerable position."*
>
> *MR BURROWS: That's correct.*
>
> *MR ARUNDALE: Yes, sir."*[59]

This evidence related directly to the question which had been asked of W80 two days before when he had given evidence (*'Why didn't you wait until you saw any part of a weapon before you fired yours?)*[60].

(ix) Number of Rounds Discharged: In connection with the number of rounds discharged by W80 the experts confirmed the content of paragraphs 940 to 943 regarding training for discharging weapon and confirmed their comment at 944 (*"It is of note that W80 only fires one round. This appears to be because the effect of being struck with the round had immediate effect. This is not always the case.")* During his evidence W80 had been asked whether he was trained to shoot twice in the applicable circumstances. W80' s response was that he was trained to fire once and then reassess[61].

[58] 21 July page 217 line 13-17
[59] 22 July page 89 line 8
[60] 20 July page 151 line 8
[61] 20 July page 152 line 7-9

In his evidence Mr Burrows expanded on this issue;

> Q. *Why, gentlemen, is it of note that only one round was discharged?*
>
> *MR BURROWS: Sir, we have done a number of these -- sorry, I say "we", there is only two we have done together, most of them we have done individually and I have done a huge number of them. In many of them, two, three, five and seven rounds were fired. It is not uncommon – the APP has been revised numerous times, it doesn't actually say fire one shot, I think that sort of was paraphrased somewhat in the last few days. It says continuously review and the wording is very deliberate. In other words, there may be occasions when I fire, I see no response and I keep firing within milliseconds of squeezing the trigger, so that often happens. But quite clearly here the officer fired the one and did not feel any need to fire any other and it was of note to us.*
> *Q. Thank you, that I think you reflected in your comments at 947 to 948, where you rightly pointed out, of course, from your perspective:*
>
> *"It is not possible to speculate as to what visual or auditory cues W80 may or may not have detected which made him fear for his life or the life of his colleague. However, having decided to discharge his weapon, he did, in accordance with the guidance, point his firearm towards the torso of Mr Baker. As soon as W80 realised that Mr Baker no longer presented a threat he immediately ceased to use force and assisted with ensuring that medical aid was provided."*
>
> *MR BURROWS: That's correct.*
> *MR ARUNDALE: Yes, sir.*
> *Q. That, of course, would be in accordance with his training?*
> *MR BURROWS: Indeed, sir.*

(x) Weaponry: Mr Burrows finally dealt elaborated about the evidence he had given about the *'frightening proposition'* which the officers had *'good reason'* to believe they were confronting in Bracknell Close. He was asked to deal further, from the perspective of his particular background and experience in Northern Ireland, with the nature of the weaponry in question agreeing that the intelligence related to weapons in the highest range of dangerousness[62] The witness expanded: "*For two reasons. One being that they are fully automatic. ie, as I have explained, you squeeze the trigger and it will fire a number of rounds and I have explained probably about 10 or 12 of the sort of rounds, of the sort of guns we have talked about. Secondly, they are not just sub-machine guns, which you normally would come across, which are shoulder-control weapons, these are referred to as pistols, so you are controlling them with one hand. I have fired nearly*

[62] 22 July page 91 line 12

all of these guns and I have been involved in training involving these sort of weapons from different perspectives, and they are extremely hard to control. So once you fire them, typically – typically an untrained firer, in fact I would even say as far as trained firers, firing one of them with one hand, the gun if I may describe it, is likely to go like that (indicates) in that timescale. So 10 to 12 rounds going like that." He confirmed that the slang term used for such weapons was 'spray and pray' and agreed that the capabilities of such weapons would be known to trained firearms officers who would take that knowledge into account in their threat assessments, which even to a trained CTSFO would be *"frightening"* or *"terrifying"*.[63]

The Use of Intelligence in Briefing Firearms Officers – What happened in connection with the death of JB?

16. It is not proposed to address in these submissions the question whether the firearms officers should have been briefed with the intelligence concerning the imitation firearm which was received overnight (and available to DCI Williams) early on the 11 December 2015. That issue was not one over which W80 had any control. The Inquiry has received a body of evidence in connection with that question and will doubtless come to findings in relation to it.

17. The question, overall, of the intelligence which <u>was</u> shared with W80 is, however, critical. In the brief chronology at the outset of these submissions an attempt has been made to summarise the content of that intelligence. The issue is also dealt with at length in W80's witness statements and was examined in detail during his evidence. The overall question of what intelligence was shared with the firearms officers informed to a significant extent an important aspect of the opinions of the expert witnesses, expressed most pithily by Mr Burrows as the firearms officers having been given "*good reason*" to consider the situation into which they were ultimately deployed a *"terrifying"* and *"frightening proposition"*[64]. It is submitted that a critical aspect of that overall picture, given what had gone before, was the relaying of the message from C3000 that the offence was to be *"firearms enabled"*

The Effect of the Use of the Term "Firearms Enabled"

[63] 22 July page 92 line 10 to page 93 line 23
[64] 21 July page 180 line 18-21

18. It is submitted that the effect of the use of this phrase in the radio transmission on those who heard it should be considered against the background of what the intelligence already was about the availability and potential use of firearms by those involved in this offence.

19. The effect of the use of the term *'firearms enabled'* over the main set of the radio was examined during the Inquiry.

20. Chief Inspector Taylor, the Chief Firearms Instructor for the MPS confirmed in evidence that this is not a term which has ever featured in the MPS training syllabus[65].

21. The policing experts were of one view:

Mr Arundale: "*Very much neither of us had heard of this term in this context. It is very much used in academic literature in relation to the assessment of a range of criminality, but not necessarily the armed policing arena itself. Just the obvious application of what that would mean to me in an operational environment, it would indicate to me live firearms. That was the first thought that popped into my head and I can understand how some of the officers, or most of the officers I think that gave evidence, assessed it that way*"[66]

"*I think it was an unfortunate use of terminology. That unfortunate use of terminology has appeared to increase the perception of threat on behalf of many of the officers involved in the operation, that is very unfortunate and not the sort of outcome that any of the commanders or individuals would have wanted to have happened from that. So it is a fairly significant issue and it is a very significant learning point. If that hasn't been properly progressed through the service up until this point.*"

Mr Burrows: "*if I heard that term coming across the radio during an operation, I would only have one thought: this is referring to real viable firearms. And I would link it to the intelligence I had been given regarding the group that I was operating against.*"[67]

Mr Arundale "*I think, sir, at this point in the operation, particularly for the tactical firearms commander, there are two pieces of information there. 1, it's firearms enabled. 2, that they have only been able to source a replica. They are very important bits of information for the tactical firearms commander to review the tactical plan itself and what tactics may well be used to resolve the incident itself, because in some incidents the intelligence in relation to a replica could lead to a different tactical outcome than being told it is firearms enabled. To me they paint two different pictures.*"[68]

[65] 29 July p64 line 14
[66] 21 July p158 line 9
[67] 21 July p159 line 23
[68] 21 July p160 line 3

22. The evidence of the officers who had participated in the operation on 11 December 2015 was almost universally in accordance with this view:

W97[69]: *Q. At any stage that morning, did you receive any intelligence about the weapons capability of those inside the Audi?*
A. Yes, I remember a transmission saying that if this were to happen, it would be firearms enabled.
Q. If what was to happen?
A. If this was going to happen it is going to be firearms enabled.
Q. When did you receive that intelligence?
A. At some point when we were mobile.
Q. Right, and what did you understand that to mean?
A. That the subjects in the Audi had guns.
Q. Live or -- live guns?
A. Yes.
Q. Did you instantly understand what the phrase "firearms enabled" meant?
A. Yes. Yes. It is --
Q. It was a live firearms capability as far as you were concerned?
A. Yes, absolutely

S105[70]:
I attributed the normal dictionary meaning to the word "enabled", meaning that my belief on hearing that circulation was that the firearms had gone from a -- the working assumption and a belief that firearms would be involved to, "will be firearms enabled", for me turns that belief into knowledge. So the thing that I already 1thought would probably be the case, that sort of confirmed in my mind that that then was the case.
Q. By firearms, you took that to mean live firearms?
A. Absolutely.
Q. When you --
A. Sorry, can I just expand on a point there, just to hopefully to assist if I can?
Q. Please do.
...
Q. I am going to simplify that answer, if I may. You understood that information to be a direct result of what had been heard on the probe?
... .
That was because you were aware that on 8 December, an audio probe had been fitted in the car?
A. Yes.
Q. So it took on specific weight in your mind that the conversation that had been overheard indicated that the offence was going to include live firearms?

[69] 29 June p197 line 2
[70] 30 June p79 line 12

A. I believed that information came from the occupants of that vehicle, and, yes, the provenance and the weight to that information that I attached was one of knowledge as opposed to then supposition or belief"

A179[71]: *A. I believe there was a call on the radio over the main working channel that firearms may be used within this attempted breakout.*

Q. Do you remember the words that were used?

A. I think it was "firearm enabled".

Q. What did you understand the term "firearms enabled" to mean?

A. That firearms would be used to facilitate the prison van or the persons in the prison van being broken out of it.

Q. Did you understand "firearms enabled" to indicate real firearms or imitation firearms?

A. Personally, I would have always taken it as real, that the firearm is a real firearm.

W112[72] *Q. What does that phrase mean to you?*

A. So that would mean to me that the perpetrators would effectively -- their rescue attempt would be enabled ... they would be enabled to effect the rescue by the use of firearms.
Q. Live firearms or not necessarily live firearms?
A. I would suggest live firearms.

S111[73]: *Q. Jumping to that later on moment, did you understand that the people in the vehicle did have similar weapons to the ones that you have just heard about?*
A. Well, they had firearms. They had firearms, real firearms, was what the interpretation I received, or I got, from "firearm enabled" so I decided that, yeah, they had weapons to use.
Q. When you heard the firearms enabled transmission, we will come to it in more detail in a bit, did you think probably that is the automatic pistol, the Skorpion machine pistol that I have already heard about?
A. No, I didn't put a name to the firearm or a type of --I just thought firearm.
THE CHAIRMAN: You said you thought real?
2 A. Yes.
3 THE CHAIRMAN: Yes

"Q. When you heard the transmission "firearms enabled", you said you believed that it indicated a real firearm, did you understand that that information came from the probe?

[71] 5 July p27 line5
[72] 13 July p45 line 19 and p77 lin3 15
[73] 14 July page 18 line 16 and page 32 line 17

A. Yes.
Q. Did the fact that the information came from the probe affect its weight in your mind?
A. Yes, it did."

V68[74] *"Q. What did you understand the phrase firearms enabled to mean?*
A. So in that particular day, obviously, because of the assets that have being deployed on to the Audi, the control room -- other officers had full access as to what was being done or said inside the car. So to say that, they would need to believe that the occupants definitely had firearms on them. And bearing in mind what they were there to do, in my mind then, I was convinced that not only did they have firearms on them, they would have them essentially ready to go and waiting. So in their hands.
Q. Just to draw out from that a little bit, please.
Did you interpret firearms enabled to mean they definitely had firearms?
A. To me that was definitely they had firearms in that car.
Q. Did that indicate real firearms or imitation firearms in your mind?
A. In my mind real firearms.
Q. Was it your understanding at the time that that intelligence was coming from the individuals who were listening to the car, listening to the probe inside the car?
A. Yes, that's correct."

"Q. Again, why did you interpret firearms enabled to mean not only were they in the car, they were in their hands, they were ready to go?
A. So that all couples together with the identity, which we don't know, at the time, the capability of the subjects inside the car, and also their intention, which, for me, that is quite high, they are quite organised as in to try and pull off this offence. So in order to activate their plan, they had to be at a state of readiness and that time span was closing. So in my mind, they are ready to deploy and such onto what they want to do. So for that to happen, they needed -- again, for me, they needed to have their weapon out, not maybe in the boot or in bags or something like that.

W109[75] *Q. Then you say:*
"At some point I remember receiving information over the radio stating the persons within the car will use firearms to commit the offence."
A. Yes.
Q. Is that your recollection, that you were told that they will use firearms?
A. It was my interpretation at the time. So it was – the wording was "firearms enabled", and I interpreted that as them utilising firearms to commit the offence.
Q. You heard the words firearm enabled, your interpretation was that they will use firearms?
A. Yes.
Q. Is that real firearms or imitation firearms?
A. Oh, real firearms.
...

[74] 14 July page 131 line 1 and page 132 line 17
[75] 14 July page 179 line 6

Q. Where did you understand at the time that the information was coming from that there would be firearms used?
A. I believed it was intelligence they were picking up from potentially within the vehicle itself."

23. As has already been examined above, it was W80's evidence that when he heard the *"firearms enabled"* message at 0728, he was in no doubt that the occupants of the Audi mission vehicle were in possession of live firearms, and that in common with many other witnesses he thought the information being relayed to be reliable given that he thought it would be coming from the listening device within the vehicle. He regarded the information to be "truly reliable" and his threat assessment *"at the very upper levels now of my personal risk assessment and threat assessment…. Q Almost at the very top of the scale A. Yes"*[76].

The Evidence of the Reconstruction

24. During the course of the reconstruction exercise a number of points of agreement were reached by the experts:

(i) The passenger seat position and rake of the seat back.

(ii) W80 was standing between the two vehicles and behind the open Audi door.

(iii) The muzzle of the tactical rifle was inside the Audi vehicle between the open door and the vehicle's A pillar.

(iv) The trajectory from W80's perspective was from right to left, and slightly downwards.

(v) JB's left wrist was raised above the entry wound to the neck, although the position (height) of the wrist is unknown.

(vi) Mr. Baker's right shoulder area was supported by the back of the passenger seat at the moment the shot was fired.

(vii) The muzzle of the tactical rifle was within 50cnn (max) of the left wrist (minimum distance a few centimetres away from the muzzle but not contact).

[76] 20 July page 100 line 4

(viii) The damage to the man-bag strap was caused by the bullet.

25. However, importantly, a number of variable were identified by the experts:

;

(i) The position of W80 relative to the open Audi door and his distance from the wing of the Audi.

(ii) JB's body position on the seat, and any rotation and/or lateral flexion (side bend).

(iii) The position of JB's left shoulder, left elbow and left wrist.

(iv) The position of JB's right arm.

(v) The position of the man bag (RAC/10) i.e. over which shoulder, and the height on the chest.

26. In the result, the agreed findings of the expert witnesses at the reconstruction were as follows:

(i) There were a range of positions that Mr Baker's body could have been in at the moment that the shot was fired.

(ii) Mr Baker's left upper arm and wrist could have been in a number of positions at the moment that the shot was fired.

(iii) The man bag could have been worn over the right or left shoulder and positioned either at the side or on the chest of Mr Baker.

27. Mr Brooks explained that in the exercise which they together conducted *"there were at least 7 or up to 10 different variables that came into play. We were only able to test a few of them, but 10 to the power of 10 is a very big number of variables that could have been brought into effect*

and the work that we did showed there were a number of different positions for both W80 and Mr Baker at the time."[77]

28. All three experts agreed with the proposition put by the Chairman, "*that none of the options which the inquiry has heard relating to the location of individuals, their physical positions or responses can be excluded on purely scientific grounds"*[78]

29. In connection with eye witness testimony, it is however to be noted that whilst R116 was unable to assist further with the position or condition of the man bag which he had described in his witness statement of 14 December 2015, in that statement he had described it as being *"around the front seat passenger's chest area"* (MPS0000120_ 006 and MPS0000115_0003). Years later he was unable to assist with what was done to it or its strap when it was removed from JB in Bracknell Close (MPS00003830)[79]. But in his original witness statement (MPS0000120_007) R116 had also written "*I began to strip the male, removing the small bag from around his chest"* when dealing with events outside the car. When he gave evidence at the Inquiry[80], R116 was asked to deal with the position of the man bag at the point when JB was seated in the vehicle. He indicated that he did not recall but stated, "*I say chest, so it must mean within -- in relation to the chest area."* He then pointed out that his witness statement described it as being *"around the chest area"* and referred to a later witness statement in which he was dealing with events outside the car in respect of which he had written, "*When I moved the bag from his chest area…I was totally focused on life preservation."* (MPS00000115_0003). Putting it another way, R116 consistently referred to the bag as having been *"around the chest"* both whilst JB was in the vehicle and outside.

Concluding Submissions

30. The submissions on behalf may therefore be briefly stated:

(i) The applicable legal principles as identified by CTI have been accurately stated.

(ii) Overall, the evidence indicates that W80 fired his rifle because he genuinely and honestly believed, based upon the information which had been provided to

[77] 27 July page 68 line 6
[78] 27 July page 68 line 13-22
[79] 15 July page 81 line 1-7
[80] 15 July page 66 line 5 – page 67 line 6

him and upon what he perceived Mr Baker to be doing when challenged , that there was an imminent threat to his life and to the life of his colleagues.

(iii) Whilst the Inquiry will reach narrative conclusions addressing its wider Terms of Reference, the evidence which the Inquiry has considered does not indicate that the decision of W80 to fire his weapon was unlawful.

Duncan Penny QC

31 August 2021