INQUEST INTO THE DEATH OF SUDESH AMMAN

OPEN PUBLIC INTEREST IMMUNITY RULING

Introduction

1. Sudesh Amman was shot by police officers on Streatham High Road at around 2pm on Sunday 2 February 2020. At the time of the shooting, he was in the course of carrying out a terror attack in which he had stabbed two members of the public. He died at the scene from gunshot wounds. This is the inquest into his death.

2. On 23 January 2020, Mr Amman had been released from a sentence of imprisonment served at HMP Belmarsh, to live in approved premises (a probation hostel). He had been released automatically at the half-way point of his sentence of 3 years and 4 months detention. In November 2018, he had been convicted, upon his guilty plea, to six counts of possessing documents containing terrorist information, contrary to section 58 of the Terrorism Act 2000, and seven counts of disseminating terrorist publications, contrary to section 2 of the Terrorism Act 2006.

3. Upon his release from prison, Sudesh Amman was under licence conditions. In addition, he was placed under surveillance, including by armed officers from the Metropolitan Police Service ("MPS"). It was two of those officers who fired on him on 2 February 2020.

4. This is my OPEN ruling in respect of a claim which I heard at a pre-inquest review ("PIR") hearing on 2 July 2021, sitting in OPEN and CLOSED sessions at the Royal Courts of Justice, by the Secretary of State for the Home Department for public interest immunity ("PII") in respect of various documents of the police, HMPPS and the Security Service (MI5).

Background

5. The Secretary of State for the Home Department makes contents claims for PII in respect of material which includes (a) contents of documents of the police and HMPPS relating

to Mr Amman and (b) documents of the Security Service (MI5) relating to its participation in the joint priority operation conducted with counter-terrorism police.

6. In their written submissions, counsel to the Inquest explained the process through which security-sensitive material has been considered for disclosure in this case. In summary:

   a. Security cleared members of the Inquest team attended police and MI5 premises on several occasions to review security-sensitive material. This included the detailed Post-Attack Review Report of MI5; documents referenced in that Report which the Inquest team requested for review; and police and HMPPS documents which were considered to contain security-sensitive material (including content of which MI5 was the equity owner).

   b. The Inquest team identified documents and content which they considered would be relevant to the Inquest if there were no national security concern, having regard to the scope of inquiry determined by my previous decision and having regard to the nature of the Inquest (as an inquiry into the means by which and circumstances in which Mr Amman came by his death).

   c. The Secretary of State then prepared the PII claim in respect of documents and parts of documents where she objected to disclosure on national security grounds. For many police and HMPPS documents, the claim only sought to withhold limited sections by means of redaction. Alongside the preparation of the PII claim, the Secretary of State's team co-operated with the MPS team in order to include gisted content from some of the sensitive documents in the witness statements of HA6, the SO15 senior investigating officer.

7. In preparation for the OPEN and CLOSED hearings for this claim, I reviewed the Post-Attack Review Report and the entirety of the material over which PII is claimed. I have looked at some of the material again following the 2 July 2021 hearing.

<u>The PII claim and its progress</u>

8. The claim is advanced in OPEN and CLOSED documents. The Secretary of State relies upon her ministerial certificate dated 15 June 2021, which is supported by a CLOSED

Sensitive Schedule. The claim was supported by OPEN and CLOSED written submissions on behalf of the Secretary of State.

9. The CLOSED documents were provided to counsel to the Inquest in draft at the same time that they were provided to the Secretary of State for consideration. Following the formal certification of the claim, finalised documents were made available to the Inquest team.

10. On 28 June 2021, counsel to the Inquest served detailed CLOSED written submissions on the Secretary of State's representatives, as well as providing OPEN submissions on the same day. In the CLOSED submissions, counsel to the Inquest raised a number of matters for further consideration by the Secretary of State. In response, counsel for the Secretary of State produced further CLOSED submissions dated 30 June 2021, which explained that the claim had been reconsidered in light of the points made by counsel to the Inquest and revised in various respects, so as to reduce its scope.

11. In the OPEN session of the PIR hearing, I heard submissions on the legal principles and the proper approach to this claim. In the CLOSED session of the PIR hearing, the documents were addressed in detail. During that session, counsel to the Inquest pressed a number of points and I tested the Secretary of State's reasoning and approach, taking account of submissions made in the OPEN session by Mr Menon QC, counsel for the family of Sudesh Amman. At the conclusion of the hearing, counsel for the Secretary of State agreed to consider a number of matters with her client and her client's advisors, as to whether some redactions could be removed and/or further gists provided. Following the hearing, the Secretary of State confirmed her final position in respect of each document, which included modifications since the hearing.

The legal principles

12. The legal principles governing PII claims, including in the context of security-sensitive evidence within inquests are not controversial, and I shall summarise them here by adopting the relevant section of the submissions of counsel to the Inquest, with which IPs agreed.

13. A coroner has the power to order provision of documents and other evidence under Schedule 5 to the Coroners and Justice Act 2009 ("CJA"). That power is subject to the qualification that a person may not be required to provide any evidence or document if he/she could not be required to do so in civil proceedings (i.e. including on PII grounds): see para. 2(1) of Schedule 5. The rules governing PII apply in inquests as in civil litigation: see para. 2(2) of Schedule 5.

14. Although a public authority may in principle assert PII as a basis for refusing to provide documents or other evidence to a coroner, the usual practice in cases involving security-sensitive material is for a nominated judge to be appointed and for the material to be provided for review to the judge and/or to security-cleared counsel / solicitors to the inquest. The disclosing party will then raise any objection to proposed onward disclosure by making a PII claim by way of application to the judge. See *SSHD v HM Senior Coroner for Surrey* [2017] 4 WLR 191 at [41]-[48]; Chief Coroner Guidance No. 30, paras. 24-33.

15. A coroner or a judge nominated to hear an inquest has jurisdiction to consider PII claims over material that is provided to him/her: see for example *R v Devon Coroner, Ex Parte Hay* (1998) JP 96 at 101; *Chief Constable of the PSNI's Application* [2010] NIQB 66; *Worcestershire CCC v HM Coroner for Worcestershire* [2013] EWHC 1711 (QB). Rule 15 of the Rules provides that a coroner may refuse to give disclosure of otherwise relevant material to IPs on the basis that there is a statutory or other legal prohibition on disclosure (which includes a valid objection based on PII).

16. The principles governing PII in inquests are the same as those applying in other proceedings (with proper account taken of the nature and objectives of the inquest process). Those general principles are set out in *Conway v Rimmer* [1968] AC 910 at 952 and *R v Chief Constable of West Midlands Police, Ex Parte Wiley* [1995] 1 AC 274. The Court faced with a PII claim will balance the public interest in avoiding harm to the nation or the public service against the interest that the administration of justice should not be frustrated by relevant evidence being withheld. As recognised in *Conway* at 985 and in *Wiley* at 289, the decision is that of the Court, both because it concerns the administration of justice and because a judge is best able to carry out the balancing exercise.

17. In *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2009] 1 WLR 2653 (Div Ct) at [34], Thomas LJ suggested that four questions be posed when addressing a PII claim: (i) whether there is a public interest in disclosure; (ii) whether disclosure would bring about a real risk of serious harm to an important public interest and, if so, which interest; (iii) whether the risk can be protected against by other means or more limited disclosure; and (iv) if there is no adequate alternative, where does the balance of the public interest lie. The final balancing exercise involves asking whether the public interest in refusing disclosure is outweighed by the public interest of doing justice in the proceedings.

18. In an inquest, the public interest in disclosure is the interest in a full and open inquiry being conducted with all potentially relevant evidence available to IPs. In *R (Amin) v SSHD* [2004] 1 AC 653 at [31], Lord Bingham characterised the purposes of a coronial investigation as follows:

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

19. In *Secretary of State for Foreign and Commonwealth Affairs v Asst Deputy Coroner for Inner North London* [2013] EWHC 3724 (Admin) (the *"Litvinenko Case"*) from [53] to [61], Goldring LJ identified nine key principles applying to PII claims in inquests, with a particular focus on claims based on national security:

    a. First, "it is axiomatic… that public justice is of fundamental importance. Even in cases in which national security is said to be at stake, it is for courts, not the Government, to decide whether or not PII should prevent disclosure of a document or part of a document." [53]

    b. Secondly, the context of the *Wiley* balancing exercise is critical. An exercise which balances national security against the proper administration of justice raises its own

particular considerations which may not apply in cases where the interest relied upon is not that of national security. [54]

c. Thirdly, "when the Secretary of State claims that disclosure would have the real risk of damaging national security, the authorities make it clear that there must be evidence to support his assertion. If there is not, the claim fails at the first hurdle." [55]

d. Fourthly, "if there is such evidence and its disclosure would have a sufficiently grave effect on national security, that would normally be the end of the matter. There could be no disclosure. If the claimed damage to national security is not 'plain and substantial enough to render it inappropriate to carry out the balancing exercise,' then it must be carried out." [56]

e. Fifthly, "when carrying out the balancing exercise, the Secretary of State's view regarding the nature and extent of damage to national security which will flow from disclosure should be accepted unless there are cogent or solid reasons to reject it. If there are, those reasons must be set out." Otherwise, the balancing exercise must "be carried out on the basis that the Secretary of State's view of the nature and extent of damage to national security is correct." [57]

f. Sixthly, it is usually a given that the Secretary of State knows more about national security than the coroner, whereas the coroner knows more about the proper administration of justice than the Secretary of State. [58]

g. Seventhly, "a real and significant risk of damage to national security will generally, but not invariably, preclude disclosure." The decision is for the coroner, not the Secretary of State. [59]

h. Eighthly, for a coroner to reject a PII claim backed by a ministerial certificate, he/she must conclude "that the damage to national security as assessed by the Secretary of State [is] outweighed by the damage to the administration of justice by upholding the Certificate." [60]

i. Ninthly, it is incumbent on a coroner to explain how he/she arrives at such a decision, particularly if ordering disclosure in the knowledge that doing so entails a real and significant risk to national security. [61]

20. As submitted by the Secretary of State, there are numerous statements in the authorities to the effect that considerable weight must be given to the Minister's view as to whether disclosure of particular material would harm national security and as to the degree of any such harm. These statements recognise that (a) Ministers have access to a wide range of evidence and specialist advice as regards national security and (b) the doctrine of separation of powers entrusts judgments about national security primarily to Ministers rather than the judiciary. See in particular *CCSU v Minister for the Civil Service* [1985] AC 374 at 402 and 412; *SSHD v Rehman* [2003] 1 AC 153 at [50]-[53]; *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2011] QB 218 (CA) at [129]-[135].

21. The Secretary of State is also right to make the separate point (recognised in the *Litvinenko Case*) that disclosure should not usually be made if it would cause significant harm to national security. The interest engaged is usually sufficiently important to override the competing public interest in the administration of justice and (in the coronial context) fullness of inquiry. See *Duncan v Cammell Laird & Co Ltd* [1942] AC 624 at 642-643; *Conway* at 940, 952 and 954; *CCSU v Minister for the Civil Service* at 955; *Balfour v Foreign and Commonwealth Office* [1994] 1 WLR 681 at 688-689.

22. The following countervailing points should also be kept in mind. First, the principle that justice be done in the open applies to inquests and favours the disclosure and deployment of relevant evidence, such that refusing disclosure on PII grounds involves some infringement of the open justice principle: see my ruling on PII in the Perepilichnyy Inquest, dated 22 May 2017, at [27]-[28]. Secondly, the independent judgment of the Court is critical: even when considering objections based on the general "neither confirm nor deny" (NCND) policy, the Court does not simply salute a ministerial flag: *Mohamed v Secretary of State for the Home Department* [2014] 3 All ER 760 at [20].

23. Where a PII application is upheld in inquest proceedings, the coroner may use the CLOSED material to ensure than no question is later asked which would be misleading or based on a premise known to be false: see *R (SSHD) v Inner West London Assistant Deputy Coroner* [2011] 1 WLR 2564 at [31] to [33] (London Bombings Inquests). Again, this was the approach I adopted in the Perepilichnyy inquest (ruling of 22 May 2017).

24. In a case such as the present, if a coroner upholds a PII claim, he/she should consider whether it remains possible to carry out a legally sufficient inquiry into how those who died met their deaths (as required by section 5 of the CJA). If the coroner does not consider that this is possible, he/she should invite the Secretary of State to establish a public inquiry under the Inquiries Act 2005. Such an investigation may receive material in CLOSED session where appropriate (see section 19 of the 2005 Act). Accordingly, where an investigation would be seriously incomplete or potentially misleading without the deployment of material for which there is a good claim to PII, a request of this kind ought to be made. See *R (Litvinenko) v SSHD* [2014] HRLR 6 at [62]-[63]. It must however be recognised that a public inquiry with CLOSED material procedures does not generally result in more information being received by the bereaved family or the public.

Discussion

25. The first matter to determine is whether the PII claim is justified in respect of each of the redactions sought and each of the documents which the Secretary of State claims should be withheld from disclosure on grounds of PII. After considering that question, if the PII claim is upheld to any extent, it will be necessary to consider whether an adequate investigation can be conducted under the CJA in the absence of disclosure of the material which is to be withheld.

26. I have reviewed every document over which the Secretary of State makes her claim. In respect of each document or section proposed to be withheld, it has been necessary to consider the harm to national security which the Security of State says would result from its disclosure and conversely the effect on the inquiry if the material is withheld. In considering the extent to which the Inquest would be affected by the material being withheld, I have taken into account the scope of the investigation and the material which

is otherwise available to IPs. Of particular significance in conducting this exercise are (a) the substantial volume of material in many disclosed police and HMPPS documents concerning what was known about Sudesh Amman and the investigations into him; and (b) the witness statements of HA6, who describes the MI5 and police investigation.

27. The CLOSED hearing began at 1:15pm and the court sat until approximately 4pm. Prior to this session, as noted above, I had reviewed the Post Attack Review Report of MI5, all the documents for which PII was claimed and the various submissions documents of the Secretary of State and counsel to the Inquest.

28. It is right to acknowledge that IPs, including members of the family of Sudesh Amman, have not been able to review the PII material or receive summaries of the particular material for which PII is claimed. As a result, they could not in OPEN session make focussed submissions in respect of either the significance of the PII material or the justifications for it being withheld on national security grounds. Mr Menon made this point fairly when he submitted that the family are in the dark in dealing with the particulars of the application. He stressed the importance of my examining the material rigorously in CLOSED session. As explained above, both counsel to the Inquest and I have tested each aspect of the application with care, considering what points Mr Menon, for example, might have wanted to make if he had had access to the material. This has been done with rigour, from an informed position, and without undue deference.

29. For reasons that will be given in more detail in the CLOSED ruling which I am in the process of producing, I have decided to uphold the PII claim in the form in which it has been finalised. The risks of harm to national security interests which the Secretary of State identifies in her Certificate and the Sensitive Schedule in support of it are serious and genuine. There are cogent and solid reasons which justify each aspect of the claim by reference to specific risks of damage which the Secretary of State explains would be posed to national security. In short, disclosure of this material would seriously set back the efforts of the police and Security Service to keep the public safe against the threat of terrorist attacks. Taking account of the relevance of the PII material to the Inquest but also of the evidence which has already been made available or which will be disclosed in any event, the balancing exercise comes down firmly in favour of upholding the claim for each document or section.

30. The iterative process described above, including exchanges of submissions and the final revision of the application after the conclusion of the CLOSED hearing, has allowed the greatest possible amount of information to be disclosed to IPs. The "in camera" disclosure process outlined in my separate ruling from the PIR hearing has assisted in ensuring that only material which cannot safely be revealed is withheld. The Secretary of State and her team have made efforts to disclose material wherever possible, sometimes in the form of gists which have been the subject of careful consideration.

31. My decision has not been motivated or influenced by considerations of convenience or expediency. If a different decision had been justified as a result of a proper application of the *Wiley* balance, then it would have been taken.

32. Although it has not been possible to give details of the particular types of national security interest which underlie the PII claim in this case, it may help to give examples of the kinds of interests which can arise in cases of this kind. As counsel to the Inquest described them in written submissions, the following kinds of interest may arise for consideration (without confirming which if any of them featured in this case).

    a. Damage to capabilities and operations: Disclosure of material which reveals operational techniques may make those techniques less effective and may increase risks to public safety. It is well-known that many terrorist subjects of interest are surveillance-aware and take steps to avoid being monitored, as was revealed by the evidence in both the Westminster Bridge and London Bridge / Borough Market Terror Attack Inquests (as well as by some of the evidence concerning Mr Amman's behaviour in this case). They may alter their behaviour if they know how they are assessed and what capabilities are used. In addition, there are often links between different priority investigations, and care must be taken to avoid revealing information that may compromise other current or future investigations. In these regards, see (i) the Independent Assessment of Lord Anderson QC concerning the 2017 terror attacks, at paragraphs 2.4 to 2.6; (ii) the evidence of the Director-General of the Security Service accepted in *Attorney-General v Shayler* [2006] EWHC 2285 (Admin) at [15]; and (iii) *R v H* [2004] 2 AC 134 at [18] concerning protection of techniques and operations.

b. Damage to persons providing information: It is well-known that law enforcement agencies, including the Security Service, work from intelligence provided by individuals. Even outside the context of national security, it is clear that PII claims may be justified to prevent disclosure that might endanger those providing valuable information to public authorities: see *D v NSPCC* [1978] AC 171 at 218-220. There are public interests in protecting individuals, in keeping sources open for the future and in not discouraging others from giving information. In the national security context, disclosure may breach Article 2 and/or Article 3 rights of informants: see *Re Scappaticci JR* [2003] NIQB 56 at [19]. It may also threaten national security by reducing the flow of vital information: see *A v SSHD* [2003] 1 All ER 816 at [87].

c. Damage to liaison relationships: Disclosure of information which reveals the existence or nature of liaison relationships with foreign sources, or dealings with such sources, engages two categories of public interest. First, it engages the interest in national security, since the preservation of such relationships contributes to the fight against crime and terrorism. Secondly, it engages an interest in the maintenance of foreign relations, an issue in which Ministers have particular expertise and responsibility.

33. The final question to be addressed is whether or not it is still possible to conduct a full, fair and fearless inquiry into Sudesh Amman's death, for all the purposes of a coronial investigation, in the absence of the PII material. I am satisfied that this is still possible, and that it is therefore unnecessary to consider asking for a public inquiry to be established to investigate his death. Although it is not possible to give the detailed reasons for this conclusion in this OPEN Ruling, the following points may be made. First, the material for which PII is claimed does not relate to how Sudesh Amman planned and carried out his attack or to the events in which he came to die. This is of course the Inquest into his death, not into that of a victim of his attack, and what is primarily required is an effective investigation into whether the authorities violated his right to life in the fatal confrontation. Secondly, there is a large amount of material covering the management and investigation of Mr Amman which has been disclosed and which will be deployed in the Inquest. Thirdly, even after all the investigations and reviews, it is understood that Mr Amman acted alone and did not share his intention to commit an

attack with anyone. At the time of the attack, he was under constant close surveillance by armed officers while he was out in public.

34. I shall of course keep under review until the end of the Inquest my decision that it is possible to conduct a thorough, fair and legally complete inquest having upheld the PII claim.

The Honourable Mr Justice Hilliard

22 July, 2021