INQUEST INTO THE DEATH OF SUDESH AMMAN

RULING ON CASE MANAGEMENT AND DIRECTIONS

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 Ruling in respect of applications which I heard at a pre-inquest review ("PIR") hearing on 2 July 2021, sitting at the Royal Courts of Justice. I shall address the following topics in this Ruling:

    a. applications for anonymity and special measures; and

    b. applications for documents to be disclosed to Interested Persons ("IPs") by way of an "in camera disclosure" process.

Anonymity and Special Measures Applications

The applications

5. The following applications for anonymity and special measures have been made.

    a. The MPS have made applications on behalf of 12 police officers.

    b. An application has been made by Witness T, the theological intervention provider assigned to Mr Amman, supported by the Secretary of State for the Home Department.

    c. The Secretary of State for the Home Department has made an application on behalf of Witness M, the practical mentor.

    d. The mother of Mr Amman has made an application for herself and her other children.

6. Each of those applications is supported by OPEN evidence. There is no CLOSED material on which the applicants rely and I heard only OPEN submissions on these applications.

7. The applications were circulated amongst IPs and copies were provided to the media. Written representations were then received from IPs, as well as two notes from journalists reporting on the proceedings. At the hearing I heard oral submissions from IPs and from Duncan Gardham, an independent security journalist who spoke on behalf of a number of accredited members of the press.

The legal principles

8. The legal principles governing applications for anonymity and other special measures are summarised in the written submissions of counsel to the Inquest (at [19]). Although IPs emphasised particular authorities and principles for me to keep in mind, there was no disagreement as to the principles. I shall therefore adopt the summary offered by counsel to the Inquest:

    a. As part of the general case-management powers of a coroner, he/she may make anonymity orders (and associated special measures orders) in relation to witnesses

or other persons within an inquest. There is no inconsistency between that power and statutory requirements for inquests to be held in public. See *R v HM Coroner for Newcastle upon Tyne, Ex Parte A* (1998) 162 JP 387. Courts give effect to and balance the relevant ECHR rights (discussed below) by exercising this power.

b. In deciding whether to make anonymity orders, a coroner usually applies a common law test, making an "excursion" if appropriate into the territory of Article 2 of the ECHR (the right to life). See *Re Officer L* [2007] 1 WLR 2135 at [29]. This involves a two-stage process:

   i. If the refusal of the orders would create or materially increase a risk to the life of the person, such that the risk would be "real and immediate", then the state in the person of the coroner would owe a positive duty under Article 2 to protect the witness by reasonable means. In those circumstances, as it was put in the *Officer L* case, the coroner "would ordinarily have little difficulty in determining that it would be reasonable in all the circumstances to give the witness a degree of anonymity". The threshold of "real and immediate risk" derives from the decision of the ECtHR in *Osman v UK* (1998) 29 EHRR 245. A risk is "real" if it is substantial and significant, rather than remote. It is "immediate" if it is present and continuing. See *Rabone v Pennine* Care NHS Trust [2012] 2 AC 72, at [37]-[40]; *R (Morahan) v HM Asst Coroner for West London* [2021] EWHC 1603 (Admin), at [38]-[40].

   ii. If the refusal of the orders would not result in the person being exposed to a real and immediate risk of death, then the coroner should "decide the matter as one governed by common law principles", balancing the factors for and against the orders sought.

c. When applying the common law test referred to above, it is relevant for the court to consider the subjective fears of the person concerned, whatever their degree of objective justification: see *Re Officer L*, at [22]. Risks of harm falling short of a real and immediate risk of death (or of serious harm such as might engage Article 3 rights) may be relevant in the balancing exercise: see *Sunday Newspaper Ltd's Application (Judgment No. 2)* (2012) NIQB at [17].

d. When seeking to strike the right balance under the common law test, the coroner may consider all the consequences of granting and of refusing the orders sought. For example, in an application for anonymity by a police officer who does specialist work, a relevant factor may be that identification of the officer would prevent him/her continuing in his/her current role and would deprive the force of a valuable resource. See *R v Bedfordshire Coroner, Ex Parte Local Sunday Newspapers* (2000) 164 JP 283.

e. When applying the common law test, a coroner is also required to take proper account of the fundamental principle of open justice, which applies to coroners' courts: see *R (A) v Inner South London Coroner* [2005] UKHRR 44 at [20]. The open justice principle holds that the administration of justice should generally take place in the open, as a safeguard and to maintain public confidence. See *Scott v Scott* [1913] AC 417 at 437-39 and 476-78; *A-G v Leveller Magazine Ltd* [1979] AC 440 at 449-50. In more recent times, courts applying this principle have recognised that giving names and personalities to witnesses and others featuring in the evidence can be an important aspect of openness in the justice system: see *In re Guardian News and Media Ltd* [2010] 2 AC 697 at [63].

f. Where a witness seeks to justify anonymity by reference to his/her rights to private and family life under Article 8 of the ECHR, the court usually has to perform a balancing exercise which weighs those rights against the free speech rights of media organisations under Article 10. See *In re S (A Child)* [2005] 1 AC 593 at [16]-[17]; *In re Guardian News and Media* (cited above); *SSHD v AP (No. 2)* [2010] 1 WLR 1652 at [7]. This balancing exercise is "highly fact-specific" and "must take into account the evaluation of the purpose of the principle of open justice as applied to the facts of the case and the potential value of the information in question in advancing that purpose, as against the harm the disclosure might cause the maintenance of an effective judicial process or to the legitimate interests of others": see *R (T) v West Yorkshire (Western Area) Coroner* [2018] 2 WLR 211 at [63].

g. It should be noted that some of the considerations which apply to applications for special measures in criminal cases do not apply to inquests (e.g. the point that the

defendant has a right to confront his accuser, including by investigating the accuser's background). See *R v Davis* [2008] 1 AC 1128 at [21]. However, in general terms the open justice principle applies with full force to inquests: *Re LM (Reporting Restrictions: Coroner's Inquest)* [2007] CP Rep 48 at [26]-[40].

h. The principles articulated above apply generally both to anonymity and to special measures orders. Orders for screening and video-links are covered by specific provisions of the Coroners (Inquests) Rules 2013 ("the Rules"). When considering an application for such an order, the coroner must first consider whether the order would be likely to improve the quality of the evidence or would otherwise be appropriate in the interests of justice. If so, the coroner must balance the factors for and against the specific order sought. Overall, the coroner should decide what special measures are appropriate, having regard to the balance of interests outlined above. Anonymity may be ordered without screening, or screening without anonymity, depending on all the circumstances. See *R (Dyer) v West Yorkshire (Western Area) Assistant Coroner* [2021] 1 WLR 1233 at [87]-[89].

The MPS application

9. The application made by the MPS is dated 28 May 2021. The officers to whom the application relates are: eight surveillance officers from MPS Surveillance Command; two operational officers in SO15 (Counter-Terrorism Command); and two operational officers in the MPS's Specialist Firearms Command and Specialist Crime division.

10. After the written application and evidence had been circulated, written submissions were made on behalf of the family of Sudesh Amman, resisting one aspect of the MPS application (the request for the police witnesses to be screened from lawyers representing IPs). The application was amended on 17 June 2021, withdrawing that part of the application.

11. At the PIR hearing, Mr Sheldon QC for the MPS also accepted that, although he was asking for the officers to be screened from IPs (as opposed to their legal teams), there should be liberty for any IP to apply to vary that aspect of the proposed order.

12. The application in its final form seeks the following orders:

a. that the name and identifying details of each of the 12 officers shall be withheld from any disclosure of evidence within the Inquest;

b. that the ciphers that are already in use shall continue to be used to identify the officers for the purposes of the Inquest;

c. that, when any of the officers is giving evidence, no question shall be asked which might lead to his/her identification;

d. that, pursuant to rule 18 of the Rules, when any of the officers is giving evidence, he/she shall be screened from the public, representatives of the media and IPs (but not from the Coroner, the Inquest legal team, the jury or the lawyers representing IPs), subject to any IP having liberty to apply to vary the screening order as it applies to that IP;

e. that, when any of the officers attends the Inquest to give evidence, he/she shall be permitted to enter and exit the hearing room by an appropriate non-public route, along with any other measures necessary to ensure that they are not seen by those in the hearing room not permitted to see them; and

f. that an order should be made under section 11 of the Contempt of Court Act 1981 prohibiting publication of the names or identifying details of the officers (including images of them) in connection with the subject matter of this Inquest, until any further order of the Court.

13. Counsel to the Inquest submitted that the application was justified, subject to the need for the MPS to satisfy the Court that these witnesses ought to be screened from IPs and from members of the press. No IP resisted the application in its final form, although Mr Menon QC for the family of Sudesh Amman made clear that his only reason for not asking for his clients to be permitted to see the officers was that they would not be attending the Inquest when the officers would be giving evidence.

14. For the MPS, Mr Sheldon submitted, by reference to witness evidence, that the orders set out above were justified, including the order for screening of the officers from the press

and IPs. He distinguished the position of these officers, whose roles of necessity involve covert work, from officers working in uniform (such as the officers in the case of *Dyer*). He pointed to evidence that the consequences of these officers being publicly identified were very serious for them, their families and their careers. He argued that the risk posed by IPs and accredited members of the press seeing these officers was real and not fanciful, relying on the proposition that the more people that see the witness, the greater the risk of identification. In particular, as regards members of the media, Mr Sheldon relied upon the fact that specialist journalists who would be reporting on this Inquest would also, in all likelihood, report on other court cases which might involve the same officers (possibly in different capacities) and may visit buildings where these officers may work.

15. Mr Gardham, the accredited journalist who made representations at the hearing, made clear that he and his colleagues would not expect to see officers whose regular work was in covert roles. He accepted the point that there could be inadvertent disclosure of an officer's identity if a journalist were later to see the officer in another context. However, he pressed the point that, where officers spend the majority of their time in uniform roles, there should not usually be a basis for screening them from accredited members of the press. In response, Mr Sheldon informed the Court on instructions that none of the officers covered by this application spends the majority of his/her time in uniform (if indeed the officers spend any time in uniform).

16. Having considered all the submissions, I have decided that the applications in their final form (as set out above) should be granted. The evidence does not, in my judgment, establish that any of the officers would be at a "real and immediate risk" of death or serious harm if he/she gave evidence without the measures sought. To meet that threshold on the facts here, more specific evidence of lethal threat would be required. Accordingly, the officers' Article 2 and/or Article 3 rights are not engaged. However, I am satisfied that the common law balancing exercise justifies the orders sought. My reasons are as follows.

    a. All the officers have established through written evidence, supported by written evidence from senior officers, that they have real concerns that they might face the risk of reprisals should they give evidence in their real identities in public. They may be subjected to violence and/or significant interference with their private lives. The concerns are reasoned and reasonable, and I consider them to be legitimate

(even though they do not establish objectively a real and immediate risk of death or serious harm).

b. Allowing the officers to give evidence with the various special measures sought is likely to improve the quality of their evidence, by dispelling the anxiety of being publicly identified. Furthermore, the proposed orders would not impair the ability of lawyers to question the witnesses or the jury to assess their evidence.

c. The adverse impact of the measures sought is therefore not on the quality of the inquiry, but on the important principle of open justice. In that regard, the orders would not prevent the press and public hearing the evidence and would not prevent the press reporting upon it. The names and features of the officers are not of any real evidential importance. However, denying the media the opportunity to report the names of the officers removes some of the accessibility and colour from press reports.

d. Significantly, if the officers' identities were to be revealed in public, it would affect their abilities to work in covert roles. This is a point that militates in favour of granting the orders both because of the impact on the individuals, who would be precluded from working in their chosen field and might find their career development restricted, and because of the impact on the resources of the police in London. The MPS would lose the services of these officers in covert deployments, and it may find it more difficult to recruit and retain officers in similar roles in future if these officers were to be publicly identified in the context of this case.

e. As to the specific question of whether these officers should be screened from the media representatives in court, I am satisfied on balance that such an order is justified. While I accept the submissions of Mr Gardham that ordinarily uniformed officers should give evidence in full view of the journalists, I also accept his point that officers who regularly do covert work may justify a different approach. In this case, the evidence establishes that each of the officers primarily works in a covert capacity and that the loss of his/her professional anonymity would be a serious matter. Mr Sheldon's submission as to the risk of these particular officers being seen again by journalists, especially those specialising in policing and security matters, has force.

The mentors' applications

17. Applications for special measures have been made in respect of Witness T and Witness M, each of whom performed mentoring roles for Sudesh Amman. Each provided this intervention through the Home Office Desistence and Disengagement Programme ("DDP"), the focus of which is on rehabilitating individuals who have been involved in terrorism or terrorism-related activity and reducing the risk they pose to national security.

18. Witness M's application is made by the Secretary of State for the Home Department, while Witness T is separately represented (by a lawyer of the Government Legal Department who has instructed counsel). The applications are substantially the same in basis and effect. Each is supported by a statement of the witness. The application of Witness M is supported by a witness statement of Cathryn Ellsmore, who is Deputy Director of the Prevent Delivery Unit and who has responsibility for the DDP. She expressly recognises in her evidence that many of the points she makes apply equally to Witness T, whose application she would support. Counsel for Witness T adopted the submissions made for Witness M in so far as they could apply to her client. Given the very substantial common features of the applications, I shall address them together.

19. The applications for these witnesses are for the equivalent measures sought for the police witnesses (as set out in paragraph 12 above), save that Witnesses T and M accept that they may be seen by IPs and accredited journalists when giving evidence. Each of them also asks that a live video feed of his evidence is not streamed to any remote location, though they accept that it may be streamed within the court building for the purpose of facilitating any necessary overflow court rooms.

20. No IP resisted either application, and counsel to the Inquest made submissions in support of them. The applications were resisted by Mr Gardham, giving the following reasons:

> "There is a real danger that in granting these applications our courts reinforce a TV drama image of Muslims in Britain as radicalised and threatening when that could not be further from the truth.
>
> "Those who give advice to help steer young radicals back onto the right path are admired throughout the Muslim community and they should be proud to stand up and talk about the work they do, how else do they encourage others to do the same?"

21. Expanding upon those points in oral submissions, Mr Gardham argued that Witnesses T and M are "not covert officers… [or] secret agents" but "they are public officials who have a public role who go in to address issues of extremism" and should give evidence as to their work in the open and in their own names.

22. Having considered all the arguments, I have decided that the applications in the form advanced should be granted. In short, these witnesses should be granted anonymity and should give their evidence screened from the public, but not from the press or the participants in the Inquest. My decision is based on the common law principles summarised above and upon striking a balance between the Article 8 rights of the witnesses and the Article 10 rights of the press and public. My reasoning is as follows:

    a. There is persuasive evidence that both Witness T and Witness M have real and reasonable fears that, if not anonymised, they would suffer abuse and be exposed to the risk of attack from Islamist extremists and/or from far-right groups. Witness T explains that some individuals within the Muslim community have very strong views about Government policy on extremism and would consider his work to be a betrayal. Witness M refers to the fact that he works with dangerous people on a daily basis whose behaviour may be aggressive and unpredictable. Ms Ellsmore cites specific examples of vile abuse being directed at mentors on social media.

    b. Ms Ellsmore states that "being unable to retain and recruit mentors would seriously jeopardise" the DDP and that "disclosing the identities of the mentors working with Sudesh Amman could cause some mentors to cease working, or cause difficulties with recruitment in the future." Although I accept Mr Gardham's point that the mentors do work of which they can be proud, substantial weight must be given to Ms Ellsmore's evidence in view of her role and experience. It would be a real disservice to the community if the DDP were deprived of mentors.

    c. There is a real risk that revealing a mentor's identity in the context of this case may impair his/her ability to work with extremists in future. Witness M makes the point in his witness statement that future subjects of the DDP may be unhappy having him as their mentor if they know that he worked with Sudesh Amman. Witness M explains that he works as a mentor with many types of extremists.

d. Anonymising these witnesses and granting them special measures would not affect the ability of IPs to understand and test the evidence. Accredited journalists will be able to see them giving evidence.

e. In summary, I consider that the effect on open justice, although more than minimal, is not sufficient to justify refusing the orders. The evidence of these individuals can be reported fully, and their identities are only of little relevance to the narrative.

The Amman family applications

23. Although an application for anonymity was initially made on behalf of Sudesh Amman's mother, that application was withdrawn in written submissions prepared for the PIR hearing. An application was maintained for her to be screened from members of the public and given a private means of entry to and exit from court on the day she gives evidence. In withdrawing the application for anonymity, Mr Menon for the family accepted that the mother's name is already in the public domain.

24. Accordingly, the principal application to be considered is that Mr Amman's mother should give evidence screened from the public gallery (but not from me as coroner, jury, IPs, lawyers for IPs or accredited journalists) and should be given non-public routes into and out of court. The application framed in this way was not opposed by the media or by any IP. It was supported by counsel to the Inquest.

25. I shall grant that application for the following reasons:

a. Mr Amman's mother has provided evidence that she has felt in a state of shock since her son's death and that as a result she feels vulnerable, exposed, threatened and devastated. Screening from the public is very likely to go some way to alleviating those feelings for the time that she is assisting the inquiry. It is therefore likely to improve the quality of her evidence, as well as reducing stress and distress for her.

b. Mr Amman's mother features in the events which this Inquest will explore. She had contact with her son in the days immediately before his death and during his time in prison. During telephone calls with her, he made remarks which are likely to feature in the evidence. However, if she is permitted to give evidence whilst

screened from the public, nobody will be prevented from hearing of her involvement in events.

c. The restriction on open justice which would result from the screening order is limited in effect. Mr Amman's mother will still give evidence in public and in her own name. The accredited press will be able to see her give evidence.

d. The accompanying order that Mr Amman's mother be permitted to enter and exit the court by a private route is plainly justified. It would not intrude upon open justice and it would help alleviate the concerns summarised above. It would allow her to focus on her evidence, without being concerned about the possibility of being photographed.

26. A second application made by Sudesh Amman's family is that his siblings should be anonymised. Since no family member apart from the mother is due to be called to give evidence, it is not necessary to consider associated special measures in support of that anonymity. The position advanced by Mr Menon for the family was that all Mr Amman's siblings, each of whom was under the 18 at the time of Sudesh Amman's death, should be anonymised. The members of the press who made written submissions explained that they would in any event have no intention of naming any person who is currently under the age of 18, but pointed out that they may wish to name any of Mr Amman's siblings who is currently of that age or older (even if he/she was under the age of 18 at the time of the attack).

27. Counsel to the Inquest pointed out that Mr Amman's siblings are unlikely to feature in the evidence such that their names would have to be given in open court. They argued that, if this was the case, it would be unnecessary to decide whether anonymity orders were justified for these individuals. They proposed an order that, as a matter of relevance, the names of the Mr Amman's siblings should not be recited in open court or given in evidence except following application on notice. In my judgment, such an order would be a sensible pragmatic solution. It is unnecessary to grapple with arguments about whether to grant anonymity orders when the names of these individuals are unlikely to feature as relevant evidence in any event.

Proposed "In Camera Disclosure" Process

28. The Secretary of State for the Home Department and the Secretary of State for Justice have made separate, but materially identical, applications for an "in camera disclosure" process to be adopted for certain documents. These are documents in respect of which the relevant Secretary of State objects to some parts of the document being put into the public domain but is content for those parts to be seen by IPs in the Inquest.

29. Each application first asks that the process be approved in principle, and then asks that specific documents are disclosed within the process. The representatives of the Secretaries of State have marked up the documents which it is proposed will be disclosed by this process so that for each document there are two versions: one "in camera" version in which certain sensitive content is shaded; and a second, public version in which that content is redacted.

30. The Secretary of State for Justice asks that the procedure be adopted in respect of parts of the HMPPS Mercury Intelligence Record and the Multi-Agency Public Protection Arrangement documents. The Secretary of State for the Home Department asks for the procedure to be applied to the DDP mentor report documents. It may be that further material will be put forward for disclosure by this process in the coming weeks.

31. The process which the applications ask the Court to approve can be summarised as follows:

    a. For documents that fall within the procedure, two versions will be produced:

        i. A public version will be produced with some sensitive content redacted (as well as any redaction of other content justified on other grounds). The public versions of the documents will contain the vast majority of the useful evidence.

        ii. A further "in camera" version will be produced, with the sensitive content shaded but visible. These versions will be provided to IPs, subject to an undertaking. Such versions may also contain redaction of (1) content which

is subject to a PII claim; (2) content which is both irrelevant and private or confidential; and/or (3) content identifying anonymised individuals.

b. Public and "in camera" versions of documents will be clearly marked when disclosed to IPs on the online document management platform. The latter versions will be placed in specific folders marked as containing sensitive material.

c. Under the terms of the undertaking, any IP wishing to deploy sensitive content from this set of documents (i.e. the shaded material in the "in camera" versions) by citing it in the hearing will be asked to give as much notice as possible before doing so and, in any event, sufficient notice for Secretaries of State's representatives to address the point and make an application for the part of the hearing to take place in camera before the content is deployed.

32. Counsel to the Inquest supported this procedure, and no IP objected to it. I am aware that the procedure was adopted by HH Judge Lucraft QC in the inquests into the Fishmongers' Hall terror attack. He noted that it was a novel process but one which the Court had the power to sanction.[1]

33. As regards practicalities, counsel to the Inquest observed that in some circumstances it may not be practicable for IPs to give very much notice of a wish to refer to the sensitive conduct, where the need to do so arises for good reason very late in the day. In written submissions in response, counsel acting for the Secretaries of State recognised that such situations may occur and confirmed that the Secretaries of State would not object to the deployment of material purely on grounds of the notice given in such circumstances.

34. In my judgment, this procedure should be approved in principle and it should apply in respect of the material specified by the Secretaries of State. By using this procedure in respect of some (limited) material, it is likely to be possible for more material to be disclosed to IPs than would otherwise be the case. The adoption of the procedure does not intrude upon the principle of open justice, because the "in camera disclosure" process

[1] Fishmongers' Hall Inquests, Third Ruling on Case Management, 18 February 2021 at https://fishmongershallinquests.independent.gov.uk/wp-content/uploads/2021/02/Fishmongers_-Hall-Inquests-Third-Ruling-on-Case-Management-18-February-2021.pdf.

does not itself prevent any evidence being adduced in public. It simply enables the Secretaries of State to receive notice of certain material being adduced and gives them the opportunity to apply for part of the hearing to be in camera. If such an application is in fact required, the open justice principle would be taken fully into account at that stage.

The Honourable Mr Justice Hilliard

18 July, 2021