INQUEST INTO THE DEATH OF SUDESH AMMAN

RULING ON QUESTIONS TO BE LEFT TO THE JURY

Introduction

1. This Ruling concerns the questions which I determined should be left to the jury at the conclusion of the evidence in this inquest.

2. Sudesh Amman was shot by police officers on Streatham High Road at about 2pm on Sunday 2 February 2020. At the time, 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.

3. 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 pleaded guilty 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.

4. Upon his release from prison, Sudesh Amman was under licence conditions, which were supervised by the National Probation Service ("NPS"), part of HM Prison and Probation Service ("HMPPS"). In addition, Mr Amman was subject to a priority investigation by the Security Service (MI5) and SO15, the counter-terrorism command of the Metropolitan Police Service ("MPS"). From the time of his release, he was under surveillance by specialist surveillance officers from the MPS. It was two of those officers who fired on him on 2 February 2020.

5. Commencing on 2 August 2021, the inquest heard evidence concerning the background to and circumstances of Mr Amman's death. The evidence concluded on the morning of 16 August 2021. It included evidence from: (a) five witnesses from HMPPS who addressed Mr Amman's time in custody and his management in the community; (b) two

mentors assigned to Mr Amman under a Home Office programme; (c) 14 police officers involved in the investigation into Mr Amman and surveillance of him (including the SO15 Senior Investigating Officer ("SIO") at the time of the attack and the two officers who fired on Mr Amman); (d) three police officers from the post-attack investigation team; (e) two senior officers involved respectively in the training of surveillance and firearms officers; (f) two ambulance medics; (g) an explosives officer; (h) eight bystanders; (i) another resident of the approved premises; (j) Mr Amman's mother; and (k) two experts (a pathologist and a ballistics expert).

6. On 17 August 2021, I heard submissions on the issues which should be left to the jury for their determination and on the form and format of a questionnaire for the jury to complete ("the Questionnaire"). I indicated my decisions in principle as to the issues to be left to the jury and said that I would give my reasons in a written ruling in the following weeks. After I had indicated those decisions in principle, there were constructive discussions between counsel to the inquest and interested persons ("IPs) as to the content of the Questionnaire, which resulted in complete agreement. This Ruling now provides my reasons for leaving to the jury the issues which I decided should be left to them.

7. As indicated during the day of submissions, this Ruling is being produced after the jury have answered the Questionnaire and returned their conclusions. There were three questions in the Questionnaire which were the subject of competing submissions and which are addressed in this Ruling, along with one further issue which I decided not to leave to the jury. The responses of the jury to the questions which were left to them are set out below.

The Questionnaire and the Jury's Conclusions

8. The Questionnaire provided to the jury had five sections. The first two of the five were headed respectively *"Short Form Conclusion: Lawful Killing"* and *"Basic Facts of the Death of Sudesh Amman"*. A copy of the Questionnaire, with the jury's responses, is available on the website for this inquest.[1]

[1] https://www.sudeshammaninquest.org/wp-content/uploads/2021/08/Sudesh-Amman-Inquest-Questionnaire-for-Jury-Determinations.pdf

9. The first of the questions was as follows: *"Are you satisfied that, on the balance of probabilities, Sudesh Amman was lawfully killed?"* The note below the question indicated that the jury were directed to answer *"yes"* in response to this question. Having regard to the evidence heard in the inquest, I decided that no other conclusion by the jury would be safe and that they should therefore be directed to provide this short-form conclusion. All IPs, including the family of Sudesh Amman, were in agreement with that decision. Anyone wishing to understand the reasons for it should refer to the written submissions of counsel to the inquest dated 16 August 2021, paragraphs 56-86. In short, the only safe conclusion on the evidence was that the officers who had shot Sudesh Amman had used lethal force in lawful defence of themselves and members of the public. In accordance with my direction, the jury answered *"yes"* to this first question, so that the short-form conclusion to this inquest is *"lawful killing"*.

10. The second question in the Questionnaire required the jury to approve or amend a paragraph which described the basic facts of the death of Sudesh Amman. The paragraph put to the jury was drafted by counsel to the inquest and was agreed by all IPs as a proper summary. The jury made a small number of entirely proper amendments to the proposed paragraph, but otherwise adopted it as drafted. The published version of the Questionnaire shows the paragraph incorporating the jury's proposed amendments. The amendments show that the jury had considered the matter carefully for themselves.

11. There followed three numbered questions by which the jury were invited to resolve further issues relating to the circumstances of Mr Amman's death ("Q1, Q2, Q3"). Each question was put to the jury inviting a *"yes"* or *"no"* answer and allowing the jury if possible to provide an explanation in a separate box. Each question was followed by a list of facts and considerations which the jury were directed to have in mind, whilst also (and importantly) having regard to their understanding of the evidence as a whole. Q1 was followed by seven facts and considerations, while Q2 and Q3 were each followed by nine. As noted above, the detailed contents of the Questionnaire (including the facts and considerations sections) were the subject of discussion and agreement between the lawyers for all IPs after I had indicated my decisions in principle as to the issues for the jury. In the following parts of this Ruling, I shall refer to some of the facts and considerations of particular relevance, but not to every one.

12. I shall now set out the three questions (Q1, Q2 and Q3), and the answers which the jury gave to each of them.

Q1: Potential Recall of Mr Amman to Prison by HMPPS

13. Question: *"Did HM Prison and Probation Service miss an opportunity which may have prevented the attack and the consequent death of Sudesh Amman, in not deciding to recall him to prison after being notified on 31 January 2020 of the purchases he had made on that date?"*

14. Answer: *"Yes. Whilst the jury does acknowledge that several other avenues were explored in order to recall, there was a missed opportunity as per point 4."*

15. The reference to "point 4" is to the fourth fact / consideration listed in the relevant section of the Questionnaire: *"The fact that, based on its Policy Framework, HM Prison and Probation Service could have recalled Mr Amman to prison if satisfied that his behaviour indicated an increased or unmanageable risk of serious harm to the public or that there was an imminent risk of further offences being committed."*

Q2: Potential Action by the Police Investigation Team to Request an Overt Search of Mr Amman's Room at the Approved Premises

16. Question: *"Did the police investigation team miss an opportunity which may have prevented the attack and the consequent death of Sudesh Amman, in not asking the National Probation Service to organise a search of Mr Amman's room by staff at the approved premises between (a) the time of his purchases on 31 January 2020 and (b) the time he left the approved premises at 1.22pm on 2 February 2020?"*

17. Answer: *"No. Reference: points 8 and 9."*

18. Again, the reference to "points 8 and 9" is to the facts / considerations with those numbers listed in the relevant section of the Questionnaire: *"8. The consideration that asking approved premises staff, who had no special search training, to carry out a search for the purpose of assisting a police operation would have been a novel step and one over which the police would have had limited control"*; and *"9. Any risk of compromising the surveillance operation or disclosing intelligence which you consider a search would have created."*

Q3: Potential Action by the Police to Stop and Search Sudesh Amman on 2 February 2020

19. Question: *"Did the Metropolitan Police Service miss an opportunity which may have prevented the attack and the consequent death of Sudesh Amman, in not taking steps to have Mr Amman stopped and searched on 2 February 2020, between him leaving the approved premises (at 1.22pm) and the attack beginning (at 1.57pm)?"*

20. Answer: *"No. Reference: points 7(a), 7(b) and 9. No further intelligence or suspicions were raised between Saturday and Sunday."*

21. Facts and considerations 7(a), 7(b) and 9 for Q3 were as follows: *"7. The considerations that (a) none of the experienced surveillance officers considered or suggested the possibility that the bag was being used to conceal a possible fake or actual suicide belt; (b) any decisions of senior officers would be based on observations at the scene"*; and *"9. Any risk of compromising the surveillance operation or disclosing intelligence which you consider a stop and search would have created."*

<u>The Law</u>

22. The following section of this Ruling, under the next two sub-headings, sets out the relevant law to be applied in deciding the questions which should be left to the jury. These paragraphs are taken from the written submissions of counsel to the inquest. They were not disputed by any IPs, although some naturally sought to emphasise particular aspects.

Statutory Provisions and Legal Principles concerning Determinations

23. The statutory provisions governing determinations in inquests are contained in sections 5 and 10 of the Coroners and Justice Act 2009 ("CJA"), which provide as follows:

> **5 Matters to be ascertained**
>
> (1) The purpose of an investigation under this Part into a person's death is to ascertain –
>
> (a) who the deceased was;
>
> (b) how, when and where the deceased came by his or her death;

(c) the particulars (if any) required by the 1953 Act to be registered concerning the death.

(2) Where necessary in order to avoid a breach of any Convention rights (within the meaning of the Human Rights Act 1998), the purpose mentioned in subsection (1)(b) is to be read as including the purpose of ascertaining in what circumstances the deceased came by his or her death.

(3) Neither the senior coroner conducting an investigation under this Part into a person's death nor the jury (if there is one) may express any opinion on any matter other than –

(a) the questions mentioned in subsection (1)(a) and (b) (read with subsection (2) where applicable);

(b) the particulars mentioned in subsection (1)(c).

This is subject to paragraph 7 of Schedule 5 [which addresses prevention of future death reports ("PFD Reports")].

10 Determinations and findings to be made

(1) After hearing the evidence at an inquest into a death, the senior coroner (if there is no jury) or the jury (if there is one) must –

(a) make a determination as to the questions mentioned in section 5(1)(a) and (b) (read with subsection (2) where applicable);

(b) if particulars are required by the 1953 Act to be registered concerning the death, make a finding as to those particulars.

(2) A determination under subsection (1)(a) may not be framed in such a way as to appear to determine any question of –

(a) criminal liability on the part of a named person, or

(b) civil liability.

24. Rule 34 of the Coroners (Inquests) Rules 2013 ("the Rules") provides:

A coroner or in the case of an inquest heard with a jury, the jury, must make a determination and any findings required under section 10 using Form 2.

Form 2 is headed "Record of an inquest" and it contains the following headings:

1. Name of the deceased (if known);

2. Medical cause of death;

3. How, when and where, and for investigations where section 5(2) of the [CJA] applies, in what circumstances the deceased came by his or her death (see note(ii);

4. Conclusion of the coroner / jury as to the death (see notes (i) and (ii));

5. Further particulars required by the Births and Deaths Registration Act 1953 to be registered concerning the death…

The Notes to that Form identify a number of long-established short-form conclusions, including that of unlawful killing. The Notes, which came into force on 25 July 2013, are now out of date in one respect, stating that the standard of proof applicable to most conclusions in an inquest determination is the civil standard (i.e. balance of probabilities) but that the standard of proof required for the short form conclusions of *"unlawful killing"* and *"suicide"* is the criminal standard. The Supreme Court has more recently determined that the civil standard of proof applies to all short form conclusions, as well as all narrative conclusions (see *R (Maughan) v HM Senior Coroner for Oxfordshire* [2021] AC 454 at [97]).

25. The following legal principles, developed by the courts, represent the key guidance on determinations for present purposes:

a. An inquest is a fact-finding inquiry conducted by a coroner, with or without a jury. The primary objective of an inquest, under section 5 of the CJA, is to produce determinations answering four factual questions: who the deceased person was; and when, where and how he/she came by his/her death. Proceedings and evidence must be directed solely to ascertaining these matters. The jury (or coroner sitting alone) are forbidden from expressing opinion on any other matters, save for supplying the formal particulars required for death registration (and subject to the coroner's power to make a PFD Report): see *R v North Humberside Coroner, Ex Parte Jamieson* [1995] QB 1 at 23 (general conclusion (1)). The question *"how"* the deceased came by his or her death is the most difficult and most important: see *R v East Sussex Coroner, Ex Parte Homberg* (1994) 158 JP 357.

b. Before the Human Rights Act 1998 came into force, incorporating the ECHR into domestic law, the *"how"* question was always to be read as meaning *"by what means the deceased came by his/her death".* That interpretation focuses attention on the physical means of death, albeit it is wider than simply identifying the medical cause of death. The question was usually answered by the coroner or jury choosing between the recognised short-form conclusions and completing a short entry for the immediate circumstances of death. However, there was no objection to a short-form conclusion being supplemented or replaced with a brief factual narrative: see *Ex Parte Jamieson; R (Longfield Care Homes) v Blackburn Coroner* [2004] EWHC 2467 (Admin).

c. Article 2 of the ECHR (the right to life) encompasses a positive procedural obligation on member states which includes a requirement to establish effective and independent investigations into deaths in certain circumstances: see *R (Amin) v SSHD* [2004] 1 AC 653 at [20]. In cases of a deliberate killing by state agents such as the present case, the obligation is automatically engaged, even if the use of force was fully justified.[2]

d. In *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182, the House of Lords held that where the Article 2 obligation to establish an independent investigation into a death is engaged in connection with an inquest, the ordinary approach to inquest conclusions must be modified in one respect to satisfy Convention standards. The expression *"how the deceased came by his/her death"* in the statutory provisions is to be interpreted as meaning "*by what means and in what circumstances the deceased came by his/her death"*: see [35]-[38]. In practice, this may require the coroner to return, or elicit from the jury, expanded narrative conclusions (see below). The decision in *Middleton* has now been given statutory force by section 5(2) of the CJA.

e. The decision as to whether the Article 2 procedural obligation is engaged will have little, if any, effect on the scope of inquiry at an inquest or the conduct of the hearing; see: *R (Smith) v Oxfordshire Asst Deputy Coroner* [2011] AC 1 at [152]-[154]; *R (Sreedharan) v Manchester City Coroner* [2013] EWCA Civ 181 at

[2] See: *McCann v United Kingdom* (1995) 21 EHRR 97 at [161]; *Amin* (cited above) at [20] and [25]; *R (Smith) v Oxfordshire Asst Deputy Coroner* [2011] 1 AC 1 at [210].

[18(vii)]. It is always a matter of judgment for the coroner conducting an inquest to determine the parameters of the inquiry. This often involves deciding how far back to trace chains of events and causes: *Coroner for the Birmingham Inquests (1974) v Hambleton* [2019] 1 WLR 3417 at [46]-[51].

f. Section 10(2)(a) of the CJA precludes the coroner or jury in any form of inquest from making findings which appear to determine any question of criminal liability of a named person. This form of words legitimises a coroner or jury returning in suitable cases the well-established conclusion that a death was due to unlawful killing. That conclusion may be given if it is found that death was due to an offence of murder, manslaughter or infanticide: see *R (Wilkinson) v HM Coroner for Greater Manchester South District* [2012] EWHC 2755 (Admin).

g. In *R (Worthington) v HM Senior Coroner for the County of Cumbria* [2018] EWHC 3386 (Admin) at [35], the Divisional Court explained that there is, analytically, a three-stage process to making a determination at the end of an inquest (whether or not Article 2 is engaged). First, the coroner or jury should make findings of fact on the evidence. Secondly, the answer to the question *"how"* the deceased person came to die should be distilled from those findings (which may be recorded in box 3 of the Record of Inquest and/or within a narrative conclusion). Thirdly, a conclusion should be given as to the death which flows from and is consistent with the findings.

h. Where a coroner sits with a jury, the coroner must determine, and provide direction on, the conclusions which the jury may consider. The coroner should not leave any determinations to the jury which they could not properly return on the evidence. In making this decision, a two-limb test (known as *"Galbraith plus"*) is to be applied: (i) whether there is evidence on which the jury could properly reach the relevant conclusion, and (ii) whether it would be safe for the jury to reach that conclusion. If either limb is not met in respect of a conclusion, it should not be left to the jury: see *R (Bennett) v HM Coroner for Inner South London* [2007] EWCA Civ 617 at [30]; *R (Secretary of State for Justice) v Deputy Coroner for Eastern District of West Yorkshire* [2012] EWHC 1634 (Admin) at [17]-[23]; Chief Coroner's Law Sheet No. 2.

i. As explained in *R v HM Coroner for West Berkshire, Ex Parte Thomas* (1991) 155 JP 681 at 697-698 (Bingham LJ), a coroner may properly conclude that only one conclusion is safe upon the evidence. *Thomas* is also authority for the proposition that an open conclusion should only be left in cases where the evidence has not fully disclosed the means whereby the cause of death arose.

j. The obligation in domestic law of a coroner to leave only those conclusions which are properly supported by the evidence is not in conflict with the duty under Article 2 ECHR to hold a Convention-compliant investigation. This issue was considered in *Bubbins v UK* (2005) 41 EHRR 24, a case where the coroner had directed a lawful killing verdict (see [94]-[95]) and where the ECtHR found no violation of Article 2 procedural obligations (see [165]). At [163], the Court explained why the directed verdict created no difficulty in Article 2 terms:

> "If an independent judicial officer such as a Coroner decides after an exhaustive public procedure that the evidence heard on all relevant issues clearly points to only one conclusion, and does so in the knowledge that his decision may be subject to judicial review, it cannot be maintained that this decision impairs the effectiveness of the procedure."

Principles concerning Narrative Conclusions in Article 2 Cases

26. Over the years since the *Middleton* case, the courts have provided the following relevant guidance on the approach of coroners to eliciting and returning narrative conclusions in inquests in which the Article 2 procedural obligation is engaged:

a. The objective of the narrative conclusion is for the coroner or jury to express findings on the key factual issues in the case, which might go beyond the immediate physical means of death. In particular, they may deal with underlying and contributory factors. Lord Bingham gave this further guidance in *Middleton* (at [36], in the context of a jury case):

> "If the coroner invites either a narrative verdict or answers to questions, he may find it helpful to direct the jury with reference to some of the matters to which a sheriff will have regard in making his determination under section 6 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976: where and when the death took place; the cause or causes of such death; the defects in the system which contributed to the death; and any other factors which are relevant to the circumstances of the death."

He went on to say that interested persons could make submissions as to the appropriate means by which a coroner could return, or elicit from a jury, conclusions on the key issues. However, he stressed that *"the choice must be that of the coroner and his decision should not be disturbed by the courts unless strong grounds are shown."* Accordingly, a coroner has a considerable margin of judgment in deciding how to formulate or elicit a narrative verdict.

b. On the facts of *Middleton* (a prison suicide case), the House of Lords (at [45]) suggested an appropriate wording for a narrative in that case: *"The deceased took his own life, in part because the risk of his doing so was not recognised and appropriate precautions were not taken to prevent him doing so"*. Lord Bingham explained (at [37]) that this embodied *"a judgmental conclusion of a factual nature, directly relating to the circumstances of death"*.

c. A narrative conclusion must not contravene the provisions of section 10(2), which prohibit any conclusion that appears to determine any question of criminal liability of a named person or any question of civil liability: see *Middleton* at [37]. Since contravention of substantive obligations under Article 2 gives rise to civil liability under the Human Rights Act 1998, an express finding of breach of those obligations is prohibited: see *R (Smith) v Asst Deputy Coroner for Oxfordshire* [2008] 3 WLR 1284 at [24].

d. The means of eliciting or stating appropriate conclusions on the key factual issues concerning means and circumstances of death will vary from case to case. In *R (P) v HM Coroner for Avon* [2009] EWCA Civ 1367 at [25]-[26], Maurice Kay LJ explained that the first task of a coroner is to identify the central issues, and the next is to devise a means for those issues to be resolved, which may be by a combination of (i) a choice of short-form conclusions and (ii) a supplementary narrative. See also *R (Bodycote HIP Ltd) v HM Coroner for Herefordshire* [2008] EWHC 164 Admin (at [23]), where Blake J found that, in the circumstances of the case before him, it might be appropriate to return a narrative either as well as, or as an alternative to, a short-form conclusion.

e. When addressing in a narrative conclusion whether a factor was causally relevant to death, the test is whether it more than minimally contributed to death: see *R (Tainton) v HM Senior Coroner for Preston and West Lancashire* [2016] 4 WLR 157 at [41]; *R (Chidlow) v Coroner* [2019] EWHC 581 (Admin) at [37].

f. Any narrative conclusion must be limited to matters relevant to the death(s) under investigation. Where an event or circumstance may have caused or contributed to the death(s) but cannot be proved probably to have done, the coroner has a power to return or elicit conclusions about that event or circumstance.

i. In *R (Allen) v HM Coroner for Inner North London* [2009] EWCA Civ 623, at [40], the Court said that a coroner conducting an inquest in which Article 2 was engaged *"was only obliged to investigate those issues which were, or at least appeared arguably to be, central to the cause of death."*

ii. In *R (Lewis) v Mid and North Shropshire Coroner* [2010] 1 WLR 1836, the majority of the Court (Sedley and Rimer LJJ) concluded that a coroner has the power to seek the conclusions of a jury on matters which did not probably cause the death of the deceased. However, there was no duty to seek such conclusions: see [28]-[29]. See also *R (Le Page) v HM Asst. Deputy Coroner for Inner South London* [2012] EWHC 1485 Admin; *Chidlow* (cited above) at [37].

iii. In *Tainton* (cited above), the Divisional Court held that serious failings (there, admitted) ought to have formed part of a narrative conclusion given that they formed part of the circumstances of the death, even though the jury could not find them to be causative.[3]

g. A narrative conclusion may also express conclusions on matters properly featuring in the circumstances of death and state that they were not causative of death. This was determined recently in *R (Worthington) v HM Senior Coroner for Cumbria* (cited above – not an Article 2 case). There, the Divisional Court held that the

[3] There is arguably a tension between this decision and those in *Lewis* and *LePage*, which has not been explored in any cases since *Tainton*.

coroner had been entitled to state in his determination that the deceased child had suffered abuse shortly before death and that it had not been causative of death: see [43]-[52].

h. A narrative conclusion should not deal with abstract matters, such as matters of high policy.

i. In *R (Scholes) v SSHD* [2006] EWCA Civ 1343 at [70], Pill LJ expressed concern that a coroner had sought to elicit a narrative conclusion by a jury questionnaire which addressed issues of broad policy, rather than concrete issues arising in the particular case.

ii. In *R (Smith) v Oxfordshire Assistant Deputy Coroner* [2011] 1 AC 1 at 100G-H, Lord Philips said that inquests were fact-finding inquiries and would not be the right forum for resolving questions of policy (e.g. the overall competence with which military manoeuvres had been executed).

i. There is no objection to a narrative conclusion in a *Middleton* inquest identifying relevant failures (see *Tainton*, cited above), or describing such failures as *"serious"*: see *R (Smith) v Asst Deputy Coroner for Oxfordshire* [2008] 3 WLR 1284, Collins J. It is in general wrong for a coroner to direct a jury that a narrative conclusion in such an inquest must be neutral or non-judgmental: see *R (Cash) v HM Coroner for Northamptonshire* [2007] 4 All ER 903 at [52]-[53]; *R (Calvert) v HM Coroner for Inner North London* [2009] EWHC 661 (Admin) at [159]-[160].

j. A narrative conclusion ought not to be too long or complicated.

i. In *Coroner for the Birmingham Inquests (1974) v Hambleton* (cited above), the Court of Appeal stressed (at [18]) that a finding of a failure by the authorities to act appropriately would be made by means of a "brief factual conclusion" similar to the short conclusion suggested in *Middleton* itself.

ii. In *Clayton v South Yorkshire Coroner* [2005] EWHC 1196 Admin at [31], the Court doubted the appropriateness of a three-page questionnaire put

before it, apparently on the basis that it was disproportionate or overly complex.

iii. *R (de Menezes) v Assistant Deputy Coroner for Inner South London* [2008] EWHC 3356 (Admin) involved a challenge to decisions of the coroner hearing the Stockwell shooting inquest regarding the drafting of a verdict questionnaire. In rejecting the challenge, Silber J said (at [26]-[27]) that the coroner had been justified in taking an approach designed to minimise the risk of confusion or undue complexity in the conclusion.

k. In leaving narrative conclusions to a jury, the coroner should not ask the jury to make a finding for which there is no evidence and which is entirely speculative, since any conclusion must have a proper basis in evidence: see *Chief Constable for Devon and Cornwall Police v HM Coroner for Plymouth* [2013] EWHC 3729 (Admin) at [16(iii)]. However, as noted above, the Court of Appeal in the *Lewis* case held that a jury could be asked to make a finding on an apparent failing which only possibly had any causal relevance to the death. On the facts of that case, the chronology made it impossible to establish a causal connection with any confidence at all.

Reasons

27. This section of the Ruling sets out my reasons for leaving to the jury the issues represented by the three numbered questions set out above (Q1, Q2 and Q3). These were issues which both the family of Sudesh Amman and counsel to the inquest submitted should be left to the jury, but which were the subject of opposition from the public authorities respectively concerned. This section of the Ruling also sets out my reasons for not leaving to the jury one issue which lawyers for the family of Sudesh Amman submitted should be left.

Q1: The issue of recall to prison by HMPPS

28. This question raised the issue whether HMPPS missed an opportunity which may have prevented the attack and the consequent death of Sudesh Amman, in not deciding to recall

him to prison after being notified on 31 January 2020 of the purchases he made on that date. As noted above, the jury concluded that such an opportunity had been missed.

29. Counsel to the inquest and the family of Sudesh Amman submitted that this was a question which the jury ought to be asked to address, on the basis that it raised a significant issue of fact relating to the circumstances of death and that the jury could safely reach a critical judgmental conclusion. The Secretary of State for Justice on behalf of HMPPS submitted the contrary.

30. I concluded that the question should be left to the jury. The relevant facts and my reasoning were as follows:

    a. The starting-point is that Mr Amman was an extremely dangerous individual and was assessed by the NPS itself as posing very serious risks to the public. Shortly before leaving prison, an OASys assessment had classified him as posing a *"high risk of serious harm"* to the general public. On 13 January 2020, Ms Vigurs of the NPS drafted a letter in which she wrote that the risk rating was likely to be upgraded to *"very high risk of serious harm"*, signifying that Mr Amman posed an imminent and likely risk of causing serious harm to the public. These views were informed by detailed ERG 22+ assessment reports which found him to have a clear extremist mindset and identified a specific risk that he would commit a terror attack with a knife. As was known to the NPS, both it and the police were actively interested in means of keeping Mr Amman in prison or returning him to prison after release, in the interest of protecting the public.

    b. On 31 January 2020, Sudesh Amman was under surveillance by a team of armed police officers. The officers saw and reported as Mr Amman entered a number of shops on Streatham High Road. In Poundland, he purchased only the following items: four bottles of Irn Bru; a roll of aluminium foil; and a packet of brown parcel tape. He then entered Low Price Store (a small hardware shop) where he took a packet of forks and spoons to the till (but without then buying them), having shown interest in a display area which included sharp kitchen knives. On that day (as before), he was thought to be displaying various signs of anti-surveillance behaviour. The specialist investigation team took the view that the items purchased in Poundland might have been bought to be used in making a hoax suicide belt,

based upon suggestions/guidance in extremist publications. Such hoax suicide belts have been used in recent marauding terrorist attacks, because (as the inquest heard) they deter unarmed officers and members of the public from engaging with the terrorist and they increase the prospect of a critical shot being fired (so ensuring "martyrdom").

c. Later that day, DI Bundock of the SO15 investigation team contracted Ms Heckroodt of the NPS to inform her of the purchases. DI Bundock told Ms Heckroodt that law enforcement agencies assessed that Mr Amman may be planning to make a hoax suicide belt or may be testing whether he was under surveillance. DI Bundock asked Ms Heckroodt whether the NPS could arrange for Mr Amman to be recalled to prison for any breach of licence conditions. Ms Heckroodt considered the matter and liaised with Mr Reid, Head of National Security for the NPS. They considered that there was no breach of licence conditions and that Mr Amman should not be recalled to prison. Ms Heckroodt and Mr Reid agreed to take no further action at that time, although in fairness to Mr Reid he actively considered the option of Mr Amman's room at the approved premises being searched. He only discounted that option because he understood from Ms Heckroodt that the police investigation team were attaching paramount importance to avoiding any risk of Mr Amman discovering that he was under surveillance.

d. The power to recall an offender in Mr Amman's position was the entirely general power under section 254 of the Criminal Justice Act 2003, discussed in *R (Whiston) v Secretary of State for Justice* [2015] AC 176 and *R (Calder) v Secretary of State for Justice* [2015] EWCA Civ 1050. It was and is a power which is used as a means of protecting the public (not as a punishment). It may be used where the offender has breached licence conditions and recall is necessary for public protection, but it is not limited to circumstances where a licence condition has been breached (see *R (Ramsden) v Secretary of State for Justice* [2006] EWHC 3502 (Admin)). Furthermore, there is a general and universal licence condition to be of good behaviour and not undermine the purpose of supervision on licence, and a breach of that condition may be found on the basis of lifestyle or conduct suggesting that the offender is planning some future offence. Where a person has been recalled to

prison using this power, his or her detention beyond an initial period of 28 days is a matter for decision by the Parole Board, which will primarily take account of public safety considerations.

e. The relevant published HMPPS Policy Framework concerning recall decisions, which was introduced in April 2019 and cancelled all other relevant Prison Service Instructions, is *"Recall, Review and Re-Release of Recalled Prisoners Policy Framework"* ("the Framework"). The Framework instructs probation officers to consider recall *"in cases where an offender has breached the conditions of their licence, the offender's behaviour indicates that they present an increased or unmanageable RoSH [risk of serious harm] to the public or there is an imminent risk of further offences being committed"* (para. 4.3.9). It states that the decision must be based on post-release conduct (para. 4.3.10). It tells probation officers to *"consider whether to seek recall in cases where they have reason to believe that an individual is actively thinking about reoffending"* (para. 4.3.11). Paragraph 4.3.14 of the Framework indicates that decisions should be based on the probation officer's *"professional judgment as to whether, on the balance of probabilities, the reported behaviour has taken place, or other risk factors have increased."*

f. If Mr Amman had been recalled to prison, he might have been kept in custody for up to 20 months, that being the unserved remainder of his sentence. Upon his release, as Mr Reid accepted in response to questions from Mr Menon QC for Mr Amman's family, Mr Amman would have been subject to notification requirements under Part 4 of the Counter-Terrorism Act 2008. Furthermore, the Secretary of State might have chosen to apply for Terrorism Prevention and Investigation Measures upon his release.

g. The key question in these circumstances is whether the jury could safely conclude against that background that the NPS should have made the decision to recall Mr Amman to prison. Given the very serious and acute risk Mr Amman posed to the public, it was properly open for the jury to say that this decision should have been made if a reasonable NPS decision-maker could have justified it and reasonably expected that Mr Amman would then be kept in prison for a significant period.

h. In my judgment, the jury could safely say that the NPS could have justified a decision to recall and anticipated that recall would have resulted in Mr Amman being kept in prison for a significant period. In particular, the jury could safely conclude that recall could have been justified on the basis of the following factors in combination: (a) the risk which Mr Amman was assessed to pose to the public; (b) the information communicated about the purchases; (c) the professional assessment communicated by police that they could represent the components for a fake suicide belt or an attempt to see if he was under surveillance; and (d) the difficulty of managing the risk posed by Mr Amman in the community as matters stood. Applying the considerations in the Framework, a reasonable decision-maker at the NPS could properly have said, based on Mr Amman's behaviour after release, that he presented an increased or unmanageable risk of serious harm to the public; that there was an imminent risk of further offences being committed; and/or that he was actively thinking about re-offending.

i. The conclusion that a reasonable NPS decision-maker could properly have decided in favour of recall is supported by evidence given by Mr Reid himself. In initial questions by leading counsel to the inquests (Mr Hough QC), Mr Reid accepted that *"a probation officer could reasonably say, given the information from the police and [Mr Amman's general] background, that Sudesh Amman was actively thinking about re-offending"* and that on that basis he could have been recalled to prison (day 11, p28-29). In closing questioning by Mr Hough, Mr Reid accepted this again (day 11, p75):

> Q. …[W]hile you didn't take the view as a matter of professional judgment that recall was justified based on the information you had, another reasonable person with all the facts, with the same set of facts and the same test to apply, could have taken a different view?
>
> A. Could have done, yes.

j. For HMPPS, Mr Rawat made a number of submissions to the effect that the question should not be left to the jury. First, he submitted that a decision on recall is a discretionary one and that both Ms Heckroodt and Mr Reid considered that the threshold had not been met. However, for the reasons summarised above it was open for the jury to take a different view, as they ultimately did after being reminded in detail of all the evidence of those witnesses. The jury had the benefit

of seeing and hearing both witnesses give evidence and be cross-examined. They heard, for example, Ms Heckroodt's evidence about the standard of proof to be applied.

k. Secondly, Mr Rawat submitted that, while Ms Heckroodt would have made the decision to recommend recall, the power would actually have to be exercised by the Public Protection Casework Section ("PPCS") of HMPPS. However, there was no suggestion that the PPCS would have been applying a different test from that set out above, and the jury could fairly say that recall should have been both recommended by Ms Heckroodt and endorsed by the PPCS.

l. Thirdly, Mr Rawat argued that Ms Heckroodt and Mr Reid reasonably attached importance to avoiding any risk of compromising the surveillance operation. However, while the jury might agree with that attitude, they could properly and safely take a different view of the situation. They could take the view that HMPPS had an independent decision to make and that the interest in not compromising the surveillance operation was outweighed by the potential benefit of recalling Mr Amman to prison for a significant time. And they could take the view that the suspect purchases could have been identified by an apparently routine search of Mr Amman's room at the approved premises (which staff were entitled to undertake) and the recall decision justified based on information which would have made no reference to the police surveillance operation.

m. Fourthly, Mr Rawat submitted that there would have been real practical difficulties in having Mr Amman's room searched by staff of the approved premises, because (i) staff might be unable to carry out such a search on a pretext; (ii) they would have to be told what to look for, which would risk alerting Mr Amman to the real objective; (iii) Mr Amman might become violent to the staff; (iv) the police would have had to be consulted; and (v) the purchases may not have been found. Taking these in turn: (i)-(ii) the jury could safely conclude that staff experienced in searching rooms could manage the task and they could be asked to take a full inventory of items in the (small) room; (iii) Mr Amman's room was due to be searched anyway, and a security guard had been hired for protection; (iv) the ultimate decision on searching was for the NPS; and (v) the jury could say that the purchases would very likely have been found. In any event, as I have said, the jury

could safely conclude that a decision to recall Mr Amman to prison should have been made even if the search would not have been a practicable proposition and he would have had to be recalled on grounds which would have revealed the nature and extent of surveillance.

n. To deal with the points raised by Mr Rawat, when directing the jury, I summed up the evidence of Ms Heckroodt and Mr Reid in some detail, including the justifications for their decision-making. For example, I quoted directly from the evidence of the former about her concerns:

"The overriding impression I was left with was that we didn't want to take any action that would compromise the police operation. I wouldn't describe it as the number 1 priority, but any action that we were to take that risked compromising the operation was not in favour."

o. Moreover, Mr Rawat's key points were properly reflected in the Questionnaire provided to the jury as facts or considerations to which they should have regard. For example, one of those facts / considerations was:

"The fact that there was a significant concern expressed not to compromise the police surveillance operation by revealing to Sudesh Amman that he had been seen by surveillance officers purchasing the items mentioned above."

p. When dealing with Mr Reid's evidence, I said this:

"He said that another probation officer could reasonably have formed the view that the threshold for recall had been reached based upon the purchases in the context of the risk Sudesh Amman posed. Confining the matter to what was known at the time, is that an indication that it was not an easy matter, perhaps finely balanced, and that different views could reasonably be taken? Or did the Service get it wrong?"

q. Earlier, having taken the jury through the questionnaire, I said this:

"Finally, of course, even when deciding particular questions, you would want to be mindful of the overall picture. It will inform your assessment of whether the overall picture was complex or straightforward, or complex in some places and

straightforward in others, whether components were interlocking or not, one piece of the jigsaw depending upon another with a need for different agencies to act in concert, all the while mindful of their own particular roles and responsibilities. You will want to see what information decision-makers had at the time. Sometimes in life reasonable people can differ. There may be defensible and sensible reasons for different judgments on the same facts in some situations. That is all for you to say."

31. For all the reasons given above, I decided that the jury could safely conclude on the evidence that HMPPS should have recalled Mr Amman to prison in response to the information from the police concerning the worrying purchases and activity on 31 January 2020. If he had been recalled, there is at least a substantial chance that the attack and his death would have been prevented.

32. Before leaving this topic, I should make one further point of general importance. It is right to say that this inquest has a broader focus than the immediate means of Mr Amman's death because of the effect of the Article 2 procedural obligation on domestic law. It is also right to say that the primary function of an Article 2 investigation is to establish the factual basis for accountability of state agents for a death, and that the state and its agents in this case did not owe Mr Amman a protective duty to prevent him from carrying out a lethal terror attack which might lead to his own death. However, this does not mean that it is illegitimate for the jury to have been asked to answer the broad question of how Mr Amman came to die by considering potential missed opportunities by state agents to prevent the attack. Once it has been decided that the Article 2 procedural obligation is engaged in connection with an inquest, the determinations should seek to resolve the central factual issues as to factors contributing to the death, even if those factors would not represent breaches of Article 2 substantive duties by state agents. See for instance *R (Sreedharan) v HM Coroner for Greater Manchester* [2013] EWCA Civ 181 at [23], where the Court of Appeal concluded that an Article 2 inquest could and should examine and address the conduct of non-state actors (who do not usually owe substantive Article 2 duties) with the same intensity as the conduct of state agents.

Q2: The issue of the police investigation team organising a search of Mr Amman's room

33. This question required the jury to consider whether the police investigation team missed an opportunity which may have prevented Sudesh Amman's death in not asking the NPS to organise a search of his room by staff at the approved premises, between the time of his purchases on 31 January and the time at which he left the approved premises to carry out his attack on 2 February.

34. The question was based on the premise that the NPS might have carried out a search of Mr Amman's room on the ostensible basis that it was a general search, as would routinely take place on a fortnightly basis. Such a search could have been carried out at the instigation of the police, in order to establish whether or not Mr Amman had used the purchased items to create a hoax suicide belt. Counsel to the inquest and the family of Mr Amman submitted that this issue should be left to the jury, while the MPS submitted the contrary.

35. I was satisfied that the matter could and should properly be left to the jury. Given that the jury ultimately answered the question in the negative, so absolving the police team of any implied criticism, my reasons can be expressed relatively briefly.

    a. Ms Heckroodt of the NPS explained that room searches are routine at the approved premises and that NPS staff have a discretion as to the frequency of those searches. Her evidence was as follows:

> Q. Are regular – so routine – room searches at an approved premises an option?
>
> A. The approved premises do do routine room searches as part of the routine.
>
> Q. How regularly?
>
> A. According to their policies, they have to do room searches of each room at least fortnightly.
>
> Q. Were you aware whether there were any such searches of Sudesh Amman's room after his release?
>
> A. There wasn't.
>
> Q. Would it be an option to have more regular room searches, given that this was somebody who presented in particular the risk of an attack with a knife?

A. We could have more often assessed room searches, yes.

Q. Was that given any consideration in any of the meetings or in your own consideration of him?

A. Not at that time, no, because it is part of what would be the package in the approved premises anyway.

b. It was open for the jury safely to conclude that a search conducted and presented as a routine exercise by approved premises staff would give rise to a low risk of compromise of the police operation, it being a commonplace occurrence in the approved premises. There could have been a search of multiple residents' rooms, to avoid tipping off Mr Amman to the cause.

c. Mr Reid accepted in response to questions that, as a matter of general principle, a room search could be an option to establish whether an offender has items of concern, as a way of parallel sourcing information which is known from surveillance, and thereby protecting the confidentiality of a surveillance operation. During their telephone call on 31 January 2020, Mr Reid specifically raised with Ms Heckroodt the option of a room search.

d. Moreover, Mr Reid accepted that an intelligence-led search of Mr Amman's room could be presented as routine, especially as nine days had passed since his arrival at the approved premises and Mr Amman's room was yet to be searched. Ms Heckroodt confirmed that, if the police had requested that the NPS carry out a search, NPS would have acted on that request. Supt McKibbin acknowledged that such a search could have been carried out by NPS staff without police being involved.

e. The police were very concerned about the risk which Mr Amman presented. There was a joint operational team ("JOT") meeting on the evening of 31 January 2020 at which the SO15 and MI5 officers jointly concluded that Mr Amman posed a threat to public safety and may be seeking to carry out a terrorist attack. As a result of the degree of risk which they assessed Mr Amman to pose, it was determined that (a) Mr Amman should from that point be subject to 24-hour armed surveillance, with armed response vehicles and an arrest car in back-up; (b) that a number of *"tipping points"* would be agreed to guide responses to his conduct; and (c) that there would be a further JOT meeting on Monday 3 February 2020.

f. Even with hindsight, it is not clear when Mr Amman constructed the suicide belt. There is a realistic possibility that a search would have discovered a fully or partly completed suicide belt. At the time, in accordance with their assessment that he may be planning to make a hoax suicide belt and that an attack may be imminent, the police knew or ought to have known that this was the case.

g. Had Mr Amman's room been searched and a partly or fully completed suicide belt been located, this would probably have constituted an offence under section 5 of the Terrorism Act 2006 (the offence of preparation of terrorist acts). It is an offence committed where a person, with the intention of (a) committing acts of terrorism or (b) assisting another to commit such acts, engages in any conduct in preparation for giving effect to his intention: see *R v Kahar* [2016] 1 WLR 3156 at [4] for the ingredients of the offence. In those circumstances, there is a realistic prospect that Mr Amman would have been convicted of a serious criminal offence which would have justified a meaningful sentence of imprisonment.

h. For the MPS, Mr Sheldon QC advanced a number of arguments in opposition to this issue being left to the jury. First, he submitted that there would have been no lawful basis for the police to request a search because this would require authorisation under Part III of the Police Act 1997. I do not accept that submission. The police are entitled to request the assistance of another agency to carry out an act which it, the other agency, is lawfully able to carry out. Although the NPS would have been entitled to refuse to assist, on the evidence from Ms Heckroodt we know that the NPS would have agreed in this instance.

i. Secondly, Mr Sheldon QC submitted that the suggestion was an unworkable one, since it would require approved premises staff to be told of the sensitive intelligence which had given rise to the search and that would have compromised the surveillance operation for no certain benefit. It was also suggested that approved premises staff would have been exposed to unnecessary risk. However, in my judgment it was open to the jury safely to conclude that no such compromise of the operation would have been necessary. As submitted by counsel to the inquest, approved premises staff could could have been told to carry out a routine search of several rooms but to give a full inventory of what they found in each, including apparently innocuous items. These were small rooms, and the task would

not have been too onerous. I have dealt above with the argument concerning risk to approved premises staff.

j. Thirdly, it was suggested that the benefits of such a search would have been questionable, since the evidential status of any items found would have been open to argument. However, Mr Reid confirmed that there would have been no difficulty with approved premises staff providing a factual statement giving details of a search and anything found. Steps could have been taken to photograph any items of obvious concern, such as a completed or partially completed hoax suicide vest.

36. As indicated in the preceding paragraphs, my decision to leave this question to the jury was only on the basis that a critical finding could safely have been made. In the event, considerations relevant to the issue were agreed, the issue was put to the jury and they decided to make no such critical finding. Accordingly, while I took the view that the jury could safely make a critical finding, they perfectly properly absolved the police of any criticism.

Q3: The issue of the police taking action to stop and search Sudesh Amman on 2 February

37. The final question proposed by counsel to the inquest, and which I decided to leave to the jury, asked them whether the MPS had missed an opportunity to prevent the attack and Mr Amman's death by not taking steps to have Mr Amman stopped and searched on 2 February, between the time at which he left the approved premises and the time at which the attack commenced.

38. My decision to leave this issue to the jury was based on the following reasoning, which again is expressed relatively briefly because the jury ultimately answered that there had been no such missed opportunity.

a. The premise for this question is that, against the background of what was known about Mr Amman's purchases and what the police and MI5 had assessed his intentions might well be, he was seen to leave the approved premises at 1.22pm carrying a white JD Sports carrier bag across the front of his chest. The bag appeared to be empty. Over the 35-minute period which followed, nine surveillance officers took turns to keep him under observation. He showed some signs of being "surveillance aware" as he walked to Streatham High Road, where

he arrived at 1:49pm. As he reached Streatham High Road, he walked extremely slowly, following a path which doubled back on itself. At times he showed signs of appearing lost. He then entered the Low Price Store at 1.57pm, before commencing his attack about one minute later.

b. The fact that Mr Amman was carrying the apparently empty bag across his front was noted by surveillance officers and transmitted over the radio, being recorded in the Police Operations Room by a loggist at 1:24pm. BX76, a surveillance officer, saw the bag and he believed that it was being carried in an unusual way. There has been no evidence to suggest that Mr Amman had previously been seen carrying a bag in that unusual way. However, it did not occur to any of the experienced surveillance officers to think that the bag might be used to conceal a real or mock suicide belt on Mr Amman's body.

c. The Tactical Firearms Commander ("TFC"), DS51, was not monitoring the operation and was expecting that she would be contacted if Mr Amman left the approved premises. In the event, due to apparent error or omission by those seeking to reach her, she was not contacted when he did leave the approved premises and was not following events as they then unfolded. She acknowledged that, had she known about the observations concerning the bag at the time, in combination with the assessment that Mr Amman might previously have bought items with a view to constructing a mock suicide belt, she would have wanted to ask further questions of the surveillance officers.

d. In my judgment, it would have been open to the jury safely to say that the surveillance officers or officers overseeing the operation should have considered the possibility that the bag was being used to obscure their vision of a mock suicide belt, given the assessment that he had recently bought items which might be used for making such a belt (an assessment on which the surveillance officers had been briefed).

e. It was also open to the jury to say that, if that had occurred to the surveillance officers and been communicated to the operations room, a decision should have been taken to stop and search Mr Amman. Equally, it was open to the jury to say that the operation should have been under active supervision by a TFC; that that

person should have raised questions (as DS51 said she would have done); and that such questions would have led to a decision to arrange a stop and search.

f. Specific tipping points were in place, having been agreed at a joint meeting between the police and MI5, as to the circumstances in which police would intervene and stop Mr Amman. There was no tipping point which would have required Mr Amman to be stopped and searched in these circumstances. However, the tipping points agreed in the joint meeting were not exhaustive and the officers retained an operational discretion as to the measures they should take when different situations occurred in front of them. Had the police believed that Mr Amman was wearing a mock suicide vest, they would surely have stopped him. The question is whether the police officers should reasonably have formed that view.

g. Of course, even if the police had had a concern about the way the bag was being worn, they had to consider a competing consideration. If the police had stopped and searched Mr Amman and he had not been wearing a mock suicide belt, the stop would likely have raised Mr Amman's suspicions as to the degree of surveillance to which he was subject. Nonetheless, in my judgment the jury could still safely find that the possibility of a concealed mock explosive belt being worn would have justified a stop and search and that the risk of an attack could not be ignored. And Mr Amman could have been stopped by uniformed officers in the "arrest car" which was available to the operation and which could have avoided Mr Amman knowing the extent to which he was being kept under surveillance control.

39. Once again, I stress that my decision to leave this question to the jury was only on the basis that a critical finding could safely have been made. In the event, considerations relevant to the issue were agreed, and again the jury absolved the police of any criticism.

Further issue: whether Mr Amman should have been arrested on or after 31 January 2020

40. Mr Menon QC submitted on behalf of Mr Amman's family that a further question should be put to the jury, asking them to consider whether the police could have prevented the attack and Mr Amman's death by arresting him in immediate response to the purchases made at Poundland on 31 January. Mr Menon QC argued that the purchases gave the police reasonable grounds to suspect that the offence of preparation of terrorist acts

(under section 5 of the Terrorism Act 2006) had been committed, and thus they had a power of arrest under section 24 of the Police and Criminal Evidence Act 1984. He argued that that power ought to have been exercised.

41. At the joint meeting on 31 January 2020, the SIO of the police investigation team considered that an arrest could lawfully be made based on the purchases (under section 41 of the Terrorism Act 2000 and/or based on reasonable suspicion of the section 5 offence). However, he took the view that such an arrest would only in practice lead to Mr Amman being held for 48 hours and would be very unlikely to result in a charge, with the result that he would be released back into the community and aware of the extent and intensity of the surveillance operation (including how close officers were keeping to him). This would have created serious dangers to the public, including for example the danger that Mr Amman might attempt to escape surveillance officers and so commit a more effective attack, or the danger that he would be more likely to confront and even attack individuals he suspected to be watching him. The SIO therefore decided against arresting Mr Amman.

42. The reason why the SIO believed that Mr Amman would only be held for 48 hours, before being released, is that in the absence of a fully or partly constructed mock suicide vest, possession of the items would have been relatively easy for Mr Amman to explain. While strong suspicions would remain, suspicion or even a professional judgment that he was likely to be intending further offending would not have been enough to ensure that he was charged and later prosecuted (let alone convicted).

43. After being arrested and asked specific questions in interview about the purchases, Mr Amman would have been well aware that the police knew the details of his transaction and that he was under very close and continuous surveillance. Accordingly, upon his release, Mr Amman would be no less dangerous but would be more likely to take one of the courses of action in para 41 above. Put simply, he would be more likely to be able to mount a successful attack.

44. The Full Code Test for prosecution would have required the Crown Prosecution Service to conclude it was more likely than not that an offence was proved to the criminal standard. In my judgment, without knowing whether Mr Amman had constructed or started to construct a belt, and given the possibility of explaining away domestic

purchases if he had not constructed a belt, the prospect of an arrest leading to a charge was speculative or remote. The prospect of a charge and successful prosecution was not such that, in my view, the jury could safely conclude that it outweighed the clear and certain risk of alerting Mr Amman to the level of surveillance and the consequences of that risk.

45. Mr Menon QC submitted that, even if the CPS would not consider that the evidence met the Full Code Test, the case might instead meet the Threshold Test. I do not consider that the Threshold Test could be met if Mr Amman were arrested before having made the mock suicide belt and if he explained his purchases in any remotely plausible way. That is because the second condition for the Threshold Test requires that *"there are reasonable grounds to believe that the continuing investigation will provide further evidence, within a reasonable period of time"* such that the Full Code Test can be satisfied. Furthermore, that further evidence *"must be identifiable and not merely speculative."* On the premise of Mr Amman having been arrested before constructing the mock device, there would have been no reasonable basis for the police to say that identifiable further evidence could be expected to meet the standard of the Full Code Test.

46. In summary, my conclusion is that the SIO was plainly right in his assessment that an arrest would have given rise to clear and certain risks, without anything more than a remote and speculative chance that any charge would follow. In those circumstances, I took the view that it would have been quite wrong to put a question to the jury as to whether the SIO's judgment was flawed in this respect.

47. Of course, many of the risks associated with the prospect of arresting Mr Amman could have been mitigated by, instead, having Mr Amman's room subject to an apparently routine search (the issue raised by Q2). If a search had located a partly or wholly constructed device, then an arrest could have followed promptly. If, however, the purchases had been found in their raw form then, as outlined above, this could have been reported back to police.

48. Finally, I should address a submission by Mr Menon QC, to the effect that it would be inconsistent to ask the jury to consider whether Mr Amman should have been recalled to prison but not ask them to consider whether Mr Amman should have been arrested. I do

not accept that argument. As explained above, the requirements to be satisfied before the NPS can recall a person to prison are materially different from (and generally materially less demanding than) the requirements to be satisfied before a person may be arrested, charged and prosecuted. Furthermore, the NPS had its own responsibilities for public protection and recall was a tool to be used to further that objective. The NPS had a much better prospect of successfully justifying recall than the police had of persuading the CPS to charge Mr Amman based on the purchases alone. It also had a better chance of taking action without alerting Mr Amman to the nature and degree of the surveillance.

The Hon. Mr Justice Hilliard

14th September, 2021