

## **CASE NOTE: INQUESTS ARISING FROM THE DEATHS IN THE LONDON BRIDGE / BOROUGH MARKET TERROR ATTACK OF 3 JUNE 2017**

*By Daniel Lemberger Cooper, Imran Khan and Partners*

### **Background**

These inquests, which took place over many months at the Central Criminal Court, concerned the deaths resultant from the terror attack in the London Bridge and Borough Market area, which occurred on the evening of 3 June 2017. Eight victims were killed in the attack: Xavier Thomas, Christine Archibald, James McMullan, Alexandre Pigeard, Kirsty Boden, Sébastien Bélanger, Sara Zelenak and Ignacio Echeverria Miralles de Imperial. In addition, the three attackers were killed: Rachid Redouane, Khuram Butt and Youssef Zaghba.

The coronial investigations into the 11 deaths were formerly the responsibility of HM Senior Coroner for Inner South London. In late 2017, the Chief Coroner of England and Wales (HH Judge Lucreft QC) decided, with the approval of the Lord Chief Justice, that he should conduct the investigations and inquests in both cases.<sup>1</sup>

When a number of deaths occur in a single incident or series of events, it is the author's experience that inquests are heard together or in groups. In terms of administration, there were two hearings, one immediately after the other: (i) the inquests concerning the eight victims of the attack, followed by (ii) the inquests concerning the three attackers (as was done in the 7/7 London Bombings and the Westminster Terror Attack inquests). The inquests concerning the deaths of the three attackers were, as they must be, held with a jury, because their deaths resulted from acts of police officers (to be done even if there was no basis for thinking any officer did anything wrong). The victims' inquests were heard by the Chief Coroner sitting without a jury, as he could deliver a summing-up explaining the reasons for his determinations, while a jury could not; a reasoned summing-up was agreed to be valuable to all those involved (as was considered a factor by the court in the New Cross Fire inquests).<sup>2</sup>

Importantly, each of the victims' families were asked to prepare a "pen portrait" statement on the character and life of the person who died, read out at an early stage in the first inquest hearing by a family member or other person chosen by them.

### **Article 2**

The Article 2 procedural obligation is automatically engaged in any inquest where death was due to deliberate use of lethal force by state agents. It was therefore engaged in the inquests concerning the deaths of Khuram Butt, Rachid Redouane and Youssef Zaghba.

The Chief Coroner decided that Article 2 was engaged in respect of the victims because there was an *arguable* case that the authorities investigating Khuram Butt prior to the attack had breached the operational duty to take reasonable steps to safeguard the lives of the public. He also expressed the view that there was an arguable breach of the Article 2 general duty relevant to the deaths of Xavier Thomas and Christine Archibald.

### **Anonymity and special measures**

---

<sup>1</sup> Pursuant to paragraph 1(1) of Schedule 10 to the Coroners and Justice Act 2009.

<sup>2</sup> See *R (Collins) v HM Deputy Coroner for Inner South London* [2004] EWHC 2421 (Admin).

Significant factors for my clients were their anonymity and safety. They were concerned that their identification would expose them to a risk of violent reprisals and harassment, and would result in a recurrence of press intrusion into their private and family lives.

As practitioners will be aware, the common law powers of a coroner to manage an inquest enable him/her to grant anonymity to witnesses and others.<sup>3</sup> In doing so, the coroner may give effect to ECHR rights, including rights to life and/or freedom from serious harm and also privacy rights. If refusal of anonymity would raise a real and immediate risk to life or of serious harm, the default position is that anonymity will be granted.<sup>4</sup> In other cases, this decision involves a balancing exercise<sup>5</sup> in which elements such as the applicant's concerns and the effect of refusing anonymity are set against the countervailing interest in open justice and the Article 10 rights of media organisations.<sup>6</sup>

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

My clients' applications were rejected. It was considered that they had not established that they would face a real and immediate risk of death or serious harm if the orders were not granted. Moreover, it was determined that granting the order would have a material effect on reporting of the inquests. However, "special measures" were put in place.

### **Public interest immunity (PII)**

A coroner has the jurisdiction to decide applications that relevant material provided to him/her should not be disclosed to IPs on the basis of PII objections.<sup>7</sup> There were open and closed sessions to deal with a PII claim by the Secretary of State for the Home Department in respect of material contained in a Sensitive Schedule.

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

The PII claim was determined to be well founded by the Chief Coroner. He upheld the PII Certificate in its entirety on the basis that the public interests relied upon justified withholding the material to which the claim related.

---

<sup>3</sup> See *R (T) v HM Senior Coroner for West Yorkshire (Western Area)* [2017] EWCA Civ 318 at paras. 55-64; *R (A) v HM Coroner for Inner South London* [2004] EWCA Civ 1439.

<sup>4</sup> See, for example, *Re Officer L* [2007] 1 WLR 2135.

<sup>5</sup> See *R v Bedfordshire Coroner, Ex Parte Local Sunday Newspapers* (2000) 164 JP 283.

<sup>6</sup> See *R (T) v HM Senior Coroner for West Yorkshire (loc. cit.)*, paras. 55-64.

<sup>7</sup> See *R v Devon Coroner, Ex Parte Hay* (1998) JP 96 at 101; *Chief Constable of the PSNI's Application* [2010] NIQB 66; *Secretary of State for Foreign and Commonwealth Affairs v Assistant Deputy Coroner for Inner North London* [2013] EWHC 3724 (Admin); *Secretary of State for the Home Department v HM Senior Coroner for Surrey* [2016] EWHC 3001 (Admin) at para. 41.

## **Determinations**

Each victim was judged to have been unlawfully killed, with accompanying narrative conclusions offered as to the means and immediate circumstances of death. The Chief Coroner concluded that the narrative should not include any criticism of the pre-attack investigation as he found it to be generally rigorous and thorough. Indeed, he was not persuaded that the authorities had missed opportunities which would in practice have led to the attack being prevented and lives saved.

He concluded that the narrative for Xavier Thomas and Christine Archibald should record that there were weaknesses in the systems for assessing the need for, and implementing, relevant protective security measures. He also determined that each narrative should recognise that there had been multiple warning signs about the extremist views and conduct of Khuram Butt which were known to a number of his close family members prior to the attack, but which were largely not reported to the authorities.

The killing of each of the attackers was determined by the jury to be lawful.

## **Prevention of Future Deaths**

The evidence revealed matters giving rise to concern. Following detailed submissions from many IPs, the Chief Coroner concluded that there is a risk that future deaths could occur unless action is taken, and so his statutory duty to report was engaged.

There were detailed proposed areas of recommendation to prevent future death made by the Chief Coroner, including (but not limited to):

- i. That consideration be given to putting in place systems of periodic review / assurance to ensure that the criteria for identifying priority sites for protective security advice remain fit for purpose and that this list remains appropriate;
- ii. That consideration be given either (a) to introducing legislation governing the duties of public authorities (including highway authorities) regarding protective security or (b) to producing guidance indicating what existing legal duties require in practice of public authorities regarding assessment of sites for protective security needs and implementing protective security measures;
- iii. That the systems for suspending “priority investigations” (including the criteria for suspension, recording of suspension decisions and systems for re-building intelligence after suspensions) should be specifically considered in the continuing work of review and improvement;
- iv. That consideration be given to legislating for further offences of possessing the most serious material which glorifies or encourages terrorism;
- v. That consideration be given to taking further measures to reduce the risk of rental vehicles being used in terrorist attacks; and
- vi. In respect of emergency response to terrorism, that procedures generally be reviewed to ensure they accord with the requirements of speed and flexibility of response which appear to be recognised in that document.

**Daniel Lemberger Cooper**