CHIEF CORONER

INQUESTS ARISING FROM THE DEATHS
IN THE WESTMINSTER TERROR ATTACK OF 22 MARCH 2017

RULING ON APPLICATIONS FOR ANONYMITY AND SPECIAL MEASURES MADE ON BEHALF OF OFFICERS SA74 AND SB73

Introduction

1. Applications have been made in these Inquests by the Metropolitan Police Service ("MPS") on behalf of two officers who have been given the pseudonyms SA74 and SB73. The officers are both Authorised Firearms Officers ("AFOs") of the MPS and are within the Royalty and Specialist Protection Command ("RaSP"). On 22 March 2017, they were engaged in professional duties as armed officers in the grounds of the Palace of Westminster when they confronted the attacker, Khalid Masood. In that encounter, Mr Masood was fatally shot.

The Applications

2. By these applications, the MPS seek directions that –

   (a) the name and identifying details of each officer should be withheld in disclosure and evidence within the Inquests;

   (b) pseudonyms should be used for both officers for the purposes of the Inquests;

   (c) when the officers are giving evidence, the Court should preclude any questions that might lead to their identification;

(d) when the officers are giving evidence, they should be screened from the public gallery (although the application does not ask for them to be screened from interested persons, their lawyers or members of the jury); and

(e) when attending to give evidence, the officers should be permitted to enter and exit the Court by an appropriate, non-public route.

Most aspects of the application ask me to exercise general case management powers of a coroner which are not codified in statutory materials, although there is specific provision concerning screening in rule 18 of the Coroners (Inquests) Rules 2013 ("the Rules"). While the applications do not say so explicitly, I understand that the MPS also intends to apply for related orders under section 11 of the Contempt of Court Act 1981, prohibiting the publication of the names or identifying details of the two officers in connection with these Inquests.

3. In the MPS application, it is submitted that failure to grant the orders sought would have the following undesirable consequences:

(a) It would expose each officer and his family (which in the case of SB73 includes children of school age) to risk of reprisals or other criminal behaviour.

(b) It would cause fear to the officers.

(c) It would compromise the officers' career progression in specialist firearms roles and in roles involving discreet close protection.

(d) It would inhibit the officers' ability to give their best evidence in these Inquests.

(e) It would act as a serious deterrent to those considering careers as AFOs and as Close Protection Officers ("CPOs"), in circumstances where there is already a marked shortage of officers in such roles.

4. The applications are based on three grounds. First, it is said that anonymity should be granted by application of the common law test, which requires that factors telling for

and against special measures should be balanced in order to further the fairness of the proceedings. Secondly, the MPS places reliance on article 8 of the European Convention on Human Rights (the right to private and family life), arguing that protection of the officers' rights under that article justifies the orders sought. Thirdly, it is argued that anonymity is justified by reference to the rights of the officers under article 2 of the Convention (the right to life).

5. The application is supported by statements from the two officers. In addition, statements have been provided by (a) DCI Stephen Ray, the Post-Incident Manager for the fatal shooting incident; and (b) DCS Zander Gibson, the OCU Commander attached to RaSP.

6. All other interested persons in the Inquests have been provided with the applications and the evidence, and have been given the opportunity to respond. None has raised any objection. Media organisations were also given an opportunity to consider the applications and file submissions, an opportunity specifically discussed in the public hearing on 15 January 2018. None has done so.

Legal Principles

7. The legal principles governing applications for anonymity and special measures generally within the context of inquests may be summarised as follows:

   (a) As part of the general case-management powers of a coroner, he/she may make an order anonymising witnesses or other persons within an inquest. There is no inconsistency between that power and 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 Convention rights by exercising this power.

   (b) In deciding whether to make such orders, a coroner usually applies a common law test, making an "excursion" if appropriate into the territory of article 2 of the Convention. 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].

(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 real and immediate risk of death (or of 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].

(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 is 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 under article 8 of the Convention, the court usually has to perform a balancing exercise which weighs those rights against the 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].

The Evidence

8. In his statement, SA74 says that he has a relatively uncommon name. He expresses concern that he could be tracked down, and his home address identified, with relative ease if his name became known. He is concerned that he or his family could be targeted

for reprisals either by associates of Khalid Masood or by terrorists sharing Mr Masood's beliefs. In addition, he points out that his professional role involves close protection of senior officials and dignitaries who could themselves be more easily targeted if his identity were known. He is worried that his ability to do that job could be compromised. At a more general level, he observes that he is a private person and that the publication of his name in connection with these Inquests would expose him and his partner to intrusive and unwanted media interest.

9. SB73 states that he has been removed from his regular close protection role since March 2017, to protect both him and the person he protected from unwanted media attention. He hopes to return to a close protection role, and worries that he would be unable to do so if his name and identity were publicised. He also worries that he or his family (including his children) could be targeted by terrorists sympathising with ISIS, which has declared an intention to perpetrate attacks in the UK. Since his name is unusual, he fears that it would be easy for such a person to locate and attack him.

10. DCI Ray points out that the national threat level remains graded as "Severe", meaning that a terrorist attack is highly likely. Police officers are at risk of being targeted by terrorists, especially if they have some iconic significance. As DCI Ray explains, it is difficult to protect an officer from being located once his/her identity has been revealed, given the ready availability of open source information, such as credit reference agencies, electoral rolls and loyalty schemes. He also gives evidence that the process for selecting and training officers for RaSP is extensive and costly, as one would expect for those involved in protecting key public figures. The approximate cost of initial selection and training is currently £14,500. DCS Gibson states that RaSP does essential work and is currently below strength.

11. DCI Ray provides with his statement a risk assessment, which indicates that there are risks of "medium" likelihood that publishing the name of either officer would (a) impact upon the officer and his family in some way, possibly requiring them to be afforded protection or (b) pose a risk to colleagues of the officers and/or protected persons. The risk assessment considers that there are "high" likelihood risks that publishing the officers' names would (a) lead to them being located by the media or (b) prevent them from taking covert roles in the future.

Discussion

Application of the common law test

12. In my judgment, each of the applications is justified and should be granted by reference to the common law test, irrespective of the merits of the argument founded on article 2 rights of the officers. The principal points telling in favour of the applications in my assessment are as follows.

13. First, I accept without hesitation the evidence of each officer that he would fear reprisals against himself or his family if he were identified. Each officer does high-profile protection work. If the applications were refused, each would probably have his name and photograph publicised widely. I can readily accept that this prospect causes deep distress to each officer and prompts fears that terrorists might target him or his loved ones. It is well known that extremists sharing Mr Masood's ideology have plotted against and attacked those perceived to be agents of the state. An officer in the position of SA74 or SB73 would naturally worry for his safety on seeing his photograph and name on the front page of a newspaper.

14. Secondly, identifying these officers would pose serious risks of impairing their effectiveness as AFOs and/or as CPOs, and it could prevent them pursuing their chosen career paths (for which they have applied and trained with considerable effort). It is easy to see that an officer identified very publicly as a CPO would be less effective in that role and might have to be removed from some positions.

15. Thirdly, and relatedly, the effect of identifying these officers would deprive the MPS of skilled CPOs at a time when such officers are much needed. The problem could be made worse in future by these officers being identified, since recruitment of officers to take such roles could be damaged by two CPOs having their identities published in a case of such a high profile.

16. Fourthly, quite apart from their fears of reprisals, these officers have a legitimate interest in protecting their identities on more general privacy grounds. Each has chosen a role which involves discretion, and each says that he has kept from others in his life

the details of that role. Refusing the orders sought would cause their privacy to be invaded to a very significant extent. While that may not be enough of itself to override the open justice principle, it is a relevant consideration in the balance.

17. Fifthly, I do not consider that the granting of these orders would impair the inquiry to be carried out in these Inquests. The officers would still give their evidence in court, heard by all. While giving their evidence, they would be seen by jury, lawyers and interested persons. Granting these orders will not prevent the Inquests receiving evidence about all their relevant characteristics (e.g. their experience and training).

18. Sixthly, there is no opposition to these applications. All those with the greatest interest in the Inquests, including the spouse of Khalid Masood (who is represented by very experienced solicitors), have had the chance to object and have chosen not to do so. They have plainly taken the view that the applications are well-founded and/or will not damage their legitimate interests.

19. Against these points, I have taken into account that the orders would intrude upon the important principle of open justice and that naming the officers could make reporting of the Inquests somewhat more engaging. However, those general considerations do not in my judgment outweigh all the points set out above. It is also significant in this context that no media organisation has taken issue with the applications. Those with the greatest interest in open reporting of the Inquests have not objected.

20. In summary, applying the common law test of fairness, and balancing the factors for and against the applications, I am in no doubt that they are well justified. The fairness of the proceedings (which encompasses fairness to these two important witnesses) would be enhanced by making these orders.

Article 8 rights of the officers and article 10 rights of those reporting on the Inquests

21. The exercise of balancing the article 8 rights of the officers against the article 10 rights of media organisations produces the same outcome, not surprisingly. The officers' article 8 rights in this case are very weighty, since identifying them would cause them fear, would overturn their reasonable expectation of privacy, could disrupt their careers and could interfere with their family life. The article 10 rights of those wishing to report

the Inquests would be affected to a degree, but the key facts would still be examined and reported fully. The ordinary right to report the name of a witness cannot trump the considerations in favour of anonymity which exist in this case.

Screening under rule 18 of the Rules

22. As mentioned above, screening of witnesses is subject to specific provision in rule 18 of the Rules. That rule provides as follows, in material part:

> "(1) A coroner may direct that a witness may give evidence at an inquest hearing from behind a screen.
>
> (2) A direction may not be given under paragraph (1) unless the coroner determines that giving the evidence in the way proposed would be likely to improve the quality of the evidence given by the witness or allow the inquest to proceed more expediently.
>
> (3) In making that determination, the coroner must consider all the circumstances of the case, including in particular –
>
> (a) any views expressed by the witness or an interested person;
>
> (b) whether it would be in the interests of justice or national security to allow evidence to be given from behind a screen; and
>
> (c) whether giving evidence from behind a screen would impede the effectiveness of the questioning of the witness by an interested person."

23. In this case, a direction for screening as sought would be likely to improve the quality of evidence by each witness, by dispelling the serious anxiety each witness would otherwise feel about giving evidence. It would also allow the inquest to proceed more expediently, in the sense of proceeding in manner more conducive to the interests of justice. Taking account of the factors specified by paragraph (3) of the rule, it is telling that (i) the officers have strong reasons for their applications; (ii) no interested person objects; and (iii) the proposed screening would not have any adverse effect on questioning of the officers during the Inquests hearings.

Section 11, Contempt of Court Act 1981

24. My conclusion that the orders sought are justified in this case leads me to decide that an associated order under section 11 of the Contempt of Court Act 1981 should be made. That section provides:

> "In any case where a court (having power to do so) allows a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions as appear to the court to be necessary for the purpose for which it was withheld."

Having accepted that the interests of justice require these officers to be granted anonymity within the Inquests, it follows that reporting of their names and identifying details in connection with the Inquests should be prohibited. Otherwise, for example, if they were seen entering or leaving court, there would be nothing to stop their photographs being printed or their identities revealed in public. Accordingly, I shall make an appropriate order under section 11.

Article 2 of the Convention

25. For completeness, I should address briefly the argument made by the MPS based on article 2 of the Convention. In this case, the evidence supplied does not satisfy me that the officers would be at a "real and immediate risk" of being killed or seriously injured if their identities were revealed. There has been no specific threat against the officers involved in the confrontation with Khalid Masood. Neither has the MPS provided examples of plots to target officers with particular profiles which could allow me to conclude that the *Osman* risk threshold is met. Whereas a general risk of reprisals cannot be discounted, and leads me readily to accept that the officers' fears are genuine, a person may sincerely (and rationally) fear retribution in circumstances such as these without facing a "real and immediate risk" of being murdered or badly injured.

26. In forming those views, I have had regard to the facts of cases where the risk threshold has not been found to be satisfied (such as *Osman* itself, and *Van Colle v Chief Constable of Hertfordshire* [2009] 1 AC 225) and those where it has been found to be met (such as *R (A) v HM Coroner for Inner South London* (cited above)).

Conclusions

27. For all the reasons set out in this Ruling, I grant the applications of the MPS in respect of these officers and I make the following orders, subject to any further order of the Court:

(a) The name and identifying details of each of SA74 and SB73 shall be withheld in disclosure and evidence within the Inquests.

(b) Pseudonyms shall be used for both of those officers for the purposes of the Inquests.

(c) When each of those officers is giving evidence, no question may be asked which might lead to their identification.

(d) Pursuant to rule 18 of the Coroners (Inquests) Rules 2013, when each of those officers is giving evidence he shall be screened from the public gallery (although not from interested persons, their lawyers or members of the jury).

(e) When each of those officers attends to give evidence, he shall be permitted to enter and exit the Court by an appropriate, non-public route.

(f) Pursuant to section 11 of the Contempt of Court Act 1981, there shall be no publication of the name of either of the officers known as SA74 or SB73 or identifying information about those officers (including images of them) in connection with these Inquests or their subject-matter. That order shall have effect for the duration of the inquests and thereafter, subject to any further order of the Court.

28. My current view is that the pseudonyms used to date (SA74 and SB73) should be maintained. Retaining them will have the benefit of consistency with practice to date and will avoid the need for many documents to be reviewed and re-edited. Since they will be the only pseudonyms to be used in the Inquests, it is not a particular problem that they are not very memorable.

HH Judge Lucraft QC
Chief Coroner of England and Wales

March 12th 2017