

IN THE CENTRAL CRIMINAL COURT

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

Note for the First Day of the Inquest, 10th September 2018

on behalf of the family of PC Keith Palmer

1. These submissions are made on behalf of the sisters of PC Keith Palmer, Angela Clark and Michelle Palmer (“the family”) who are designated as Interested Persons. The sisters of PC Keith Palmer wish to make clear that although they are the members of the family officially recognised as Interested Persons, they are also advancing the views of PC Keith Palmer’s parents and younger brother. Accordingly, these submissions reflect the views of a number of PC Keith Palmer’s close family members.
2. A number of significant issues have arisen since the date of the last Pre Inquest Review Hearing on the 2nd July 2018. None of these issues are the fault of the family and all of them have caused the family considerable distress at a time that is already exceptionally difficult.
3. In raising these issues, the family is cognisant of the fact that there are a number of others affected by the inquests arising from the deaths on the 22nd March 2017. It should be made plain at the outset that none of the issues raised herein impact on the

inquests of anyone save for PC Keith Palmer. Accordingly, there are no representations that any inquest into the other victims of the 22nd March 2017 should be delayed, nor the inquest into the death of Khalid Masood.

4. The difficulties that have arisen are:
 - a. Funding for representation by the state was refused by the Legal Aid Agency on Thursday 5th September 2018 and communicated to the family on Friday 6th September 2018.
 - b. There has been late disclosure of significant evidence from Commander Usher, Mr Hepburn and the AFOs. Statements have been made available to the family from the 17th August 2018 (Appendix 1) and additional statements have been uploaded up to, and including, the evening of Friday 6th September 2018.
 - c. It is plain from an initial reading of the late material that relevant disclosure is outstanding.

5. The cumulative effect of the issues that have arisen is such that the family of PC Palmer are of the view that they cannot currently meaningfully engage or participate in the inquest into their brother's death. It is submitted that the only means to ensure that they have an effective voice at the inquest is to adjourn that part of the inquest that relates to PC Keith Palmer, either by:
 - a. Re-listing the inquest into PC Keith Palmer's death at a time suitable for the other relevant interested parties and witnesses. This would be the family's preferred course as it would enable a reasonable time to prepare and arrange funding; or
 - b. Re-jigging the witness order so that the witnesses relevant to PC Keith Palmer are called at the end of the evidence, as opposed to Friday this week.

6. It is not known at this stage if the second option will enable the family to have sufficient time to resolve the three issues.

Delay

7. The fact that these issues are arising at this late juncture is, as far as the family is concerned, something that should never have occurred, considering PC Keith Palmer was killed a year and a half ago and there is nothing within the recent material to justify its late service.

8. Submissions of Counsel to the Inquest dated 26th June 2018 anticipated that the statement of Commander Usher would be provided shortly before the 2nd July 2018 PIRH. The family do not understand why this was not done, particularly given the fact that the significance of the contents of the statement would have been clear.

9. At the PIRH on 2nd July 2018, it was stated by Counsel to the Inquest that Commander Usher's statement was in the process of being drafted and a further deadline of 16th July was suggested. It was recognised that any later disclosure than this would likely delay follow up enquiries [p.6 lines 13 to 25]. Concern at the delay to service of this material was expressed by Counsel representing Michelle Palmer, PC Palmer's widow, and it was stated in the clearest terms that the absence of this statement would hinder preparation of the case and provision as late as August would cause particular difficulties [p.8 lines 6 to 18].

10. The impact of the late service on the family is particularly grave given that they were given no information, or forewarning, of any issue as to the security arrangements to protect PC Palmer, either by the Metropolitan Police Service in general or their Family Liaison Officer in particular.

11. The delay is of real concern to the family when it is plain that these matters would have been known shortly after the attack, and the date of the initial report, by the Department of Professional Standards ("DPS") into misconduct on the part of the police and/or wider organisational failures is dated September 2017.

Access to Evidence Uploaded on OPUS

12. The family were not shown the CCTV of the attack and/or any of the inquest documentation until the 3rd July 2018. On that date the family had a meeting with MPS officers. They were told at this meeting that they were not permitted to have copies of the documentation or to take any evidence away. The material did not of course in any event include the statements of Commander Usher or the latter statements of the Authorised Firearms Officers (“AFOs”). After the showing of the CCTV, the family sought representation for the inquest from those instructing.

13. Prior to representation by those instructing, the family have had no access to the evidence on the OPUS system, save for the meeting detailed above. Although it was envisaged at the PIRH on 15th January 2018 that, once confidentiality undertakings were signed, access to OPUS would be given to Interested Persons within the next month or sooner, this access was not given to the family.¹ The family have had no contact by anyone as to access. It appears that this may be because it was not appreciated that the family were unrepresented at this time and accordingly would not be getting the access to evidence, in advance of the inquest, to which an interested person is entitled. This underlines the difficulties caused to interested persons in an inquest such as this if they do not receive the benefit of funding for legal representation.

14. The family gained access to the OPUS system, through those instructing, on the 6th August 2018.

15. The family were initially represented *pro bono* by Hogan Lovells. At the second PIRH on 2nd July 2018 it was made clear to the family, by Hogan Lovells, that it was not appropriate and would not be possible for them to represent the family’s interests at the inquest. The family therefore have had no effective engagement with the inquest through representation for Hogan Lovells. Hogan Lovells notified the Inquest team on the 5th March 2018 of the details of those they represented.

¹ The Family signed an undertaking within months of PC Palmer’s death

16. PC Palmer's widow, in the meantime, due to a highly sensitive conflict with the family, had sought representation by Slater Gordon. Slater Gordon are not able to represent PC Palmer's family and so the family have not been able to obtain access to the evidence through Slater Gordon or engage with the inquest assisted by their representation. In light of the extreme sensitivity of this issue, if any questions arise, both the family and the widow, would be grateful if the questions and the answers could be dealt with in writing. This is not a matter that should be in the public domain.

Significance of the Recent Statements

17. It is submitted that not only was this material served unjustifiably close to the date set for the inquest, the content of the evidence is of the utmost significance. The family has learnt for the first time that, although it was recognised by the state that the unarmed officers at the open Carriage Gates were in a highly vulnerable position, and that issues as to their security had been raised on a number of occasions, there were no AFOs in the vicinity of the attack so as to be able to protect the unarmed PC Palmer. Indeed, there were no AFOs in the vicinity of Carriage Gates for the duration of the 15 minutes of CCTV footage viewed by DPS that showed the time around his murder.

18. From the initial consideration of the late served evidence, it is plain that there are critical areas of conflict between the evidence of Commander Usher and the AFOs working on the ground, in relation to where AFOs should be located in New Palace Yard. Far from there having been plain instructions to protect their unarmed colleagues, vulnerable in high visibility jackets at Carriage Gates, by remaining in close proximity to them at all times, there is evidence that the AFOs were told to widen the scope of their patrols to cover all the perimeter of New Palace Yard.

19. Further, the new material raises issues as to recommendations in security reviews and reports not being implemented and problems with the security in New Palace Yard having been raised prior to PC Palmer's death.
20. It is evident to the family that there are issues as to failures in the security operations and systems, such that PC Palmer was not given the armed protection to which he was entitled, or any other effective means of dealing with a terrorist attack by an armed assailant.
21. As Counsel to the Inquest raised at the PIRH on the 17th May 2017:
- “The inquest into the death of PC Palmer could only engage Article 2 if evidence emerges to support a suggestion that the state breached substantive Article 2 obligations, for example in (i) failing to prevent the attacks; and/or (ii) failing to institute better security arrangements at the Palace or provide better protective / defensive equipment which may have saved the officer's life. “*
22. Evidence has now emerged that supports a suggestion that the state has breached substantive Article 2 obligations by failing to institute better security operations at the Palace of Westminster.
23. It is submitted that the inquest should now be designated an Article 2 inquest (Article 2 submissions, Appendix 2). It is important for the family to have clarity as to this issue at the outset, as they would have had if the evidence had been served as envisaged before the second PIRH and as it should have been in good time. Such clarity has additional importance for PC Keith Palmer's family, as any determination will assist their application for funding.

Outstanding Disclosure

24. The three issues are inextricably linked and due to the funding problem and the need for time to consider the new material, the preparation of a list of outstanding disclosure has not been possible.

25. However, it is plain from the material considered to date that relevant documentation such as the following has not been provided:
 - a. The relevant sections of all reviews and reports in relation to security issues concerning New Palace Yard, including those at Carriage Gates. If the material concerns the risk to those within New Palace Yard and the measures to deal with such a risk, it is relevant. As security has changed since March 2017, there should be no security issues in disclosing the relevant sections to the interested persons. It is of note and concern to the family that there has been no disclosure of any reviews or reports conducted since the attack. It is in the public domain that a review was undertaken by Sir John Murphy into perimeter security in the wake of the March attack. Further, that he recommended a string of major changes. It would be surprising if such a review did not contain relevant material as to the systemic and operational failings that existed in March 22nd 2017 and which made PC Palmer vulnerable to an attack at the perimeter.
 - b. Conversations have been had with the AFOs by Commander Usher and senior officers as to their location within the Yard. Notes must have been made. It became apparent during the evidence of Det Supt. Crossley, for the first time, that the issue of the AFOs was discussed at a meeting with the Gold Commander. No documentation as to Gold Command meetings have been disclosed.
 - c. The DPS initial report would have flowed from emails and instructions as to the ambit of the review. It would appear that Commander Usher must have had an input in the DPS review. None of this material has been disclosed.
 - d. The AFOs refer to briefings, briefing notes, emails and changes to the security instructions in New Palace Yard. None of this material has been provided.

- e. The AFOs name others who will confirm the briefings and the scope of the patrol. From the material seen to date, there does not appear to be disclosure of statements from these officers.
- f. One of the AFOs refers to the fact that the position at Carriage Gates used to be static. The previous maps, briefings and documentation as to this has not been provided.
- g. A decision must have been made to change the position from a static one to a moving patrol (whatever the ambit of that patrol). No documentation has been disclosed as to this decision.
- h. No documentation has been provided in relation to the security at the Cromwell Green, Colonnades and other perimeters at the time that the AFOs' post was a static one at Carriage Gates. Were there at that time other AFOs or officers based at other static points and/or on patrol within New Palace Yard? There must have been a recorded rationale for the change, whether documented in internal emails, meetings or operational logs.
- i. Emails have been provided as to concerns being raised about security failings. These are entitled "again". The earlier emails have not been provided.
- j. The Post Instruction that pre-dated the incident and is dated January 2015 has been disclosed but not the Post Instruction that was applicable at the time.

26. The above is merely an indicator of why the family is of the view that material is outstanding that will assist them in discovering the truth as to the security systems and operational decisions that led to no AFOs being at Carriage Gates for 15 minutes, during which their brother was stabbed to death. Further, that such material will ensure that the state investigates impartially and diligently his death.

Conclusion

27. The family in raising these three issues and seeking an adjournment of the start of the inquest into the death of their relative, are simply keen to ensure the following, as expressed by the European Court of Human Rights in *Vo v France* (2005) at [89]:

"... so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others." (Amin at [31] per Lord Bingham: see also *R (L (A Patient) v Secretary of State for Justice* [2008] UKHL 68 ("L") especially at [21] and following per Lord Phillips of Worth Matravers).

SUSANNAH STEVENS

THOMAS COKE-SMYTH

Q.E.B. HOLLIS WHITEMAN

10th September 2018

APPENDIX 1: CONFIRMATION FROM OPUS OF AVAILABILITY OF STATEMENTS

From: Kieran Mackrell [<mailto:KMackrell@opus2.com>]
Sent: 06 September 2018 14:17
To: Sarah Burton
Cc: Kiran Shoat
Subject: Release of Documents - Westminster Bridge

Dear Sarah

Thank you for your time on the phone earlier this morning. Having looked into the issue we discussed I can see that the three documents initially uploaded to the Palace Security folder on the 18th of July (WS5099, DC5334 and WS5100) were not made available to the Kingsley Napley team at this time. The same is also true of the final document that was uploaded to this folder on the 10th of August (WS5103) – this folder was subsequently made available to you and your team on the 17th of August. Please accept my apologies for the error in releasing these documents to your team – there were some initial issues around the release of documents to various interested parties but we are confident the issues have been resolved now and there should be no further problems going forward.

With regards to the discrepancies with documents you mentioned that you and your team are experiencing, I would be grateful if you could let us know whether downloading Google Chrome has resolved the issue. If it has not, could you please provide the email addresses of two users who have access to different documents and the inquest reference of a document that can be viewed by one but not the other? This will allow us to investigate further.

Kind regards

Kieran

Kieran Mackrell

Project Manager

OPUS 2 INTERNATIONAL

E: KMackrell@opus2.com

T: +44 20 3008 6619

D: +44 20 3409 1526

M: +44 7585 802 878

A: 5 New Street Square | London | EC4A 3BF



VISIT OPUS2.COM

APPENDIX 2: ARGUABLE ARTICLE 2 BREACHES

Article 2

Substantive duties

1. Article 2 imposes two substantive duties on contracting states:
 - a. a negative duty to refrain from taking life (except as provided for by the article), and
 - b. a positive duty to protect life, which consists of two separate duties:
 - i. a systemic duty to put in place a framework of laws, precautions, procedures and means of enforcement that will, to the greatest extent reasonably practical, protect life; and
 - ii. an operational duty to protect individuals from real and immediate risks to life which are known about or could reasonably be anticipated.
2. As recognised at the first PIRH, Article 2 would be engaged if evidence emerged suggesting a “*i) failing to prevent the attacks; and/or (ii) failing to institute better security arrangements at the Palace or provide better protective / defensive equipment which may have saved the officer’s life.*”

Evidence capable of proving an actionable breach of Article 2

3. To prove an actionable breach of Article 2, it is not necessary to prove that, but for the state’s failings, the victim would not have died. Instead the test is whether the victim lost a substantial chance of survival (*Van Colle v Chief Constable of Hertfordshire* [2009] 1 AC 225 para 138 and *Savage v South Essex Partnership NHS Foundation Trust* [2010] HRLR 24 para 82).

Procedural duty

4. Where there has been an arguable or *prima facie* breach of one of the substantive duties, Article 2 also imposes a procedural duty on the state to investigate. The threshold for the procedural duty to be engaged is low: “arguable” means anything more than “fanciful” (*R (AP) v HM Coroner for Worcestershire* [2011] EWHC 1453 (Admin) para.60). The threshold is reached not only where evidence indicates a breach but also where it discloses a potential breach requiring further investigation (*R (Humberstone) v Legal Services Commission* [2011] HRLR 12 paras 62, 65-66 and 69).

Relevant evidence capable of triggering the Article 2 procedural requirement

5. Commander Adrian Usher's first statement dated 16th July 2018 discloses, *inter alia*, that:
 - a. The Carriage Gates where the attack took place were to be left open despite the known and anticipated risk of terrorist attack.
 - b. It was known that unarmed officers at the Carriage Gates, such as PC Palmer, were at increased risk as result of earlier reviews of security.
 - c. It was intended that PC Palmer would have been supported by two AFOs in close proximity to the Carriage Gates who would have been able to offer immediate armed protection as a result of this identified vulnerability.
 - d. Despite this identified risk and the stated requirement of AFOs in New Palace Yard (NPY) the investigation has disclosed that no AFOs were in the area of Carriage Gates between approximately 14:25.03 and 14:41.07 which was after KM's fatal attack on PC Palmer.
 - e. There is evidence that the AFOs concerned had not acted in accordance with the requirements of the Post Instructions and this was dealt with by way of a referral to the Metropolitan Police's Department of Professional Standards (DPS). This concluded that this was the result of organisational failings in that the relevant AFOs had either not read the relevant instructions or were said to have not followed them. No further action was taken against these officers further suggesting that this was a systemic rather than an individual failing.
 - f. A number of reviews have identified various vulnerabilities and issues which relate to or are relevant to the security of unarmed officers stationed in NPY.
 - g. A number of reviews and reports included recommendations as to how to decrease the vulnerability of those at Carriage Gates. These were not implemented.
 - h. Security concerns had been raised before the attack that officers were not where they should be inside NPY.
 - i. Security concerns had been raised before the attack that supervision was lacking inside NPY.
6. A second statement has been provided by Commander Usher, which clarifies that in 2015 concerns were raised that officers were not where they should be inside NPY and that there was an insufficient level of supervision. Further, a recommendation for individual Carriage Gate officers to be deployed with taser was not actioned.

7. The statement also makes plain that no guidance was given to the AFOs as to the “short patrol” requirement in the Post Instructions.
8. A preliminary review of the NPY Post Instruction reveals that there is ambiguity in the terms used, areas referred to and actions required by officers. The Post Instruction appears to have broadened the area that was to be covered by the NPY AFOs between January 2015 and December 2015 when the relevant Post Notes for this incident were published.
9. A further Tactical Review following this suggested that “*There is value in the occasional, and irregular, patrol around New Palace Yard as a whole*”. This document again suggests ambiguity or confusion as to whether AFOs ought to have been static or whether they were required to patrol.
10. When the Post Instructions dated December 2015 are contrasted with the statements of the two AFOs from the day of the attack they show a belief that their roles required patrol of NPY and not solely providing static cover to unarmed officers at Carriage Gates.
11. The AFOs have provided statements. One refers to sector 3 as “*a patrol within New Palace Yard*”, which is consistent with the Post Instruction as to a perimeter patrol and the Tactical Review requirement of the duty to extend to a patrol as a whole, albeit on an occasional and irregular basis. Sector maps are produced by this officer to show the patrol areas (albeit they are illegible copies of photographs).
12. The other AFO equally refers to the sector as “*a moving patrol of the area*” which includes the “*member’s entrance, House of Parliament, Carriage Gate and New Palace Gate*”.
13. The AFOs say that their evidence as to the fact that their duty was not to remain in close proximity of Carriage Gates at all times, rather included a patrol around the perimeters of the NPY, is corroborated by:
 - a. Briefing email.
 - b. Plans of the locations of AFOs in NYP.
 - c. Briefings from supervisors.

- d. The change from a static post to a patrol.
 - e. The fact that all other AFOs patrolled the same area.
 - f. The fact that the two AFOs in question had been carrying out a patrol of NPY for years unchecked and unchallenged.
14. Therefore, the only AFOs in NPY were around the NPY Colonnades at the time of the attack and were unable to protect PC Palmer as would have been required in their intended role.

Arguable Breaches

15. It is submitted that there is now evidence which discloses a “*failing to institute better security arrangements at the Palace or provide better protective / defensive equipment which may have saved the officer’s life.*”
16. It is further submitted that *prima facie* there are the following arguable operational failures which contributed to the loss of a “substantial chance of survival”:
- a. Failure to adequately appreciate and manage the risk to unarmed officers in the NPY posting.
 - b. Failure to arm all officers, including PC Palmer, in the NPY posting.
 - c. Failure to ensure that there were armed officers in a static position in close proximity to Carriage Gates, at all times, in order to protect the unarmed officers posted there.
 - d. The decision to change the AFO’s post from a static one in close proximity to Carriage Gates to a moving one away from Carriage Gates and/or covering the entire New Palace Yard.
 - e. Failure to station the unarmed officers in a protected location.
 - f. Failure to provide adequate supervision from senior officers given the identified risk and a known history of officers not being in the correct position.
17. It is submitted that *prima facie* there are the following arguable systemic failures which contributed to the loss of a “substantial chance of survival”:
- a. Inadequate systems for supervision and/or review of the location of AFOs in NPY as required of them in the Post Instructions.

- b. Failure to provide a clear, consistent and effective system of rules and guidance in respect of deployment of AFOs to NPY.
- c. Inadequate information management and dissemination through ADAM and other methods resulting in unclear and conflicting information as to the proper location of the two AFOs in NPY.
- d. An inadequate review of the information provided to AFOs to ensure that the instructions were consistent and clear.
- e. Inadequate training of the AFOs posted to NPY.
- f. A failure to implement recommendations following the identification of the high risk to unarmed officers at Carriage Gates, notably not providing officers with a small ballistically protected enclosure; increased physical barriers at the gate or the provision of taser.

18. Given the low threshold necessary to trigger the Article 2 procedural duty, it is submitted that the evidence disclosed is clearly sufficient to establish arguable breaches and now require a formally designated Article 2 inquest into the death of PC Palmer.