

IN THE CENTRAL CRIMINAL COURT

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

**Note on outstanding disclosure and witnesses requested
on behalf of the family of PC Keith Palmer**

Introduction

1. The requests for disclosure and the calling of the two witnesses have a common objective: the family of PC Palmer seeks an independent, full and fearless investigation of the death of PC Palmer, one that will provide them with the answers required to understand the security systems applicable to NPY and their genesis. On the face of the evidence, failings in that security system resulted in their unarmed loved one being stabbed to death without the support of armed police, whilst working at one of the most obvious terrorist targets.
2. The family is not in a position to obtain the answers that they legitimately seek without either the assistance of the MPS in relation to disclosure and the calling of witnesses or the intervention of the Chief Coroner.

3. Considering the MPS approach to the family's search for answers, the family wish to make it plain that they consider the MPS' adversarial stance and ongoing objections to disclosure, has a common objective: to limit exploration of the security system failures; to limit criticism of those responsible for the changes and to prioritise reputational concerns of the MPS over the public interest in fearlessly exploring PC Palmer's death.

4. As has been made plain in a number of authorities, an inquest is not adversarial but should ensure:

"... 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).

5. It is submitted that where there is arguable evidence of a systemic or operational failure which deprived PC Palmer of a chance of life there must be a significant degree of public scrutiny to satisfy the public interest that:

- a. The full facts of any failings resulting in PC Palmer being left without armed protection be brought to light;
- b. Any culpable or discreditable conduct within the MPS linked to this failure be brought to public notice;
- c. Sufficient evidence be heard of the nature of any such failing so that the Court can be in a position to know whether such failings have been rectified and are unlikely to be repeated.

6. On the material disclosed to date, there is currently no consensus as to how it was that AFOs such as PC Ashby and Sanders operated in contradiction to the stated Post Instructions and how it was that Carriage Gates were left unprotected at the crucial moment of the attack on PC Palmer. The evidence has been plain that the daily practice of the 50-100 AFOs who worked at the POW was to patrol the entirety of NPY. If there is any suggestion that this evidence can be rebutted or rebuffed through the calling of the senior officers at the top of the tree of responsibility, then evidence is required from the Police Sergeants or duty officers who worked alongside the AFOs and disclosure of the checks and briefings involved should be given.

7. Where disclosure is not provided by the MPS the Coroner has the power under the Coroners and Justice Act 2009 s.32, schedule 5 to require production of evidence in the form of a written statement or by the production of documents.

Fixed Post/ Patrol

8. The absence of AFOs at the time that Khalid Masood appeared at Carriage Gates is of central importance to the family. In order to obtain any comfort from the inquest process, they seek answers as to how he came to die in circumstances where there was no adequate firearms protection in place. It is plainly relevant when ensuring that the full facts are brought to light and that culpable and discreditable conduct is exposed, to ask and have answers to the question of why patrols were introduced and/or were being undertaken. Further, why there was a change in the practice of AFOs from a static position to a patrol.

9. The family has examined the MPS' Response to Disclosure document with concern. It is notable that at [2] the MPS state: "*in light of the expressed beliefs of PCs Ross and Glaze as to the previous history concerning post instruction*" and "*the supposed move from fixed to mobile patrols*", a schedule of Post Notes has been prepared.

10. PCs Ross, Glaze and Ashby have all given clear evidence that there used to be a fixed armed post at Carriage Gates and that this was changed to a patrol. Therefore, a deliberate decision appears to have been made to alter the security system to one which meant that AFOs would necessarily be away from Carriage Gates for significant periods.
11. None of these officers were directly challenged by the MPS in relation to the evidence that they gave in relation to either the previous fixed post or a change to a patrol. It has then been noted that the MPS questioning of PC Ashby as to static patrols was to ask him when they had existed and when the change came in.¹ PC Sanders was asked whether he had any first hand knowledge of there having been fixed posts and it was suggested that in his time there was never a fixed post on Carriage Gates.²
12. It therefore appears that the MPS may be seeking at this late stage to call evidence from Commander Usher and/or another senior witness which will contradict or undermine the evidence of PC Ross, PC Glaze and PC Ashby.
13. If the MPS is planning on calling evidence that: a) on the basis of Post Instructions there was no fixed post; b) there was no change to a patrol and c) the usual practice of the AFOs at the time was not a patrol of NPY, this needs to be made plain now in order that representations can be advanced as to disclosure and the calling of witnesses on an informed basis and decisions can be made on a clear understanding of the MPS' position. Further, if there is to be any suggestion that the evidence of all the officers who were present on the day, and who have been called, is incorrect when they state that the practice of the AFOs was to patrol the entirety of NPY, this should be made clear to the family.
14. Disclosure of items 4, 6, 16 all go to the issue of fixed post/ patrol.

¹ Day 7 transcript p.145-146

² Day 8 transcript p.74

15. The Post Note summary provided is insufficient and inadequate to discharge the duty of disclosure and meet the disclosure requests made. The family seeks the core material, namely the Post Notes themselves and the Tactical Planning Reviews that led to each Post Note. Although the MPS asserts that all relevant material is included in the Schedule, the family was concerned to observe that the December 2015 Post Note had not been covered by Commander Usher in his statement and that material that was plainly relevant had not been included. There had been no reference by Commander Usher to: *“all relevant maps and post times are displayed within the base room at POW”* or to *“supervision of this post is the responsibility of the Duty Officer/ Patrolling Sergeant. Recorded periodic checks are to be carried out to ensure compliance with these instructions”* (see Usher 1 [67]).

16. Further, the Post Note summary was provided with no accompanying explanation, on the 17th September 2018 at a time too late to be considered with PC Ashby and after the evidence of PC Ross and PC Glaze. This is notwithstanding the fact that on the 13th and 14th September the family requested the disclosure and also time to consider matters before PC Ross and PC Glaze were called.

Commander Usher

17. Commander Usher has not clearly addressed in his statements to date the question of whether there was a fixed post at Carriage Gates and/or a patrol. If evidence is to be called from him, then this should be reduced to writing and served on the IPs to consider before questions are asked.

18. The MPS response throughout has been that all matters can be asked of Commander Usher. However, the family does not accept that he is best placed to ensure that the full facts of the practice of patrol/ change from a static position are brought to light for the following reasons:

- a. He has only been in post since April 2016;

- b. His understanding of the security systems in NPY is based on Post Notes that plainly did not reflect the reality of what occurred on a daily basis;
- c. He cannot speak to what occurred on the ground either in relation to static posts or patrols as he has no direct experience;
- d. As Protection Commander with strategic responsibility at the material time, he cannot be described as independent.

19. The MPS has at its disposal a wealth of evidence to answer the family's wish to get to the truth. If there is any suggestion by Commander Usher that: there was never a fixed post; a change to a patrol, or a regular practice of patrolling NPY, then there are numerous witnesses who were in post over the relevant period and who have the direct knowledge of the security systems in place. Such witnesses will be able to assist with the documentary evidence that must be in existence. It is notable that no evidence has been provided from: any Inspector; Duty officer; Police Sergeant or other AFO. Further, that no disclosure has been forthcoming as to: daily briefings; detail of training exercises; other maps; or supervisory records.

20. The family submit that it is inconceivable that there is no documentary or other relevant evidence to support the contention by PCs Ross, Glaze, Ashby and Sanders that there was a static post at Carriage Gates which was then changed to a patrol.

Expert Evidence

21. Objection has been made to hypothetical questions being asked of witnesses³ and it has been suggested that it cannot be known whether the presence of AFOs could have prevented the loss of PC Palmer's life.⁴ Having established that AFOs were not in close proximity to Carriage Gates at the material time, the likely effect of this is now, it is submitted, a central issue requiring determination in the inquest into the death of PC Palmer.

³ Day 8 PC Sanders p.54

⁴ Day 4 transcript CTI submissions p.30 L8-18

22. It is therefore submitted that it would not now be appropriate, given earlier objection to the questioning of PC Sanders, for Commander Usher to be asked questions about what an AFO may or may not have done if present at Carriage Gates. The MPS accepted that PC Sanders could not be asked the hypothetical questions as to opportunity and or efficacy of a shot, as he was not present at the time of the incident. The same applies to Commander Usher. Further, Commander Usher is less able to answer than even PC Sanders, as Commander Usher was not present on the day and was not an AFO working at POW at the material time (it is not known if he has ever worked in this role). In addition, the family would strongly oppose any attempt to seek to adduce evidence in relation to this key issue from a witness who is far from independent.

23. The family are not in receipt of legal aid funding but, in view of the need to explore this issue, will nevertheless be seeking funding from the LAA for a firearms expert to be instructed to assist on this issue. They are unlikely to receive a response within the timeframe of this inquest. It is submitted that if detailed questioning of officers present is not appropriate, then expert evidence is the only proper alternative to explore this important issue.

Disclosure which remains outstanding

24. From the list of requests dated 13.09.18 the following items remain outstanding in light of the submissions above:

- a. Item 4 and Item 16: Full Post Instructions from 26th May 2010 to 28th November 2014 accompanied by their supporting Tactical Planning Review as contained in their original format (with appropriate redaction where not dealing with NPY, Sector 3 or general arrangements) are requested. Confirmation remains sought as to whether it is the MPS's position that there were no fixed posts for AFOs at Carriage Gates prior to the December 2015 Post Instruction (see paras 9 to 19).

- b. Item 6. Records of checks by supervisors of AFOs and positioning in NPY. In view of reference in the Post Instruction dated 14 December 2015 to “*Recorded periodic checks are to be carried out to ensure compliance with these instructions*” evidence of these checks is sought or confirmation that no such records exist. Documentary evidence of any improvement or change remains sought. The request should be made of the duty officers and/or PS undertaking the task, rather than the “understanding” of senior officers about the existence of such records.
- c. Item 7. The request was not limited to briefings contained in a binder. Evidence has been given of oral briefings and briefings by way of email. Has there been any attempt to contact the PS and/or duty officers who provided such briefings to obtain evidence as to what AFOs were told to do in relation to NPY and what was said as to the maps?
- d. Item 12. Confirmation of whether post May 2015 there was any consultation or communication from the MPS to the Parliamentary authorities about keeping Carriage Gates closed.
- e. Item 18c and d. Advance disclosure is sought of any relevant material relied upon by Commander Usher in respect of these assertions or confirmation that no such material exists.
- f. Item 9 and 21c. Materials relied upon to reach conclusions that Post Notes are considered advisory and that there is scope for personal interpretation, in particular, the identified review of working practices.
- g. Items 24 – 26. Training material as to exercises given in relation to attacks at Carriage Gates and/or terrorist attacks. Hypothetical questions have been put as to whether or not an AFO would leave a static post. No disclosure has been given as to training and/or exercises on the subject. Further, no training material and/or disclosure of exercises has been provided as to the interplay between unarmed officers and AFOs. PC Ashby and PC Sanders could not be questioned about the training and/or exercises undertaken by unarmed officers as they had been AFOs for a considerable time by the attack.

Timing of evidence of Commander Usher

25. In view of the outstanding disclosure and lack of clarity as to the evidence Commander Usher is going to give, we ask that disclosure is provided and clarification is given prior to his evidence being called. The family are concerned at a pattern whereby relevant disclosure has been given only after evidence has been given. It is of particular concern that criticism has been made of the lack of questions asked of PC Ross and Glaze, when it was made clear that the family was not in a position to ask questions without further time and disclosure.
26. Accordingly the family strongly oppose the calling of evidence by Commander Usher on Monday without resolution of the issues identified above.
27. The family would ask that legal argument as to the question of whether or not PC Marsh should be called, is heard after the evidence of Commander Usher and Chief Superintendent Aldworth. The family will be submitting in any event that he should be called. However, the extent of the issues to which he can provide assistance, may be greater than those outlined by counsel to the widow depending on the position of the MPS.

SUSANNAH STEVENS

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Q.E.B. HOLLIS WHITEMAN

21st September 2018

