**IN THE CENTRAL CRIMINAL COURT**

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

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**Submissions on behalf of the family of PC Keith Palmer**

**14th September 2018**

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## Introduction

1. In order to assist and reduce the time required to hear legal argument and/or any need to guillotine submissions, matters that would have been raised orally have been reduced to writing over night. The family of PC Palmer ask that these submissions are considered before any decisions are made, in conjunction with the oral submissions and the Note of the 10th September (with Appendix 1 and 2).

2. In referring to "the family", no upset is intended to the widow of PC Palmer and it is a chosen as a more sensitive shorthand than blood relatives. It would not be right to use the shorthand of sisters, as the submissions are also advanced on behalf of: PC Palmer's parents, younger brother and wider family. This is important to the family and it is relevant to the decision that has to be made as to an adjournment. It is not simply PC Palmer's sisters who wish to have the inquest adjourned. It should be noted that PC Palmer's parents have attended during the inquest and have also provided instructions to those instructing.

3. 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. It was to be hoped that matters would be resolved or progressed to a degree that the inquest into PC Palmer's death could continue, however the stage has now been reached that not only have the matters raised in the 10th September 2018 Note not been resolved, it is plain that the extent of the disagreement between the family and the MPS is such that the number of issues and the time taken to resolve them has increased, rather than dissipated.

4. The issues that call to be determined are as follows:

    a. Adjournment of the inquest into the death of PC Palmer;

    b. Article 2 – are there arguable grounds that are more than fanciful such that there should be an Article 2 determination before all the evidence is called;

    c. Whether a jury should be summonsed;

    d. Disclosure – what disclosure should be ordered and in relation to any disclosure that is withheld on the grounds of national security, whether the relevant evidential and legal threshold has been met following an application for PII.

5. Despite the fact that the timetable has been set and there is a desire not to alter it any further, it was always known that in setting that timetable matters would have to be kept under review. Indeed, it was made plain at the PIRH that the timetable could not be agreed until the relevant evidence as to security systems in place in New Palace Yard ("NPY") was served. Significantly therefore, the timetable was set before the key evidence was obtained and served, namely: Commander Usher; Mr Hepburn; Ms Morris and the material statements of PC Ashby and PC Sanders. These statements were all served after the three PIRHs in this case.

6. Further, the timetable was set at a time that the family of PC Palmer had no meaningful opportunity to participate and/or make representations. The failure to serve the key evidence prior to the PIRHs meant that no application for funding could be made in order to obtain representation and the lack of representation has left the family without any access to the evidence (no access to Opus was given until the beginning of August). Without access to the evidence, no submissions could be made as to the timetable.

7. The service of the material as to the security systems in place has continued up to the week before the inquest and has had a significant impact on:

    a. arguable Article 2 breaches;

    b. A fundamental procedural Article 2 obligation, namely funding: see *Humberstone* [2010] EWCA Civ 1479;

    c. The requirement to summons a jury;

    d. the number of issues arising in relation to the security systems in place;

    e. disclosure;

    f. questioning of witnesses;

    g. the length of the witnesses' evidence.

8. The material that has been served is not only of the utmost importance and relevance to the inquest of PC Palmer, it is: extremely detailed in its content; involves numerous different categories of systems (such as reviews, reports, decision-making, instructions (Post Instructions, briefings, training, implementation and supervision) and there is conflict between witnesses. Accordingly, it is not right that this is material that can be prepared quickly, nor has sufficient consideration and/or weight been given to the fact that the limited preparation time available has been reduced by the need to consider at the same time the issues of Article 2, funding and disclosure.

9. It is submitted that the issues are interlinked and the cumulative affect is important.

**Adjournment**

10. The grounds for an adjournment are as follows:

    a. Late service of significant material that should have been served at an earlier stage and which triggers an arguable case for Article 2, a jury to be summonsed and disclosure requests. Preparation is ongoing and the time afforded has been insufficient to ensure that the family are able to effectively participate.

    b. Funding has yet to be resolved for legal representation.

    c. There is outstanding disclosure that relates to witnesses to be called, who cannot be out back due to timetabling constraints.

    d. The timetable that was fixed before the material evidence was served is now unrealistic and inflexible to the extent that it does not allow for a fair and fearless investigation and/or legal matters to be adequately represented. The family now has grave concerns that the inflexibility and inadequacy of the timetable will be given great weight than the requirement to investigate. There is an appearance to the family that there will be pressure to rush.

11. It is submitted that the following factors are relevant:

    a. The chronology in relation to the PIRHs, service of material and the family's notification of relevant issues.

    b. The other victims, save for the widow would be unaffected by the adjournment.

    c. The inquest of Khlaid Massood can take place before the inquest of PC Palmer if there is good reason to do so. Ensuring the effective participation of PC Palmer's family in the inquest amounts to a good reason.

    d. There are a number of civilian witnesses who have been referred to, such as Rt. Hon. Tobias Ellwood, who are not required by the family and could be read. Therefore, the distress of witnesses in having the inquest adjourned can be met in a large number of their cases by reading the evidence.

e. The evidence of other professional witnesses could be read. There is no requirement on the part of the family for instance for any witness from the London Ambulance Service to attend. There is no issue as to the care PC Palmer received.

f. The views of the widow are not determinative and can be easily explained, she is in a very different position to the family and has been for some time. She is represented and her legal team had access to the documentation on OPUS at a much earlier stage. She was represented at the PIRH and has been able to make any requests and representations as to disclosure. She has been able to participate in the inquest process in the months prior to the inquest. The family have been unable to participate in this way and cannot be represented by the legal team for the widow. The legal team has made plain that they have never represented the family's interests and nor can they do so. It is not solely a question that the private funding does not extend to the family, but that it would not be appropriate for them to act in light of the conflict. Accordingly, this safeguard does not apply.

g. The time-table is in now too tight and is unworkable if there is to be a fair and fearless investigation into PC Palmer's death. Five days have been set aside for the key evidence in relation to PC Palmer. This is insufficient. In light of the evidence served since the timetable was set, the evidence of the officers at the scene will take longer than a day and the evidence of Commander Usher will take longer than half a day.

**Article 2**

12. It is submitted that the starting point is that questions of Article 2 engagement should ordinarily be dealt with, before evidence is called, at a PIRH. Such an approach is supported by case law and indeed was the intended approach of this Court. But for the late disclosure of materials by the MPS, such an approach would have been taken in this inquest. The following cases support such an approach:

a. *Brown v Norfolk Coroner* [2014 1 WLR 3191 [39-41] where it was said that whether Article 2 was engaged ought to be considered at the PIRH and that *"The coroner should also ensure that interested persons, particularly those unrepresented, have sufficient disclosure of relevant statements and documents before the pre-inquest review hearing so as to be able to address the agenda on an informed basis"* [41].

b. *R (on the application of Deana Fullick) v HM Senior Coroner for Inner North London v The Commissioner of Police for the Metropolis London Ambulance Service* [2015] EWHC 3522 (Admin) [54-59]. Here it was explicitly recognised by the Chief Coroner that whether Article 2 was engaged would indeed have consequences for both (1) any application the family would wish to make for legal aid and (2) the conclusions the Court can come to. In that case the Coroner had simply stated that the Inquest would be Article 2 compliant. It was said by the Chief Coroner that *"In all cases where the issue of Article 2 is raised for consideration, the coroner should respond with clarity. If necessary the coroner should rule, with brief reasons. Interested Persons need to know whether the coroner considers that Article 2 is arguably engaged, either as a general duty or as an operational duty, so that they can know whether the State's procedural duty of investigation is triggered."* [58].

13. The engagement of Article 2 will have a material impact upon whether the family of the deceased are entitled to state funded legal representation in order to safeguard their legitimate interests *R (Humberstone) v Legal Services Commission* [2011] 1 WLR 1460 [50]. A decision not to determine whether Article 2 is engaged will therefore likely hinder the family from demonstrating the necessary threshold has been reached so as to entitle them to funded representation. A failure to provide such representation would in itself be an arguable breach of the state's Article 2 procedural obligations.

14. A failure to provide PC Palmer's family funded representation when IPs such as the MPS and parliamentary authorities are properly resourced and legally represented creates an obvious and undesirable imbalance. This would be contrary to the Article 2

procedural obligation, the interests of justice and the public interest in the family being able to play their part in properly holding state bodies to account for any failings which may have contributed to PC Palmer's death.

15. Accordingly, it is submitted that rather than the onus being on the family to persuade the Chief Coroner to adopt what ought to be the standard procedure in respect of determining Article 2 engagement, it is for the IPs to establish a good reason to act differently.

16. It is submitted that none of the reasons advanced amount to good reasons. The arguments as to the potential for review and the fact that a coroner "will be better placed" at the conclusion of the evidence could be made in any inquest. Such arguments fail to take into account, and apply, the correct test, merely that of *"arguable breach"*. In response to the points set out in CTI's submissions at paragraph 9 which are supported by the MPS and parliamentary authorities:

    a. Although it may be a matter for the Coroner's discretion as to when to revisit engagement of Article 2, it is submitted that such is the impact of this determination for the family's rights, that it would not be a proper exercise of discretion to delay this determination where there is sufficient evidence of arguable Article 2 breaches;
    b. For the reasons given in Appendix 2 to our original note there is already *prima facie* evidence of failings in the security arrangements in NPY which may have contributed to PC Palmer's death. It would be inconsistent with the intended functioning of the Article 2 procedural obligation to artificially delay such a decision until the conclusion of the evidence. There is no suggestion or requirement that the Court should await further *"great detail"* and this would be contrary to the intended threshold of "*arguable breach"*;
    c. As set out, a decision on Article 2 would materially affect the family's ability to achieve state funded representation in order to protect their legitimate interests. Further, Article 2 will as a matter of law provide a clear and unambiguous threshold against which requests for disclosure and detailed

consideration of the boundaries of the scope of the examination into possible inadequacies in security at POW are assessed. It is submitted such clarity will reduce and simplify subsequent legal argument as to disclosure which will need to be dealt with prior to the conclusion of the evidence;

d. Interested Persons affected by the question of Article 2 are in reality the MPS, parliamentary authorities and widow of PC Palmer. It is submitted that given the low threshold and clear evidence this issue can be decided without extensive legal argument or delay. That is the very intention of the threshold to be applied. It is of note that no Interested Person has in fact articulated why, on the evidence identified, there is no *"arguable breach"* notwithstanding that the MPS and parliamentary authorities would not accept any substantive breach. Contrary to this, the widow of PC Palmer has also put forward cogent argument in support of an "*arguable breach"* on the evidence as served. If it is to be argued that Article 2 is not engaged by the MPS and parliamentary authorities, it would greatly assist the family to understand the basis upon which this argument is made so that the issues raised can be properly and fully explored during the evidence rather than simply through submissions at its conclusion;

e. No unfairness can be said to arise to the relevant Interested Persons, the MPS and parliamentary authorities, by this determination being made at this stage. They have been aware from the PIRH of the evidence which would be capable of engaging Article 2. The MPS have been aware of the relevant evidence for a substantial period of time in advance of its service. There can be no proper argument that there would be any unfairness in its determination at this stage. This is in direct contrast to the impact upon the family of this determination not being made.

17. In summary there are good reasons to make the determination now:

a. The test of *"arguable breach"* is clearly met. Adjourning until the end of the evidence would in effect, change this test from arguable breach to actual breach.

b. Funding and representation of the family's legitimate interests would be affected.

c. If it is going to be argued that there has been no Article 2 breach the Court and family would be assisted by knowing the basis for this so that it can properly be explored during the live evidence and relevant further disclosure can be sought to determine any issues arising.

**Jury**

18. The submissions of the MPS dated 12 September 2018 at paragraph 27(a) raise the issue that it has not been argued that the Inquest sit with a jury under section 7(2)(b) of the Coroners and Justice Act 2009 on the basis that there are grounds to suspect that PC Palmer's death resulted from an act or omission by a police officer.

19. Under section 7(2):

*An inquest into a death must be held with a jury if the senior coroner has reason to suspect—*

*(b) that the death resulted from an act or omission of—*

*(i)a police officer, or*

*(ii)a member of a service police force,*

*in the purported execution of the officer's or member's duty as such,*

20. Written submissions have suggested that there were individual failings on the behalf of police officers. There is suspicion that the lack of provision of immediate armed support by these officers resulted in the loss of PC Palmer's life. If that is correct there are grounds for suspicion that the relevant test has been met.

21. It is said in *Jervis* at 10-38 that although an inquest can continue and a jury can be summoned *"it must be at least be doubtful that it permits the coroner, who, knowing*

*that the jury condition is satisfied, proceeds to hold part of an inquest by himself before he summons a jury."*

**Disclosure**

22. The outstanding disclosure relates to relevant material that concerns the security systems in place at the time of PC Palmer's death. The outstanding material is required in order to effectively investigate the acts or omissions that could have contributed to his death and/or caused PC Palmer to lose a substantial chance of survival.

23. This is the first opportunity for the family to make disclosure requests, having previously been unrepresented.

24. It is trite law that the disclosure exercise needs to be kept under review and the obligations are ongoing.

25. The outstanding evidence is required before evidence is called as to the death of PC Palmer, in particular any evidence from those implementing the security systems on the ground (the unarmed and armed officers on the scene) and those making decisions, and supervising, as to the systems. It is submitted that a failure to provide relevant evidence in advance of the questioning of witnesses will prevent the family from being able to effectively participate.

26. In light of the time afforded to prepare and the funding issues that have affected preparation, it was made plain that the initial disclosure list of the 10th September

would be amplified this week. A further list of disclosure was provided on the 13th September. No response has been seen at the time of writing.

27. In relation to the initial disclosure list, for ease of reference the following was sought as relevant to the evidence served:

    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.

28. None of the material is to be provided and accordingly the matter falls to be determined. In relation to a number of the disclosure requests, the response has been that the material cannot be provided on the grounds of security. It accordingly follows that there is relevant material that would otherwise attach but that it is said PII applies.

29. There has been no PII application and/or ruling. It is submitted that this is now required before any rulings as to disclosure are made which impact on the application to adjourn and the calling of witnesses.

30. When dealing with an application for non-disclosure under PII, paragraph 2(2) of Schedule 5 of the Coroners and Justice Act 2009 applies:

    a. *The rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to an investigation or inquest under this Part* ***as they apply in relation to civil proceedings*** *in a court in England and Wales.*

31. The Law in relation to PII at inquests and in respect of PII based on national security concerns was comprehensively set out in *Secretary of State for Foreign and Commonwealth Affairs v Assistant Deputy Coroner for Inner North London [2013] EWHC 3724 (Admin)*. The following principles are set out in the judgment of Goldring LJ, at [53-61] (my emphasis):

> *It is axiomatic, as the authorities relied upon by the PIPs [properly interested persons] demonstrate, and as the Coroner set out in his open judgment, that public justice is of fundamental importance.* ***Even in cases in which national security is said to be at stake, it is for courts, not the Government, to decide whether or not PII should prevent disclosure of a document or part of a document****.*
>
> *…****When the Secretary of State claims that disclosure would have the real risk of damaging national security, the authorities make it clear that there must be evidence to support his assertion****. If there is not, the claim fails at the first hurdle.*
> *…*
>
> ***If the claimed damage to national security is not "plain and substantial enough to render it inappropriate to carry out the balancing exercise," then it must be carried out.***
>
> ***…When carrying out the balancing exercise, the Secretary of State's view regarding the nature and extent of damage to national security which will flow***

***from disclosure should be accepted unless there are cogent or solid reasons to reject it.*** *If there are, those reasons must be set out.*

***A real and significant risk of damage to national security will generally, but not invariably, preclude disclosure****. As I have emphasised, the decision was for the Coroner, not the Secretary of State.*

32. It is submitted that in this inquest disclosure has been provided as to the security arrangements that were in place in NPY. Therefore this is already known and there can be no real and significant risk of damage to national security to provide details as to any evidence as to those systems having been criticised in Sir Jon Murphy's report. Moreover, those systems have now changed.

33. The only recommendation in Sir Jon Murphy's report that has been disclosed in the statement of Commander Usher is recommendation 4. This relates to an armed policing command. A summary and/or redacted version of the report is sought as to any evidence given concerning: perimeter security; Carriage Gates; static patrols; patrols in NYP and the positioning and number of AFOs.

34. It is submitted that it is highly unlikely that a review of the 22nd March 2017 security breaches did not include any relevant material as to these issues. This is the material that is requested, unless the necessary legal and evidential threshold is met for PII.

35. In summary it is submitted in respect of all disclosure that the materials requested is relevant and necessary:

    a. in order to explore and establish whether the systems for the provision of security in NPY were adequate;

    b. in establishing what was known and what ought to have been known about security in NPY prior to the attack;

c. in establishing what reasonable steps or decisions were or should have been taken which could have had a material impact upon the death of PC Palmer;

**SUSANNAH STEVENS**

**THOMAS COKE-SMYTH**

**Q.E.B. HOLLIS WHITEMAN**

**14th September 2018**