BEFORE THE CHIEF CORONER HHJ LUCRAFT QC

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

INQUEST INTO THE DEATH OF PC KEITH PALMER GM

RESPONSE ON BEHALF OF THE PARLIAMENTARY AUTHORITIES TO THE NOTE BY COUNSEL FOR PC PALMER'S SISTERS

Request for adjournment

1. The Parliamentary authorities recognise and respect both: (i) the importance of the role of PC Palmer's widow and his other close family members, families being at the heart of the inquest process; and (ii) the considerable work involved on the part of the Inquests team in drawing the evidence together and making the existing timetabling arrangements. A suggested timetabling resolution for the conflicting difficulties has been made in the submissions of Counsel to the Inquests and is being put into effect. The Parliamentary authorities will of course co-operate, as far as practicable, with whatever timetabling arrangements are made to resolve those difficulties having regard to the family's various interests.

Other Procedural Matters

2. Concern expressed regarding "late disclosure of significant evidence." Paragraph 4b of Ms Stevens' note is understood to refer to the concern that PC Palmer's sisters only *received* the statement of, amongst others, Mr Hepburn (Director of Security for Parliament) on 17 August. For the avoidance of doubt, however, the Parliamentary authorities responded to the Inquests team's request[1] for a statement from Mr Hepburn fully and promptly. Mr Hepburn's detailed statement was provided to the Solicitor to the Inquests on 16 July 2018, a significant amount of sensitive material relating to previous security reviews having been reviewed and assimilated into that statement.

[1] Made on 4 June 2018

Paragraph 4 of the Parliamentary authorities's submission of 29 June 2018 summarised the scale and nature of the task and need not be repeated here. The wider chronology is addressed by Counsel to the Inquests' submissions.

3. Concern expressed regarding "Outstanding disclosure". Consistent with the approach adopted and encouraged by the Inquests team, Mr Hepburn's statement sought to extract and address relevant information from the various Palace of Westminster security reviews, applying the Inquests teams' own guidance on matters that fall within the scope of PC Palmer's inquest. By their nature, such security reviews are sensitive and most of them extend well beyond those Palace of Westminster security issues which are relevant to PC Palmer's inquest. Counsel to the Inquests has seen the underlying reviews. Following receipt of the statements of Mr Hepburn and Commander Usher, the email from Solicitor to the Inquests dated 10 August 2018 noted that,

> *"… CTI has reviewed a significant number of sensitive documents relating to Parliamentary security which have required CTI to hold appropriate security clearance. Included in these documents is a major review carried out after the attack.*
> *Those sensitive documents have informed the topic areas about which questions were posed to Mr Hepburn and Commander Usher, including the follow up questions which are the subject of Commander Usher's second witness statement.*
> ***CTI are satisfied that the materials which have been disclosed to IPs provide the relevant information about the security of the Palace of Westminster, in a way which is proportionate and which respects the clear sensitivity of much of the material that has been reviewed**.*
> *CTI has borne in mind both that the security in the area of New Palace Yard is within the scope of the Inquests and a matter of understandable interest for PC Keith Palmer's family. CTI have also had in mind that the Inquests are not, and could not be, a wide ranging investigation into the safety and security of the Parliamentary estate, something which in any event could not take place in public." (emphasis added)*

See further in this regard, the submissions of Counsel to the Inquests at §4(d) which confirms that the Inquests team has worked with the MPS to ensure that relevant conclusions of the reports are set out in the evidence. The same applies to the Parliamentary authorities who have naturally co-operated fully with the Inquests team's approach.

4. Most of the specific disclosure issues raised at §25 of Ms Stevens' note relate to the MPS. As regards the matters raised at §25(a), it does not follow from the fact that some security arrangements have changed since March 2017 that there are no security issues in disclosing earlier reviews. In relation to reports conducted since the attack, including Sir John Murphy's report, these have been included in the process described above and have been reviewed by Counsel to the Inquests; hence the reference in the email cited above to the fact that "*Included in these documents is a major review carried out after the attack."* Such reports are wide-ranging. They address sensitive security matters extending well beyond the scope of this inquest, including current security measures. While it is true that some security vulnerabilities, once identified, can be rapidly addressed, for a variety of reasons other measures may take time to implement. It is manifestly not in the public interest - nor in the interests of the safety and security of police officers and security staff currently working at the Palace- to disclose details of where action is still being taken in relation to some assessed vulnerabilities. Here, as elsewhere, the Parliamentary authorities support, and have co-operated with, the Inquests team's approach of requiring the relevant information to be addressed by way of witness statements. Mr Hepburn's statement includes relevant information drawn from post-attack reviews. As was done in respect of Commander Usher's further statements, were it the case that Counsel to the Inquests considered that relevant material in the post-attack reviews needed to be further disclosed / addressed, the appropriate approach would be to require further witness statements to address those areas. However, it is understood that Counsel to the Inquests is currently satisfied that the relevant information from all the reviews (pre- and post-attack) have been proportionately addressed in the witness evidence.

Article 2

5. The Parliamentary authorities support Counsel to the Inquests' submission that the question of whether the procedural obligation under Article 2 ECHR is engaged should be addressed at the end of the evidence (CTI submissions, §1(c)). They agree with each of the points made in §9 of those submissions. It is particularly relevant that:
    - the scope of PC Palmer's inquest has already been set appropriately widely such that the relevant circumstances of his death, and not just the narrower question of the means by which he came by his death, are already being

thoroughly investigated in the evidence. This includes the relevant Palace of Westminster security issues.

- A decision now that Article 2 is engaged will not affect the scope or evidence to be heard.
- A decision taken at the end of the evidence will be better informed.

6. The vast majority, but not all, of the family's arguments on Article 2 are based upon arguments concerning the MPS. Operational security at the Palace of Westminster is however a strategic partnership between the MPS and the Parliamentary Security Department. Insofar as the Parliamentary authorities are affected by the Article 2 issues raised, they make the following observations.

7. First, as to timing, it is doubtful whether fuller and perhaps more adversarial submissions on whether or not Article 2 is engaged will assist the inquest process at this early stage of the evidence. That is so for all the reasons advanced in §9 of Counsel to the Inquests' own submissions. The matter can and should be reviewed at the end of the evidence. That is the most appropriate approach.

8. Second, as to the law:
   (1) The thrust of the Counsel to the Inquests' overview of the governing legal principles (CTI submissions, §7) is agreed.
   (2) The submissions on behalf of PC Palmer's sisters in places inappropriately elide the applicable principles for the general positive duty under Article 2 and the 'Osman' operational duty. The latter duty arises only if the threshold of a real and immediate risk to life is reached.[2]
   (3) The general positive duty is a duty on the state to establish a framework of laws, precautions, procedures and means of enforcement which will protect life so far as practicable. The security and policing of the highest profile public buildings, which are sadly attractive targets for terrorists, is an activity which may be inherently

[2] As to the threshold test, following *Osman v United Kingdom* (2000) 29 EHRR 245, the nature of the threshold has been the subject of comment and guidance in, amongst other cases: *Re W's application for Judicial Review* [2004] NIQB 67*; In re Officer L and Others* [2007] UKHL 36, [2007] 1 WLR 2135*; Savage v South Essex Partnership NHS Foundation Trust* [2008] UKHL 74, [2009] 1 AC 681*; R(Palmer) v Worcestershire Coroner and others* [2011] EWHC 1453 (Admin)*; Rabone v Pennine Care NHS Foundation Trust* [2012] UKSC 2, [2012] 2 AC 72*; and R (Kent County Council) v HM Coroner for Kent (North-West District)* [2012] EWHC 2768 (Admin).

dangerous for the security staff involved, whether civilian security staff or police officers. It is plainly the case that the state had in place laws, precautions, procedures and means of enforcement to protect those working in those policing the Palace of Westminster. In various different contexts, domestic and Strasbourg case law makes clear that in such cases, the general duty is **not** breached:

a. In the context of hazardous military training, by the "Negligent conduct of an individual or the concatenation of unfortunate events" (*Stoyanovi v Bulgaria,* App No 42980/04 (ECtHR, 9 November 2010).

b. In the context of military deployment, by low level operational decisions made on the ground, by isolated or occasional errors of judgment or co-ordination (even if negligent), or by high level procurement decisions based on political judgement. That is to be contrasted by the 'middle ground' which may involve cases of failure to provide equipment, bad planning or inadequate appreciation of the risks where Article 2 may be engaged (see, e.g., *R(Smith (Susan)) v Ministry of Defence* [2013] UKSC 41, [2014] AC 52; *R(Long) v Secretary of State for Defence* [2015] EWCA Civ 770; *R (Smith (Catherine))* [2010] UKSC 29 [2011] 1 AC 1.

c. In the custodial context, by matters which amount to "…*individual failings of understanding and individual failings of compliance".* There is a difference between a failure in the operation of the system and a failure of the system itself. The fact that complaints can be expressed at a level of generality as being "systemic failings" does not mean that they establish the sort of systemic fault required for a breach of the Article 2 general duty (*R (Scarfe) and others v Governor of HMP Woodhill and the Secretary of State for Justice* [2017] EWHC 1194 at [54-56]).

d. In the healthcare context, where save in certain exceptional cases, the positive duty will not be breached by an error of judgment on the part of a health professional or negligent coordination among health professionals in the treatment of a particular patient (*Powell v. the United Kingdom (2000) 20 EHRR CD 362; Fernandes v Portugal (Application no. 56080/13), 19 December 2017.).* Even as regards the exceptional cases, the Grand Chamber has made clear that *"... the dysfunction at issue must be objectively and genuinely identifiable as systemic or structural in order to be attributable to the State authorities, and must not merely comprise*

individual instances where something may have been dysfunctional in the sense of going wrong or functioning badly" (*Fernandes* at [195]).

These cases - albeit taken from different contexts- illustrate the particular care that is required in assessing allegations of "systemic" failures as suggested breaches of the Article 2 general duty, and whether they in fact amount to genuinely systemic issues as opposed to individual errors or failures in the operation of the system. This serves further to underline the desirability of reviewing the Article 2 question at the end of the evidence, rather than before the relevant evidence has been heard. The Court will be better placed to judge this matter at the end of the evidence.

9. Third, as to the facts,

(1) the Parliamentary authorities should not be taken to accept, even as arguable, the factual premise of the submissions put forward on behalf of PC Palmer's sisters as they relate to the Parliamentary Security Department.

(2) By way of illustrative example only, it is said that a number of reviews and reports included recommendations as to how to decrease the vulnerability of those at Carriage Gates and that these were not implemented (Ms Stevens' submissions at appendix 2, §5g). As regards the Parliamentary Security Department, the only final report recommendation relevant to Carriage Gates that was not accepted was a recommendation for types of rising and fixed bollards, a measure that would have had no effect whatsoever on Masood's callous, inhumane and determined attack, and which was not accepted because of the longer term project for infrastructure improvements in New Palace Yard. Mr Hepburn's evidence suggests that even if the planned large-scale infrastructure improvements had been implemented sooner, this would not have prevented Masood's incursion as far as the vehicle barrier within New Palace Yard. The separate recommendation from the 2016 report that the police should look at the then-current policy of keeping Carriage Gates open even when traffic volumes were low, was addressed by means of the additional crowd control barriers. Even if Carriage Gates had been closed at quiet times when traffic volumes were low, this would not have included the period when Divisions had been called, such as when Masood in fact attacked.

(3) Mr Hepburn has addressed in clear - and it is hoped responsible - terms that the Carriage Gates vulnerability is one that PSD now considers should have been

addressed at an earlier date. That does not change the fact that thought had been given to, and judgment exercised upon, the Carriage Gates recommendations in the past. Nor does it evidence the sort of genuinely systemic failures required to amount to an arguable breach of the general duty. Here again, however, the Court will be better placed to consider these factual issues, and whether they affect the Article 2 position, having heard the evidence.

Nicholas Moss, Temple Garden Chambers **12 September 2018**

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