INQUESTS ARISING FROM THE DEATHS

IN THE WESTMINSTER TERROR ATTACK OF 22 MARCH 2017

RULING ON APPLICATIONS MADE ON BEHALF OF THE SISTERS OF PC KEITH PALMER

Introduction

1. This ruling concerns a series of applications made in these Inquests by counsel for the sisters of PC Keith Palmer, one of the victims of the Westminster Terror Attack (supported by some other members of his family). As I shall explain below, the applications are in the main not supported by Keith Palmer's widow, who is separately represented.

2. On the morning of Friday 14 September 2018, following written and oral argument, I refused to grant the main applications and said that I would give reasons in writing. This ruling gives the reasons for my decisions.

Background and the applications

3. The Westminster Terror Attack took place on 22 March 2017. Khalid Masood drove a Hyundai car across Westminster Bridge, striking many pedestrians and causing four to suffer fatal injuries. He then ran from the car into New Palace Yard in the Palace of Westminster, where he attacked a police officer (Keith Palmer) savagely with a knife. He was confronted and shot seconds later by armed plain clothes protection officers in New Palace Yard. Keith Palmer very sadly died of his injuries that day. The entire attack from start to finish had taken 82 seconds.

4. The hearing of the Inquests concerning the victims of the Westminster Terror Attack commenced on Monday 10 September 2018. Prior to the hearing, there had been three Pre-Inquest Review ("PIR") hearings, two of which were held before me on 15 January and 2 July 2018. At those hearings, there was discussion of a range of procedural issues and I gave directions.

5. The widow of Keith Palmer has been represented throughout the period of preparations for the Inquests. Before March 2018, she was represented by Hogan Lovells. At that time, she changed her representation to Slater & Gordon. I am told that Keith Palmer's sisters were represented by Hogan Lovells until March 2018 but did not instruct other solicitors until early August 2018, when they instructed Kingsley Napley.

6. In the months preceding the Inquests hearing, disclosure of statements and other documents has been given to interested persons by the Inquests team through an online system. Kingsley Napley requested access to that system on 6 August 2018 and were given access immediately.

7. On 7 September 2018 (the last working day before the Inquests hearing), counsel for the sisters of Keith Palmer (Susannah Stevens) contacted counsel to the Inquests for the first time. She explained that her clients had sought funding for their representation from the Legal Aid Agency, which had just been refused. I do not know the reasons for that refusal, but the fact of Keith Palmer's widow being ably represented may have been a relevant factor. She asked for adjustments in the timetabling of the Inquests to allow her to prepare properly for certain witnesses, specifically the re-scheduling of PCs Ashby and Sanders.

8. On 10 September 2018 (the first day of the hearing), counsel and solicitors to the Inquests discussed with Ms Stevens options for deferring the two specific witnesses. That evening, Ms Stevens provided a Note in which she asked that either Keith Palmer's inquest be adjourned or that witnesses in relation to him be called at the very end of the hearing. She also raised requests for some additional documents and raised the Article 2 issue which is discussed below.

9. Over the following days, at my request, counsel to the Inquests and some other interested persons provided written submissions setting out their position. I then heard oral argument on 13 and 14 September 2018.

10. Ms Stevens made the following four applications, which she supported with a further note circulated on the morning of 14 September 2018:

    a. She applied for the inquest into Keith Palmer's death to be adjourned, so that it is heard separately from those of the other victims.

b. She applied for a ruling that Article 2, ECHR, is engaged in Keith Palmer's inquest.

c. She applied for an order that a jury be summoned for his inquest.

d. She asked that I direct that the police carry out further enquiries and that I give disclosure of documents resulting from those enquiries (as set out in a note she provided on the evening of 13 September 2018).

I shall address each of those applications in turn.

Adjournment Application

Background

11. Ms Stevens makes her application for an adjournment on the following grounds. She claims that there has been late service of some significant material which she says she needs to consider and which she says calls for further enquiries and disclosure. She also argues that her clients have distinct interests but are unable to participate properly in the hearing because their application for funding has been refused.

12. The material on which Ms Stevens relies which she says has been provided late in the day is material on the question of security arrangements at the Palace of Westminster, specifically documents showing (a) where the two uniformed firearms officers stationed in New Palace Yard (PCs Ashby and Sanders) were at the time of the attack and (b) what their post / patrol instructions were.

13. This application is opposed by counsel for Keith Palmer's widow. It is also opposed by counsel to the Inquests, counsel for the Metropolitan Police Service ("MPS") and counsel for the Parliamentary Authorities. It is not supported by any other interested person.

14. The relevant chronology may be summarised as follows:

a. At the PIR hearing on 15 January 2018, the scope of the Inquests was determined and directions were given for disclosure. The document management system (Opus Magnum) was then set up and material uploaded to that system on a rolling

basis when it was available and had been reviewed by the inquests team. Interested persons who requested access to the system were given that access, as counsel to the Inquests had indicated would be the case in that hearing (see transcript at p8).

b. The first statements of PC Ashby and PC Sanders were uploaded on 26 April and 1 June 2018 respectively. Those statements made clear where the two officers were when the attack began and where they went as events unfolded. They also made clear that the officers were (as they understood it) on a "moving patrol", rather than stationed in one place in New Palace Yard. The officers' second statements were uploaded on 24 July and 1 June respectively. Those gave more details about the officers' movements.

c. Security vetted members of the Inquests team reviewed a number of available reports (many Secret) pertaining to security at the Palace of Westminster. Then, on 18 April 2018, the Inquests team provided a document to the MPS setting out topics to be addressed in evidence about Palace security arrangements. This note has since been disclosed to interested persons on the document management system. The MPS and the Parliamentary Authorities promised that they would provide statements addressing those topics in detail, which would include relevant material from the security reports in a form which could be disclosed in the Inquests. In the case of the MPS, this was to be a statement of Commander Usher.

d. The MPS was unable to provide the statement before the PIR hearing on 2 July 2018. At that hearing, I gave a direction that it and the Parliamentary Authorities' statement (of Mr Hepburn) should be provided by 16 July 2018. Both statements were provided on that date and uploaded to the document management system on 18 July 2018 (with a specific notification email to interested persons). The statement of Commander Usher gave details of the Post Instructions to PCs Ashby and Sanders and addressed in detail the question of where they were intended to patrol.

e. On 23 July 2018, the Inquests team posed follow-up questions to Commander Usher in writing. Those questions included some about postings of armed officers in New Palace Yard.

f. The sisters of Keith Palmer instructed their present solicitors, Kingsley Napley, on 2 August 2018. As mentioned above, the solicitors requested access to the system on 6 August 2018 and were given access on that same day. Because of an administrative error by the company operating the document management system (Opus), the solicitors were not initially given access to the folder containing Commander Usher's and Mr Hepburn's statements.

g. On 10 August 2018, a further statement was produced by Commander Usher answering the questions posed by the inquests team. It was uploaded to the system immediately.

h. The failure to give Kingsley Napley access to the Palace Security folder was noted and corrected by Opus on 17 August 2018. Their access to this document had been delayed by 11 days. There remained three full working weeks before the start of the Inquests hearing, and four before the hearing of detailed evidence about Keith Palmer.

i. On 28 August 2018, Commander Usher provided a third statement addressing further questions raised by the Inquests team. That too was disclosed to Interested Persons immediately.

j. As I have already mentioned, Ms Stevens first contacted counsel to the Inquests on 7 September 2018 to raise concerns about her ability to prepare for the evidence of PCs Ashby and Sanders and to ask if their evidence could be deferred from the first to the second week of the hearing.

k. I was informed on 10 September 2018 that a preliminary agreement had been reached between Ms Stevens and counsel to the Inquests regarding the timetabling of evidence of PC's Ashby and Sanders.

15. It is fair to note that PCs Ashby and Sanders have provided further statements to the MPS over recent weeks. They are relatively short documents and were disclosed by being uploaded to the system as soon as they were provided to the Inquests team.

Legal Principles

16. A coroner may adjourn an inquest if he/she is of the view that it is reasonable to do so: see rule 25(1) of the Coroners (Inquests) Rules 2013. This provision gives a substantial and proper measure of discretion to the coroner conducting the hearing. The coroner will take account of all the circumstances, including the effects on other interested persons and witnesses. As noted in the Chief Coroner's Law Sheet No. 5 (at para. 19), decisions whether or not to adjourn inquests are for the coroner and are not lightly to be disturbed.

Conclusion

17. In my judgment, it would plainly be wrong to accede to the adjournment application. First, it would be very disruptive to the witnesses who have been summoned to attend, and would probably be very distressing to many involved in the case. It would involve re-calling witnesses months in the future. It is apparent that many witnesses in this case are deeply affected by what they saw and find the process of giving evidence very difficult. I am also aware that some witnesses have had to make special travel arrangements and to re-arrange shifts at work.

18. Secondly, the proposed adjournment would prevent the Inquests hearing from providing the full, clear and coherent account of the attack (in all its aspects) which it has been carefully arranged to provide. Removing consideration of Keith Palmer's death from this hearing would thus be undesirable for this further reason. It would also have the unfortunate consequence that Masood's shooting was examined before his killing of Keith Palmer.

19. Thirdly, consideration must be given to the wishes and interests of Keith Palmer's widow. She has no wish for her husband's inquest to be adjourned, and it would no doubt be distressing for her to live through this process a second time. Her legal representatives are prepared and able to address relevant issues of Palace of Westminster security.

20. Fourthly, I am satisfied that the relevant issues can be properly examined without any adjournment. A large amount of evidence about relevant security arrangements at the Palace has been disclosed through the statements of Commander Usher and Mr Hepburn, and through exhibited documents. PCs Ashby and Sanders have given their accounts in statements. CCTV footage and maps of their movements have been disclosed. Other officers stationed in the Palace grounds are being called to give evidence. All the relevant witnesses can be examined about the issues, and it is apparent from his submissions that counsel for Keith Palmer's widow is both keen and able to examine witnesses about security arrangements (including patrolling duties of armed officers). I am not persuaded that Keith Palmer's widow has any less interest in a rigorous examination of these matters than his sisters do. Shortly after I heard argument, Mr Adamson's examination of PCs Ross and Glaze bore out my view in that respect.

21. In that respect, I should also observe that issues concerning the posting and conduct of the two armed officers are important, but that they are one aspect of one issue in Keith Palmer's inquest. There are other important issues in his inquest.

22. Fifthly, I do not consider that the timing of the provision of the evidence, as summarised above, made it impossible for Ms Stevens and her junior properly to prepare for the examination of the relevant witnesses. They had the bulk of the material on Palace security for three weeks prior to the hearing, and even that material was not very voluminous. They received additional statements when those became available, and those were not long or complex documents. It is very often possible in an inquest for an interested person to identify further enquiries that could be pursued to unearth additional documents, but that will not necessarily be a reason to adjourn the inquest once started. In any event, I am confident that the Inquests team, assisted by the MPS, will undertake reasonable enquiries and provide disclosure as appropriate and practicable.

23. I am unaware whether the refusal of funding by the Legal Aid Authority, or its timing, has had an impact on Ms Stevens' and her junior's ability to prepare. However, it cannot in my judgment be right for this inquest to be adjourned while such funding issues are addressed between Kingsley Napley and the authorities.

24. For all those reasons, the application to adjourn is refused.

Article 2, ECHR

25. The legal background to this aspect of the application is set out very fully in submissions of counsel to the Inquests. I do not propose to repeat here the summary of the law in those submissions, which I understand to be uncontroversial. The essential issue for me at this stage is whether I ought to make a decision now as to whether Article 2 is engaged in Keith Palmer's inquest or defer that decision until the end of the evidence. Ms Stevens urges me to take the decision now. Counsel to the Inquests and counsel for the MPS and Parliamentary Authorities submit the contrary. Counsel for Keith Palmer's widow accepts the pragmatic course suggested by counsel to the Inquests.

26. I am not persuaded that I should make a decision at this juncture as to whether the facts of Keith Palmer's death engage Article 2 in the relevant sense. I do not, in any way, prejudge the decision which I shall reach when I revisit the question at the end of these Inquests.

27. At the PIR hearing on 15 January 2018, I heard submissions from all interested persons, including representatives of the Palmer family, on Article 2 issues. It was common ground at that stage that the available evidence did not justify a finding that Article 2 was engaged in the inquests concerning the victims of the attack, and I made a decision to that effect. However, I indicated that the decision would be kept under review, to take proper account of evidence yet to be received.

28. It is a matter for my discretion as to when I reconsider that decision, subject to an obligation to ensure that the matter is resolved before I give my determinations as to the deaths. While it may be good practice to address Article 2 at a case management stage (as I did in this case), it is commonplace to keep the issue under review and it must be a matter of discretion when to address it again.

29. In my judgment, the reasons in favour of addressing the issue at the end of the evidence are very strong.

30. First, deferring the decision in this way would allow it to be taken on the basis of materially better information. The evidence to be given over the coming weeks will address security arrangements at the Palace of Westminster in great detail. That evidence is likely to add to everyone's understanding of the arrangements. For example, the adequacy of Post Instructions to armed officers is likely to be addressed minutely in the examination of Commander Usher. Furthermore, since in this case the Article 2 issue may well turn on distinctions between systemic and individual alleged failings (as made clear in submissions from the Parliamentary Authorities), it is particularly important that the evidence of senior and junior officers be heard before the issue is debated.

31. Secondly, my decision (whatever it would be) would not change any aspect of the conduct of the hearing or the evidence to be elicited. As all interested persons have accepted in their submissions, the Higher Courts have repeatedly stressed in recent years that a decision on Article 2 engagement generally has little or no relevance to inquisitorial scope. In this case, it has been repeatedly made clear that the scope of inquiry is as wide as it would be if all the inquests concerning the victims had been subject to Article 2 engagement.

32. Thirdly, there would be other specific disadvantages in attempting to resolve the issue now. It would take considerable time, and would probably cause witness evidence to be re-arranged, so causing inconvenience and distress to witnesses. There would be the very real possibility that, at the end of the evidence, I would be asked to reconsider any decision made now. That would plainly result in a waste of Court time.

33. Ms Stevens raises the point that a decision on the Article 2 issue now in her favour would assist her clients' application for funding. Since I have no detailed information about the application or the reasons for its refusal, I am unable to take a firm view on the effect a decision might have on the funding application. More importantly, I do not consider that the potential (and speculative) effects on a funding application can be a strong reason for taking the Article 2 decision now. In any case, the reasons in favour of deferring that decision (as set out above) in my judgment outweigh any such considerations.

Jury Issue

Legal Principles

34. Section 7 of the Coroners and Justice Act 2009 governs the issue whether a jury is required in an inquest. It provides as follows (in relevant part):

> "(1) An inquest into a death must be held without a jury unless subsection (2) or (3) applies.
>
> (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…
>
> (3) An inquest into a death may be held with a jury if the senior coroner thinks that there is sufficient reason for doing so."

35. The starting-point under section 7(1) is therefore that there should be no jury unless one of the mandatory grounds in subsection (2) is made out or the coroner exercises the residual discretion under subsection (3). The argument in this case concerns one of the mandatory grounds, specifically that in section 7(2)(b)(i).

36. The predecessor to that provision was section 8(3)(b) of the Coroners Act 1988, which provided that a jury should be summoned if there was reason to suspect that a death had resulted from an injury caused by an officer in the purported execution of his duty.

37. Like its predecessor, section 7(2)(b) focusses attention on the question of whether the death resulted from the conduct of one or more specific police officers. The statutory change had the effect that the ground now includes omissions causing death as well as

the actual infliction of fatal injury. An example of an omission causing death is the case of *R (Fullick) v Senior Coroner for Inner North London* [2015] EWHC 3522 (Admin). There, the omission was a culpable failure to summon medical attention for an obviously vulnerable individual at a police station.

38. The legal policy underlying section 7(2)(b) is that deaths caused by police officers (as agents of the state) require scrutiny by a tribunal with the perceived additional independence afforded by a jury: see *Shafi v East London Senior Coroner* [2015] EWHC 2106 (Admin) at para. 60.

39. This subsection must be construed and applied in accordance with common sense. In *Ex Parte Linnane* [1989] 1 WLR 395, the Court made that point in relation to the closely connected provision requiring a jury to be summoned for deaths taking place in state detention. The Court of Appeal endorsed that conclusion in *R (Ferreira) v Inner South London Coroner* [2018] QB 487 at para. 110.

40. Finally, while the test in the subsection of a "reason to suspect" sets a low evidential threshold for the relevant finding, that does not mean that a coroner should summon a jury on the basis of pure speculation. Neither does it avoid the need to ask whether the facts can really justify a conclusion that death resulted in reality from an identifiable act or omission of one or more specific police officers.

Discussion

41. Ms Stevens' written submissions in support of this application are very brief and make no reference to authority. They say that it has been "suggested that there were individual failings on the behalf of the police officers" and that "there is a suspicion that the lack of provision of immediate armed support by these officers resulted in the loss of PC Palmer's life". Ms Stevens did not expand on those submissions orally. I understand that the primary basis of her submission is that PCs Ashby and Sanders were in the wrong place within New Palace Yard when Keith Palmer was attacked and that this caused his death.

42. This application is not supported by any other interested person (including Keith Palmer's widow). Those who made submissions on the issue strongly resisted the application.

43. In my judgment, there is no reason to suspect that Keith Palmer's death resulted from the act or omission of a police officer for the purposes of section 7(2). Keith Palmer was killed by a savage attack by a terrorist. It appears that the attack began at the gates of New Palace Yard and continued over the seconds that followed. The officers around him gave what assistance they could. Within seconds, Masood was confronted and shot by armed officers. Taking the common sense approach suggested by the authorities, it is wholly unreal to say that Keith Palmer's death resulted from acts or omissions of police officers.

44. Mr Keith QC for the MPS and Mr Moss for the Parliamentary Authorities submit that it would be absurd to apply section 7(2) in such a way a jury was mandatory in any case where it could be suggested that police officers might have been able to intervene to prevent an attack by a third party. Mr Adamson for the widow of Keith Palmer endorsed that submission. I accept it.

45. Furthermore, on the evidence presently available to me, it appears that PCs Ashby and Sanders had been on a roving patrol in the period before the attack and that their actions were in accordance with common practice. Even if I am wrong about that, it currently seems to me a somewhat speculative question whether PCs Ashby and Sanders could have saved Keith Palmer's life even if they had been standing in close proximity to Carriage Gates when the attack began (as I understand is the basis of the argument underlying the application). They might have moved away from their post in response to the sound of the vehicle colliding with the north wall of New Palace Yard. Even if they had not done so, they would have had seconds to react and any attempt to take a shot would have been complicated by the attacker's proximity to Keith Palmer and other unarmed officers. In those circumstances, it would be unfair and wrong to describe Keith Palmer's death as "resulting from" omissions by these officers.

46. Accordingly, I shall continue to hold the inquest into Keith Palmer's death without a jury.

Further Enquiries / Disclosure

47. As I indicated in open court, I am not in a position to make detailed rulings on further enquiries, many of which were suggested after the argument on 13 September 2018 had

begun. I understand that these will be addressed in correspondence, as has been normal practice in these Inquests. If it is necessary for me to rule on matters of detail in the coming days and weeks, I shall do so.

HH Judge Lucraft QC

Chief Coroner of England and Wales

16 September 2018