ANTHONY GRAINGER INQUIRY

RULING ON LEGAL REPRESENTATION

1. Pursuant to rule 5 of the *Inquiry Rules 2006*, and with the consent of each, I have designated Marina Schofield, John Schofield, Stuart Grainger ('Mr Grainger's family') and Gail Hadfield-Grainger ('Mr Grainger's partner') as core participants. All are interested persons in the inquest proceedings, which are currently suspended pending completion of the present statutory Inquiry. Mr and Mrs Schofield are Mr Anthony Grainger's mother and stepfather, and Stuart Grainger is his brother. Ms Hadfield-Grainger was Anthony Grainger's girlfriend at the time of his death and was on 18 December 2012 formally acknowledged by HM Coroner Nicholas Rheinberg to be a properly interested person on the basis that she had been Mr Grainger's "partner" as defined by rule 2(1) of the *Coroners Rules 1984*.

2. On 18 July this year, I determined that Mr Jonathan Bridge of Farleys Solicitors LLP should be designated the recognised legal representative of Mr Grainger's family, and Mr Tony Murphy of Bhatt Murphy Solicitors should be designated the recognised legal representative of Mr Grainger's partner. I now give my reasons for making those determinations, together with my reasoned decision as to the size and composition of any legal teams that may be instructed.

3. Mr Grainger's family and partner are, unfortunately, personally estranged. There is a profound and permanent rift between the two camps. They have been separately represented throughout the inquest proceedings. The first question I have had to decide is whether they should continue to be separately represented for the purposes of this Inquiry, or whether, pursuant to rule 7(2) of the *Inquiry Rules 2006*, they should henceforth be represented by a single recognised legal representative.

4. Rule 6(1)(a) of the 2006 Rules provides that where a core participant "other than a core participant referred to in rule 7" has appointed a qualified lawyer to act on that person's behalf, the chairman must designate that lawyer as that person's recognised legal representative in respect of the inquiry proceedings. Rule 7 applies where there are two or more core participants, each of whom seeks to be legally represented, "and the chairman considers that–
   (a) their interests in the outcome of the inquiry are similar;
   (b) the facts they are likely to rely on in the course of the inquiry are similar; and
   (c) it is fair and proper for them to be jointly represented."

   In those circumstances, the chairman "must" direct that those core participants shall be represented by a single recognised legal representative (rule 7(2)). Where the chairman makes such a direction, rule 7(3) provides that any designation of the single recognised representative "must", subject to rule 7(4), be agreed by the core participants in question. In the absence of agreement, the chairman may designate a qualified lawyer for that purpose.

5. On 6 July, the Inquiry solicitor wrote to the solicitors representing Mr Grainger's family and partner communicating my provisional view that the conditions in rule 7(1)(a) and (b) were met, namely that the interests of all the above-mentioned core participants in the outcome of the inquiry, and the facts upon which they are likely to rely, are similar, and allowing seven days for any written submissions on the issue of legal representation with particular reference to rule 7(1)(c).

6. I received submissions on behalf of Mr Grainger's family and his partner. They agree in opposing the designation of a single legal

representative. Although both camps hint at the possibility of some unspecified 'conflict of interest' arising in future, neither seriously challenges my provisional view that their interests in the outcome of the inquiry, together with the facts upon which they are likely to rely, are similar. The only differences are that: (i) Ms Hadfield-Grainger does not intend "on the basis of her current understanding" to advance the contention – which she attributes to Mrs Schofield – that Mr Grainger lost his life as a result of a pre-planned 'execution' by State agents; and (ii) Ms Hadfield-Grainger was once jointly tried with Mr Grainger on a drug-trafficking indictment of which both were ultimately acquitted. Those are not, in my view, material distinctions for the purpose of determining whether Ms Hadfield-Grainger's interest in the outcome of the inquiry is "similar" to that of the family. Indeed, were it not for those differences, I should have concluded that the interests of Mr Grainger's family and partner were not merely similar, but identical. As it is, I find nothing of substance in the submissions of either camp to cause me to modify my provisional view, and I accordingly find that the conditions in rule 7(1)(a) and (b) are met.

7. The arguments presented in support of the proposition that it would not be "fair and proper" for Mr Grainger's family and partner to be jointly represented fall into four broad categories:
   (i) The estrangement between Mrs Schofield and Ms Hadfield-Grainger, and its actual and potential consequences;
   (ii) 'Equality of arms';
   (iii) The health of Mr and Mrs Schofield;
   (iv) Ms Hadfield-Grainger's Article 8 right to respect for her private and family life.

8. With the sole exception of the first, there is nothing in any of those points. In the context of inquisitorial proceedings such as these, where there are no parties and the law in any event precludes me from determining any person's civil or criminal liability, the concept of 'equality of arms' is of limited practical relevance. There is, for example, no right in a statutory public inquiry for any core participant to adduce evidence or even, subject to rule 10, to question witnesses. In any event, as I made clear in my opening statement on 26 July,

where any core participant does wish to explore particular aspects of the evidence, I will generally require such questioning to be undertaken by counsel to the Inquiry, who are of course neutral. An obvious consequence of that method of proceeding is that the principle of 'equality of arms' will be fully respected by the deployment of precisely the same advocacy skills on behalf of all core participants. That is not to say that there will not be important exceptions where I grant leave for direct questioning of certain witnesses by advocates instructed on behalf of particular core participants, but given the similarity in the interests of Mr Grainger's family and partner in the outcome of the Inquiry and the facts on which they are likely to rely, there is absolutely no justification for separate representation on the basis of 'equality of arms'.

9. Turning to the health of Mr and Mrs Schofield, the submissions on their behalf contained an assertion that both had been diagnosed as suffering from specified medical conditions which, it was said, would be exacerbated by contact with Ms Hadfield-Grainger. Those submissions were not accompanied by any medical evidence. At my request, the solicitors acting for Mr and Mrs Schofield obtained and forwarded some documentation which did not, however, substantiate the claimed diagnoses. Even if it had, there is no reason to suppose that the designation of a joint recognised legal representative would cause any deterioration in the health of Mr or Mrs Schofield, because it would not require either of them to be brought into direct contact with Ms Hadfield-Grainger. I am somewhat surprised that their advisers should have chosen to advance medical assertions without first satisfying themselves of their accuracy. Be that as it may, the evidence forwarded to me did not disclose anything of relevance to the point I had to decide.

10. The Article 8 argument advanced on behalf of Ms Hadfield-Grainger seems to be predicated upon an assumption that any recognised joint representative would be the representative presently instructed by Mr Grainger's family. That is not an assumption that I have ever made, nor is the identity of any joint representative relevant to the decision whether it is fair and proper that there should be a single recognised legal representative in the first place. In any event, the proposition that Ms Hadfield-Grainger's Article 8 rights would not be protected

from interference if she were to be represented by the family's legal team adds nothing of substance to the argument based upon the estrangement between the two camps.

11. It is that estrangement between Mr Grainger's family and Ms Hadfield-Grainger, together with some of its consequences, which has driven me to conclude, reluctantly, that it would not be fair and proper to direct joint representation by a single recognised legal representative.

12. Since about the middle of 2012, Mrs Schofield has exhibited extreme hostility towards Ms Hadfield-Grainger. That hostility has manifested itself in verbal abuse and threats, including an incident in August 2013 at a pre-inquest review hearing which led HM Coroner Nicholas Rheinberg to issue a written rebuke. It has allegedly driven Ms Hadfield-Grainger to move to an address which is unknown to Mrs Schofield. In the inquest proceedings, Mrs Schofield strongly objected to Ms Hadfield-Grainger being recognised in the inquest as a properly interested person. That contention failed after HM Coroner Nicholas Rheinberg found that Mr Grainger and his partner had been in an enduring family relationship, but Mrs Schofield's objection was, of course, advanced on her instructions by the legal team who still represent her.

13. Throughout the inquest proceedings, Ms Hadfield-Grainger has been represented by her own solicitor. I am satisfied that there is no prospect of a reconciliation or even of basic cooperation between her and Mrs Schofield. In my judgment, given the history of extreme hostility, it would be unrealistic to expect either camp to place the requisite degree of confidence and trust in the other's legal representative.

14. Theoretically, it might be possible to meet that difficulty by designating a single legal representative with no previous involvement in the inquest. However, that superficially attractive solution would in my assessment create more difficulties than it would solve, besides adding significantly to the costs of representation. The reality is that neither camp will ever agree upon a

single joint representative as envisaged – indeed mandated – by rule 7(3). The absence of such agreement would leave me with no option but to invoke my power under rule 7(4) to impose a single representative against the wishes of all concerned. As a matter of principle, I am inclined to doubt whether it would ever be right to make a finding that it was "fair and proper" for core participants to be jointly represented against the known certainty that rule 7(3) could never be satisfied and was, to that extent, a dead letter. Irrespective of the question of principle, the practical consequence would be to deprive both camps of the legal representatives of their choice. Further, the imposition of a new team would do nothing to address the risk, however slender, of a material conflict of interest arising at some future stage. Finally, such a team would have to begin the process of reading and preparation all over again, thus significantly multiplying the legal costs of this Inquiry.

15. It is thoroughly unsatisfactory, to put it mildly, that core participants in respect of whom there is currently no material conflict of interest in relation to the subject matter of the Inquiry, who have similar interests in its outcome and who are likely to rely on similar facts, should have to be separately represented. If I could have devised any way of avoiding such an outcome, I should not have hesitated to adopt it. However, for the reasons I have outlined, I find myself unable to say that it would be "fair and proper" for Mr Grainger's family and partner to be jointly represented. That is why I have determined that the solicitors already acting for them should be designated their recognised legal representatives.

16. In communicating that decision to the solicitors concerned, I asked them to make any submissions concerning the public funding of legal representation (including the size and composition of any team of lawyers) in writing by Wednesday 27 July. As that was only one day after the Inquiry's opening session, which was listed on 26 July, I later decided to extend the deadline for submissions to Friday 29 July. My purpose in so doing was to ensure that any submissions were properly informed by my own opening statement, in which I set out some important matters of policy with regard to the preparation and

presentation of evidence. I particularly had in mind the following passage, which contains observations of relevance to any application for the funding of legal representation at public expense, including the size and composition of legal teams:

"Although, for reasons of practical convenience, this hearing happens to be taking place in the Crown Court centre where I normally sit, I should make it clear that the business of the Inquiry has nothing to do with the Crown Court. Indeed, the Inquiry's proceedings are of a wholly different kind. They are not in any way adversarial, nor will I permit them to be conducted in an adversarial spirit. I should not like there to be any misunderstanding about this. A public inquiry is not a trial. It is, as its name implies, inquisitorial in nature. There is no sense in which it is even remotely analogous to any form of litigation. It follows that those designated as core participants are not parties and must not seek to exploit the Inquiry as a means to advance a particular case. Subject to that important qualification, however, I will do everything I properly can to ensure that core participants have a reasonable opportunity to take part. That will include the making of opening statements, to be timetabled by me after consulting counsel, but I emphasise that it is for the Inquiry itself to decide what evidence is to be produced, which witnesses are to testify and what matters they are to be asked about.

I intend to require witnesses to attend in person only where I consider that the Inquiry cannot properly fulfil its terms of reference without doing so. In all other cases, relevant evidence will be read, summarised or taken as read. In accordance with rule 10 of the *Inquiry Rules 2006*, it will be for counsel to the Inquiry to call and test the evidence. While counsel to the Inquiry will at all times remain objective and, indeed, neutral, I have made it clear to them that I regard their duty as encompassing a right to examine witnesses robustly and, in appropriate cases, to challenge their evidence. Where core participants wish to explore particular aspects of the evidence, I will generally invite them to submit any relevant points in writing so as to enable counsel to the Inquiry to cover them in the course of their examination. I may nevertheless permit core participants, through their counsel, to question certain witnesses directly, but only upon notice in accordance with the provisions of rule 10. Where I do allow such direct questioning, I will not under any circumstances permit repetition, or duplication of one advocate's questioning by another."

On 18 July, at my request, Mrs Worthington (solicitor to the Inquiry) wrote to the solicitors acting for Mr Grainger's family and partner suggesting that they should not submit any application for funding of legal representation until after the opening session had taken place and extending the deadline for such applications to Friday 29 July.

17. In response to that invitation, I have now received detailed applications from both solicitors. I should make it clear that I do not intend to determine the detail of either application in this ruling. That is something which will fall to be considered in accordance with the Inquiry's Costs Protocol, rules 19 to 34 of the 2006 Rules and the Secretary of State's Notice of Determination under s40(4) of the *Inquiries Act 2005*. At this stage, my sole purpose is to indicate the size and composition of the legal teams I am prepared to approve, pursuant to paragraph 2d of the Notice of Determination, which provides as follows:

> "If an applicant's recognised legal representative engages a legal team, an award shall be made in respect of work undertaken by that team only if the Chairman has approved its size and composition, including the seniority and number of any counsel whose retention he agrees to be necessary. Costs associated with work carried out by legal representatives who are not approved in advance of the work being carried out shall not be met from public funds."

Although I indicated in advance of the hearing on 26 July that I would make an award for legal expenses in relation to attendance at, and preparation for, that hearing, nothing said in this ruling should be taken as approving any further award in respect of legal expenses.

18. Before turning to the merits of the decision I have to make, I should like to clear up two fundamental and closely related misconceptions that lie at the heart of the family's submissions in respect of the funding of legal representation at public expense. The first arises out of the assertion in paragraph 12, citing *R (Middleton) v HM Coroner for Western Somerset* [2004] 1 AC 182, §26, that "in this sense an inquiry into a death (particularly one into a police shooting) is, like the inquest, partly adversarial." That does not, with respect, accurately reflect what the Appellate Committee actually said. It is worth quoting the relevant passage in full:

> "The *Coroners Rules 1984* have effect as if made under section 32 of the 1988 Act, which gives the Lord Chancellor, with the concurrence of the Secretary of State, a wide power to make rules for regulating the practice and procedure at inquests and to prescribe forms for use in connection with inquests. The 1984 Rules prescribe a hybrid procedure, not purely inquisitorial or purely adversarial.

> On the one hand, notice of the inquest must be given to the next-of-kin of the deceased and a widely defined group of other interested parties (rule 19), who are entitled to examine witnesses either in person or by an authorised advocate (rule 20); witnesses are privileged against self-incrimination; notice must be given to, and attendance facilitated of, persons whose conduct is likely to be called into question (rules 24 and 25). On the other hand, the coroner calls and first examines all witnesses, the representative of a witness questioning him last (rule 21); no person is allowed to address the coroner or the jury as to the facts (rule 40); and there is no particularised charge or complaint as in criminal or civil proceedings. In addition to examining the witnesses the coroner (rule 41) sums up the evidence to the jury and directs them as to the law, drawing their attention to rules 36(2) and 42."

From those words, it is clear that the Committee was speaking not of "an inquiry into a death", but specifically of an inquest conducted under the *Coroners Rules 1984* (now superseded by the *Coroners (Inquests) Rules 2013*). Further, of the features listed by their Lordships in support of the proposition that the procedure prescribed by the 1984 Rules was of a hybrid character and "not purely inquisitorial", only the last two have any application to statutory inquiries of the present kind. In such inquiries, there is no obligation to give notice of the proceedings to any identified category of persons; indeed, the 2005 Act is completely silent as to any form of participation by interested individuals or bodies, and rule 5 of the 2006 Rules merely provides that the chairman of an inquiry "may" designate a person as a core participant, "provided that person consents". Similarly, there is no right for a core participant to examine witnesses; unless the chairman directs otherwise (and the rules place him under no obligation to do so), only the inquiry panel or its counsel may ask questions of a witness: see rule 10.

19. It is perfectly true that the privilege against self-incrimination applies to witnesses in statutory inquiries: see *Inquiries Act 2005*, section 22. In this particular Inquiry, however, I have already decided, in the usual way, that I will seek an undertaking from the Attorney General not to use evidence given to the Inquiry in any future criminal prosecution against those who have provided it. A refusal of such an undertaking, were it to occur, would not by itself impart an adversarial character to the present proceedings. The same applies to

the rules governing persons whose conduct may be called into question. Although rule 13(3) of the 2006 Rules prohibits the chairman of a statutory inquiry from including any criticism of a person in his report without first sending that person a warning letter and giving him a reasonable opportunity to respond, the rules do not oblige the chairman to send such letters in advance to anyone who may be at risk of criticism. While the possibility of "explicit or significant criticism" is a factor to be considered in deciding whether to designate a person as a core participant (rule5(2)(c)), there is no strict obligation on the chairman to designate a person who may be subject to such criticism, let alone to facilitate his personal attendance.

20. The second, related misconception concerns the treatment in paragraph 11 of the family's submissions of 'equality of arms'. Plainly, it would be going too far to say that the concept of equality of arms has no application to inquisitorial proceedings. However, the attempt to reduce it to crude arithmetical terms by equating the National Crime Agency, Greater Manchester Police and the officer known as Q9 (incorrectly referred to as "parties") as representatives of the State betrays, yet again, a persistent and disappointing reluctance to respect the inquisitorial nature of the present Inquiry.

21. Even if the analogy with inquest proceedings were valid, the correct test for publicly funded representation is not numerical equivalence but whether the representation is such as to enable the publicly funded person to play an effective part in the inquest: see *R (Humberstone) v Legal Services Commission* [2011] 1 WLR 1460, §77. There is simply no basis for substituting some alternative test based upon 'equality of arms'.

22. The truth is that an Inquiry under the 2005 Act is a creature of statute. Its procedure is governed by the *Inquiry Rules 2006*, not by some misplaced analogy with the wholly different provisions which govern inquests. It is an inquisitorial, not adversarial, process. I have previously spelled out these important principles in correspondence

with those acting on behalf of the family, as well as in my opening statement. I do not expect to have to repeat them again.

23. With those preliminary observations out of the way, I now turn to the proper size and composition of any legal teams to be instructed by the designated legal representatives of Mr Grainger's family and partner. I remind myself that in making any decision as to the procedure or conduct of this Inquiry, section 17(3) of the Inquiries Act 2005 requires me to "act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others)."

24. My starting point is that the only reason I have designated separate legal representatives is the extreme and deeply rooted personal hostility that exists between Mr Grainger's family and his partner. But for that, I should have designated a single, joint legal representative. My decision to do otherwise does not in any way modify or undermine my conclusion that their interests in the outcome of this Inquiry, as well as the facts upon which they are likely to rely, are similar.

25. Had circumstances permitted me to designate a joint legal representative, I should have approved a single team comprising one Queen's Counsel, a junior barrister, a solicitor and a single paralegal. Against the background of the shared interests of Mr Grainger's family and partner in the outcome of this Inquiry, the purely personal rift that divides them does not give rise to any increased requirement for legal resources beyond that which is necessary to overcome the immediate difficulty occasioned by their estrangement. Objectively, in other words, there is no need for a legal team of a size and composition any different from the team I would have approved if there had been no estrangement between the two camps.

26. At the same time, I accept that the need to insulate the two camps at a personal level cannot be satisfied merely by my decision that each should have its own recognised legal representative. In order to achieve and maintain the necessary degree of separation, practical reality dictates that each legal representative should also have separate

paralegal support. The assertion put forward on behalf of Mr Grainger's family that their representation requires the full-time employment of two paralegal staff is, however, wholly unrealistic. The Inquiry team itself, which is subject to a considerably heavier burden of work, has so far managed without any paralegal support at all. For those reasons, I will approve the inclusion in each team of one solicitor (that is to say the recognised legal representative) together with one paralegal.

27. I recognise that each team will need to call upon the services of a specialist advocate. That does not mean that the public should be expected to fund two Queen's Counsel and juniors, with the unnecessary duplication of effort such an arrangement would inevitably entail. As I indicated in my opening statement on 26 July, my general policy will be to invite any core participant who wishes to explore particular aspects of the evidence to submit relevant points in writing so as to enable counsel to the Inquiry to cover them. Besides providing all concerned with access to the specialist advocacy skills of counsel to the Inquiry, that policy will also have the effect of reducing the extent to which counsel instructed on behalf of individual core participants will be called upon to undertake oral advocacy. In those circumstances, notwithstanding the personal estrangement between Mr Grainger's family and his partner, I regard it as entirely reasonable to expect two counsel to fulfil the legitimate advocacy requirements of both camps. I will therefore approve one Queen's Counsel and one junior barrister to represent the interests of Mr Grainger's family and partner, just as I would have done had there been no rift between them.

28. An inescapable consequence of that decision is that one team will have the services of Queen's Counsel while the other has a junior barrister. That is something which in my judgment cannot be avoided without incurring unnecessary and disproportionate additional cost. On balance, the information presently available to me tends to suggest that the greater burden, in terms of advocacy, will probably fall upon counsel for Mr Grainger's family. For that reason, I will in their case approve representation by Queen's Counsel. Mr Grainger's partner,

who has not indicated an intention to pursue any allegation of a pre-planned State 'execution', will be represented by a junior barrister. I should like to add that in the absence of any material conflict of interest with regard to the subject matter of these proceedings, the Inquiry expects that there will be full cooperation between counsel for each team in accordance with the ordinary professional standards of the independent Bar, and that both counsel will conduct the necessary basic preparatory work jointly.

29. For the foregoing reasons, I will approve individual legal teams comprising a single solicitor and paralegal, together with (in the case of Mr Grainger's family) Queen's Counsel and (in Ms Hadfield-Grainger's case) a junior barrister. I am confident that the arrangement I have devised is a fair one which will enable all concerned to participate effectively in this Inquiry without unnecessary cost to the public.

HHJ Teague QC
Chairman of the Inquiry
8 August 2016