

IN THE MATTER OF THE INQUIRIES ACT AND RULES 2006

THE ANTHONY GRAINGER INQUIRY

OPENING STATEMENT ON BEHALF OF GAIL HADFIELD- GRAINGER

Introduction

1. At the opening of this Inquiry the Chair very properly recognized that the killing of an individual by police officers is always a matter of the utmost public concern.¹ Anthony Grainger was not just a name or a statistic: he was a human being with all the wonder, complexity and potential that involves. It is important that the first witnesses to be heard by this Inquiry will be Mr Grainger's close family members, including his partner Gail Hadfield-Grainger. This will provide an opportunity to understand who Anthony Grainger was and who he has left behind.

2. These submissions are made on behalf of Ms Hadfield-Grainger and touch upon the requirements of Article 2, the duty of candour and open justice, before moving to the substantive issues to be considered by this Inquiry. Accordingly, this document is arranged under the following headings:
 - Article 2, the duty of candour and open justice
 - Overview of key areas for Inquiry to consider
 - Summary of Ms Hadfield- Grainger's concerns
 - The intelligence picture
 - Decision-making

¹ <https://www.graingerinquiry.org.uk/wp-content/uploads/2016/07/Opening-Session-A-Grainger260716.pdf>

Article 2, duty of candour and open justice

3. Article 2 of the European Convention on Human Rights protects the right to life in a number of ways. Two aspects are of paramount importance with regard to this Inquiry:
4. First, the State, through its public servants and officers, has an obligation to protect life. In the current context, this means that when deploying armed officers, the police had an obligation to do everything reasonable to protect life. This obligation applied to the Commanders and the officers deployed, to the planning and the exercise of the operation;
5. Second, there is an obligation on the State to fully and effectively investigate a death caused by armed officers. That investigation must be independent, thorough, transparent, capable of reaching judgmental conclusions, and involve the bereaved to the fullest extent possible.
6. The Inquiry must therefore carefully examine:
 - a. Whether the operation was planned and controlled so as to minimise, to the greatest extent possible, recourse to lethal force; and
 - b. Whether the force in fact used was strictly proportionate to the aim of protecting persons from unlawful violence.
7. In order to meet the above obligations, the Inquiry must ensure so far as possible that:
 - a. The full facts are brought to light.
 - b. Culpable and discreditable conduct is exposed and brought to public notice.
 - c. Unjustified suspicions are allayed.
 - d. Dangerous practices and procedures are rectified; and
 - e. The bereaved may at least have the satisfaction of knowing that lessons learned from Anthony Grainger's death may save the lives of others.
8. Mr Grainger's close family members, including his partner Ms Hadfield-Grainger have the right to expect, as a matter of law and common decency that Greater Manchester Police (GMP) and the National Crime Agency (NCA) assist the Inquiry to the greatest extent possible, including in accordance with their duty of candour.²

² See also *Appendix A: Duty of Candour*

9. As this is an Inquiry, Ms Hadfield-Grainger has no ‘case’ to put, but she has many questions. These questions arise from her own knowledge, the Independent Police Complaints Commission’s (‘IPCC’) preliminary analysis and from the ongoing disclosure of documentary material by the Inquiry.
10. Although, in contrast with the position of a criminal defendant or civil litigant, the official Core Participants (GMP and NCA) are not expressly required by Inquiries Act or Rules to set out those facts and propositions that they accept and those they refute, their status as public authorities places further obligations upon them to assist the Inquiry by coming clean about any failures or wrongdoings which they have identified and/or accept and/or have taken steps to remedy. Those duties are additional to those that require all Core Participants to provide disclosure to the Inquiry and to attend to give evidence.
11. The statutory provisions are but a part of the picture. Anthony Grainger’s close family relatives and the wider public have a right to expect more than formal adherence by Core Participants to the letter of these provisions. GMP and the NCA are public authorities: the purpose of their existence is to serve the public and to act in the public interest. They owe a duty of candour. Accordingly, Ms Hadfield-Grainger expects that their opening statements will set out with frankness and as much transparency as possible, any and all failures, omissions, wrongdoing and/or errors that they themselves have identified, including in relation to the intelligence picture gathered; the handling, grading, communication of that intelligence; the decision-making processes; and the planning for and the performance of the operation. GMP and the NCA have an intimate and unique knowledge of what went on and what went wrong in Operation Shire. The Inquiry will be assisted if these public authorities eschew a defensive position and adopt a responsible approach, taking proper account of the shortcomings identified, for example, by the IPCC. Ms Hadfield-Grainger is also concerned to understand any remedial action taken to date by GMP/NCA in the interests of avoiding similar fatalities.
12. If GMP and the NCA set out in opening statements their current assessment of what went right and what went wrong in the train of events ending in the death of Mr Grainger, it will assist the Inquiry to distil the issues and to concentrate upon those areas of evidence that are

truly in dispute or require forensic clarification. The issues at stake in this Inquiry are too important to be occluded by institutional defensiveness.

13. As this is an Inquiry and not a trial, there is no prosecution to put to proof. Instead, it is incumbent on GMP and NCA to adopt a forthcoming and responsible approach from the outset of this hearing in accordance with their obligations as State agencies. Keeping their powder dry in relation to any failures of which they are aware to protect Anthony Grainger's life is not a legitimate approach to adopt in view of their legal and moral obligations to this Inquiry.
14. Compliance with the duty of candour on public authorities is a well-known problem and has arisen in other proceedings (as set out in Appendix A). It is made all the more important in this Inquiry due to the extensive restrictions on open justice put in place at the direction of the Chair, including at the request of GMP/NCA.
15. As we understand the position, there are 46 police officers and other officials who are to remain anonymous and there will be at least two weeks of 'closed' hearings from which the close family members, their lawyers and the public will be excluded. At the present time, neither the next of kin, the media nor the general public know the source or content of that closed evidence. Neither the identity of the witnesses to be heard in the closed hearings, nor their witness statements have been made available. Only the GMP and NCA will be permitted to attend the closed hearings, together with the Chair and lawyers to the inquiry. It remains an open question as to whether evidence elicited at the closed hearings will be disclosed in summary or in a gist in open hearings.
16. It is plain that hearing evidence in closed session imposes an additional obligation on the Inquiry to ensure that deviations of this kind from the normal principles of open justice are kept under close review and that the extent to which evidence is hidden from public view is reduced to an absolute minimum. Ultimately, the Inquiry will have to reflect upon whether it has been able to discharge its functions under Article 2 whilst operating under such a significant curtailment of open justice

Overview: What went wrong and what are the key areas upon which the Inquiry should concentrate?

17. Anthony Grainger died from a single gunshot fired by Q9, a GMP officer in a dedicated firearms unit,³ during a pre-planned operation. Q9 has asserted that the shot was deliberate and he has not suggested that it was accidental. At the time, Mr Grainger was sitting in the driver's seat of a stationary Audi in a car park in Culcheth, together with two associates. None of them was armed and there is no evidence known or disclosed to Ms Hadfield-Grainger capable of founding a reasonable belief that they were in possession of firearms at any point that day or on previous days when they were under surveillance as part of 'Operation Shire'.
18. The Audi was a stolen car and Mr Grainger had criminal antecedents, as did his two associates. Mr Grainger had no antecedents relating to firearms or violence. It. Operation Shire focused upon possible armed robberies. The two other men in the car with Mr Grainger were charged with conspiracy to rob but were subsequently acquitted.
19. In our submission the key questions are:
 - a. Re Operation Shire:
 - i. Was the available historical evidence and intelligence properly managed. Was it graded and stored appropriately and in accordance with applicable national and local guidelines.⁴ Were local policies and procedures consistent with national standards;
 - ii. Was the historical evidential and intelligence picture available to each relevant decision-maker at all material times;
 - iii. Was the intelligence basis for the Operation accurate with respect to likely criminal offences and targets;
 - iv. Was the intelligence picture regarding Mr Grainger accurate;

³ GMP's Tactical Firearms Unit ("TFU")

⁴ The statutory *Code of Practice on the Management of Police Information* (MoPI Code of Practice), *ACPO Guidance on The Management of Police Information*, 2nd Edition 2010 (MoPI Guidance), the statutory Code of Practice, National Intelligence Model (NIM Code of Practice) and *ACPO Guidance on the National Intelligence Model* 2005 (NIM guidance). Disclosure is awaited in respect of GMP's local policies and any NCA policies.

- v. Was the intelligence picture regarding other ‘targets’ of the Operation accurate.
- b. Re the surveillance and intelligence-gathering:
- i. Was the evidence and intelligence gathered during the currency of Operation Shire (up to and including the time of Anthony Grainger’s shooting) properly managed. Was it graded and stored appropriately and in accordance with applicable national and local guidelines;⁵
 - ii. Did GMP and the NCA work together appropriately and was the product of their operations managed and shared properly;
 - iii. Was a full and accurate, evidential and intelligence picture made available to each relevant decision-maker at all material times;
 - iv. Did the material gathered evidence the commission, or future likely commission, of serious criminal offences by Mr Grainger or his associates;
 - v. Did the material gathered evidence the possession or likely use of firearms by Mr Grainger or his associates.
- c. Re 3 March 2012 in general terms:
- i. On what basis was the authorisation to deploy firearms officers given by N18 at 20:50 on 2 March 2012. Did N18 make sufficient TFU resources available in case the operation ran for longer than anticipated;
 - ii. Did J18 ensure that N18 had all relevant evidence and material upon which to make the decision, and was the information and material supplied to N18 accurate and complete;
 - iii. Did N18 do everything s/he could and should have done to ensure s/he had a complete and accurate basis upon which to make the decision to deploy firearms officers;

⁵ Ibid

- iv. What strategic and tactical plans were in place including with regard to the use of the Tactical Firearms Unit (TFU). Were they appropriate based upon the available evidence and intelligence;
 - v. Were the appropriate senior and specialist officers involved in the planning of the firearms deployment, and was appropriate technical advice sought and given;
 - vi. Were the senior and specialist officers fully and properly trained to undertake these tasks;
 - vii. Was the plan formulaic or did it provide sufficient flexibility for the exigencies of the situation;
 - viii. At what points were the operational officers briefed about the operation and what did the briefings include. Was the information supplied to the operational officers accurate and sufficient;
 - ix. Were the operational officers fully and properly trained to undertake their tasks.
- d. Re the shooting of Mr Grainger, specifically *deployment*:
- i. On what precise basis did J18 take the decision to deploy the armed officers to the car park and carry out the 'strike' on the car. Why did J18 delay deployment until just after 19:00;
 - ii. Was the decision to 'strike' the car inappropriately linked to an evidential 'tipping point', rather than other considerations such as disruption;
 - iii. Was J18 provided with all relevant information upon which to take the decision. Was it accurate and appropriately graded. Did J18 do everything appropriate to ensure s/he had all relevant material upon which to base the decision;
 - iv. Was the decision to proceed to the arrest phase appropriate at the time it was taken. In particular did J18 take all relevant circumstances into consideration, including the length of time the firearms officers had been on duty. Was appropriate tactical advice taken and considered.

- v. What were the firearms officers deployed to the car park told and what was the content of their final briefing.
- e. Re the 'strike' on the Audi, specifically the *operational plan*:
 - i. Who did, and who should have, determined the way in which the 'strike' on the car was to be carried out. Was there any tactical 'plan' and if so when was it devised;
 - ii. Was the 'strike' on the car (prior to the shot being fired) carried out in accordance with any such plan;
 - iii. Was the plan appropriate. In particular was it appropriate to place W4 and Q9 (the driver and rear passenger on the driver's side of the Alpha car respectively), so close to, and in the line of sight of, the occupants of the car;
 - iv. Did the plan minimize the risk to life of police officers, targets and others.
- f. Re: the firearms officers involved in the strike on the car:
 - i. Did X7 deliver effective leadership of the strike;
 - ii. Were each of the other firearms officers given roles. What were they. Did the officers follow their orders and briefing;
 - iii. What did each of them actually see and hear as the strike happened.
- g. With respect to Q9:
 - i. What had he understood from the briefings concerning:
 - The aim of the operation and the role of his unit;
 - Who was in the target car;
 - Whether the targets were in possession of firearms;
 - The risks from the target individuals.
 - ii. Did he take account of other information and if so did he raise it with officers up the command chain and attempt to check its veracity and accuracy;
 - iii. How did he come to be in a position close to the target individuals and directly in their line of sight. Was this part of the plan. Using his experience and training did he raise any question concerning the propriety of this position;

- iv. What exactly occurred as the Alpha car drove across the Audi. How long after the Alpha car came to rest did Q9 discharge the shot;
 - v. What was his line of sight and view when the shot was fired, with particular attention to lighting and any reflection off the windscreen;
 - vi. What did he say, if anything, directly before and directly after firing the shot;
 - vii. Why did he fire the shot and what was his honest belief at that time;
 - viii. Was there an objective and reasonable basis for the contention that Q9 or other officers were in imminent life-threatening danger at the point at which the shot was discharged.
- h. Re the immediate aftermath:
- i. Were all reasonable first aid and medical efforts made to save the life of Mr Grainger after he was shot;
 - ii. Were, or should have, medical facilities been on hand at the time the 'strike' was ordered.
- i. Re pathology:
- i. Did the shot from Q9 cause the death. Were there any other contributory medical factors;
 - ii. Once shot, could any medical intervention have saved Mr Grainger's life;
 - iii. How quickly would Mr Grainger have lost consciousness and was he capable of voluntary movements after being shot.
- j. Re scientific evidence:
- i. Is it possible to determine the position of Q9 and the gun at the time of discharge;
 - ii. Is it possible to determine the position of Mr Grainger, including the position of his arms, at the moment he was shot;
 - iii. Could the gun have been accidentally discharged as the Alpha car impacted the Audi or a kerb. What pressure had to be applied to the trigger to fire the shot;
 - iv. How and when would the spotlight and laser dot have been activated by Q9;

- v. Is it possible to predict how the impact of the bullet through the windscreen would have affected its trajectory;
 - vi. Is it possible to say whether Mr Grainger was shot before or after the CS canister was activated in the car.
- k. Re tactical issues:
- i. Given the nature of the intelligence picture and what was known, was it appropriate to effect a strike on the Audi at the material time. Were appropriate 'tipping points' set in advance and what should they have been, taking account of national and local guidance for the deployment of armed officers;
 - ii. Was the decision-making to deploy armed officers and to effect the strike appropriate on the material before the command officers; and was the process of managing, grading and making available relevant material to them appropriate. Did the command officers consider all relevant options and take all proper tactical advice considering the material which should have been before them;
 - iii. Was the plan sufficiently flexible for the exigencies of the situation;
 - iv. Was driving the Alpha car across the front of the Audi an appropriate tactic in the circumstances. What other tactics were or should have been available;
- l. Post-incident procedures:
- i. Was the scene properly preserved, photographed and video-recorded;
 - ii. Was the incident reported properly and sufficiently quickly, including to the IPCC;
 - iii. Were first accounts obtained from officers and others in accordance with relevant protocols and policies. In particular were first accounts obtained quickly and with best evidence in mind;
 - iv. Were officers allowed to confer when recording their accounts and if so was this made clear in those accounts;
 - v. Are there lessons to be learned for the future regarding post-fatal incident procedure, to ensure the integrity of future investigations.

- m. Miscellaneous matters:
 - i. Why was there apparently no aerial or video recorded surveillance of events leading up to and including Mr Grainger's shooting;
 - ii. In operations against OCGs, target vehicles are frequently subject to audio surveillance through listening devices. Were they in this case, and if not, why not;
 - iii. Were any of briefings audio recorded and if not, why not;
 - iv. Were any of the Tetra radio communications between officers, and between officers and command, recorded. If not, why not;
 - v. Was the strike on the car video and/or audio recorded, including by dedicated officers or by personnel cams. If not, why not.
- n. Final issues:
 - i. Was the death of Anthony Grainger unlawful;
 - ii. In the planning and strategy phase of the operation did GMP fail to pay sufficient regard to the duty to protect life; and in the 'strike' phase of the operation did GMP fail to protect Mr Grainger's life, as required by Article 2.

20. When making findings of fact in relation to the above and other issues, the Inquiry is not bound by formal burdens or standards of proof. When making a finding that does not reflect common ground, the Inquiry should record the degree of confidence behind the finding. When considering the evidence of Q9, the Inquiry should apply the test in *Ashley v Chief Constable of Sussex* [2008] 1 AC 962 i.e.: an action undertaken in the mistaken belief that Q9 or others were in imminent mortal danger could only be lawful if the belief was honestly but also reasonably held. With respect to the lawfulness of the killing, the Inquiry should determine what Q9's state of mind actually was; whether there was a reasonable and objective basis for his actual belief; and was his action in shooting Anthony Grainger proportionate to any reasonable, perceived threat. The Inquiry should then go on to consider its conclusion by reference to the test in section 76 of the Criminal Justice and Immigration Act 2008. If

the conclusion were different having done so, the Inquiry should also record that fact. This is consistent with the approach taken in the *Azelle Rodney Inquiry*.⁶

Concerns of Ms Hadfield-Grainger

21. Above all else Ms Hadfield-Grainger is concerned to know exactly how her partner Anthony Grainger came to be shot and killed during a planned police operation involving a long-running intelligence, surveillance, and specialist firearms officers.
22. Did Mr Grainger die as a result of a botched, incompetent police operation where intelligence was mishandled and key decisions were taken on the basis of flawed and erroneous material? Worse, could he have died because an individual firearms officer relied upon tittle-tattle and rumour rather than graded, reliable intelligence, perhaps because he was tired having been on duty for more than 12 hours, and/or because he was trigger-happy having formed a distorted view of the intelligence picture?
23. Ms Hadfield-Grainger's search for the truth is impeded by the fact she will be unable to consider the closed material or to attend the closed hearings; however an even greater impediment is the inexplicable absence to date of any contemporaneous audio-visual recordings of GMP's strike on the Audi and/or the discharge of Q9's weapon. Why were the officers apparently not equipped with body cameras? Why were there apparently no dedicated video officers? Why were the officers' radio communications apparently not recorded? Did, or does, such footage exist that has yet to be disclosed? In the context of a planned and well-resourced surveillance and arrest operation it is not easy to understand the absence of such basic evidence-gathering tools.
24. Q9 has asserted in interview that he saw Mr Grainger move in a threatening way. It would of course be much easier to analyse this claim were there video footage of the incident. On paper there are a number of anomalies between the accounts of the officers involved in the strike on the Audi. Audio-visual and data-incident evidence could make these much easier to evaluate and to reveal an accurate picture of what occurred. What exactly was the plan

⁶ At paras 1.9-1.12 and 19.1-19.11 (and in particular 19.10)

and the orders given to the firearms officers involved? Had the Tetra radio system been recorded, as with many other police communication systems, understanding what was the plan and what orders were communicated to the firearms officers would be much more straightforward.

25. A picture emerges: a clear suspicion that a police and intelligence is kept opaque, not by necessity or by accident but by design. The problems aroused by this suspicion are twofold: First, it raises the concern that the Inquiry has been denied the opportunity to use objective, contemporaneous evidence to establish the truth as to why Mr Grainger was shot. Second, it undermines public confidence in the ability of the Inquiry to fulfil its objectives. Where assertive and armed police methods are used, there is inevitably a heightened risk of things going wrong. The State is under a legal obligation to protect and to explain. It is also under a common sense duty to allay fears. Policing by consent requires public confidence. Confidence comes from as much transparency as is possible, and dealing with uncertainties and suspicions head on.

26. Ms Hadfield-Grainger therefore hopes that the Inquiry will investigate robustly why evidence routinely gathered in other areas of policing is missing here; insist on the discovery and disclosure of any such evidence; make findings upon any shortcomings; and make clear recommendations for the future.

27. In considering the integrity of the police evidence Ms Hadfield-Grainger trusts that the Inquiry will look carefully at what happened in the aftermath of the incident, including whether the post-incident process was in accordance with the relevant policies and whether steps were taken to ensure that 'best evidence' was gathered. When the police are investigating a member of the public, suspects and witnesses are usually asked to provide their account before they have spoken to anyone else about the evidence, so one account is not allowed to risk contaminating another; however, when the police officers in this case were investigated, they conferred with another and received a briefing before preparing their accounts. Questions the Inquiry will wish to consider include: were the officers upfront about conferring and the de-brief; did they carefully record whether there were de-briefs and group recollections; would it have been preferable to provide their recollections without a de-brief or conferring; and how did this impact on the reliability of their accounts.

28. With respect to the shooting, Ms Hadfield-Grainger seeks to understand the wisdom of GMP placing two officers in close proximity and directly in the 'line of fire' of the Audi, if Mr Grainger et al were really suspected to be armed. This strategy appears to indicate an absence of such suspicion. Ms Hadfield-Grainger wishes to establish exactly where each officer was when the fatal shot was fired, and whether Q9 could in fact have had a clear sight of any movement by Mr Grainger, as is alleged by the officer. She seeks to understand why it is that only one other officer, W4, claims to have seen any similar movement by Mr Grainger, and to know the timing and circumstances in which W4's account was provided.
29. Ms Hadfield-Grainger seeks an answer to why it was deemed necessary to strike the Audi at that particular time and place. Were the commanding officers fixated on getting to a position of evidential sufficiency for a prosecution and thereby failed to consider the necessity to act in such a way as to minimize risk to life? Were the commanding officers frustrated by a lack of progress in an operation which had gone on for some 5 months without tangible result? Were they moved to action by an awareness of the amount of resources expended on the Operation? Had they reached a position where firearms officers had been on duty for a very long shift and time had effectively run out?
30. Moving to the intelligence picture, did the officers really have a reasonable basis to believe a robbery was imminent? Given the evidence heard in the subsequent, unsuccessful prosecution of the two other individuals in the Audi; and in view of what was asserted by the CPS in the aborted health & safety prosecution of the Chief Constable of GMP, it is difficult to see that the GMP did have such a basis; however, this Inquiry may have access to additional material. If the Inquiry does rely on any such further material it will be important to carefully scrutinise its objective reliability and accuracy and whether it was graded properly or at all. This is particularly the case if this evidence is to be heard in closed hearing.
31. The objective intelligence picture will no doubt be centre stage to the inquiry. But more crucial is what was actually collated and presented to the command officers who took the key decisions. Intelligence has to be properly recorded, assessed and graded, collated in a useful way and fully and properly communicated. If there are failures in that information management process it follows that vital decisions are made on a flawed basis.

32. The IPCC's 2013 report is plainly not binding on the Inquiry and may be based upon an incomplete picture; however, it provides a useful reference point. The IPCC findings indicate that there were intelligence failings in Operation Shire from the outset. An inaccurate and out of date intelligence picture concerning Mr Grainger was a starting block for Operation Shire. An *accurate* intelligence picture could not support on any reasonable view that Mr Grainger was himself violent, in possession of a firearm on 3 March 2012 or indeed involved in armed robberies. If the Inquiry were to agree with the IPCC in this regard, then the entire intelligence picture for Operation Shire started from a false premise.
33. The IPCC also found that the briefings were flawed and provided inaccurate information to operational officers. Q9 had relied on anecdotal and incorrect information that Mr Grainger and others had been involved in a previous armed robbery. The IPCC in addition found that GMP concentrated on an approach based upon intervening in an active robbery rather than considering alternative options; and that the Tactical Firearms Commander did not explore options with the Tactical Firearms Adviser that could best minimize risk to life. The written rationales for decisions were poor and not in line with ACPO guidance.
34. The IPCC view was that as a result of acting on flawed intelligence and pursuing a prosecution-led plan rather than considering less risky options, choices were made with higher risks to life than otherwise might have been the case. The IPCC also criticized the lack of consideration of the period the firearms officers had been on duty by the time of the strike on the car; the lack of flexibility exercised in the tactics employed; and the fact that the actual strike on the car had involved placing two officers in the line of fire.
35. To reiterate, the Inquiry may well consider more evidence than considered by the IPCC and will have the opportunity to forensically examine witnesses, with the assistance of Core Participants. The Inquiry is not bound by any previous findings;⁷ however, nonetheless, the IPCC report does at a minimum serve to illuminate a number of important points which should assist the Inquiry in determining its approach and lines of questioning.

⁷ Hence we have not taken the time to also refer to the general findings in the IPCC report (Findings 8 & 12) at [695] (Finding 8) and [718] (Finding 12)

The intelligence picture

36. The nature of the Inquiry will involve consideration of Mr Grainger's past involvement in criminality, in addition to the basis for, and adequacy of, risk assessments. In this context, a concern arises that one or more CPs may attempt to portray the risk posed by Mr Grainger as more serious than the reality. It will be the Inquiry's responsibility to manage such evidence fairly so as to arrive at a fair and balanced answer.
37. In our submission, the Inquiry should scrutinise closely the initial intelligence picture of Mr Grainger, carefully considering how it was constructed and whether it was robust. Each piece of intelligence that was fed into Operation Shire should have been graded and assessed in accordance with recognized policing policies. Intelligence without such referencing is not simply useless: it is dangerous. At one end of the scale, recent conviction records may present a useful and reliable evidential basis for inferring a propensity to violence, possession of firearms or other such matters. At the other, out-of-date, unattributed, un-evidenced assertions of involvement in a serious crime are worse than useless because they add no probative value to the picture and can create a wholly false impression. All intelligence relied upon must be properly assessed for reliability and accuracy, only then can it be added to the intelligence picture. Reliability and accuracy of intelligence are usually assessed by reference to its the source, provenance and means of collection. A recording from a probe, for example, is likely to be more accurate than a hearsay recollection; a first- hand report from a previously reliable informant is likely to be more robust than an overheard rumour from an unattributed source.
38. Once the Inquiry has considered the propriety of the Operation's starting point regarding Mr Grainger's intelligence picture, it should then adopt a similar approach in respect of the intelligence picture pertaining to his associates. Both by determining whether the targeting itself was appropriate, and whether there was a proper basis for the Operation to link each individual to joint criminality.

39. If there was a proper basis for the Operation and a robust intelligence picture, the surveillance material and intelligence gathered as the Operation progressed should itself have been assessed and graded and fed into the process. Did that take place? Did GMP and the NCA liaise properly? Did intelligence material cross the ‘corridor’ between the two in a swift, complete and appropriate manner? Was sufficient regard afforded to gaps in the surveillance picture and the means by which that might be bridged? Were sufficient resources provided?
40. It should be possible for the Inquiry to make an assessment as to the *objective* intelligence picture relating to Mr Grainger and his associates at particular junctures. As far as we are aware, the police and NCA have been required to disclose the complete intelligence picture to the Inquiry. Key questions include whether there was a reasonable and objective basis for a belief that Anthony Grainger was armed at the time of the shooting and whether there was a reasonable and objective basis for believing that the men in the car were about to commit a serious offence involving the use of weapons.
41. Whatever the answer to those questions, the Inquiry should then scrutinize whether the command officers were provided with an accurate intelligence picture at each material juncture and whether those command officers sought out answers to any missing issues.
42. In summary:
- a. Did those involved in the management of the intelligence properly assess and grade the material before them, and present it to the decision-makers in an intelligible and optimal way, in order to facilitate the making of highest quality decisions; and
 - b. Did the command officers then utilize that material competently and in accordance with current policies and training, in order to make the right judgment calls.
43. When addressing Question (b) above, the Inquiry will wish to analyse closely the written rationales for each applicable decision by the commanding officers. Relevant policies and training require clear contemporaneous written reasons for tactical and operational decisions in these circumstances. For good reason: committing such reasoning to written record concentrates the mind and guards against ex- post facto justification.

Decision-making

44. It is recognized that some operational decision-making has to be undertaken urgently and that some judgments have to be made quickly. An impossible standard must not be applied to decision-making; however, obviously all those involved in an armed operation should recognize the attendant risk to life and their obligations to keep this risk at the forefront of decision-making. In the pursuit of legitimate aims the requirement to take decisions that minimize the risk to life is paramount and applies to the lives of police officers, the public and suspects.
45. Proper, justifiable decisions can only be taken by those of the required rank who are appropriately experienced and trained, with full knowledge of the relevant policies. Forward planning and proper resourcing should minimize unnecessary operational stresses; however, equally, experienced command officers should recognize the need for flexibility rather than formulaic outcomes. Decisions are only as good as the information upon which they are based.
46. In this case questions include the following:
- a. Did the appropriate command officers make the important decisions;
 - b. Did they have the appropriate experience;
 - c. Had they undertaken and passed the relevant training;
 - d. Did they evidence their decisions contemporaneously with full written rationales;
 - e. Did they inform themselves with proper tactical advice;
 - f. Did they exercise appropriate flexibility in operational deployment;
 - g. Did they act on a full and properly presented intelligence picture;
 - h. Did they ensure that they probed and tested that picture where issues were unclear;
 - i. Were decisions and orders properly passed down the chain of command;
 - j. Were briefings sufficiently detailed;
 - k. Did they provide space in which to deal with clarification and questions by operational commanders and officers.

47. These submissions are made in advance of receiving CTT's opening statement, which will no doubt address many of the above issues. They are also made before receiving the forthcoming un-redacted material, such that we are grateful for JCTI's indication on 7 January that if further, limited submissions are necessary post-receipt of the un-redacted material, an opportunity will be provided on 7 February 2017. In oral submissions on 19 January, we shall endeavour to assist the Inquiry by addressing key points, including from matters arising from the other opening statements.

48. The fatal police shooting of Anthony Grainger on 3 March 2012 shattered the life of his partner. She has had to wait five long years for this hearing. The importance to Gail and to the wider public of this Inquiry establishing the truth and delivering justice cannot be overstated.

Pete Weatherby QC

Fiona Murphy

Tony Murphy

9 January 2017