THE ANTHONY GRAINGER INQUIRY

CLOSING STATEMENT ON BEHALF OF MARINA AND JOHN SCHOFIELD AND STUART GRAINGER

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(1) Introduction

1. This Closing Statement is made on behalf of Marina and John Schofield, and Stuart Grainger. Anthony's killing was absolutely devastating for his family. His shooting and its aftermath has torn their worlds apart. A human tragedy is at the heart of this inquiry, and we repeat what was said in opening by Mrs Schofield:

> "Anthony was a committed family man. He was the most loving and caring person and was made to be a dad. He adored his kids. He was a good son, brother, and father. His children have been left without a father who they were both very close to. I cannot imagine the pain that they will have had to go through. If Anthony was doing wrong, he should have been arrested and sent to court. He did not deserve to be shot. I miss him dearly."

2. The evidence has revealed serious failings from top to bottom in the operation that led to Anthony's death. A few examples are as follows.

- There was a failure to properly test and verify the intelligence which was the bedrock of the whole operation.

- AFOs were primed to shoot by being given a greatly exaggerated assessment of Anthony's threat.

- The approach of the firearms commanders engaged on 2 and 3 March 2012 was slapdash and cursory.

- The strategy was inadequate, and the consideration of tactical options was fundamentally flawed.

- There should not have been a strike in the evening of 3 March because it was likely that there would be no robbery that day.

- Eyes were lost during a crucial period, and the option of disruption was not properly considered.

3. As to the MASTS strike itself:

- A plan was formulated at the last minute, which was apparently not communicated to more than half of the AFOs who were expected to perform it.

- Officers failed to clearly identify themselves as armed police.

- The window of Anthony's car was smashed and a CS dispersal canister thrown in, for no good reason and oblivious to the obvious dangers of doing so. Two of the Audi's wheels were shot out, apparently without any good basis. The subjects might have been shot if they moved, yet all of this made it almost impossible for them to keep still.

4. There were deeper, institutional concerns revealed by the inquiry. The procedures relevant to the creation of accurate AFO briefings were vague and prone to error. Several officers were not competent to perform the roles they did on 3 March 2012. The firearms training department was in disarray.

5. CSDC was untested and unapproved. GMP seem to have been well aware that this chemical weapon should not have been authorized in those circumstances, yet let it be used anyway. The need to ensure it was properly evaluated was obvious. PC Ian Terry was killed in 2008 during a GMP training exercise when a weapon which contained CS gas was discharged into the car he was sitting in. Following that tragedy, a senior officer from the National Policing Improvement Agency, Mr Alder, made damning criticisms of the use by GMP of the CSDC, saying that the possibility of another accident is high. Those concerns appear to have been overlooked. GMP approved it, and have used it regularly.

6. Had the operation been run properly and competently it is clear that Anthony would not have been shot. He may have been up to no good, but

there was no reliable basis for thinking he had a gun that evening, and still less for thinking he would ever shoot a police officer with one.

7. The evidence has also revealed concerted attempts by GMP at a cover-up. Officers going right up the chain of command, have attempted to conceal evidence and mislead the investigation. Key documents have been destroyed, accounts and logs embellished, the production of police statements carefully stage-managed, evidence has been concocted, redactions made for no good reason, and thousands of pages of relevant material withheld.

8. As to Q9's decision to shoot, the family accept that AFOs put themselves at risk doing an important job, and must make difficult decisions in fast moving situations. But Q9 was a specialist, who was highly trained in making split second judgments. He shot an unarmed man, and does not claim to have seen Anthony holding a weapon. He gave a dishonest account of what led him to shoot Anthony, exaggerating the threat he believed there to have been. He had no basis for thinking there was more than a possibility that Anthony might have a firearm. He shot due to a small and ambiguous movement of Anthony's right hand. This could not have founded an honest belief that Anthony was about to pick up a gun and shoot a police officer. Anthony may well have been trying to open his car door.

9. The basis Q9 gave to justify the lethal force – that his colleagues would be shot by Anthony through the front doors of the red Audi – was unfounded on Q9's own account. Alternatively, there is evidence that X7 had Anthony covered at the time of the shot and so Q9 had no justification for shooting. For these and other reasons, Anthony's killing was not lawful.

10. It has now been over 5 years since Anthony died. The pain of coming to terms with the death of a beloved son has been made far worse by the unjustified attempts by GMP to conceal the truth. Reliving these events through the course of this inquiry has been extremely traumatic. The

family are grateful for the sensitive way in which the Chairman has managed the proceedings, and for the Inquiry's efforts to ensure Stuart Grainger can watch the proceedings by video link.

11. Being excluded from the closed hearings has inevitably impeded the family's ability to participate in the inquiry. However, the family have been extremely impressed by CTI's approach. CTI have obviously put a huge amount of work to do everything they possibly can to satisfy the terms of reference of this inquiry. Within the restrictions imposed upon them by the law, CTI appear to have conducted a comprehensive and searching investigation.

(2) Legal background

Standard of proof

12. We invite the Chairman to apply a flexible standard of proof, including, where he deems it appropriate, initially adopting the civil standard of proof to findings of fact, but indicating where appropriate that he is sure of that finding. This approach was taken by Sir William Gage in the Baha Mousa Inquiry, and has been applied in a number of other inquiries[1]. The Court of Appeal appeared to approve that approach in *R (Keyu) v. Foreign Secretary* [2015] QB 57, at §110-111.

Wording

13. There is no restriction on the words that the Chairman can use in his report except for section 2(1). Section 2 states:

> "(1) An inquiry panel is not to rule on, and has no power to determine, any person's civil or criminal liability.
>
> (2) But an inquiry panel is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines or recommendations that it makes."

14. Section 2(1) prevents the Chairman from determining that a person is guilty of a criminal offence, for example of murder or manslaughter. However, it is a narrow provision, as s.2(2) and other authority demonstrates:

a. There can be no objection to a conclusion of unlawful killing. This verdict was returned in hundreds of cases by Dame Janet Smith DBE in the Shipman Inquiry[2].

b. Similarly, Sir William Gage concluded an officer "continued unlawfully to assault Baha Mousa" (Inquiry Report[3] §142).

[1] Ruling on Standard of Proof 7 May 2010, §28; the Litvinenko Inquiry report, Sir Robert Owen, §2.20 and Appendix 1, §122-123; and see the more detailed summary in Beer et al, Public Inquiries.
[2] www.shipman-inquiry.org.uk/fr_caseindex.asp?from=r&Letter=A
[3] www.bahamousainquiry.org/f_report/vol%20iii/Part%20XVIII/Part%20XVIII.pdf

c. He concluded that an officer "was involved in a violent assault on Baha Mousa. I find that his conduct on this occasion was a contributory cause of Baha Mousa's death." (*ibid* §221).

d. In the report of the Azelle Rodney Inquiry, a fatal police shooting case, Sir Christopher Holland concluded that on the "legal basis provided by the criminal law… I am wholly satisfied that firing so as to kill him was disproportionate and therefore unreasonable… and unlawful" [4] §21.13.

e. Lord MacLean concluded that there was "a wrongful omission on their part which facilitated the death of Billy Wright; such omission was negligent rather than intentional" (*The Billy Wright Inquiry Report,* §7.302). Permission to apply for judicial review to challenge terms of reference which included 'to determine whether a wrongful act or omission facilitated death', on the ground that this infringed s.2(1), was refused (*Re Steven Davis* 7 August 2007, unreported, per Weatherup J.; and see *Public Inquiries* Beer ed, OUP, §2.114-6).

15. The law relating to the question of whether Q9's decision to shoot was unlawful, is set out in section 6 below.

The planning and control of the operation

16. The police are bound to act compatibly with article 2 of the European Convention on Human Rights, by s.6 of the Human Rights Act 1998. Article 2 requires a firearms operation to be planned and controlled so as to minimize, to the greatest extent possible, the risk to life. In *Makaratzis v. Greece* (2005) 41 E.H.R.R. 49 the Grand Chamber said, at §60:

> "the Court must examine in the present case not only whether the use of potentially lethal force against the applicant was legitimate but also whether the operation was regulated and organised in such a way as to minimise to the greatest extent possible any risk to his life."

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[4] http://azellerodneyinquiry.independent.gov.uk/docs/The_Azelle_Rodney_Inquiry_Report_(web).pdf

17. This is similar to the duty within s.3 of the Health and Safety at Work Act 1974, which requires the Chief Constable, as an employer:

> "to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety."

18. All relevant witnesses accepted that command decisions should aim to minimize the risk to life to the greatest extent possible[5]. This applies to all aspects of the operation, including the tactical options chosen[6].

19. Mr Arundale describes article 2 considerations as "the core responsibility of the firearms commanders" §275. The importance of this aspect of article 2 is reflected in police policy. For example, the ACPO Manual of Guidance states that the provisions of Article 2 and the positive obligation to protect life "must take precedence over any other imperative"[7]. The 2003 *Code of Practice on Police Use of Firearms and Less Lethal Weapons* puts it slightly differently to the Grand Chamber in *Makaratzis:*

> "Police officers responsible for planning and undertaking operations where the use of force is a possibility should plan and undertake them so as to minimse, to the greatest extent possible, recourse to force and, in particular, lethal force."[8]

20. In the context of this case, there is no significant difference between 'minimizing *risk to life'* and 'minimizing *recourse to lethal force'*. The material question is whether the police minimized the risk that Anthony *would be fatally shot by a police officer*. Either wording (life, or lethal force) means the same thing in practice: the police were required to minimize to the greatest extent possible the risk that a police officer would shoot Anthony.

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[5] For example, Mr Fitton, 1 March/122/20-24; Mr Allen: this duty had to be at the forefront of the tactical advice he gave: 21 March/74-75; Y19, 21 March/179; Mr Granby, 24 March/108
[6] 22 March/23, Mr Sweeney.
[7] F/661 §5.18, see also §1.23
[8] G1/3327, §3.4.4

21. The family submit that the Chairman ought to ask whether the police operation was managed and organized in a way which minimized the risk to Anthony's life to the greatest possible extent. That is consistent with the purposes of an article 2 inquiry, described by Lord Bingham in *R (Amin) v. Secretary of State for the Home Department* [2004] 1 AC 653, at §31, which include that "culpable and discreditable conduct is exposed and brought to public notice". A failure to comply with this key aspect of law and policy would be an important factual issue that ought to be exposed. That submission is supported by caselaw which indicates that an article 2 investigation ought to examine whether the substantive article duties (which includes the requirement to minimize risk) were met[9].

22. Article 2 also indicates that the police should exercise the greatest care in evaluating relevant information and communicating it. In *McCann v. United Kingdom* [1996] 21 E.H.R.R. 97 the Grand Chamber concluded that the UK violated article 2 of the ECHR when terrorist suspects were shot (the 'death on the rock' case). That finding was largely due to miscommunication, which exaggerated the level of threat posed by the subjects. A series of working hypotheses as to the risk the suspects would be armed and intending to use weapons were conveyed to the firearms officers as certainties: §208-209. The Grand Chamber said:

> "the authorities were bound by their obligation to respect the right to life of the suspects to exercise the greatest of care in evaluating the information at their disposal before transmitting it to soldiers whose use of firearms automatically involved shooting to kill." §211.

23. As will be seen below, very similar failings occurred in the present case. The same standard as that set out in *McCann* applies to the police officers and NCA staff in this case who were responsible for obtaining and passing on the information which would be used to brief up AFOs. They were bound by article 2 to exercise the greatest care in evaluating and transmitting that information. That is an element of the broader duty to minimize the risk to life so far as possible.

[9] Such as *R (JL) v Secretary of State for Justice* [2009] 1 AC 588 paras 29, 87, 101 and 109

24. An important part of the article 2 procedural duty is learning lessons to reduce the risk of future deaths. The investigation has a vital part to play in the correction of mistakes and the search for improvements[10]. When considering the evidence, the Chairman is invited to consider carefully whether to recommend improvements at every level to the systems and procedures that are relevant.

25. This Inquiry is a perhaps unique opportunity for there to be independent and public scrutiny on certain GMP practices and procedures that are normally kept secret. In particular, the processing of intelligence, and the practices of the TFU, have before now received little independent oversight. That may be one reason why those aspects of this operation were so seriously flawed. "Sunlight is said to be the best of disinfectants"[11]. The fact that this independent scrutiny happens so rarely means it is all the more important for recommendations to be made to ensure the systems and procedures adopted by GMP are robust.

[10] See *R (JL) v. Secretary of State for Justice* [2009] 1 AC 588, §29; *R (Sacker) v. HM Coroner* [2004] 1 WLR 796 §11, which was said in the context of prison suicides, but given the risk involved in the activities of AFOs, must apply equally in this context.
[11] US Supreme Court Justice Louis Brandeis, quoted by Lord Bingham in *MCCartan Turkington Breen v. The Times* [2001] 2 AC 277.

Planning and control of the operation

26. Many of the failures relating to the planning and control of the operation are helpfully summarized at the end of Mr Beer's questions to Mr Arundale[12]. We support all of the conclusions he expresses there, with the following supplementary points or caveats.

(3) Failure to communicate information accurately

27. There was a serious failure to obtain and provide to AFOs, and to Q9 in particular, an accurate assessment of the threat posed by Anthony. The threat he posed was greatly exaggerated. In summary, the family's submissions are as follows:

    a. Since the threat assessment about each individual subject that is provided to AFOs could determine whether that subject is shot, it should be as accurate as possible.

    b. An accurate picture of Anthony's threat was that his only significant and real risk was that he may try to ram police cars with his vehicle.

    c. The assessment of Anthony's threat provided to AFOs was seriously exaggerated, wrongly indicating that he was violent and dangerous, was engaged in armed robbery, and that he had committed robbery using firearms.

    d. The failure was important. Had Q9 been given an accurate assessment of Anthony's threat, he could not have lawfully shot Anthony in the circumstances he did on 3 March 2012.

28. What follows is based on open evidence, and we recognise the closed material may affect this analysis. We invite the Chairman to carefully

[12] 27 April/118-123

consider the following submissions, with the benefit of the closed evidence.

(a) Threat assessments[13] given to AFOs should be as accurate as possible

29. AFOs ought to have been given information relevant to the threat posed by Anthony (described herein as "the threat assessment") that was as accurate as possible. The reason is that this information may determine whether the AFO shoots the subject or not.

30. This operation is a clear illustration of the importance of accurate threat assessments. If Q9 had been given an accurate threat assessment about Anthony, then his decision to shoot Anthony in the circumstances would plainly have been unlawful.

31. There was, in fact, no reliable basis for thinking Anthony would be armed with, or prepared to use, a firearm. The only significant threat was that he may use his car to ram a police car.

32. But at the point Q9 shot him, Anthony was sitting in the driver's seat confined inside a car, which was boxed in. The front of the red Audi was actually touching the police alpha car. Anthony was unable to drive forwards[14]. The photo at O1/325 shows the red Audi was about 4-5 feet from a brick wall behind it. The possibility that the red Audi might try to reverse that short distance, then be put into first gear, and then try to ram its way out, plainly would not justify Q9's decision to use lethal force when he did. The red Audi had not yet begun to reverse when Q9 fired. Moreover, the AFOs had been instructed to disable the vehicle and prevent it being a threat to officers using the Hatton shotgun[15]. The only real risk Anthony posed – of using his car to ram police cars – did not justify him being shot.

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[13] In these submissions we use "threat assessment" to mean information relevant to the threat posed by Anthony. Those words are sometimes used by GMP to mean something different.
[14] As can be seen on various photos, such as Q/22, O/241, 311, 312, 338, 431, 436
[15] 24 March/26, and C/340

33. Thus, if Q9 had been given this accurate threat assessment about Anthony the shooting would not have been lawful.

34. Q9 shot Anthony because of a small movement of his right hand below the height of his sternum. Q9 did not see a weapon. If an AFO saw an unknown member of the public somewhat lowering his hand in this way, he could not lawfully shoot that person. What makes the difference in Anthony's case? It can only be the information Q9 had been given about the threat posed by Anthony.

35. This demonstrates the importance of providing threat assessments to AFOs on each individual subject that are as accurate as possible. If the threat assessment understates the threat posed by the subject, the public and police may be put at risk. But if the AFOs are given an exaggerated picture of the threat the subject poses, that may lead to him being shot when he did not in fact pose an imminent threat. Ensuring officers accurately understand the threat posed by each subject may be a matter of life or death.

36. Policy recognizes that the content of a briefing may determine whether or not a subject is shot. For example, GMP's SOP 3 on Briefing and Debriefing a Firearms Operation states[16]:

> "Officers conducting briefing need to be mindful that the content of the briefing may directly affect the response of armed officers to any perceived threat and as a consequence there needs to be a distinction between what is considered fact and assumption…" (emphasis added).

37. The Manual[17] contains an equivalent section, stressing that the "content of the briefing may directly affect the response of armed officers to any perceived threat".

[16] X/50
[17] *The ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers*, 3rd Edition, 2011, F/686, §6.71

38. Mr Arundale agreed that the information in threat assessments may directly affect the subsequent actions of the AFO. In consequence, there is an obligation on those planning the operation to take careful and thorough steps to ensure that the information they provide is accurate. By 2012, the importance of this had been stated and restated in a number of reviews of fatalities, and it was a matter of common understanding in the police service[18]. He indicated that it was "common sense" for AFOs to be given an accurate gist of the reliability of intelligence upon which they are going to be asked to make life and death decisions[19].

39. The Coroner's report after the Jean Charles de Menezes inquest emphasised the importance of communicating intelligence accurately to firearms officers[20]:

> "the situation which arose on 22nd July 2005 highlights the importance of ensuring that intelligence is communicated to officers on the ground, insofar as that is possible. If a firearms officer is expected to exercise his own independent judgment before firing a critical shot, he should be kept informed…"

40. The MPS Response[21] to the Coroner's rule 43 report in de Menezes accepted this, and said:

> "the Silver Commander should ensure that the level of threat assessed, the reasons for it, and the reliability of the information are included in the briefing" of SFOs: §76.

41. Moreover, it is necessary for AFOs to be provided with threat assessments regarding each individual subject, separately[22]. The Manual calls for:

> "a **specific individual threat assessment in relation to all identified parties** to be formulated."[23]

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[18] 26 April/80-81
[19] 26 April/65
[20] http://www.julyseventh.co.uk/j7-jean-charles-de-menezes-inquest/de-menezes-inquest-transcripts/DeMenezesRule43Reportopen.pdf, Sir Michael Wright, 6 January 2009, §36.
[21] http://www.julyseventh.co.uk/j7-jean-charles-de-menezes-inquest/de-menezes-inquest-transcripts/Q09-02-18DJERule43MetropolitanPoliceCommissionerResponse20F.pdf
[22] Mr Arundale, 27 April/86, lines 1-5
[23] Emphases added, F/679, §6.22

42. Indeed, in this case, the AFOs *were* given separate threat assessments about each individual subject. There was obviously a reason for that. The reason is obvious: one subject may pose a significantly different threat to another[24]. One subject may have no history of violence or possession of weapons. He may be weak and have no inclination to violence. He may always take a non-violent role in offending due to his particular character and skills. For example, he may always be the driver, since he is an excellent driver but a dreadful shot.

43. Mr Arundale explained that it was necessary to provide AFOs with specific, individual threat assessments, in part because "All of this is extremely relevant. The history and the threat that they [the subjects] pose can inform tactics and decision making. Therefore based on your previous point, it needs to be as accurate and as relevant as possible"[25].

44. It is important to note that our concern here is with the threat assessments *provided to AFOs*. That is, the information upon which Q9 later based his decision to shoot Anthony. The threat assessment upon which command officers base decisions such as whether to grant firearms authority, is a different matter. In that context, as DCI Cousen explained, the principal concern is the individual with the highest risk. The fact that one member of a 3 man group poses a much lower threat than the other two, is not of great significance so far as command decisions about firearms authority are concerned. But the same does not apply to threat assessments provided to AFOs, which may be used to decide whether to shoot a subject.

45. What was set out above appears to have been largely uncontroversial amongst relevant witnesses. For example, Mr Lawler accepted that, since the contents of the briefing may affect the response of the AFO, the aim must be to make the contents of the briefing as accurate as possible. He agreed that the foundation stone of an operation such as this is the accuracy and reliability of the intelligence on which it is built; and that the

[24] See, for example, U9, 28 March/10-11
[25] 26 April/83-84

assessment of the intelligence is fundamental to its reliability[26]. Mr Nutter accepted that it was:

> "vitally important that the words used to convey intelligence to firearms officers must be accurate" because "there may come a time when they rely on what they have been told in order to contribute to a decision as to whether or not to fire their gun"[27].

46. Mr Holliwell indicated that clear information "is essential in circumstances where the information you are providing can be used to brief up firearm officers"[28]. C/Supt Ellison noted that the assessment of the credibility and reliability of intelligence is vital[29].

47. One cannot assume, on the mere basis that Mr Totton was sitting next to Anthony in the car in Culcheth on 3 March 2012, that Anthony would pose the same high risk as Totton. That would constitute a serious error in accurate threat assessment. It would be an unjustified assumption that may lead to someone being shot when he did not in fact pose an imminent threat. At times Mr Granby appeared to fall into this error, and suggest he could blur the risk posed by one subject with that of another[30].

48. It was suggested at times that individual assessments may fade into the background. For example, U9 was asked by Ms White whether, if two men were sitting next to each other who were of different risks but "the assessment is that they are … preparing imminently to conspire to commit armed robbery… do you, if at all, individuate… between the risk?" (emphasis added). He said he would not. Real caution should be had with his comment. Firstly, it is notable that Ms White put a caveat in her question that the men were about to commit armed robbery. That was not the situation here: as will be seen below there was no reliable intelligence that the men were all about to commit armed robbery.

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[26] 8 March/130 and 134-135.
[27] 21 April/81-82
[28] 23 Feb/51-53
[29] 21 Feb/99. Likewise, DCI Cousen noted that making the best use of intelligence was vital: 14 Feb/37; and CI Crowcroft said "the more information that you have is vital to the success of that operation": 28 Feb/119.
[30] E.g. 23 March/151-152.

49. Secondly, any suggestion that AFOs will simply ignore individual threat assessments on the ground is plainly wrong:

a. AFOs are given separate threat assessments on the individual subjects for a good reason.

b. As the Manual, and as GMP policy, note: "the content of any briefing may directly affect the response of armed officers to any perceived threat"[31].

c. Take an example. An AFO had been told that the man in the front passenger seat had a submachine gun in his lap, and a history of shooting at police officers. Meanwhile, the driver and rear passengers were his daughters, who had no history of violence, and there was no suggestion they had weapons. The AFO would plainly be expected to distinguish between the threat posed by the man and that by his daughters. The AFO would want to do so for his or her own protection. By the same token, the AFO would not be justified in shooting the daughter in the driver's seat, if she dropped her hand slightly, merely because she sat next to and regularly associated with her father.

d. AFOs gave evidence that the threat assessments were significant to them. For example, W9 said when pressed about why he was given threat assessments about each subject:

> "Well if one has got a warning for say having a knife in his pocket, I would want to know about it, wouldn't I?".

e. This is a pretty obvious point and a simple illustration of why the suggestion that threat assessments fade into the background, on the ground, is wrong. W9 accepted he would treat the subject differently to others if W9 recognised the subject[32].

[31] F/686 §6.71, X/50
[32] 5 April/174-175

f. Likewise, Q9 said of the information in the briefings:

"that information is what we base our decisions on"[33].

g. Q9 said that what he was told in the briefing about Anthony in part justified his decision to shoot[34].

h. U2 said he would expect to be told as much as possible about the subjects and that his expectation was that exquisite care had been applied to the intelligence case before it got to the AFOs[35]. G11 gave similar evidence[36]. There would be no point in any of that if the threat assessments will just to fade into the background when the AFOs go into action.

i. U9 agreed that the threat assessment remains in mind when he deploys. He accepted threat assessment may make a difference about whether a person is shot. Given an example of an AFO being confronted by a subject who drops his hand out of sight, U9 accepted that if he had been told the subject was a petty criminal, rather than someone who had threatened officers with firearms, that may make a difference to whether the subject is shot[37].

50. It cannot be said that firearms officers of Q9's caliber and experience were incapable of bearing in mind information about different subjects' threats when on the ground. As is explained below in more detail, AFOs are highly trained to assess threat in these situations. Q9 had a particularly high level of training and experience. Their training Q9 received includes drills in a range of scenarios, sometimes at increasing pace, to help him to assess the threat posed by those in front of them; and to distinguish between people who pose a greater and lesser threat[38]. Examples have

[33] 5 April/ 210/lines 4-5; repeated at lines 10-11.
[34] 6 April/27
[35] 30 March/86/lines 15-25, and 112/ lines1-3
[36] G11, 11 April/192
[37] 29 March.13-14
[38] See e.g. U9, 29 March/12

been disclosed of a number of different training scenarios involving vehicle stops which Q9 had the benefit of[39]. They include where the driver is unarmed and poses no threat but the front seat passenger is armed. The scenarios are aimed at improving the AFO's ability to distinguish between the threat posed by the occupants of the two front seats of the subject vehicle.

51. In a number of situations, the threat assessments AFOs are given may not be significant. An example may be if the subject is pointing what appears to be a gun at the officer. But in other circumstances, including those of this case, the threat assessments could be crucial. The small and ambiguous movement made by Anthony, dropping his hand somewhat, could not on its own justify him being shot. It is only the information given to AFOs about Anthony that could justify lethal force in those circumstances.

52. Clearly, AFOs should not be overburdened with too much detail about the subjects' history. They should be given a condensed gist of, or headlines about, the threat posed by each subject, where there were significant differences between them.

53. Mr Arundale was accepting of information being given in gist or headline form to AFOs, so that they were not overburdened, "as long as the words that are used are absolutely accurate and reflect the grading"[40].

54. For example, if there was no suggestion the driver would be armed and she was non-violent; while the front passenger had a submachine gun and had shot at police officers, firearms officers would be expected to keep the gist of this in mind, for their own safety as much as for that of the subject.

[39] E.g. R/1381-1383; see also X/372-373 and 389, and Mr Nutter's explanation on 21 April/134-137
[40] 26 April/65-66

55. At one stage Q9 indicated that he treated all of the occupants in the vehicle as presenting the same risk, given the nature of the threat assessments they had been given[41]. That must be seen in the context of Q9 having been given a grossly exaggerated threat assessment about AG, which did not suggest his threat was a lot lower than the other subjects. Had Q9 been given an accurate picture, it would not have been right for him to treat the occupants as presenting the same risk.

56. Once it is recognized that information given to AFOs about the subjects' threat may affect their response, the need for exquisite care in the preparation of threat assessments is apparent.

(b) An accurate picture of threat posed by Anthony

57. Anthony plainly posed a much lower risk than any other subject. DCI Cousen said that Anthony's risk was "a lot lower" than that of Totton, Rimmer, Aaron Corkovic and Jamie Corkovic[42].

Violence or weapons

58. Anthony had no convictions for violence. He had no convictions for robbery, and none for weapons offences. He had a number of convictions, but they were all for non-violent offences (largely for dishonesty, driving offences, or theft)[43].

i. The 4 December 1997 driving incident

59. Anthony was convicted of an offence of dangerous driving which occurred on 4 Dec 1997. It was a significant offence. He received 15 months imprisonment, and there was video evidence of the incident. The offences for which he was convicted did not involve violence. However, an offence of affray, which does, was ordered to lie on file in respect of this matter. Anthony rammed his car into a police car, twice, during a chase. Two people Anthony was with (albeit not Anthony himself) got out armed with

[41] 6 April/89
[42] 14 Feb/76-78
[43] 14 Feb/80-91. Court PNC: I/255; more detailed police PNC: C/757.

weapons and caused damage to the police vehicle, including smashing the police windscreen, which caused glass fragments to hit the two officers who were in the front seats[44].

60. Anthony was initially arrested for two s.20 assaults in respect of this 4 December 1997 driving incident. The two s.20 allegations were not proceeded with. Anthony was also charged with violent disorder in respect of this incident, but that charge was dropped at the Magistrates' Court[45]. It is significant that this incident took place in 1997, when Anthony was relatively young, aged 21, and has not been repeated.

ii. Other unsubstantiated allegations of violence

61. There were two unsubstantiated allegations of violence on Anthony's records. Before examining these, it is first worth explaining part of the OPUS record.

62. Anthony's OPUS record contains a table headed 'Crimes'[46]. This appears to include any crime with which Anthony was merely associated. It does not necessarily indicate there were any grounds to suspect him of having committed the crime.

63. One column of the 'Crimes' table is headed "Status". In that column we see either 'accused' or 'eliminated', or there is no entry. If 'accused' is written in that column it appears to mean the subject was somehow associated with the crime. As Ms Griffiths put it "for every crime that he is associated with, it is going to appear on that page in his OPUS print"[47]. The table includes crimes for which AG was not charged, and those for which he was not even arrested. That can be seen, for example, from the fact that 'accused' is listed next to a s.18 assault on 19 May 2001 (157497H/01) and a s.47 assault on 30 Oct 1999 (326088E/99), yet

[44] 8 Feb/84
[45] 8 Feb/84-85. See also the entry dated 4 Dec 1997 on C/727.
[46] [C/727], and [F/1018]
[47] 7 Feb/65-67 and 71

Anthony was arrested but not charged with the former, and was not even arrested for the latter[48]. Similarly, the table indicates Anthony was 'accused' of a series of robberies in 1995 and 1996, even though he was not charged with many of those offences[49].

64. 'Eliminated' "means that a positive decision was taken that [the subject] did not commit the offence"[50].

65. The OPUS record contains a separate table headed "Offences"[51]. If an offence appears in that table: "It just means he has been associated to those offences in some way"[52].

66. The OPUS 'Offences' table contains an error: "Murder, 23 May 2000: suspected". This entry was plainly wrong. It appears that it mistook Anthony for his brother, Stuart Grainger, who was convicted for the murder of Mr Ianson in 2000. Nobody involved in this case has suggested that Anthony was suspected of being involved in that offence, nor did they rely on any such suggestion during the operation. There is no suggestion that Anthony was involved in an offence of murder in any of the witness statements, threat assessments, or indeed in any other document. DCI Cousen did not brief anyone that Anthony was suspected of it[53]. He agreed that this suggestion within Anthony's OPUS record that Anthony was somehow associated with that offence "is incorrect"[54].

67. We return now to the two unsubstantiated allegations of violence on Anthony's records.

Section 47 assault, 30 Oct 1999, not arrested

[48] 8 Feb/94, Ms Ross. She appears to have got the year wrong for this offence.
[49] 7 Feb/76, per Ms Griffiths
[50] Mr Lapniewski, 7 Feb/138; Mr Talbot, 10 Feb/31-33.
[51] C/737, F/1028.
[52] 7 Feb/67
[53] 14 Feb/91-92, DCI Cousen.
[54] 14 Feb/181

68. The OPUS record indicates Anthony was "accused" of one s.47 assault, and this occurred on 30 Oct 1999[55]. Anthony was not even arrested for this matter. The fact that he was not arrested for it indicates there was insufficient evidence to pass the low threshold for arrest[56]. It is said that the alleged victim did not want to press charges. But the police are still expected to proceed to investigate a criminal offence if there is sufficient evidence (unless the matter is too minor).

69. Ms Ross noted Anthony had been suspected of a s.47 assault. She initially thought the date may be 30 Oct 2009. However, she accepted that the year may be an error[57], and that the assault was in 1999 rather than 2009. The reasons why this appears to be an error are (i) this allegation was taken into account in the 2002 review of Anthony's warning markers[58], (ii) the day and month are the same as the 30 Oct 1999 s.47 assault recorded at [C/727], and (iii) there is no other suggestion in any of the records that Anthony was associated with any s.47 assault other than the one on 30 Oct 1999. In any event, Ms Ross confirms that Anthony was not even arrested for the s.47 assault she mentions[59].

70. It is difficult to see what significance a minor assault for which there was insufficient evidence even to arrest Anthony, could have for firearms officers. Indeed, DCI Cousen did not pass any information about this incident to anyone in the TFU[60].

Section 18 assault, 19 May 2001, not charged.

71. There was an allegation that Anthony committed a s.18 assault on 19 May 2001, when he punched someone, causing the person to hit his head on the pavement and fracture his skull. Anthony was arrested but not charged

[55] C/727 and 737
[56] Reasonable grounds to suspect, "a state of conjecture or surmise", which does not even require the existence of admissible evidence: *Armstrong v. Chief Constable of West Yorkshire* [2008] EWCA Civ 1582, §10 and 15.
[57] 8 Feb/101-102
[58] 8 Feb/91-92
[59] 8 Feb/94
[60] 14 Feb/90

with the offence[61]. The CPS decided that there was insufficient evidence to proceed with a prosecution[62], and so it was not proceeded with.

72. This arrest for the 19 May 2001 s.18 assault is referred to in the OPUS 'Offences' table[63] as "Wounding WI". That is firstly because the collar number of the relevant officer is the same, and secondly because there was no other allegation in the records against Anthony of any assault between 1999 and his death[64].

Summary: violence and weapons

73. An accurate summary of allegations of violence against Anthony which might be significant to AFOs (leaving aside robbery for the moment) is this:

a. He had no convictions for any offence involving violence. There were only two significant allegations of violence:

b. Affray, ordered to lie on file, for using his car to ram a police car. This took place in 1997 when Anthony was aged 21.

c. An arrest for a s.18 assault in 2001. There was insufficient evidence to charge.

ii. Robberies

74. To reiterate, Anthony was not convicted of any robbery offences. An accurate summary of the unsubstantiated allegations that Anthony was involved in robbery is as follows.

[61] C/737 and H/160
[62] 8 Feb/94-95
[63] C/737, albeit with a date of 7 Jan 2002. The date listed in that column of the table appears not to be the date of the original offence, but some other later stage of the investigation. That is clear by comparing the date listed in that column for other offences, for which we know the date of the actual offence was earlier, such as the driving incident on 4 Dec 1997.
[64] See, for example, C/727

Preston/Kirkham robbery in 2005

75. The 3 March 2012 briefing suggested the subjects were responsible for a robbery in Preston in 2008, at which staff were held up at gunpoint. This actually refers to a robbery in 2005[65]. It was a robbery of a Lloyds TSB in Kirkham, Preston.

76. There is no evidence to suggest Anthony was involved in the offence. The evidence about it was supplied to Op. Shire by DC Mills[66] on 1 March 2012. There is no suggestion in that evidence that Anthony was involved in the offence. There was no other suggestion of which DC Mills was aware that Anthony was involved in that robbery at all[67]. DCI Cousen "was aware of intelligence implicating David Totton only… Robert Rimmer and Anthony … were not named in the intelligence logs" about the offence[68]. GMP's Opening Statement accepts, in respect of this 2005 robbery, that:

> "There was nothing to suggest that either Mr Grainger or Mr Rimmer were involved and the intelligence suggesting Mr Totton's involvement was circumstantial and limited" §16(b)[69].

Operation Ashton 2006 robberies

77. A series of robberies which took place in 2006 were investigated within Operation Ascott. These had not been considered relevant before the time of Anthony's death[70]. While Anthony was initially suspected of being somehow associated with those offences, he was later eliminated as a suspect for all of the Op Ascott robberies. That can be seen from his OPUS record, which lists one robbery offence which concluded on 28 April 2006,

[65] See GMP's opening statement at §16(b).
[66] It is at R/11, R/21, R/35 and R/38. See DCI Cousen 14 Feb/97-98
[67] 9 Feb/154
[68] H/93
[69] See also DCI Cousen, G/3168: "there was possibly intelligence implicating Totton. Although intelligence wasn't found stating that Totton had committed the robbery, intelligence was present indicating he was spending a lot of money, the inference being it was possibly from the robbery."
[70] 10 Feb/29-30, DC Talbot; and 16 Feb/135, DCI Cousen

and states that Anthony was "eliminated" in respect of that offence[71]. Further, the subject profile on David Totton confirms Anthony:

> "was arrested in 2006 for conspiracy to commit armed robberies… Anthony [and others] **were eliminated**"[72] emphasis added.

78. As has been seen above, this means that a positive decision was taken that Anthony and others did not commit the offence. On Mr Lapniewski's research, the men were eliminated for all and any 2006 robbery offences including the arrest for conspiracy[73].

79. The evidence provided to the inquiry includes one or two vague suggestions that Anthony was initially suspected of being somehow associated with those robberies. For example, DC Talbot said that in 2006 Mr Totton and Anthony were driving towards Culcheth, and it was "believed, at the time, they were planning to commit a robbery/act of criminality"[74]. In oral evidence, he clarified that "act of criminality" could refer to any crime, and was not necessarily robbery. DC Talbot's evidence appears to have merely been based on a conversation he had with Mr Mulvihill in 2014. Mr Mulvihill, in turn, does not seem to have had any solid grounds for his conclusion – it was merely an assumption. DC Talbot said "it was his [Mr Mulvihill's] assumption that some sort of criminal act was going to be taken" [75].

80. Mr Mulvihill's witness statement noted that Anthony was seen driving a car which, a day later on 28 April 2006, was suspected to have been used in a robbery of a Lloyds TSB in Ashton on Ribble. It is not clear whether Mr Grainger was the only person driving that car on 27 April 2006, or whether others were seen driving it that day or the next day, or whether it was in fact involved in the offence.

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[71] C/727, F/1018.
[72] C/54, F/43.
[73] 7 Feb/138. See also DC Talbot, 10 Feb/32-33
[74] 10 Feb/28, and H/154
[75] 10 Feb/30

81. It is a concern that DC Talbot and Mr Mulvihill set out these vague suggestions that Anthony was associated with the Op. Ascott robberies, without either (i) acknowledging that a positive decision was taken to eliminate him as a suspect for those robberies, or (ii) also setting out the reasons why it was concluded that he was not involved in the offences. Nevertheless, it is not necessary to go into the specific evidence, since the police made a positive decision to eliminate Anthony, presumably having considered all of the available evidence, not merely a vague snapshot.

Bolton robbery 2000

82. There was a robbery in Bolton in 2000 following which a firearm was discharged at the police[76]. There is no suggestion at any stage that Anthony was involved in any aspect of the robbery. For example, the crime report for it lists 7 people who were associated with it, and Anthony is not one of them[77]. Stuart Grainger was charged with the robbery, and was also charged with attempted murder.

1995/1996 robberies – Operation Vulture

83. There were a series of robbery offences in 1995 and 1996 which were investigated within Operation Vulture. A stayed indictment[78] shows Anthony was originally charged with conspiracy to commit robbery between 9 October 1995 and 11 June 1996 (count 1); robbery on 10 June 1996 (count 2); robbery on 31 May 1996 (count 3); robbery on 31 May 1996 (count 4); and attempted robbery on 14 Nov 1995 (count 6).

84. However, on 25 April 1997 HHJ Owen stayed that original indictment and granted leave to prefer a new indictment. Under the preferred indictment there were two counts for which Anthony was a defendant:

a. Count 3, conspiracy to rob, on 31 May 1996, with Totton.

[76] 16 Feb/70-72
[77] G2/1400-1406 and 14 Feb/99-100, DCI Cousen.
[78] G2/1168B

b. Count 4, robbery, on 10 June 1996, with Totton, Stuart Ellis and Peter Anderson[79].

85. The trial Record Sheet shows that on 19 June 1997, in respect of both of these counts, the Judge ordered the jury to return a verdict of not guilty. Anthony was discharged with a defendant's costs order.

86. The Judge's decisions, both to strike certain counts off the original indictment, and to direct the jury to find Anthony not guilty, are obviously significant insofar as Anthony's threat assessment is concerned. An experienced Judge, who is an expert at assessing evidence, and who had the benefit of all of the available evidence, appears to have essentially concluded that there was insufficient evidence upon which Anthony could be found guilty of each of the offences for which he was charged. AFOs should have proceeded on that basis – that there was insufficient evidence to conclude Anthony committed the offences.

DC Clark

87. DC Clark presented his recollection[80] of a fraction of the evidence in respect of the two counts against Anthony on the preferred indictment. DC Clark's evidence should be treated with real caution. It does not undermine the importance of the Judge's decision to direct an acquittal, for the following reasons:

a. DC Clark only had a small fraction of the relevant evidence. It came from his recollection of "speaking to officers involved and sight of the MG5, at some point. I don't exactly, can't time and date who I spoke

[79] [G2/1167]

[80] Some care is necessary with DC Clark's evidence. In a report dated 18 July 2012 [G2/683] he referred to the 2000 robbery in Bolton, then said: "Intelligence and association on the division around the time of the robbery suggested that Totton and the Grainger's were committing this type of robbery i.e. actually entering the banks to commit the robbery." In fact, this did not refer to anything Totton and the Graingers were doing at the time of the 2000 robbery, but to four to five years earlier. DC Clark was actually referring to the Operation Vulture robberies, in 1995-1996: 22 Feb/51-55, 82.

to and when"[81]. He does not appear to have made a note about what he was told. He was vague about what information he was given, and when he was given it.

b. Nevertheless it is clear he only had a snapshot of the relevant evidence. For example, it appeared DC Clark was not aware of Anthony's response to the allegations against him[82], or whether Anthony had put forward a convincing defence, or the reasons to support the Judge's decision[83].

c. DC Clark appeared to lack knowledge of key aspects of the evidence. For example, he noted that the evidence against Anthony included that shortly before the 10 June 1996 Adelphi Post Office robbery, 4 men - Totton, Stuart Ellis, Peter Anderson and Anthony - were seen to travel to the area of the post office. But DC Clark did not mention that only 3 men performed the robbery[84].

d. Similarly, he said that shortly before the 31 May 1996 RBS Prestwich robbery, Anthony and the other co-accused were "surveilled to the area" where the robbery occurred. But he did not mention that Anthony was likely to have been the driver, and the driver did not commit the actual robbery itself[85].

e. By contrast to DC Clark, the Judge would have had the benefit of access to all of the relevant evidence. The Judge would not have had to rely on a vague recollection of what he or she was told some years earlier, as DC Clark appeared to be doing.

f. DC Clark noted that the case was dismissed due to inconsistencies in the surveillance evidence. Most of the matters DC Clark claimed were

[81] 22 Feb/111, 64 and 76
[82] E.g. 22 Feb/76
[83] 22 Feb/117
[84] G2/1256
[85] G2/1282 and 1284

evidence against Anthony involved surveillance evidence. It is a concern that DC Clark identified to the inquiry the surveillance evidence he claimed went against Anthony, but failed to point out the evidence that was inconsistent with that evidence.

Crime reports

88. A number of crime reports have been produced[86]. Considerable caution should be taken in respect of these crime reports. That is firstly because many of them list Anthony within the "Offender Details" section, even though he was not charged with the offence in question. The fact he is listed on the "Offender Details" section does not mean there was any evidence that he actually committed that offence[87].

89. Secondly, many of the reports are wrong or incomplete. To take one example[88], the crime report about the 9 October 1995 robbery of Holyrood Post Office in Prestwich[89] states that the offence was ordered to lie on file for Stuart Grainger. That is wrong[90]. Stuart Grainger was a co-defendant on the old, stayed indictment, in respect of this offence[91]. But it was only Peter Anderson who appeared on the preferred indictment for this offence[92].

Summary: robberies

90. An accurate summary of the significant evidence that Anthony was involved in robberies is as follows:

    a. He was charged for offences of robbery and of conspiracy to commit robbery in 1995/1996, when Anthony was aged 19 or 20.

[86] By DCI Cousen [G2/759-873], and by DC Clark [G2/1253-1540].
[87] See, for example, Ms Griffiths, 7 Feb/71-72
[88] Other examples of crime reports that are wrong are described on 7 Feb/72-75.
[89] G2/759-765, and G2/1536-1540
[90] As the trial Record Sheet shows [G2/1154]
[91] G2/1168C
[92] G2/1167

b. A Crown Court Judge decided there was insufficient evidence to convict him of those offences.

c. There is no evidence Anthony was involved in robbery since then.

iii. The Corkovics family

91. By 3 March 2012, it was clear that the Corkovics brothers were acting entirely separately from Mr Totton, Anthony and Mr Rimmer. There was intelligence available to SOCA that Aaron Corkovic and David Totton were not planning a robbery together and were not working as a team[93]. Operation Shire initially proceeded on the basis that Totton and the Corkovics were acting together. But on 22 February 2012 DCI Cousen decided to split the operation into two strands. He made a note in his casebook saying this was because:

> "We have never witnessed the Corkovics associating with David Totton. I am now treating these as two different strands of the operation."[94]

92. By that date there had been a great deal of surveillance on the Corkovics and Totton. In total, the DSU was deployed on 75 separate occasions[95]. VTDs on vehicles used by Totton and the two Corkovics enabled Op Shire to know where their vehicles were at all times. There was no "evidence, intelligence or surveillance to show they were criminally active together and so [DCI Cousen] removed" the Corkovics from the strand of the investigation involving our three subjects[96]

93. DCI Cousen was very clear that, from then on, the intelligence about the Corkovics' was not relevant to the threat posed by the three subjects, Totton, Anthony and Mr Rimmer. That is:

> "the intelligence relating to the Corkovics wasn't relevant to the risk, if any, that Mr Totton, Mr Grainger and Mr Rimmer posed…. In

[93] Gist of closed hearing [1], §5.
[94] 15 Feb/18
[95] G2/699
[96] H/77

> particular, it was not relevant to the assessment of the threat that Mr Grainger posed… The intelligence that had been received that the Corkovics had access to, or possessed, firearms, was not relevant to Mr Grainger's threat…".

94. DCI Cousen agreed "had you suggested to firearms officers that specific intelligence relating to the Corkovics would have been relevant to Mr Grainger, it would have been wholly misleading and completely inappropriate"[97]. In particular, the intelligence that the Corkovics driver carried a gun had no relevance whatsoever to Anthony.

95. After 22 February 2012, DCI Cousen claimed, because the Corkovics' were not relevant, he did not brief TFCs about the intelligence about the Corkovics: "I never once included any of the intelligence relating to the Corkovic's or others as this was not relevant at that time." Emphasis added[98]. (What he did inform TFCs about in this respect is considered in more detail below.)

96. If anything about the Corkovics was to be included in the AFO briefing, it was essential to state that they had no relevance to the threat posed by Anthony, Totton and Rimmer.

iv. Intelligence

97. We are limited in the extent to which we can make submissions about intelligence, having not been part of the closed hearings. However, it is apparent from what we have seen that there was no reliable intelligence or other information to indicate that Anthony would or may be armed on 3 March 2012.

98. P11 was a person at SOCA responsible for disseminating intelligence. The intelligence that P11 disseminated on 2 March 2012 was that the three

[97] 15 Feb/21. DCI Cousen repeatedly emphasised that the Corkovics' were irrelevant, such as at H/77-78, 86, and 91, and L/384.
[98] H/77

subjects intended to commit *a robbery*, not an *armed* robbery[99]. He repeatedly made clear, including "in strong terms", that there was no intelligence within the intelligence he was responsible for disseminating that Anthony, Totton or Rimmer would or may be armed on 3 March 2012 or 5 March 2012. It appears that the intelligence P11 was responsible for disseminating was the most up to date and specific intelligence about what the subjects may have been planning on 3 or 5 March 2012.

99. Apart from what is in the Intelligence Chronology, SOCA did not, at any stage, disseminate any intelligence to GMP that Totton, Rimmer or Anthony had access to, or may have had access to, firearms[100].

100. DCI Cousen accepted that there was no information, intelligence, or evidence that Anthony would be armed on 3 March 2012. For example:

> "Q. And there was no information, was there, to show that each of the subjects would be armed?
> A. No..."[101]

101. In closed hearings DCI Cousen accepted that on 2 March 2012 and 3 March 2012 he was given no intelligence by C3 that the 3 subjects had access to firearms or would be carrying firearms[102].

102. X7 made a contemporaneous note of the briefing by DCI Cousen on 1 March 2012. The note says (and X7 thought DCI Cousen said this):

> "No current intelligence to put subjects in possession of f/arms"[103].

103. The only entry in the Intelligence Chronology that refers to Anthony was on 2 Feb 2012:

> "41. A team of individuals which is headed by David Totton are actively involved in the commission of armed robbery offences at banks, building societies and other premises where large sums of cash are kept. 1. David Totton is planning to commit offences of robbery

[99] Gist of closed hearing [1], §11(a)
[100] Closed transcript, §15.
[101] 16 Feb/86/2-4
[102] Gist of closed hearing [3], §13 and 19.
[103] R/560 and 11 April/176

> with his close friend, IDGY and others including Anthony Grainger and twin brothers known as Aaron and Bradley. [Redacted] 2. David Totton is also heavily involved in the large scale movement of cocaine with a criminal associate known as Rimmer [Redacted]" [S/11]

104. The gist of the closed hearings indicates that this item originated from SOCA. It also suggests that this item was not reliable[104].

105. Insofar as item 41 suggests that the three subjects may be armed upon the commission of a robbery offence, that appears to have been superseded by the more up to date and more specific intelligence disseminated by P11, considered above. P11 was clear that, insofar as 3 or 5 March 2012 was concerned, there was no intelligence that Anthony would or may be armed.

106. But even if that were wrong, item 41 did not provide any reliable basis for concluding Anthony would be armed on 3 or 5 March 2012. It contains three distinct sentences. The first sentence appears to concern a separate scheme to that in the second sentence. That is because the first sentence is about offences that were being *actively committed*. By contrast the second sentence is about offences being *planned*.

107. The scheme in the first sentence (involving offences being actively committed) is not said to involve Anthony. It is only in respect of the separate scheme in the second sentence (involving the planning of offences) that Anthony is named as being involved. It is only the scheme in the first sentence which involves armed robbery. The scheme in the second sentence in which Anthony is involved does not concern armed robbery.

108. There are a number of reasons why item 41 appears, on information that Op. Shire knew or ought to have known, to be unreliable:

    a. Item 41 indicates Totton was planning to commit robbery offences with Anthony, Aaron and Bradley McLennan and others. Yet the

[104] *Ibid* §9-10

McLennan brothers were in prison at the time, so could not commit robberies. DC Clark agreed that the fact that the McLennans were in prison indicated the intelligence that they were planning a robbery may not be reliable[105].

b. Item 5 and item 41 of the intel chronology are largely the same. They indicate, together, that Totton and others were *actively* involved in the commission of offences in late 2011 and early 2012. Yet it was apparent from evidence available to the robbery unit that Totton was not actively involved in committing offences during that period. He was away from the UK for an extended period. From 19 Oct 2011 to 2 March 2012, inclusive. The DSU was deployed on Op. Shire on 74 separate occasions [G2/699]. For some of this period, Op. Shire had a VTD on Totton's BMW which enabled them to see where the car was at all times. At no stage was there any suggestion from this detailed surveillance that Totton was actively involved in the commission of armed robbery offences.

c. Similarly, Idgy (Iain Parkinson) was not witnessed by any of the detailed surveillance conducted on Totton, Rimmer and Anthony, nor in any other evidence obtained by Op Shire, prior to Anthony's shooting[106]. Op. Shire did not consider he was acting together with Anthony, Totton or Rimmer, and so did not obtain a profile for him, or any other information about him. That draws further doubt on the reliability of the second sentence of item 41, which says Idgy, Totton, Anthony and others were planning robbery offences together.

109. In light of §10(c) of the gist of the closed hearings, we invite the Chairman to consider whether the original intelligence relevant to item 41 was that it was Aaron Brady Corkovic (and his brother), who were planning a robbery with Totton, rather than Aaron and Bradley McLennan. If it did, then this was a further, different reason why item 41 was unreliable. That

[105] 22 Feb/21
[106] 22 Feb/99-100

is because it was, or ought to have been, clear that the Corkovics were acting separately from Totton, Anthony and Rimmer. If item 41 was actually: "David Totton is planning to commit offences of robbery with his close friend, IDGY and others including Anthony Grainger and [Aaron Brady Corkovic and his brother]…" then, at least by the start of March 2012, it would have been clear to Op. Shire that it was wrong.

110. There appear to have been no efforts made by Op. Shire to try to evaluate the relevant intelligence within the chronology, particularly item 41[107]. Mr Beer suggested to relevant witnesses a number of simple steps that could have been taken to evaluate item 41[108]. None of the steps had been taken.

111. The absence of any steps to inquire further, particularly into item 41, suggests that the intelligence was not considered to have been reliable. Had credence been given to item 41, any competent unit would have investigated it further, and would have discovered that, in fact, it was unreliable. For example, they would have found that Aaron and Bradly McLennan were in prison and so could not commit robbery.

112. The initial CPS admissions for the *R v. Fahy* trial, which indicate that item 41 was directed to "the early part of 2011"[109]. We do not seek to rely on those admissions. However, we invite the Chairman to consider whether the original intelligence received indicated item 41 was focused on what was happening in the early part of 2011.

113. The reasons we do not seek to rely on the CPS admissions about intelligence is that they do not appear to be accurate. Further, we do not have enough information about how they were formulated to have any confidence that that process was reliable.

[107] DC Clark was not aware of any such action taken: 22 Feb/21-26
[108] See, for example, 22 Feb/page 17 onwards
[109] I/1190 and 1193

114. It could not be inferred that Anthony would be armed with a firearm on the evening of 3 March 2012 from the intelligence that the three subjects were planning *a robbery* on 3 or 5 March 2012. The reasons why will be expanded upon below, but are in summary as follows:

a. By lunchtime on 3 March 2012 it was unlikely a robbery would occur, in part because the likely targets (CIT deliveries and financial premises) were absent or closed. The men were most unlikely to have weapons if they were only conducting a recce.

b. General statistics indicate that only a fraction of robbery offences involve a firearm. There is a table at [I/856] which indicates around 60-66% of commercial robbery offences involve some type of weapon, but 14-24% involve a firearm. DC Talbot said he had seen CIT robberies which involved no weapons at all[110].

c. But those general statistics should yield to the specific facts of the case. As has been seen above, the up to date and specific intelligence contained no suggestion that the men would or may be armed. The statistics do not show the percentage of robberies in which active and recent intelligence contains no suggestion that the subjects would or may be armed, where the subjects turned out to be armed with a firearm. The percentage chance, in such cases, is likely to be considerably lower than 14-24%.

d. Moreover, DCI Cousen had formed the view that Anthony would be the driver. This, together with the absence of any evidence that he had ever carried a weapon, indicates it was unlikely he would be performing a role in any robbery which required him to be armed with anything other than a car. The general statistics tell us little about whether a person with Anthony's role and characteristics will be armed.

[110] 10 Feb/77-78

Summary of accurate picture of Anthony's threat

115. In summary, an accurate threat assessment about Anthony given to AFOs should have included the substance of the following:

a. He had no convictions for any offence involving violence. There were two significant unsubstantiated allegations of violence:

i. Affray, ordered to lie on file, for using his car to ram a police car. This took place in 1997 when Anthony was aged 21.

ii. An arrest for a s.18 assault in 2001. There was insufficient evidence to charge.

b. He was charged for offences of robbery and of conspiracy to commit robbery in 1995/1996 when Anthony was aged 19 or 20. A Crown Court Judge decided there was insufficient evidence to convict him of those offences. There is no evidence he was involved in robbery since then.

c. He intended to commit robbery on 3 or 5 March. But there was no reliable suggestion in the intelligence that Anthony would or may be armed.

116. Q9, in common with some other AFOs, said he would expect whatever was on a briefing to be reliable. Further, Q9 said "I wouldn't expect anything which was weak, uncorroborated or unsourced to feature on a firearms briefing"[111].

117. If the Chairman accepts what Q9 says, then it appears to follow that the briefing should not have included anything other than the 1997 driving

[111] 5 April/211

incident. The 2001 arrest for assault, and the 1995/1996 dismissed robbery charges, were unreliable, weak and/or uncorroborated.

118. Moreover, if Q9's account is accepted, the following matters should not have appeared on the AFO threat assessment:

a. The note by Mr Justice Butterfield during sentencing of Stuart Grainger for the murder of Dereck Ianson, that there had been a vendetta carried on against the deceased by Stuart, his elder brother, and associates. This note does not indicate that Anthony was involved in violence or firearms. A vendetta can take many forms. The fact that brother was convicted for this offence obviously does not mean Anthony did the same thing, or anything similar.

b. The body armour, smoke grenades and other items found at 8 Thanet Close. As will be seen in more detail below, there is no reliable basis for concluding these items were Anthony's. Other individuals were or may have been staying at the address, and may have been responsible for the items. 8 Thanet Close was said to be David Totton's "primary address", and Gary Stewart may also have been staying there in 2008. Colin Waters Anthony was living with him, in 9 Gorse Pitt Cottages, at the time. The fact that Anthony associated with serious violent criminals does not mean he was one of them.

119. We wholly accept that these were appropriate matters for firearms commanders to consider within the detailed intelligence briefing for Operation Shire. Mr Arundale accepted that[112]. But the threat assessments provided to AFOs are a different matter. They need to be scrupulously accurate and reliable. If Q9 is right, these matters should not have appeared on the AFO briefing because they were weak, uncorroborated and unreliable bases for concluding that Anthony was violent or had a weapon.

[112] 27 April/165 onwards

(c) What were AFOs, particularly Q9, told about Anthony's threat?

120. The briefing on 3 March 2012 to Q9 and the other AFOs grossly exaggerated the threat posed by Anthony.

121. The briefing included the following information, at F/1267:

> "the subjects are believed to be engaged in armed robberies in the North West region"[113]

122. The briefing made clear that "the subjects" referred to Anthony, Totton and Rimmer. Thus, the above passage indicated that Anthony (with the other two) was believed to be engaged in armed robbery in the North West region. Indeed, there was a similar entry to this one on F/1270, a page specifically about Anthony, which said:

> "Intent: conspiracy to commit armed robbery."

123. This also indicated that Anthony intended to commit armed robbery. U9 understood this to mean the men would be committing armed robberies at some point, but not necessarily on the night in question[114]. X9 understood it to mean Anthony had been convicted of offences of armed robbery[115].

124. It is wrong to say the subjects were engaged in armed robbery, whether using firearms or any other type of weapon. It is also wrong to say that Anthony intended to commit armed robbery. As has been set out in detail above, there was no reliable intelligence to indicate that Anthony was engaged in armed robbery. At its highest, the intelligence indicated that Anthony was engaged in robbery. There was no reliable intelligence that he would or may be armed on 3 March 2012. This was a significant error because the question of whether the subjects were armed was, as X7 put it:

[113] At the briefing, the Powerpoint was read out, the relevant page of which is: F/1267. This is shown on the transcript of the recording of the briefing, which is at C/333.
[114] 28 March/23-24
[115] 29 March/101-102

"very important – if we have intelligence or information regarding specific weaponry, then definitely that is really important to us."[116]

125. The briefing continued:

> "There is intelligence to suggest that these subjects were responsible for a robbery in 2008 in Preston where they broke into a bank and lay in wait for staff to arrive. On their arrival they were held at gunpoint using shotgun, handgun, tied up and forced to hand over keys…"

126. If it is assumed that intelligence only appears on a briefing if it is deemed to be reliable[117], then the above passage indicates that Anthony was responsible for a robbery in 2008 (acting with the two other men) when a shotgun and a handgun were used to commit the offence[118].

127. That is wrong in various respects. This entry refers to the robbery in Kirkham, Preston in 2005 which is described in paragraphs 75-76 above. The most significant error here is that there was no evidence whatsoever that Anthony was involved in that offence. This entry wrongly indicates Anthony committed robbery armed with a firearm, wrongly indicates he had access to firearms, and wrongly indicates he was willing to threaten others with a firearm. (Although Totton was suspected, the intelligence suggesting he was involved was relatively weak). Mr Lawler, who had overall responsibility for the creation of this entry originally, accepted that it was wrong and exaggerated the threat[119]. Even DCI Cousen largely accepted that the briefing was wrong, essentially as set out here[120].

128. This was a serious error:

a. The indication that Anthony held up staff at gunpoint was likely to be of real significance to the assessment by AFOs as to whether he posed a threat.

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[116] 11 April/41
[117] Q9 said: "If it is appearing on a firearms briefing, then I would expect it to be reliable", 6 April/31
[118] Mr Granby, 23 March/141. See also X9, 29 March/100-101
[119] 7 March/134-136.
[120] 14 Feb/169-183 and 15 Feb/1-18

b. The question of whether the subjects have a firearm is the most important piece of information for AFOs[121]. It is "critical information" according to Q9 and other AFOs[122].

c. It is therefore necessary for those creating the AFO briefing document to be particularly careful to convey a scrupulously accurate assessment of whether the subjects will have firearms.

d. W9 said that this paragraph was important information, and had AFOs been told the correct picture (Anthony and Rimmer were not involved, and the intelligence case against Mr Totton was weak) that would have presented a very different picture[123].

129. The briefing to AFOs on 3 March 2012 continued, at F/1270, that Anthony had:

> "Warnings: Weapons - Previously conspired to commit robberies with firearms. Violence - Numerous arrests for s.18/20 offences… group 1 offender…"[124].

130. *Warnings for weapons - Previously conspired to commit robberies with firearms.* This is wrong in two respects. The first reason is that it asserts as an established fact that Anthony had previously conspired to commit robberies with firearms. The true position is that Anthony was charged with offences involving robbery in 1995/1996, but that a Judge concluded that there was insufficient evidence to convict him for those offences. Other than that there was no evidence he was involved in robbery.

131. The fact that a Judge essentially dismissed the charges against Anthony is important, for the reasons set out above. The Judge was in the best position

[121] 31 March/ 134, per J4
[122] W9, 5 April/28; Q9, 6 April/37
[123] E.g. W9, 5 April/38-39
[124] See also the transcript of the recording of the briefing, C/335, which was slightly different: "Anthony… has warnings for weapons, he has previously conspired to commit robberies with firearms and violence, numerous arrests for Section 18 and 20 offences, he's a group one offender. And he's (sic) intent is conspiracy to commit armed robbery"

to reach a conclusion as to the evidence against Anthony. It was important for the threat assessment to reflect this. The age of the incident is also significant and should have been noted. For an AFO assessing whether the subject sitting in front of him poses a threat of picking up a firearm, there is obviously a substantial difference between:

a. an allegation which was so weak that a Judge directed the jury to acquit, that Anthony was involved in robberies 15/16 years ago, when he was aged 19/20; and

b. the assertion that Anthony previously conspired to commit robberies with firearms.

132. If Q9 was right, and it was only reliable information that went on briefing documents, then this should not have appeared at all. Alternatively, the Judge's decision was of real importance because it meant that the likelihood that Anthony committed the offence, and the likelihood that he would do so again, was slim.

133. At times it was suggested that AFOs could treat intelligence or unsubstantiated allegations as being true. For example, it was suggested by Mr Davies that the Operation Vulture charges against Anthony would justify the conclusion that he was capable of and intended to commit armed robbery on 3 March 2012. That is wrong and demonstrates an unjustified exaggeration of the threat. A Crown Court Judge essentially found there was insufficient evidence to convict Anthony. There was no reliable basis for concluding Anthony committed the Operation Vulture offences, or would be armed on 3 March 2012.

134. The error in Mr Davies' approach can be seen by comparing Anthony's history against that of Q9. There have been 12 separate complaints that Q9 assaulted someone. Two of the assaults, in 1997, which included allegations of racism, appear to have proceeded to disciplinary hearings, at

which Q9 was found not guilty. The result of two other assaults, also in 1997, is listed as "DP – Disp with Reqs".

135. Q9 was found guilty of two of the assaults in 1998, and fined after a formal disciplinary process.

136. Three complaints of assault had been made against Q9 in the year or so before the 3 March 2012 shooting[125]:

a. On 15 Feb 2011. "The offender was found to have cuts to his back which required stitches. It was further discovered he had a ruptured spleen which required removal. He later alleged officers used excessive force to arrest him by way of numerous punches, kicks and knees to his body".

b. On 21 Feb 2011. "Complaint… alleged officers struck him over the head with the butt of a gun, tasered his back whilst he was handcuffed and punched and kicked him…".

c. 10 March 2011: "Complaint alleges that during his arrest he was assaulted by police which included being hit over the head with the butt of a gun and being kicked and punched in his body."

137. The IPCC decided, having regard to the seriousness of the case and the public interest[126], to investigate the three 2011 complaints of assault independently. It appears the investigation was outstanding on 3 March 2012. However, those allegations, together with the remaining allegations, were found to be unsubstantiated.

138. The police did not treat Q9 as guilty of those offences. Mr Davies plainly would not suggest that the allegations show that, on 3 March 2012, Q9 had the capability and intent to strike Anthony over the head with the butt of

[125] G2/1146-1148a.
[126] Police Reform Act 2002, sch.3, part 3, §15(3).

his gun. That is despite the fact that, unlike Anthony, Q9 was actually found to have committed two of the allegations made against him. Many more allegations had been made against Q9 than against Anthony, and there were a series of three recent, serious allegations in 2011 against Q9. The police permitted Q9 to continue to bear firearms and to be deployed on high stakes, aggressive firearms operations because the allegations were not proven and it was inappropriate to assume he had committed them[127]. It was equally inappropriate to treat Anthony as guilty of the unsubstantiated allegations against him.

139. The second reason why "*Warnings for weapons - Previously conspired to commit robberies with firearms"* is misleading is that it indicates that Anthony had a warning for weapons that related to firearms. That is how U9 interpreted it. He thought it meant, in consequence, that Anthony might have a firearm on the 3 March 2012[128]. Anthony had no warnings for weapons on the PNC[129], only on OPUS[130]. The OPUS warning could only have related to the driving offence in 1997. That is, it could only be the allegation that Anthony used his car as a weapon to ram a police car, that could have led to a weapons warning. There was no evidence Anthony had ever possessed or used firearms, or any type of weapon other than a car.

140. It was important to accurately specify the basis for the warning marker. That is in part because these markers can be imposed on the basis of a very broad spectrum of offending[131], of unsubstantiated allegations and mere

[127] Mr Nutter, 21 April/126, line 19
[128] Mr Granby, 23 March/144; U9 28 March/26
[129] C/759
[130] C/704
[131] Mr Kelly confirmed a weapons marker could refer to a very broad spectrum - anything from a suggestion that somebody was carrying an "air weapon" when they were a child, to a recent conviction for double murder. He agreed that is why it is important to explain what the basis for the warning marker is: 8 Feb/10-12. Likewise, Ms Griffiths noted: "you could have a violent marker for a minor assault, couldn't you, or a violent marker for murdering somebody" 7 Feb/59. To the same effect see Mr Talbot - "pushing someone or stabbing someone" - 10 Feb/46. C/Supt Ellison noted a violent warning marker could be imposed for a slap delivered in the street; or a murder firearms marker may be imposed for an offence involving an air weapon as a teenager or someone using fully automatic weapons committing crimes: 21 Feb/106-7. Mr Ross agreed it would be wrong to assume that a warning marker,

suspicion, and on the basis of very old offences. C/Supt Ellison confirmed that, in assessing risk, he would consider the warning marker against the context of other intelligence and the individual's offending history. He would want to know what the warning marker was for, how recent it was, and how serious the incident was, for example[132].

141. *Warning for Violence - Numerous arrests for s.18/20 offences.* This is less important, but it is an exaggeration to say Anthony had "numerous arrests for s.18/20 offences". An accurate overview would have been (i) he was arrested for two s.20 assaults for the same incident, namely the driving incident in 1997. Those s.20 assaults were not proceeded with, but resulted in an offence of affray lying on his file; and (ii) he was arrested but not charged for a s.18 assault in 2001. Or, if the Chairman accepts Q9's claim that only reliable information should be on the briefing, then the only sufficiently reliable information is the offence of affray.

142. *Group 1 offender.* Nearly every AFO understood this to mean something different[133]. For example, X7 understood this to mean "the most dangerous offenders, (sexual offenders and violent offenders)"[134]. G6 said at one stage that it meant "a higher offender for GMP, one of the more prolific and more dangerous offenders…"[135]. Q9 claimed he thought it indicated "serious violent crime", although he also said that this information did not particularly highlight in his mind that Anthony was dangerous[136].

143. Whichever of those interpretations is used, it is wrong to categorise Anthony as a group one offender. He had no convictions for violent or sexual offences, and so it cannot be said he was a sexual or violent offender. Nor was it right to categorise him as amongst the most dangerous offenders. The principal basis for the 'violent' warning marker was the

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taken alone, referred to a conviction rather than an unproven suspicion; or that it referred to a recent incident: 8 Feb/73-74.

[132] 21 Feb/108

[133] See, for example, G6 31 March/18 and 19, U9 28 March/26.

[134] A/87. C/Supt Ellison said there are a specified list of offences: 21 Feb/153.

[135] 31 March/18 and 19

[136] 6 April/44

1997 affray charge. Even DCI Cousen accepted that this charge, 14 years old, was not of concern[137].

Anthony would be the driver

144. AFOs, including Q9, were aware that at the time of the strike Anthony was probably in the driver's seat of the red Audi.

145. That is firstly because they heard the surveillance observation that Anthony was driving the red Audi as it moved towards Culcheth at 18.29 on 3 March 2012. At that time, Anthony was seen by DC Clark getting in to the driver's seat of the red Audi just before it moved off in Boothstown[138]. Shortly afterwards, Ray Evans identified Anthony as the driver as the red Audi travelled towards Culcheth[139]. Consistently with normal practice, he transmitted his observation over the surveillance radio channel. [140] We know that he did so because the loggist made a note of the observations that were transmitted over that channel. We have a copy of his note, which records the observation at 18.29 that Anthony was driving the red Audi.

146. The surveillance channel was also broadcast in the alpha car and the other AFO vehicles through a speaker, so that the whole car could hear[141]. The AFOs were in their cars at 18.25 "ready for off"[142]. It appears they were instructed to get in their cars when the VW carrying the subjects was driving towards the red Audi. This means Q9 would have been inside his vehicle at 18.29, when the observation that Anthony had been identified as the driver of the red Audi was broadcast[143]. W9 accepted that the whole alpha car would have known that Anthony was the driver[144].

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[137] 14 Feb/120-123
[138] 22 Feb/94, and F/1205
[139] 8 Feb/131, and C/828
[140] 8 Feb/148-149
[141] W9 and X7 confirmed this was the case in the alpha vehicle: 5 April/61, /65 lines 19-24 and /125-126; 11 April/62; see also X9, 29 March/122.
[142] 6 April/125/line 25, see also X7 E/88
[143] X7, 11 April/115-116
[144] 5 April/65/19-24 and 5 April/125-126, per W9.

147. Mr Granby was aware that Anthony was the driver[145]. Mr Granby expected that the AFOs would be listening to the surveillance channel and would have been aware of the same information that he was picking up. In consequence AFOs would have been aware that Anthony was driving the red Audi[146].

148. Q9 claimed that he did not know Anthony was the driver[147]. The evidence set out above shows that is not correct.

149. If it was correct, that would imply that there was a failure in the planning of the operation. It was important for AFOs to be told both about Anthony's specific risk, and also that he was the driver, for the reasons set out in detail above. In short, if AFOs had been made aware that the driver was not a firearms risk, this could have made the difference between whether Anthony was shot or not. That is why it was important for those in command to ensure that AFOs were made aware of the surveillance observations that Anthony was in the driver's seat.

150. Mr Davies suggested that it may be difficult for an AFO to recognise someone. Whether that was correct or not in this case is of little relevance, since Q9 and the other AFOs were aware from surveillance that Anthony was probably sitting in the driver's seat.

151. The VTD showed the red Audi had not stopped between Boothstown and Culcheth other than for "a very, very short period… at lights perhaps… there had been no suggestion, at any point, that anybody had got out of the vehicle"[148]. DC Wallace was of the view that the surveillance team had not lost sight of the vehicle as it travelled to Culcheth. As there was no

[145] 24 March/69-73, C/561
[146] 24 March/73
[147] 6 April/124, lines 14-15
[148] 16 Feb/50, DCI Cousen; see also Mr Granby, 24 March/72/lines 19-23;

indication of anyone getting out, the three men who got into the red Audi in Boothstown probably remained in it when it arrived in Culcheth[149].

152. There is a related issue, which is whether those in command did enough to brief AFOs about DCI Cousen's view that AG would be driving. DCI Cousen said:

> "**I formed the view that Anthony Grainger was going to be the driver** and was responsible for moving vehicles around. It was borne out during the course of the operation when the vehicles were being moved by Anthony Grainger. **Even though his role may be considered minor when compared to others in the group,** it is still an integral part and was considered by the TFC's, as was pointed out to me by a very experienced TFC, that **vehicles can be used as weapons**."[150] Emphasis added.

153. DCI Cousen's view was based on Anthony's background and previous behavior, and also on surveillance observations. Anthony had the keys to and control of the red Audi[151]. Surveillance repeatedly recorded Anthony was the driver of that car[152].

154. DI Cousen said that he passed on his view that Anthony would be the driver to Mr Lawler and also to Mr Granby during their phone conversation at about 7pm on 2 March 2012[153]. It appears that Mr Granby failed to ensure this was relayed to AFOs. For the reasons mentioned above, it was important that this information was passed on to AFOs.

What AFOs were <u>not</u> told

155. AFOs were not told that there was no specific intelligence that the subjects had access to firearms of would be armed on 3 March 2012. Mr Granby accepted this was a significant omission[154]. Mr Lawler and Mr Granby both accepted that this was an important thing for AFOs to be told[155]. It

[149] 9 Feb/71 and 117
[150] H74
[151] 15 Feb/12
[152] E.g. C/828, F/1202, 1203, 1205
[153] 15 Feb/11-12 and 16 Feb/82-83 suggest this was said to Lawler and/or Granby.
[154] 23 March/155
[155] Mr Granby, 23 March/152; Mr Lawler 7 March/140

was particularly important on 3 March 2012, because the day before the AFOs had been explicitly told by Mr Lawler that there was no specific intelligence that the subjects had firearms[156]. In that context, the absence on 3 March 2012 of any such instruction, may have been treated by AFOs as implying that the intelligence picture about firearms had changed.

156. In the briefing on 2 March 2012, Mr Lawler added the caveat that he assumed, "based on their previous capability" that the subjects would be armed. But he appeared to accept that the information upon which he based that comment was "false information". At least in respect of Anthony, his assumption was in fact groundless. It was based on (i) the Preston robbery in 2005, (ii) the Intelligence Chronology, and (iii) the risk assessment in Anthony's subject profile. Taking those in turn, (i) Anthony was not involved in the Preston robbery, (ii) the Intelligence Chronology did not indicate any previous capability relating to armed robbery (and for the reasons set out above did not constitute a reliable basis for thinking Anthony would be armed); and (iii) and the subject profile was wrong to say Anthony committed a robbery on 9 October 1995. Anthony's previous capability does not support a reasonable assumption that he would be armed on 3 March 2012 with anything other than a car.

(d) The consequences of the errors in the AFO briefing

157. The errors set out above in the briefing given to AFOs were very serious ones. Anthony was wrongly presented as a man who had access to and who was prepared to threaten people with firearms. In fact, there was no reliable basis to suggest he may have a firearm. His key threat was that, based on the driving incident 15 years earlier, he would ram his car into police cars. This was a real threat and AFOs should have been told about it.

158. But if they had been given an accurate picture (in headline form) of his threat, as they should have been, the shooting would not have been lawful.

[156] C/586

Anthony was entirely boxed in. He could not drive forward. The possibility he might reverse then, if he had not been disabled by the Hatton rounds, drive forward and use his car as a weapon to ram the police car, did not justify killing him while he was still.

159. Mr Arundale appeared to accept at one stage that it was possible that the risk was underestimated. The question of whether the threat assessments were inaccurate in material respects is a detailed question of fact that is a matter for the Chairman, having the benefit of all of the evidence. It would be plainly wrong to suggest that Anthony's risk was in fact underestimated.

160. The matters apparently relied on by Mr Davies as showing that Anthony had the capability and intent to commit armed robbery did no such thing. They were the 1997 driving incident; the items found in 8 Thanet Close, where there is no evidence they belonged to Anthony rather than one of the other people who used that address; that Anthony carried on a vendetta against Mr Iansen, where there was no evidence Anthony's role in the vendetta was violent in any way; and the Operation Vulture offences, where the evidence was judged insufficient to properly convict Anthony.

161. Anthony's association with serious and violent criminals did not show he was one of them. To assume from the four points set out above that Anthony would or may have a firearm would be an unjustified leap. It would demonstrate a failure to provide a scrupulously accurate summary of Anthony's threat to AFOs, regarding the critical question of whether he had a firearm.

(e) Who or what was responsible for the errors?

162. It is clear that the information relevant to Anthony's threat that was communicated to AFOs involved on 3 March 2012 was seriously wrong. It is less clear exactly who or what was responsible for those errors.

163. Nevertheless, it is evident that there were a series of failures from top to bottom within GMP and SOCA. A number of the officers demonstrated, both in the evidence they gave and in their handling of Anthony's case, a cavalier attitude to intelligence. They were all too ready to exaggerate and embellish information about the threat posed by Anthony. In a context where errors can lead to someone being shot, this is a matter of real concern. We will try to identify the errors by first looking at how the relevant pages of the Powerpoint were drafted, before moving on to the broader process of obtaining the information that was relied on.

164. **Page F/1267** appears to have been formulated as follows. There was a template for firearms briefings, which was used here [157]. F/1267 reproduced a page of the previous day's Powerpoint, which is at F/449. That was created on 1 March 2012.

165. Mr Lawler accepted he had overall accountability[158] for the contents of the 1 March 2012 Powerpoint, which included F/449. The OFC, X7, had physical responsibility, but this was delegated to someone from the TFU operational team. It appears, although is not entirely clear, that this may have been H9. H9 said he created the briefing document on 1 March 2012, but was not sure whether he drafted page F/449.

166. The process as to how the person who drafted F/449 obtained the information upon which it was based, is even less clear than the identity of the drafter.

167. It does not appear that the person from the TFU operational team who drafted F/449 was present at the risk assessment meeting the SIO and others on 1 March 2012. During oral evidence Mr Lawler said the officer preparing the Powerpoint briefing would be expected to be present at the risk assessment meeting. However, he did not recollect whether or not H9 was present at the 1 March 2012 meeting. Mr Lawler's notes indicate H9

[157] Y/870 onwards
[158] 8 March/28-33

was not present[159]. In particular his log states "Persons present at R/A as follows: CI Lawler, DI Cousen, Insp Fitton, X7, PS Hurst"[160]. That list does not include H9 or anyone else from the TFU operational team. Mr Lawler's statements also indicate H9 was not present[161].

168. Mr Lawler said it would be expected that the person creating the Powerpoint would go through normal policing systems, such as OPUS and the PNC[162]. Given the potential importance in particular of the second paragraph on F/449 and its duplicate in F/1267, original, reliable, records of it ought to have been examined.

169. There was a failure by whoever prepared F/449 to access reliable records. Mr Arundale "would have expected them to go off to OPS, GMPics and/or the PNC"[163]. GMP disclosed to the inquiry the results of an audit as to whether OPUS, GMPICs or the PNC records for the three subjects were accessed from 1 to 3 March 2012. Before the shooting, the only time that any of those records regarding Anthony were accessed, was on 3 March 2012, when Anthony's PNC was accessed by DC Talbot[164]. His OPUS or GMPICs records were not accessed at all. Moreover, none of the TFU officers, whether H9, Mr Granby, or anyone else, accessed any of Anthony's records.

170. There was a failure to accurately translate what was said at the risk assessment meeting into F/449. X7 has produced his contemporaneous note of the meeting[165]. It indicates that DCI Cousen gave an accurate summary of the intelligence about the Preston robbery (except for the date). That is, there was no suggestion Anthony or Rimmer were linked to that robbery. The only intelligence DCI Cousen mentioned implicating Mr

[159] 7 March/109-112
[160] C/370
[161] See E/42 in particular.
[162] 8 March/30
[163] 27 April/93, lines 11-15
[164] R/477-491. Indeed, it appears that the only person to access Anthony's PNC, OPUS or GMPICs record in Feb 2012 was DS Hurst on 10 Feb 2012: R/528
[165] 11 April/33, 174-176; and R/559-563

Totton was that he was seen out celebrating with Mr Cullen afterwards: R/560.

171. Mr Lawler's note of what he was told at that meeting is that DCI Cousen said: "One **or more** subjects involved in armed robbery in Kirkham in 2008 where FR used…"[166]. However, Mr Lawler accepted during oral evidence that DCI Cousen probably said "one of the subjects" and that he, Mr Lawler, made an error in noting that it may have been more than one of the subjects[167].

172. Mr Lawler also accepted he was accountable for the error regarding the 2005 Preston robbery[168]. He agreed he should have gone through and checked the briefing before it was delivered. He Lawler knew or ought to have known that the contents of F/1267 were wrong, and should at least have corrected them.

173. Mr Granby had some responsibility for the errors. He had ultimate responsibility for the information that was communicated to AFOs[169]. The ACPO Manual states the TFC "Is responsible for ensuring that officers… are fully briefed" and "must ensure that, as far as time permits, information and intelligence is appropriately assessed, graded and where possible verified."[170]

174. Mr Granby claimed that he directed a TFU officer to edit the Powerpoint briefing, so that it included the information set out in four bullet points on page E/63. He claimed he stood next to the TFU officer who typed in the changes to the briefing, and that he (Mr Granby) read through the briefing, page by page, before it was delivered. Yet none of the changes in those bullet points were in fact made[171]. His claims therefore lack credibility.

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[166] Emphasis added, C/369
[167] 7 March/132
[168] 8 March/48
[169] 23 March/139
[170] F/663 §5.22; F/677, §6.11
[171] 23 March/133-137

175. Mr Granby agreed that he should have taken more care to check the source and accuracy of what was said on page F/1267[172]. He accepted that the first two paragraphs of F/1267 were important things to concentrate on because they suggested to AFOs that the subjects may be armed.

176. **Page F/1270** (the threat assessment about Anthony) was formulated much earlier. It was created on 26 Jan 2012[173]. Exactly the same threat assessment was then recycled in every briefing thereafter, including that on 3 March 2012[174], without any amendment whatsoever.

177. The process by which it was created and the identify of the person who drafted it is, again, haphazard and obscure. On 26 Jan 2012, C/Supt Ellison and J4 (the tactical advisor) received a risk assessment briefing from DCI Cousen. This was a detailed briefing, lasting some 2 ¾ hours, where C/Supt Ellison could probe and scrutinse the information relevant to threat. C/Supt Ellison then invited DC Clark into the meeting, without prior warning, to give an oral briefing.

178. DC Clark did so without any preparation, from recollection alone, and without the aid of any written records to support what he was saying[175]. This is a concern. DC Clark appears to have told the meeting that Anthony was somehow involved in robberies relating to Operation Vulture in 1995/1996. This may have led to the inclusion in the precursor of page F/1270 of the erroneous entry: "Warnings – Previously conspired to commit robberies with firearms".

179. DC Clark must have become aware of thousands of robberies in his time working in robbery units in the 16 years between the end of Operation Vulture in 1996, and the briefing in 2012. He cannot be expected to

[172] 23 March/143-144
[173] It is at G1/329, part of the briefing pack prepared on 26.1.12, which begins at G1/315
[174] F/1270
[175] G2/684, G1/3167, and C/358

remember with any accuracy the details of those offences, without any preparation, from recollection alone, and without the aid of any written records to support what he said.

180. The next concern is that the officer who actually prepared the Powerpoint which contained was not present during this detailed risk assessment meeting. Rather, after the meeting, at best someone might have gone and orally passed on the information to a "briefing officer" from the TFU. It appears that the TFU officer was expected to have gone and accessed OPUS themselves, starting from scratch, to prepare the threat assessments[176]. There was plainly a disconnection between the expert knowledge of the robbery unit which had been imparted during the risk assessment meeting, and the person creating the crucial Powerpoint threat assessments for AFOs.

181. The person creating F/1270 either failed (i) to access the records they should have done, or (ii) to accurately record the information from those records on Anthony's threat assessment. That is apparent from the fact that the information in F/1270 is wrong, and if records had been accurately transcribed, F/1270 would have looked very different. The person creating this should have looked at reliable records of significant information, such as the PNC, indictments, and court record sheets. If that had been done, the threat assessment would have contained the substance of the information in paragraph 115 above, and not what we ultimately see on F/1270.

182. It is also apparent that there was a failure by someone who attended the risk assessment meeting to check the contents of the Powerpoint. If they had done so, the errors in Mr Grainger's threat assessment should have been corrected or at least checked.

183. The threat assessment on Anthony was apparently prepared in haste. That is because Anthony had first been identified as being a possible associate

[176] 21 Feb/111, 139-140, 150

of Totton only during the afternoon of 26 Jan 2012. The threat assessment was created on the same date. It is apparent that the threat assessments were simply cut and pasted, without any amendment or correction, because manifest errors or quirks were repeated in every briefing pack. One example among several is the capital 'B' in the description of Mr Totton as being of "heavy Build"[177].

184. A significant consequence of the threat assessments having been cut and pasted, without apparently being checked or amended, is as follows. The original assessment about Anthony, at G1/329, was created at a time, 26 January 2012, when very little was known about him. C/Supt Ellison was clear that the only subject at that stage was David Totton, and Anthony was merely one of a number of potential associates. "Anthony Grainger was not mentioned at all through the initial risk assessment meeting with the DI [DCI Cousen]."[178] Further: "there were a lot of unknowns around those associates and that was stressed to the AFOs".

185. Thus, the threat assessment at F/1270, an exact copy of that created on 26 Jan 2012, was created at a time when very little was known about Anthony and he was not thought to be significant. This may explain why the threat assessment contained errors.

186. The Chairman may wish to consider whether or not it was appropriate to simply cut and paste the previous threat assessments. The considerations as to whether or not this would be appropriate are partly set out in the covering email which introduced the briefing template, at Y/870, last big paragraph. A simple reason why it was not appropriate is that the available information may change. There should, in any event, be some system to ensure that what happened here is not repeated: that is, that a threat assessment created about a marginal associate about whom little was known, is reproduced without amendment or further research.

[177] Compare F/1268 (3.3.12 briefing) and G1/325 (26.1.12 briefing).
[178] 21 Feb/152

DCI Cousen's errors

187. DCI Cousen made several mistakes relevant to Anthony's threat assessment, and the information which ultimately appeared on F/1267 and F/1270. His errors with respect to the subject profile are dealt with later.

188. Firstly DCI Cousen failed to correct the errors in the briefing documents, and in the briefings themselves. He accepted that, if he had heard or seen an error in the threat assessment, he would have corrected it. Or if he was not in a position to correct it, but he was suspicious that the information given to AFOs might be wrong, he would have taken steps to have the information checked[179].

189. It is likely that DCI Cousen saw and/or heard the information relevant to Anthony's threat assessment. That is because:

a. Page F/1270 was created on 26 Jan 12 and was part of every briefing pack for AFOs since then. DCI Cousen must have read the relevant pages at some stage between 26 Jan 2012 and 3 March 2012. Moreover, that page was read out at each of the AFO briefings about which we have heard evidence, in particular during the following seven briefings: 26 and 30 Jan, 1, 2 and 3 Feb, 2 and 3 March 2012. DCI Cousen is recorded as being present at all of them[180].

b. Page F/1267 was in the briefing pack on 2 and 3 March 2012 and was read out at the briefings on both of those dates. Again, DCI Cousen was recorded at the start as being present at both briefings. Pages 1267 and 1270 were read out shortly after the start of the briefings. There is no record of him leaving. It would be surprising if he had left, particularly so early on, and during information which falls within his province.

[179] 14 Feb/146
[180] F/1139-1140, F/1146, 1148, 1156, 1158, 1165, 1168, 1175-7.

c. Indeed, he appears still to be present at the 3 March 2012 briefing between the time, and indeed after, F/1267 and F/1270 were read out. The entries at the top of [C/334], and at [C/347] at 16.59, appear (from the text) to be DCI Cousen. Mr Beer said that having listened to the recording of the briefing, the 16.59 entry was plainly DCI Cousen. If the Chairman has any doubt that DCI Cousen was present, we invite him to listen to the recording of the short briefing. DCI Cousen could not say whether he was present or not[181].

190. Had he read or heard the information in F/1267 and F/1270 (as he must have done) DCI Cousen would have been, on his own evidence, well aware that it was wrong. Yet he took no steps to correct it. He did not even ask someone to check the information. Those were significant failings.

191. Secondly, DCI Cousen failed to pass on important information accurately. Two examples are as follows:

a. Supt Granby's note of his phone call with DCI Cousen at 7pm on 2 March 2012 notes "ICI – all capable of using FI and extreme violence"[182]. In oral evidence Mr Granby said that the gist of what DCI Cousen told him was "all three subjects had previously used violence to commit offences"[183]. DCI Cousen knew that was wrong.

b. ACC Heywood's note of a telephone call on 1.3.12 at 13.45 from CI Lawler and DCI Cousen includes this: "Previous history of Totton and Grainger suggest ability to access firearms and the intent to use such firearms to commit crime"[184]. DCI Cousen denied saying this, and accepted that it would have been wrong to say it[185]. However, Mr

[181] See, e.g. 14 Feb/143/lines 20-22
[182] K/205
[183] 23 March/87
[184] G1/3601
[185] 15 Feb/73-74

Heywood said Mr Cousen told him that the subjects will have access to weapons[186].

DC Clark

192. As noted above, during the 26 Jan 2012 briefing C/Supt Ellison invited DC Clark to provide information, without prior warning, to give him an oral briefing. It appears that the briefing provided by DC Clark, insofar as Anthony was concerned, was inaccurate, incomplete and potentially misleading.

193. In oral evidence, C/Supt Ellison said he thought he recalled DC Clark mentioning "a robbery and there was a MAC-10 fully automatic weapon involved and also the discharge of shotgun pellets towards police officers"[187]. It appears this must be the Bolton robbery in 2000[188]. C/Supt Ellison thought DC Clark told him Anthony was "connected to" the offence. If that was said, it is wrong – there was no evidence that Anthony had any connection to that offence, other than that his brother, Stuart Grainger, was charged for it.

194. C/Supt Ellison tried to probe further, but:

> "A… There was no further detail available about Anthony's precise involvement… Anthony Grainger being one of a number of names who may or may not have been in a vehicle…
>
> Q: You had not been given any intelligence that implicated Anthony Grainger?
>
> A: No… I was clear in my mind that this was squarely about David Totton"[189].

195. Indeed, C/Supt Ellison made a detailed, contemporaneous note of what DC Clark told him[190]. There was no mention of Anthony in his note at all.

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[186] 1 March/187
[187] 21 Feb/123-124
[188] 16 Feb/70-72
[189] 21 Feb/124. It is not clear that there was any intelligence linking Totton to that robbery. He was not named on any of the crime reports about it: see, e.g. G2/1438. A briefing on 1.2.12 suggested Totton was involved, but this suggestion was not repeated: e.g. F/1176, and see G1/3167-8.

196. In oral evidence, DC Clark appeared to deny suggesting Anthony was involved in the Bolton robbery. DC Clark was asked what, if anything, did he say during the briefing about Anthony Grainger. His response was unclear, but included this:

> "That he [Anthony] was co-accused [in Operation Vulture] and a firearm was recovered… it is to do with firearms… David Totton and his wider group have access to firearms."[191]

197. This vague and misleading comment wrongly suggests there was evidence Anthony used or had access to firearms. DC Clark later appeared to accept that he was wrong to suggest Anthony had access to firearms, and that this "wasn't in relation to Anthony Grainger at all"[192].

198. DC Clark's evidence illustrates why an oral briefing without any preparation, and without the aid of any written records to support what he was saying[193], is dangerous and inappropriate. It illustrates the need for: (1) dissemination of the original, reliable sources of information (such as indictments and trial Record Sheets) where possible, and (2) training of relevant GMP officers in the accurate dissemination of information when it may be used to brief AFOs.

The process of creating the threat assessment

199. A principal concern, perhaps the principal concern, is about the *process* or system for the preparation of the threat assessments[194].

200. DCI Cousen was aware that "the information that you provided the TFC may be provided to AFOs and, upon the basis of that information, they

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[190] G1/2319 onwards. By contrast, DC Clark did not make any note of what he said: 22 Feb/27. Insofar as his recollection in evidence to the inquiry, 5 years later without the benefit of any note, was inconsistent with C/Supt Ellison's note, the latter note should be preferred.
[191] 22 Feb/83
[192] 22 Feb/85
[193] See G1/3167
[194] As a reminder, "threat assessments" refers in these submissions to the information relevant to the threat posed by the subjects. In the 3 March 2012 Powerpoint, that was the information on pages F/1267 to F/1270.

may take decisions that were a matter of life or death"[195]. AFOs rightly expected that exquisite care was taken to ensure the information was reliable. Given the 'life and death' importance of accurate threat assessments, there should be a clear, formalised procedure, which ensures that the threat assessments for AFOs were as accurate and reliable as possible[196].

201. In particular:

a. A researcher should look, where possible, at the relevant, most reliable, and up to date sources of information.

b. A person who fully understood the underlying sensitive intelligence and national intelligence model should have input.

c. All involved should understand the importance of the threat assessment being as accurate as possible, and should have sufficient time to check the information properly.

d. The threat assessment that goes to AFOs should briefly but accurately summarise the substance of important information, including its reliability.

e. The researcher and person who understands the underlying intelligence should scrupulously check the briefing before it is delivered[197].

202. Further, if the person drafting the threat assessments in the Powerpoint briefing is different from the researcher, then there must be a reliable system for ensuring the information gets from the researcher to the drafter accurately. The researcher should provide all of the information in written

[195] 14 Feb/64-67
[196] Mr Arundale agreed: 27 April/87, lines 1-8
[197] Mr Arundale, 27 April/87; and 27 April/92, lines 10-15

form, specifying the grading of the reliability of that information, and providing original sources or links to the original sources where possible.

203. The reason why the most reliable sources should be considered, is to avoid errors in translation. As we saw in this case, where information was transcribed on GMP systems, such as charges or arrests on crime records, OPUS, or GMPICs, there were many errors or ambiguous entries. That may well have been because the person creating the crime report or OPUS record did not do so with the scrupulous accuracy that would be required in a firearms operation. To avoid those errors informing an AFO briefing, the researcher should check the original, reliable source. For example, if researcher is considering whether the subject was charged for a robbery offence involving a firearm, and if so what the court outcome was, they should look at the indictment and trial record sheet. Those are the obvious, reliable sources of information about those matters.

204. The approach above was essentially that which was endorsed by Mr Arundale[198], who indicated it was normal practice in West Mercia. He emphasised the importance of there being "complete integrity" between the headlines in the Powerpoint briefing, and the original information.

205. The procedure for the creation of F/1267 to F/1270 was anything but clear and simple. Even after weeks of painstaking evidence at this Inquiry, it is still not clear who created those documents, how they did so, and what information they looked at. What is clear, in part from the series of errors in those pages, is that there was a manifest failure to exercise the exquisite care and attention that AFOs could have expected.

206. A key question is who should be responsible for doing this. One option is that someone from DCI Cousen's team would do so. It may be that

[198] 26 April/44-45. Similarly, C/Supt Ellison said he would always make a written note of the core intelligence, in a chronological format, identifying the date of the incident, the grading of the intelligence, and a description of the substance of it. Under the National Intelligence Model, it is necessary to assess the reliability of intelligence using the 5*5*5 grading system, and to specify that assessment when disseminating any intelligence: e.g. 7 March/130

someone from the TFU would actually draft the Powerpoint itself. But someone from DCI Cousen's unit would do the research, present the information, and check the assessments before they are delivered[199]. The reasons why are as follows:

a. DCI Cousen and his team had far more time available to conduct the necessary research than Mr Granby's team did. By the time of the briefing in the morning of 3 March 2012 Operation Shire had been active for 5 months, since 3 Oct 2011. Anthony had been a subject since 26 Jan 2012. The robbery unit had lived and breathed the relevant information for months before 3 March 2012. Their focus for those 5 months was obtaining information about the subjects, much of which would have been relevant to the threat assessments.

b. DCI Cousen had several members of staff most of whose time was dedicated to Op. Shire, including DC Gary Mills[200], DC Talbot[201], DC Clark[202] and DS Hurst[203]. DC Healy, DC McGlone, DC Deagan, DC Castley and DC Storey were also available to help. It appears that any of these experienced officers could have conducted the necessary research.

c. The robbery unit was a specialist[204] investigative department, with detailed knowledge of their subjects. They had ample opportunity to develop the intelligence case. As C/Supt Ellison put it "they are specialist members of staff who are trained as professionals to be able to access [relevant information] themselves"[205].

d. DCI Cousen had access to more resources and information. He accepted he had access to "a hell of a lot more" information than the

[199] These are in large part supported by C/Supt Ellison, 21 Feb/100-103.
[200] 9 Feb/129
[201] 10 Feb/27
[202] Who said he spent "A lot of the time" on Op. Shire: 22 Feb/101
[203] 7 April/8 to 10
[204] C/Supt Ellison, 21 Feb/100
[205] 21 Feb/102

TFC[206]. For example, he had the benefit of months of surveillance information, whereas the TFU would not[207]. Some of this information, was very important to the threat assessments, such as the information that the Corkovics' had no relevance to the threat posed by Anthony, Totton and Rimmer. A second example is that DCI Cousen was able to commission the FIB to create bespoke subject profiles. A third example is that DCI Cousen had direct access to the sensitive intelligence, while the TFC did not.

e. By contrast Mr Granby's team had far less time to research and prepare the threat assessment. Firearms authority was granted shortly before 9pm on 2 March 2012. The Powerpoint briefing had to be ready for roughly 5am the next morning. Conducting proper research into the contents of the briefing could obviously take some time[208]. Mr Granby was keen that the team could go home and rest overnight so they would be ready for the next day's deployment. They therefore had little time to properly prepare a threat assessment. If they wanted to check the information with someone (for example someone responsible for disseminating sensitive intelligence), that may have been impossible out of hours.

f. More generally, a spontaneous firearms operation may have to be prepared urgently, possibly in a matter of minutes. In such cases, the TFU may not have time to create a threat assessment, and the briefing will need to be prepared in advance.

g. A final reason why a fully informed member of DCI Cousen's unit should be responsible for presenting all relevant information, is to avoid the cut-and-pasting problem identified above. This was that F/1270 was originally created on 26 Jan 2012, on a marginal associate about whom little was known, but was reproduced many times without

[206] 14 Feb/148
[207] 14 Feb/49
[208] As H9 accepted: 10 April/21

amendment, checking, or further research. If a member of the robbery unit retained responsibility for the threat assessment, they could alter it when the available information improved.

207. The Chairman may also consider that DCI Cousen's unit should actually draft the threat assessment aspects of the Powerpoint briefing. That is for the same reasons as those above. In addition, it does not appear that formulating the threat assessment would be beyond the competence of the robbery unit. Threat assessment is part of the 'National Decision Model' and is something all police officers do[209]. DCI Cousen and the other members of his team were experienced officers would be well practiced in threat assessment.

208. However, there are some considerations which indicate this aspect of the job falls better within the expertise of the TFU than the robbery unit. Mr Arundale noted that the SIO's team is focused on evidence of current offences, while the TFU would be more interested in any information including historical information, that was relevant to threat. What is important is that GMP should have a clear system for who is responsible for each stage[210].

209. DCI Cousen's team did not ensure that the relevant, reliable sources of information were produced; did not provide to the TFU, in written form, all other accurate relevant information; and did not check the threat assessments before delivery.

210. DCI Cousen repeatedly said that the briefing that the firearms team prepare "was nothing to do with me"[211]… "I don't go to a firearms briefing to check the accuracy of what is on that briefing"[212]. He said he does not check the accuracy of the threat assessment in the briefing

[209] C/476, §5, and C/477.
[210] Mr Arundale, 27 April/88, line 24 onwards
[211] 14 Feb/49-54, 149
[212] 14 Feb/54 and 148

document, before it is delivered. That is a serious concern: he was in the best position to check they were accurate.

211. Instead, it appears that TFU officers started the whole research process from scratch. They received no formal written handover of reliable information from the robbery unit. They do not appear to have attended the risk assessment meetings. They went away and researched the subjects' backgrounds afresh, themselves. It appears they had to do so in a rush, with little time to do the exercise properly.

212. This is bizarre. In Mr Granby's words, the process was "foolhardy"[213] and does "not make any sense"[214]. C/Supt Ellison accepted, "a TFU briefing officer reinvents the wheel"[215]. Mr Arundale agreed[216].

213. DCI Cousen said there was no specific training or guidance about the creation of threat assessments for AFOs, and there was no clear system in place which required him or his team to prepare the information relevant to the threat assessments[217]. The Chairman may consider that it should have been obvious to DCI Cousen that someone in his team should have taken responsibility for this process and failed to do so.

214. Alternatively, the absence of a clear system, in which officers were trained, to ensure threat assessments were accurate, was a corporate failing. The conclusion that this is a systemic problem is supported by Mr Arundale's comment that errors in this area are not unusual[218]. This is a critical process, and we invite the Chairman to make recommendations aimed at addressing any flaws he identifies in this system.

[213] 24 March/15
[214] 23 March/124-125.
[215] 21 Feb/152
[216] 27 April/91, line 16 onwards
[217] 14 Feb/57-58, 66-67
[218] 26 April/42

215. There is a briefing template[219]. It does not seem appropriate. It focuses on OPUS warning markers. But as has been seen, those warning markers refer to such a broad range of offending, from a childhood arrest for possession of a penknife, to a recent double murder using a shotgun, that they are of no assistance to AFOs. The threat assessment should include a concise summary of the key information.

Subject profile

216. There are specific concerns about the creation and use of subject profiles. The subject profile for Anthony contained the following entry:

> "Of note… Grainger has been charged in the past with cr 243085B/95 which is an armed robbery at a post office in Prestwich where a sawn off shotgun was used. The result of this case was that it was ordered that it lie on file for Anthony Grainger" [C/25].

217. The entry was in red coloured text, and appeared to be within a section entitled "Risk assessment".

218. That entry is wrong. The 243085B/95 robbery was at the Holyrood Post Office in Prestwich on 9 October 1995. The indictments[220] show Anthony was not charged with an offence of robbery on that date. The preferred indictment contained a charge of robbery on 9 October 1995, but this was against Peter Anderson alone. The stayed indictment contained a count of robbery on 9 October 1995, but it was only against Peter Anderson and Stuart Grainger.

219. Rachel Griffiths was responsible for the error, since she created the original subject profile. It appears that she did not check the indictments. That is surprising. Those are the obvious, reliable records of whether Anthony was charged with that offence. Instead, Ms Griffiths checked GMP crime reports. A number of the reports considered in evidence were wrong and incomplete. That suggests Ms Griffiths should have checked other, more reliable sources.

[219] Y/870 onwards
[220] G2/1167-9, and 7 Feb/44 and 48.

220. But even on the face of the crime report she accessed, Ms Griffiths' entry was wrong. The crime report does not indicate Anthony was charged with this offence[221]. It merely shows he is somehow associated with it. The "charge/summons" column in the report had not been completed, and so it was not clear whether his association was anything more than a link to the men who were suspected of the offence. There was no entry showing Anthony had been charged with the robbery, still less to show it was ordered to lie on his file.

221. However, Ms Griffiths said she did not create the subject profile with the care and attention necessary for the purposes of a briefing of an operational firearms team. She said she thought it was "just an overview" for the specific purpose of Operation Semana. A subject profile for an operational firearms team "would contain a lot more detail"[222]. She "had no idea this would go anywhere outside Operation Semana"[223]. She did not think it would be used by an arrest team or that it would be used as a basis for briefing firearms officers[224]. She thought it was a foundation, but that the operational team would look into the relevant material in more depth and develop what was in the subject profile. She expected the briefing for AFOs to be done from a completely different document, not the subject profile[225].

222. Contrary to Ms Griffiths' expectations, the subject profile was relied on for the purposes of the threat assessments given to AFOs on 3 March 2012. Mr Granby said that he satisfied himself of the reliability of the 2 March 2012 briefing, principally by looking at the subject profile and Intelligence Chronology[226]. He spent more time considering the risk assessment parts of the subject profiles than other aspects of them.

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[221] G2/759 and 763, and 7 Feb/71.
[222] 7 Feb/29-31
[223] 7 Feb/39
[224] 7 Feb/6 and 39. See also Mr Kelly, 8 Feb/19.
[225] 7 Feb/64
[226] E/63 and 23 March/115-116

223. It is a significant concern that a profile that was relied on to verify the briefing given to Q9 on 3 March 2012, was created without the care and attention necessary for that purpose.

224. It appears that DCI Cousen is responsible for this failure to accurately communicate. The robbery unit did not tell the FIB that the subject profile would be provided to firearms commanders, or that firearms officers were involved[227]. Yet DCI Cousen passed the profile to Mr Granby and Mr Lawler, in the knowledge that it may be used to brief firearms officers as to the threat Anthony posed[228].

225. DCI Cousen relied on the entry in the subject profile quoted above during the 1 March 2012 risk assessment meeting[229]. He knew the information he provided may be relied on by AFOs in making decision whether to shoot. The indication that Anthony used a firearm to commit robbery on Ms Griffiths' subject profile was likely to be of particular significance to AFOs. It was therefore important that DCI Cousen was confident it was accurate, before passing it on. Mr Arundale noted that "if mention of a weapon or a firearm is made, for example, I would expect… commanders to quiz that in some detail."[230]

226. The need to check the profile was enhanced by the fact that the contents of it were incomplete. For example, the passage quoted above had no intelligence grading next to it. Moreover, the front page of Anthony's subject profile states that: "No part of the report should be disseminated or copied without prior approval of the Director of Intelligence, Force Intelligence Bureau"[231]. Contrary to that note, DCI Cousen did not check with the FIB before disseminating the subject profile to the TFCs.

[227] 8 Feb/19, DS Kelly
[228] W/79, and see above
[229] R/560 – X7's note of the meeting
[230] 26 April/42, lines 1-4
[231] C/22, F/11

227. It is therefore not surprising that DCI Cousen accepted he was well aware of the need to check Ms Griffith's entry about the Prestwich robbery. He knew he had to do so because he would be asked about it by the firearms cadre[232]. He was plainly aware that the issue of the steps he took to check that entry, and the information he looked at, would be a significant matter for this inquiry.

228. DCI Cousen said in oral evidence that the step he took in this regard was to access the 1995 Prestwich robbery entry on GMPICs. He claimed that, having looked at the GMPICs record, he was satisfied that the subject profile entry regarding the 1995 Prestwich robbery was correct[233].

229. We invite the Chairman to find as a fact that DCI Cousen did not check GMPICs, and intentionally misled the Inquiry by claiming that he did check it. That is for the following reasons:

a. DCI Cousen gave clear and unambiguous oral evidence that he did in fact access the Prestwich 1995 entry on GMPICs back in 2012 before the shooting: "I have read it on GMPICs", he repeated twice. He was asked: "So back in 2012… you access GMPICs to look at this" and answered "Yes"[234]. He made it clear he *recollected* and *remembered* checking GMPICs for the entry on the pen picture[235]. He was asked to clarify whether he would have checked, or did in fact check, GMPICs. He said he did in fact check it[236]. DCI Cousen volunteered the information himself that he had accessed the GMPICs entry[237], and made clear he did so prior to Anthony's death.

[232] 14 Feb/105
[233] 15 Feb/133-136, and 14 Feb/113
[234] 14 Feb/103
[235] 14 Feb/104/lines 5 to 23.
[236] 15 Feb/125
[237] 14 Feb/101-102

b. The first time DCI Cousen claimed he had accessed GMPICs to check the Prestwich entry was on 14 Feb 2017 during his oral evidence[238]. He did not mention doing this in any of his various statements or interview[239]. He did not disclose it before his oral evidence, nor did anyone else in GMP do so. Had he looked at GMPICs entry regarding the 1995 Prestwich robbery offence, this absence would be surprising. The contents of those statements show he was well aware that the steps he and his unit took to develop the subject profile were at issue.

c. After DCI Cousen had made this new claim, the Inquiry asked for GMP to investigate whether DCI Cousen had in fact accessed GMPICs between 1 September 2011 and 9 Match 2012. The results were produced on 17 Feb 2017. They were that, contrary to his oral evidence, DCI Cousen did not access that entry during that period[240]. This was confirmed, after further investigation, by Ms Pope in an email of 28 February 2017 at 14:30.

d. On 17 Feb 2017, at 12.58pm, DCI Cousen volunteered that he had become concerned that the evidence he had given about accessing GMPICs was not correct[241]. It is remarkable that this occurred at exactly the same time that GMP's discovery that DCI Cousen's oral evidence was incorrect, was revealed. It is hard to believe it was merely coincidence.

e. DCI Cousen could not provide a credible explanation for why he had become concerned that his evidence was incorrect. His explanation appeared to be that he read his 10 Jan 2013 statement at [E/11-13], in which he produced a number of crime reports to the IPCC, and doing so made him think he may not have looked at the relevant GMPICs entry. We cannot see anything in that 10 Jan 2013 statement which

[238] 14 Feb/101
[239] See the statements; his interview, in particular pages L/377-378; and 15 Feb/134-137
[240] See email from GMP on 17 Feb 2017 and transcript 17 Feb/19.
[241] 17 Feb/28, see also 16/lines 6-9, and 17 Feb closed transcript/3/lines 15-16.

might explain why, reading it, DCI Cousen came to decide that his previous evidence may not be accurate. Mr Beer pressed him several times to explain this, and he did not provide a credible response.

f. On 17 Feb 2017 DCI Cousen said that when he first gave evidence about this on 14 and 15 Feb, he said "I would have" read GMPICs instead of "I did do"[242]. That is incorrect.

g. It also a serious concern that in the evening of 16 Feb 2017 DCI Cousen attempted to discuss his evidence with Det Supt Creeley. He "raised a number of issues, in terms of I wasn't satisfied that, in fact, I potentially read the GMPICs report, the crime report…"[243]. He should not have been discussing his evidence with anyone, as he was well aware.

230. There are several systemic concerns relating to the subject profile:

a. Those in the FIB received no formal training about the creation of subject profiles.

b. There was no written policy or guidance regarding the creation of those profiles.

c. There was no quality assurance process before they were sent out[244].

d. There did not appear to be a standard template for subject profiles that was used by all staff in the FIB[245].

231. These deficiencies were a concern firstly because they may have contributed to the misuse of the subject profile in this case. Different staff

[242] 17 Feb/17/lines 11-15
[243] 17 Feb/27-28.
[244] 7 Feb/4-5, Ms Griffiths; 7 Feb/86-87, Mr Lapniewski
[245] See e.g. Ms Griffiths, 7 Feb/27-28

had conflicting understandings of what the subject profile would be used for. While Ms Griffiths said she expected the operational team would build on and check her subject profile, DS Kelly's expectation was that the operational team would not need to go back over it[246]. Further, staff misunderstood important matters. For example, some thought warning markers could be imposed only on the basis of convictions[247]. In fact, they can be imposed on the basis of a mere arrest[248].

Anthony's warning markers on PNC record:

232. Ms Ross accepted that the violent warning marker ought to have been removed from Anthony's PNC record in 2008[249].

The Corkovics'

233. DCI Cousen does not appear to have done enough to make sufficiently clear to the operational team that the Corkovics were not, by the start of March 2012, relevant to the risk posed by the three subjects.

234. As noted above, DCI Cousen was at pains to explain that he had decided that the Corkovics were of no relevance to the threat posed by Anthony, Mr Totton or Mr Rimmer. Yet Mr Granby was given the full Intelligence Chronology[250], which included many entries relating to the Corkovics'. Mr Granby said that DCI Cousen did not specifically tell him to only have regard to the 6 entries relating to Totton, Anthony and Rimmer, and to ignore the others. He accepted that DCI Cousen told him that the operation had been split, and constrained his briefing to those 6 entries.

235. However, at times Mr Granby appears to have fallen into the "wholly misleading and completely inappropriate" trap of inferring that intelligence relating to the Corkovics' was relevant to the threat posed by

[246] 8 Feb/58
[247] 7 Feb/103, Mr Lapniewski
[248] Ms Ross, 8 Feb/70, Mr Talbot 10 Feb/46.
[249] 8 Feb/99
[250] 15 Fe/24-26; Mr Granby received it on 3.3.12 at his morning briefing with Mr Cousen: 23 March/115-116

the three subjects. For example, he mentioned "inter-operability" of "Salford OCGs", and said he "didn't want to lose sight of the relevance that Mr Corkovic or the Corkovic family and some of their associates might have had"[251].

236. The Chairman may consider that Mr Granby should have inferred from DCI Cousen's briefing that the Corkovics' were irrelevant. Alternatively, given the importance of clarity, the Chairman may well conclude that DCI Cousen should have done more to explain to Mr Granby that the Corkovics' were irrelevant to the risk posed by the three subjects.

237. AFOs were not aware that the operation had been split into two[252]. This is a concern firstly because a number of them had been involved in earlier stages of the operation, and so were briefed on the assumption that the Corkovics' and the risk they posed were relevant. Some AFOs appeared to have had some regard to the information they had received in the past (although their focus was on the information received on 3 March 2012)[253]. Q9 said he did not treat his previous knowledge about Paul Corkovic as relevant on 3 March 2012, but he did take into account the mention of firearms in the previous briefing on 26 Jan 2012 at which he had been present[254]. This indicates that those in command should have made it more clear to AFOs that the information about the Corkovics had no relevance to the three subjects on 3 March 2012.

Intelligence errors: the closed material

238. The family respectfully invite the Chairman to consider the following issues in respect of the closed evidence:

a. Whether item 41 of the intelligence was reliable.

[251] 23 March/117-120; see also H/26
[252] See, e.g.
[253] For example, U9 said you cannot ignore the previous briefings, although you try to focus on what you are told on the day: 28 March/12.
[254] 5 April/208, 6 April/23

b. Whether sufficient steps were taken to test its reliability.

c. Whether the intelligence received by SOCA on 2 March 2012 that there would be a robbery on 3 or 5 March 2012 was reliable.

d. If a source was an informant, was it someone who was on the list of informants within the memory stick, and does that undermine the reliability of the information provided?

e. Whether there was evidence to indicate that the subjects were in the council car park in Culcheth on 3 March 2012 to transfer the memory stick? If so, was it unlikely that they would be armed?

239. From the face of the gists of the closed hearings, the following appear to be significant errors:

240. Firstly, there was evidence available to SOCA in late 2011 that Aaron Corkovic and David Totton were not working as a team. There was a failure to disseminate this to GMP.

241. One reason this information was significant is that if DCI Cousen knew it, he probably would not have made David Totton a subject of Operation Shire[255]. Another reason is that AFOs and other members of the TFC involved on 3 March 2012 may have had some regard to the intelligence relevant to the Corkovics' when deciding what threat the three subjects posed[256].

242. Secondly, P24 and P27 accepted that further research should have been conducted before disseminating item 41 on the Intelligence Chronology, and more care should have been taken with the wording of the

[255] §4 of the gist of the closed hearing [3]
[256] See, for example, Mr Granby at H/26, and U9 said you cannot ignore the previous briefings, although you try to focus on what you are told on the day: 28 March/12.

intelligence[257]. It is unclear, without having heard the closed evidence, what the significance of this error was. Item 41 was an important piece of intelligence, as it was the only one on the Intelligence Chronology which named Anthony.

243. Thirdly, there appears to be conflicting evidence about whether the intelligence that the three subjects were going to commit a robbery on 3 or 5 March 2012 was passed on accurately. P11 received intelligence that:

> "David Totton and Anthony Grainger and another person intended to commit a robbery on 3 March 2012 if the opportunity arose and, if not, to conduct reconnaissance on that day, or to commit a robbery on 5 March 2012."[258]

244. It was obviously important that this central piece of intelligence was passed on precisely to DCI Cousen, Mr Granby and Mr Sweeney. P11 says he told C3, C3 suggests he didn't. C3 suggests he didn't tell DCI Cousen. However, DCI Cousen says he was given intelligence that: "David Totton, Anthony Grainger, and Robert Rimmer were going to commit a robbery on 3 March 2012 or, if not then, on 5 March 2012." He said he told this to Mr Granby, and Mr Granby agreed[259]. Mr Sweeney also told the inquiry that at about 8.40pm or 8.50pm on 2 March 2012 Mr Granby gave him this information[260]. It therefore appears that there was a failure to pass this intelligence accurately.

245. Fourthly, there is a conflict about whether C3 told DCI Cousen that P11 had said, "in strong terms" (or otherwise), that there was no intelligence that the subjects would or might be armed. The gist of closed hearings [1] at §16-19 indicates that DCI Cousen was told this. DCI Cousen claimed he was not[261]. However, as noted above, DCI Cousen was aware that there was no current intelligence that the subjects would be armed.

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[257] Gist of closed hearing [1], §9-10
[258] Gist of closed hearing [1], §11(a).
[259] Gist of closed hearing [3], §9 and 15(a); Mr Granby, 24 March/106
[260] Gist of closed hearing [4], §2.
[261] Gist of closed hearing [3], §14 and 18-20.

246. If there was a failure to tell DCI Cousen this, then the significance of the error is the next question. The Chairman may consider that DCI Cousen should have assumed that he would be told about any intelligence that the subjects would or may be armed, and if he was not so informed, should have assumed there was no such intelligence. Alternatively, the Chairman may conclude that there was a failure to pass on this key piece of intelligence.

247. Finally, in common with a number of important GMP officers involved in the planning of the operation, SOCA lost and/or deleted important records[262].

(f) Other issues

Guns were stored nearby in bins/other cars?

248. It is said that intelligence was received after Anthony's death that suggested weapons may have been kept near to the red Audi either in bins or in another vehicle. That intelligence is not relevant to the decisions that were made during the operation, as it was not received until afterwards.

249. Nor does it provide any post-facto justification for the operation. That is because it is plainly unreliable. Intelligence to this effect was apparently received on two occasions. The *R v. Fahy* defence case statement notes intelligence was received, which included:

> "… hearsay information that prior to the arrival of the stolen red Audi… at the car park in Culcheth, an accomplice had placed an imitation firearm and a machete in a rubbish bin nearby."[263]

250. GMP said it held intelligence:

> "… that suggests that on the night of the shooting… there was a further vehicle which contained weapons and balaclavas".[264]

251. The reasons this information was unreliable are firstly that there is no information whatsoever about the name or reliability of the source. It

[262] Gist of closed hearing [1], §20.
[263] I/1096, §11.15
[264] C/824

could have been DCI Cousen for all we know. Secondly, it was hearsay. Thirdly, there are key conflicts with central aspects of the information. For example, the former piece of intelligence said there was an imitation firearm and machete, the latter that there were weapons and balaclavas; and the former said these items were in a bin, while the latter said that they were in a vehicle.

252. DCI Cousen did not appear to place any credence on this intelligence. He did not think weapons would be in a second vehicle[265]. No weapon was found in any bin or anywhere else in the vicinity. DCI Cousen does not appear to have said to any of those conducting searches after the shooting that he suspected there would be weapons stored in a bin or vehicle nearby, and so vehicles and bins should be searched[266]. There is no good basis for believing that a gun or other weapon was stored near to the red Audi.

Surveillance

253. The red Audi was kept under relatively close surveillance for the period from 29 February 2012 until the shooting. Yet none of the surveillance suggested the subjects put a suspected firearm into the Red Audi[267].

254. Mr Granby was told that, as the men were seen by surveillance getting into the red Audi in Boothstown at 18.29, none of them was carrying anything. He made a note of this in his log[268]. DCI Cousen accepted that the observation that the men were not carrying anything suspected to be a weapon "would have been fairly significant"[269]. Mr Granby understood that the AFOs would be listening to the surveillance channel, and in

[265] "Q… you therefore thought that any weapons might be in the second vehicle; is that what you are saying? A. No." 16 Feb/48
[266] See, e.g. 25 April/36, lines 14-21, Ms Bates; and 25 April/125, Mr Donaghy.
[267] Mr Granby, 24 March/68-71
[268] F/425. There is no suggestion in the surveillance logs that the men were carrying anything. Surveillance officers agreed that if the men had been carrying something, they would have said so over the radio: e.g. 22 Feb/99-100. We know if they did that, it would have been recorded on the log.
[269] 16 Feb/47

consequence that they would be aware that none of the subjects were apparently carrying anything[270].

Scrap yard tools:

255. Scrap yard tools were seen in cars linked to the group:

a. On 26 Jan 2012 PC Dann observed a sledgehammer in the blue BMW. There is no suggestion in any of the surveillance or other records that this was seen again, nor that it was transferred into the stolen red Audi. Although a sledgehammer was found when Miss Hadfield's address was searched on 15 March 2012, DC Dann did not identify it as being the same as the one he had seen back in January[271].

b. Two petrol cans and a monkey wrench were put into an Audi before the trip to Stoke on 26 Jan 2012[272]. They were not seen in the red Audi at any other time after that date. DCI Cousen accepted that there is nothing unusual or surprising about him having a monkey wrench and two petrol cans, given that he worked in a scrapyard and as a vehicle recovery driver[273].

c. What appeared to be a black leather sheath was seen in the back of the red Audi on 31 Jan 2012. It was not possible to see whether there was anything in it. It was not seen again in the red Audi after that date[274].

d. On 24 Feb 2012 Totton was seen carrying a hold-all upon exiting the black Audi[275]. But he was seen with that hold-all on occasions when he was just going about his daily life, such as leaving a leisure centre[276]. It was never observed in, or being transferred into, the red Audi.

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[270] 24 March/69-70
[271] 9 Feb/156-157, and G1/1997.
[272] K/941
[273] 16 Feb/96
[274] 16 Feb/97, F/1166. By 2.2.12 it was said: "It's either been removed or it's not, err, visible now": F/1157
[275] K/945
[276] O2/850, 1.3.12 at 11.22am

e. On 29 Feb 2012 Totton was seen by a surveillance officer to take something from the boot of his legitimate Audi, reg MTII0NO, and put it into the rear of that same, legitimate, car[277]. Video footage showed he was holding a hacksaw at that point. There was no evidence that the subjects had been seen with the hacksaw in Culcheth. Yet the briefing on 3 March 2012 said, referring to a bush line by Sainsbury's in Culcheth, that "a third subject has been seen emerging from this bush line here with a hacksaw" [C/341]. There was no evidence to support that.

f. There is no suggestion that the hacksaw was put into the Red Audi. The sighting on 29 Feb 2012 of it being transferred from the boot to rear of Totton's legitimate vehicle was the only ever sighting of it[278]. The presence of tools in the subjects' legitimate vehicles is of little relevance. That is because DCI Cousen considered the stolen cars (not the legitimate ones) would be used in any offending[279].

g. On 29 Feb 2012 Totton put a binbag into the boot of the silver Audi MT11ONO[280]. However, on 1 March 2012 Totton took a binbag from the boot of that silver Audi and put it into the rear seat of the black Audi. He then took it into his apartment[281]. It was never seen being transferred into the red Audi.

Operation Blythe

256. A search of 8 Thanet Close in 2008, as part of Operation Blythe, recovered body armour, smoke grenades, and other items[282]. Neither DCI Cousen[283]

[277] 10 Feb/60-73, and the references there.
[278] 10 Feb/72, and see also the various surveillance logs and other records, none of which contain any suggestion it was put into the red Audi.
[279] H/84
[280] F1201
[281] 10 Feb/96-98, K/946-947.
[282] P/365
[283] 16 Feb/134

nor DC Clark[284] knew about this or suggested the results of that search were relevant to Mr Grainger's risk assessment in Operation Shire.

257. That is not surprising. Anthony was not arrested for any offences relating to those items[285]. Other individuals were or may have been staying at the address, and may have been responsible for the items. For example, David Totton's nominal profile states 8 Thanet Close was his "primary address"[286]. Gary Stewart may also have been staying there in 2008[287].

258. Moreover, it is not clear whether Mr Grainger spent a great deal of time at 8 Thanet Close at the time. On 6 March 2012 Colin Waters said that Anthony had been living under his roof, in 9 Gorse Pitt Cottages, for four years[288].

259. Without ascertaining who was using the room in 8 Thanet Close in which the items were found, it is wrong to conclude Anthony was responsible for them.

[284] DC Clark merely accepted this type of item might be "potentially relevant" to something undefined "in principle": 22 Feb/119.
[285] 16 Feb/134
[286] C/49.
[287] His vehicle was observed outside 8 Thanet Close in 2008 [C/738]
[288] R/454 and 457

(4) Tactics and strategy

260. There were a number of failings relating to the tactics and strategy employed in the operation that led to Anthony's shooting. Mr Arundale concluded there were "substantial fundamental issues in relation to the decision making and command of the incident"[289].

(a) MASTS strike improper

261. Mr Granby should not have declared state amber on the evening of 3 March 2012. By about 6pm that evening, it had become apparent that it was unlikely that a robbery would take place that evening. A MASTS strike (sometimes called MASTS decisive action) was, in consequence, contrary to the aim of bringing about long prison sentences for the subjects, and was contrary to the requirement to minimize the risk to life.

262. In making this submission we are limited because we have not seen the closed material. The Chairman will be better able to judge the merits of the following analysis, in light of the closed evidence, and we respectfully invite him to consider making a finding about this point. However, from the open material it appears that the MASTS strike should not have occurred for these reasons:

263. As has been seen, the sensitive intelligence was that "David Totton and Anthony Grainger and another person intended to commit a robbery on 3 March 2012 if the opportunity arose and, if not, to conduct reconnaissance on that day, or to commit a robbery on 5 March 2012."[290] DCI Cousen says he was given intelligence that: "David Totton, Anthony Grainger, and Robert Rimmer were going to commit a robbery on 3 March 2012 or, if not then, on 5 March 2012." Mr Granby said DCI Cousen told him this[291], and Mr Sweeney appears to have had the same information[292].

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[289] 26 April/71, lines 15-17
[290] Gist of closed hearing [1], §11(a).
[291] Gist of closed hearing [3], §9 and 15(a); Mr Granby, 24 March/106
[292] Gist of closed hearing [4], §2.

264. The remainder of this section assumes that intelligence was reliable. The question of when the robbery would occur was binary: it would either occur on the Saturday or the Monday. It was of great importance for those planning the operation to decide whether it was likely to be on Saturday or Monday[293]. There are two reasons why a MASTS arrest on Saturday, if the subjects were only on reconnaissance for Monday, would be wrong.

265. Firstly, it would defeat the purpose of the whole operation. The purpose of Operation Shire was to secure long prison sentences against the subjects, for the long-term protection of the public[294]. The "high benefit" of the MASTS operation would be to catch the subjects when they have items within the red Audi which demonstrated they were carrying out serious offences, and so would ensure convictions for those offences. The obvious example is if a weapon was in the vehicle.

266. But if the MASTS arrest took place when the subjects were merely conducting a 5th reconnaissance trip to Culcheth, it was unlikely that the necessary evidence would be present in the red Audi to secure those sentences. That was the case here: Totton, Rimmer and Travers were not convicted of serious offences in respect of this incident, and ultimately walked free. All of the effort was wasted, and the operation failed to ensure the long-term protection of the public.

267. A similar reason for not jumping the gun is that a MASTS arrest would indicate to the subjects that they were under surveillance, which would probably make them more cautious and undermine the prospects of an arrest, in the short term.

268. Secondly, a MASTS arrest of subjects who were merely conducting reconnaissance would be contrary to the important requirement to minimize the risk to life. MASTS decisive action is a high risk option:

[293] Mr Granby agreed: 24 March/107
[294] 24 March/43 and 107

a. Mr Granby accepted that a MASTS vehicle intervention is high risk[295].

b. Experienced Cheshire TAC advisor, Jonathan Pope, together with CI Brierley, decided to put a post-incident manager on standby because MASTS was a high risk tactic. Mr Pope's note of a discussion he had with CI Brierley was: "Put PIM on standby as MASTS is a high risk tactic"[296].

c. Mr Allen appeared to accept that it involved a high risk[297]. Y19 was asked whether a MASTS intervention is quite a high risk, and responded "No doubt about that". He said it was commonly viewed as being quite a high risk tactic[298].

d. Mr Arundale regarded MASTS as high risk[299]. He said this was "extremely well known right across the service"[300]. Indeed, it he indicated that it is high risk in ordinary cases, but the use of Hatton rounds and CSDC adds to the risks[301]. At §455 he states there are "obvious risks associated with a MASTS 'strike'". He notes "there have been a number of adverse incidents following MASTS strikes over the last decade that indicate the risks associated with" it §331. Examples are the shootings of Azelle Rodney and Mark Duggan, and a more recent example is the shooting of Yassar Yaqub[302]. Mr Arundale says this option should only be used when lower risk options are clearly inappropriate: first report, §456.

e. The IPCC report dated 9 December 2005 into Azelle Rodney's shooting, describes the hard stop tactic as high risk and gave reasons

[295] 24 March/107-108
[296] M5/111 and 24 Feb/108
[297] 21 March/37
[298] 21 March/141
[299] 26 April/118. See also first report at §366 and §284
[300] 27 April/99, line 25 onwards, referring to MASTS being "high risk/high benefit"
[301] 27 April/84, lines 22-24
[302] http://www.bbc.co.uk/news/uk-england-38501122

why[303]. The report of the Azelle Rodney Inquiry, 5 July 2013, "endorsed every word" of that IPCC report[304]. Those reasons largely apply equally to the MASTS tactic applied here.

f. The IPCC in this case[305] note the tactic of MASTS at night "was inherently dangerous" and involved "a high risk to life".

g. The SFC's threat assessment on 3 March 2012 (apparently completed by Mr Sweeney) states there is a medium/high risk to subjects at the point of interception [C/490].

269. Some of the reasons why this is a high risk option are as follows.

270. Firstly, the subjects may think they are being attacked by other people or by a gang, and so would be more likely to react defensively or unpredictably, than with compliance: Mr Arundale §381-3. Y19 noted this was "a commonly recognized risk". He accepted that this, and the corresponding need for police officers to be identifiable as such, was certainly something that should be considered by those planning the operation[306].

271. This was a particular concern with Totton in this case, since in 2006 he was wounded during a contract killing attempt in the Brass Handles pub [C/56]. In addition, intelligence links him to known drug importers, and said he was "in dispute with opposing OCGs": [C/18]. This increased the chance that the subjects would think they were under attack and react defensively or unpredictably.

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[303] Mr Arundale §458

[304] http://webarchive.nationalarchives.gov.uk/20150406091509/http://azellerodneyinquiry.independent.gov.uk/docs/The_Azelle_Rodney_Inquiry_Report_(web).pdf, §25.7, see more broadly pp116-8 and 123

[305] C/1076 §693 and 696

[306] 21 March/139-140

272. If the SFOs are told that the subjects will have firearms and be willing to shoot at police, then an unexpected movement could cause the subject to be shot.

273. There are many other factors that can occur during MASTS decisive action which may cause an unexpected movement, which could in turn lead to the subject being wrongly shot. Those factors include:

a. The subject might flinch or drop a hand as the nearside window is broken and a CSDC deployed. This is analysed in more detail in the 'CSDC' section below.

b. Similarly, the subject might recoil as one of the Hatton rounds hits the car. Two Hatton rounds were fired here[307]. Mr Arundale explained the shotgun being discharged within just a few feet from the subject would be extremely loud, "may cause sudden movements and panic" and "could lead an AFO to believe they were making a threatening movement" which may lead the AFO to shoot the subject. That is, "The natural reaction to hearing a shotgun being discharged in close proximity can include an involuntary and rapid body movement that could be misinterpreted as a threat"[308].

c. The subject may flinch if a police car collides with the subject car. Here the alpha car appears to have collided with the red Audi[309], causing damage to the alpha car.

d. The subject may faint. X7 had seen this happen on other operations[310]. That could cause the subject to drop his hands. H9 had seen it on two previous operations and said his team, including Q9, knew subjects

[307] M/272 and 275
[308] 27 April/83-84, and first report, §583
[309] See the photos at O1/162-166, 241, 438, which show a mark on the side of the alpha car in the same location as the red Audi was touching it: O1/391. Mr Botha, who visited the scene, said: "The nose of the red Audi was in contact with the officer driver's door of the silver Audi…" Q/38
[310] E/90, C637

could faint. H9 pulled out his taser rather than his gun as he was unsure whether Anthony was not complying because he had fainted or for a range of other reasons[311].

e. The subject may be confused by what is happened and react unpredictably. As Y19 put it "with an element of surprise, people can react differently"[312]. For example, Anthony might have dropped his right hand to turn off the red Audi's engine. Some witnesses suggest the engine was running[313]. Or he might have dropped his right hand to open his door. X7 thought Anthony might be doing this at one stage.

274. By about 6.30pm on 3 March 2012, and in respect of the specific subject vehicle involved, it was apparent that the intervention would be an even higher risk[314]. The rear windows of the red Audi were tinted, and so AFOs would be unable to see what the rear passenger was doing[315]. At 6.30pm it was going dark, and so by the time the car got to Culcheth it would be more difficult for AFOs to see inside the vehicle.

275. A MASTS strike in the council car park in Culcheth on 3 March 2012 put the lives not just of the subjects and police at greater risk, but also those of the public. It was likely that members of the public would be in the vicinity of this relatively busy town centre car park early on a Saturday evening. As Mr Arundale put it:

> "an armed intervention at a car park on a relatively busy Saturday night has obvious public safety consequences… there was a potential for … injury to innocent members of the public."[316]

276. That was, in fact, the case. Mr Delaney was in the car park, close to the shooting at the time[317]. Jessica Brown, a 15 year old, was in the car park

[311] 10 April/83-84
[312] 21 March/138
[313] J4, 31 March/164; Z15, 4 April/121
[314] U9, 28 March/71-72
[315] 16 Feb/55, DCI Cousen
[316] 27 April/62-63
[317] A/200

outside the post office with some friends[318]. Alex Sayers, a 14 year old boy, witnessed the shooting incident and so was apparently nearby[319]. There are flats and the backs of shops just behind the red Audi, in and near to Q9's arc of fire[320]. The CCTV from those flats shows people coming and going from them. A shot fired could have passed through one of the doors or windows of those premises, or hit someone who may have been outside them. The photos show the car park had a number of cars in it. V3, in the delta car, said it could not get to the car park because there was a lot of traffic in the area of common lane[321]. Other CCTV indicates the town center was busy at that time[322].

277. Statistics at [I/1052] show that from April 2012 to March 2013 there were 45 MASTS deployments against subjects in vehicles, where the subjects were arrested at gunpoint, and no one was shot by police. That does not show the option chosen here was safe. The statistics do not show what the circumstances were of those 45 deployments, for example whether they used CSDC, Hatton rounds, largely unidentifiable officers, in a fairly dark place, and a subject car with tinted windows. Secondly, it is a limited sample and we know that there have been a number of occasions when MASTS decisive action has led to a fatal shooting.

278. There were lower risk options on the evening of 3 March 2012 which would have achieved the same as MASTS decisive action if the subjects were conducting reconnaisance. An example is disruption activity. This option was used in similar circumstances earlier in Operation Shire. For example, on the weekend of 28 and 29 Jan 2012, Mr Ellison decided to use disruption, when it became apparent that the CIT deliveries that weekend would be of low value[323].

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[318] 28 Feb/20
[319] R/465
[320] O/313, 325
[321] A/163
[322] Such as those at Common Room, SDB1, cameras 4 and 10
[323] G1/2362-5

279. By about 6pm on 3 March 2012 the balance of probability had tipped to favour Monday as being the date of any robbery (assuming the intelligence was true). That is, it was likely that the robbery would be on Monday rather than Saturday. It was likely that a trip to Culcheth on Saturday evening would be reconnaissance.

280. That is firstly because, by that time, the likely targets of the robbery were no longer open or present. The evidence indicates that the command team had formulated the view, based on the information available to them, that the target of any robbery was likely to be a 'Cash in Transit' delivery and/or financial premises. That evidence includes the following[324]:

a. A note at 10.45 on 3 March 2012 on Mr Granby's log said:

> "Discuss with SIO **likely targets and risk periods**. CIT deliveries predominantly 11.00-13.00. Banks/Building Societies/PO [post-offices] all closed by 12.30."[325]

b. That note indicates the likely targets would be CIT deliveries and/or banks, building societies and post-offices. It continued: "Agree to review again at 13.00". The review took place at 12.45, when Mr Granby noted: "Subjects are running out of potential targets".

c. On 1 March 2012 DS Hurst was tasked to:

> "obtain cash delivery/collection times for financial premises in St Helens and Culcheth…" [G1/2068].

d. The fact that her research appears to have been limited to cash delivery/collections for financial premises indicates that the command team thought this was the likely target of any robbery.

e. DI Dickinson was told by GMP on 2 March 2012 that any robbery in Culcheth "would centre around a cash delivery"[326]. Similarly Mr

[324] DCI Cousen said it was no more than a possibility that a CIT delivery was the intended target: 15 Feb/179 onwards. The Chairman may consider this is not credible, in light of the evidence to the contrary, some of which is summarized here.
[325] F/423, 12.45pm, 17 Feb/2

Holliwell said the intelligence he received was "very lax intelligence… there was nothing – not a lot to go on apart from it being financial institutions in the village of Culcheth being targeted, so obviously we had to look and see if we could develop it any further."[327]

f. Supt Granby states: "the TFC entry at 19.03 hrs [on 3.3.12] shows that the intelligence picture indicated that Cash in Transit target was involved and that is why it was included in the working strategy" [H/29].

g. The TFC's working strategy and threat assessment were both altered between 2 and 3 March 2012. Cash in transit custodians were added[328].

281. It appears that the view of the command team that the likely targets were CIT deliveries or financial institutions was based on intelligence, and robberies that the subjects were suspected to have committed previously.

282. The Powerpoint briefing listed 8 'Potential Subject Premises', which included four shops that were not financial institutions[329]. This does not demonstrate that on 3.3.12 it was not thought that the likely targets were CIT deliveries and/or financial institutions. That is firstly because the non-financial shops in that list would receive CIT deliveries. H9 noted that the list included premises "that would either hold cash **or** potentially have cash deliveries."[330]

283. Secondly, the Powerpoint was a cut-and-paste from the previous day's deployment, and the operation on 2 March 2012 was 'completely different', involving a break-in overnight.

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[326] M5/45. See also Phaedra McLean: "the only information that we had that it was a cash in transit robbery in Culceth" 27 Feb/17.
[327] 23 Feb/21-22
[328] 3.3.12: F/1271–1272 vs 2.3.12: C/589-590
[329] F/1283
[330] H9 was involved in the recce with X7 to Culcheth on 1 March 2012 which led to that list being prepared 10 April/36

284. In any event, the evidence set out in paragraph 280 above indicates that even if it was thought that Sainsburys or Bet Fred were *possible* targets, the command team had formed the view that the *likely* targets were CIT deliveries and/or financial premises.

285. The research into CIT delivery times and the closing times for financial premises was duly carried out. Mr Granby's log suggests, "by lunchtime on the Saturday [3 March 2012], it was apparent there would be no more cash in transit deliveries that day". In addition, all of the relevant financial premises had closed by 12.30pm[331]. In oral evidence Mr Granby accepted that: "By [6pm] on Saturday the 3rd, all of the likely targets, the cash in transit deliveries, and/or the financial premises, were gone or closed"[332].

286. Since the likely target of any robbery was a CIT delivery and/or financial institution, once those likely targets were gone or closed, the likelihood of a robbery that evening had significantly reduced. As Mr Cousen accepted, there is no risk of a robbery of a cash in transit delivery van if it doesn't arrive. After the likely targets were closed or gone, the balance of probability had swung in favour of Monday as the date of any robbery.

287. The above analysis is supported by the fact that the TFU put no plans in place for a replacement firearms team, or indeed other contingency, after 8pm on 3 March 2012 when the MASTS team were to be stood down. At 5.49pm Mr Sweeney agreed with Mr Granby that the operation would be closed down by 8pm[333]. Mr Sweeney himself said that this was because "my expectation would be the move to the Monday rather than the Saturday", because the number of premises had reduced[334].

288. But the number of premises open at 6pm was the same as at 8pm. We know the financial premises closed at 1pm. Thomas Cook closed at

[331] 16 Feb/1-18, particularly page 17, lines 6-10; see also G1/2025, G1/2068, K/1239, W/275.
[332] 24 March/108/lines 10-14
[333] F/340 – Mr Sweeney's log.
[334] 22 March/196-197

5.30pm[335]. That is to be expected of a travel agent in a small town. The only "target premises" open after 5.30pm were Bet Fred, which closed at 9.30pm[336]; Co-op, which closed at 10pm[337]; and Sainsbury's closed at 9pm[338]. Mr Sweeney's assessment, that a robbery was expected on Monday rather than Saturday because of the remaining open premises, applied equally at 6pm as at 8pm.

289. The above analysis is also supported by communication between Mr Brierley and Mr Granby. At 12.55 on 3 March 2012 Mr Brierley had a discussion with Mr Granby, who said that GMP were going to review their operation at 3pm and if there had been no movement by the suspects the arrest would not happen that day[339].

290. The surveillance observations of the subjects, taken alone, did not demonstrate they were about to commit a robbery on Saturday night rather than conducting a 5th recce. The simple fact that the subjects were going to Culcheth in the red Audi, wearing sports clothing, did not prove they were about to commit a robbery, for example. On previous occasions when the men visited Culcheth they were wearing similar clothing, including dark or anonymous clothing and gloves. Yet no robberies were conducted on those trips. DCI Cousen said those trips were only reconnaissance[340].

291. We do not suggest that, once, after lunchtime, financial institutions were closed and no more CIT deliveries were due, there was no risk of a robbery. There were other shops which might possibly have been targeted. However, the information above indicates the investigation team thought the likely targets were CIT deliveries and/or financial institutions. On their

[335] P426. This information was received after the shooting, but it would be surprising if a travel agent in a small time were to open later than that on a Saturday. Mr Sweeney claimed to have thought about likely closing times of the remaining premises.
[336] G1/2047
[337] G1/2035
[338] Sainsbury's open until 9pm: G1/2041
[339] 24 Feb/119, Mr Brierley.
[340] DCI Cousen, 15 Feb/106-107, see also F/1200, e.g. entries at 19.20 and 19.59 on 29 Feb 2012.

view, by Saturday afternoon, it was likely the robbery would be Monday not Saturday.

292. The second reason why, by 6pm, it was likely that any robbery would be on the Monday rather than the Saturday, concerns the subjects who were expected to commit it. DCI Cousen and Mr Granby understood:

> "David Totton, Anthony Grainger, and Robert Rimmer were going to commit a robbery on 3.3.12 or, if not then, on 5.3.12." emphasis added[341].

293. At about 5.15pm on 3 March 2012, surveillance evidence was received which indicated Mr Rimmer was housed away from the other two subjects in a place which meant he was not likely to be going to Culcheth with them that evening[342]. Since Mr Granby and DCI Cousen understood that one of the robbers would be Mr Rimmer, once it was apparent Mr Rimmer was not going to Culcheth on Saturday, the balance of probabilities had swung still further in favour of Monday.

294. It follows that the MASTS decisive action on Saturday evening should not have taken place. It was likely (assuming that the intelligence was correct) that the men would merely be conducting a recce. Proceeding with the MASTS intervention that evening was wrong firstly because it was contrary to the purpose of the operation, since it was unlikely that evidence would be obtained which would lead to long prison sentences for the subjects. Secondly, it was contrary to the imperative of minimizing risk to life, since it was probable that a MASTS intervention would have posed a considerably higher risk to life than other options which would have achieved the same ends, such as disruption.

295. Anthony would not have been killed if the MASTS intervention had been pulled off, as it should have been.

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[341] Gist of closed hearing [3], §9 and 15(a); Mr Granby's evidence, 24 March/106-107; and gist of closed hearing [5], §1.
[342] R/440, Mr Granby, 24 March/66-67 and 87

Policy

296. It appears that MASTS policy and training is inadequate, in that it does not make clear that MASTS is a high risk tactic. The evidence set out above suggests it is high risk. The documents we have seen about MASTS training and policy do not state that it is a high risk option, nor do they explain what risks ought to be considered. This is an important matter and something firearms commanders ought to be given guidance about.

(b) The approval and use of CSDC

297. A CS Dispersal Cannister ("CSDC") should (i) not have been used by GMP at all; (ii) should not have been authorized for deployment into the red Audi on 3 March 2012; and (iii) should not have in fact been used by X9.

298. We adopt, without repeating it in detail, the analysis by CTI in paragraphs 452 to 473 of their opening statement, by Mr Arundale in his first report from paragraph 545 onwards, and in his supplementary report, helpfully summarized in paragraph 96. Since the matter is dealt with in detail there, we only include a summary of the issues here.

299. The 2011 ACPO Manual of Guidance states, at §2.13:

> "Only less lethal weapons that have been approved by the Secretary of State may be used by UK Police Services" [F/623].

300. The 2003 Code of Practice contains a similar provision. It indicates that for a new type of weapon, ACPO should consider its use first. If ACPO thinks the weapon may be of value, Home Office evaluation and approval should be obtained *before* the new weapon can be used: §3.3.3 and §4.3.2-5.

301. The Code of Practice describes a thorough evaluation process, including technical, operational and medical evaluation. It states that:

> "The process for evaluating, assessing and adopting new weapon systems and tactics, and arranging for any related training to accredited

standards, must be completed before such weapons and tactics are to be regarded as available generally for use by police forces" §4.3.4.

302. The emphasis is added to show this was a mandatory requirement of the code.

303. This important requirements set out above were not met. The Home Secretary did not approve the use of CSDC. The processes required for evaluating, assessing and adopting this new chemical weapon system, and arranging for training, were not undertaken.

304. Mr Arundale has confirmed that the Home Office has no knowledge of GMP's approval of the use of CSDC. Nor did the ACPO Armed Policing Secretariat. Mr Arundale was national armed policing lead at ACPO at the time of approval. As such, he should have been consulted prior to approval, and he was not[343].

305. Mr Arundale said that it was "extremely concerning" that an unknown and unresearched chemical agent was used against subjects. That is "because it doesn't appear that we know what it was or what its effects on human beings were… The Home Secretary would never approve any chemical weapons system without a full understanding of the effects of the agent that it contained."[344]. Mr Arundale concluded that it was "extremely concerning"[345] that central approval was not sought. The adoption and use of CSDC by GMP was "wholly inappropriate", and it should not have been used[346].

306. GMP accept not only that the Home Office had not approved the use of this chemical weapon[347], but also that the Home Office Scientific

[343] First report, §548; 26 April/157
[344] 26 April/161
[345] 26 April/149, line 20
[346] §308, 314, 535, 568 and 574; see more generally §545 onwards
[347] GMP's opening statement, §38

Development Branch made it clear to GMP, in a 13 June 2007 email, that it could not support or sanction CSDC[348].

307. There is a range of evidence which shows that GMP must have been aware that they ought to have obtained ACPO and Home Office approval before bringing CSDC into use. For example, there was contemporaneous evidence from within GMP of knowledge of the need to obtain central approval[349]; the Code of Practice and the Manual are well known to firearms commanders; and Mr Arundale said the requirement for central approval was common knowledge for those with lead responsibility for these matters[350].

308. Mr Arundale described the evaluation and testing process in detail[351]. He considered that the evaluation process and requirement for approval by the Home Secretary was "a very important provision"[352]. Similarly, the Code of Practice states that central co-ordination of this is important (§4.3.1). The importance of this process is illustrated by this case.

309. Key officers seemed to have little or no idea what the purpose of using this chemical weapon was, or of the dangers of doing so. For example, important witnesses did not appear to know whether the purpose was to make the subjects get out of the subject vehicle or to stop them from doing so[353]. X9 (who used it) gave oral evidence that the aim of CS gas was to incapacitate the subjects and to keep them inside the vehicle until such time as officers were in a position to extract them[354]. But X9 had written a report[355] which indicated the purpose or effect was the exact opposite. His

[348] GMP's opening statement, §38 and 42
[349] Mr Arundale, 26 April/141
[350] 26 April/130
[351] 26 April/132-138
[352] First report, §535. He explains in detail why this is important in his supplementary report §8-18.
[353] E.g. Y19, 21 March/178-179; and Mr Allen 21 March/79.
[354] 29 March/64-65
[355] Vdocs/354b

report said that CS will produce an almost uncontrollable desire to get out of a contaminated area.

310. Further, when he gave oral evidence, X9 could only list a few of the many disadvantages of it[356]. He was not aware of some of the key disadvantages, such as that from the front of the car the CSDC entirely obscures the view of the occupants. He thought it has a clouding effect rather than a fogging effect[357]. Had the mandatory process set out in the Code of Practice been followed, then X7 would have received training about these important matters, before using it.

311. Mr Alder's criticisms of the use of CSDC ought to have led to it being withdrawn. He indicated[358] that the use of CSDC during MASTS strikes is not considered necessary or appropriate by any other force (see also Arundale at §561). Mr Alder recommended that GMP stop using CSDCs[359], noting "the possibility of another accident is high". It is not appropriate, is dangerous, and the use of CS gas during a MASTS vehicle intervention is an "extremely aggressive tactic". Mr Arundale agrees with Mr Alder (§549-550)[360]. He noted that GMP appear not to have acted upon Mr Alder's stringent criticisms, and this is a significant omission: (§567). It is not correct to say that Mr Alder approved the use of CSDC by GMP[361].

312. One reason why CSDC should not have been authorized for being put into a subject vehicle during MASTS decisive action is that there are a number of obvious dangers in doing so. They include the following:

    a. Discharging a CSDC into the subject vehicle is likely to cause unexpected or sudden movements. It may cause the subjects to flinch

[356] 29 March/74-75.
[357] 29 March/78-80
[358] G2/1860, 1874, 1902, cf 1958
[359] G2/1862
[360] See also Mr Fitton, 1 March/71
[361] See, for example, Mr Alder's statement V/139, §23

away from the breaking glass or CSDC discharge. The CSDC will cause the subjects to have difficulty breathing. This may lead to them trying to get out of the car so they can breathe[362]. So it may cause the subject to reach a hand or hands down to open a window or door. Or it may cause the subject to grab his T-shirt or a cloth to cover his nose and mouth.

b. X9 agreed that someone smashing a window immediately to your left when you are in a vehicle will produce a reaction immediately[363]. U9 said that when he (U9) opened the rear red Audi door Mr Travers was "hunched down… crunched down from the smashing of the glass maybe… cowering."[364]

c. As Y19 put it

> "you also have some disorientation of the occupants of the vehicle and, having experienced exposure to CS Spray before now, it is difficult to comply when you have got lungs full of mucus, et cetera… you obviously go to the self preservation bit of I need to get rid of the irritant out of my eyes and such. So you can make undue movements".

d. AFOs are looking for the subjects to be still and compliant, with their hands up. Hands are one of the most important things in a firearms operation. Sudden and unexpected movements may lead the AFOs to thinking they are under threat[365], and so put the lives of the subjects at risk. One or more of the many AFOs approaching the car may misinterpret an unexpected or sudden movement as a threat, and shoot the subject in consequence. That is a particular danger if the officers have been told that the subjects have firearms.

[362] Mr Lawler said for this reason it is a "bad option", Y/2235; Mr Arundale §558; Mr Fitton 1 March/127-129; Mr Allen 21 March/80-84; Mr Granby, 24 March/23-30
[363] 30 March/41
[364] 28 March/78-29
[365] See, among many, Mr Arundale, 27 April/84, lines 16-21

e. Mr Grainger was shot because he lowered his hand. He could have been reaching for the door handle or window button after the CSDC was discharged.

f. Mr Arundale considers that an officer breaking a window and sending in a CSDC, during the arrest of Anthony, was dangerous. It could have been the CSDC that caused Anthony to move in a way that "led officer Q9 to discharge his weapon"[366].

g. With a sudden cloud of noxious gas filling the car, and the difficulty breathing, the subjects are unlikely to think rationally, or to obey commands. Mr Alder notes using CSDC will "induce a panic thereby making the subject very difficult to control… while disorientated they most definitely will not follow commands" [G2/1902].

h. SFOs must wear respirators, which impedes their peripheral vision; and their ability to let subjects know they are police or give other commands[367]. It also prevents them wearing caps which show they are police officers.

i. The AFO deploying the CSDC would normally have to break a window, meaning he is not able to use a conventional firearm. This puts that officer at risk[368]. That was a particular concern here since the Audi had tinted rear side windows.

j. When it explodes, the CSDC instantly fogs the inside of the vehicle with an opaque cloud of gas, which prevents the AFOs from being able to see inside for a critical period[369]. It is obviously important for officers to be able to see what the subjects are doing[370]. The CSDC video indicated the gas would obstruct any view of the inside of the car

[366] §436, 452 and 572
[367] See, e.g. X9, 29 March/75
[368] Y19, 21 March 148-149
[369] Y19, 21 March/150
[370] Mr Sweeney, 22 March/160-161

for about 2-3 seconds or more. That period of time is potentially critical during a fast moving MASTS arrest.

313. The long list of obvious dangers meant it was particularly important for the central evaluation process to be gone through before the CSDC was used.

314. That evaluation process is also likely to have considered whether the use of CSDC in the confined space of a vehicle would breach article 3 ECHR. The CoE's Committee on the Prevention of Torture says that pepper spray should not be used in confined spaces (CPT/Inf (2009) 25, CPT/Inf (2009) 8). The ECtHR has cited these reports with approval, in concluding that the use of tear gas (CS gas being materially equivalent to pepper spray) violated article 3: *Ali Gunes v. Turkey* 9829/07, 10 July 2012, §37, 39-41.

315. A6 claimed GMP approved the CSDC in 2007, in part by use of discussion paper which is at I/330. Mr Arundale has "fundamental concerns about the content and integrity of the original report that led to the approval of CSDC within GMP" (§552 and 547-8). GMP:

> "(1) incorrectly stated the potential effects of CS/CSDC, (2) omitted key and relevant material relating to the 2003 Code of Practice and written HOSDB advice and, (3) overstated the level and extent of 'due diligence' that had been carried out".

316. For example, the report overlooks the fact that national approval was not obtained from the Home Secretary and from ACPO, contrary to the national policy requirements.

317. In October 2008 X9 was asked to write a report about CSDC, which was used to support its use by GMP[371]. Yet at the time he was a newly qualified AFO, who had not yet gone on MASTS training, and it appears he had no operational experience of CSDC[372]. He was clearly no substitute for the expert scientific, medial and operational scrutiny that would have

[371] Vdocs/351 and 354a-d
[372] 29 March/70-71

occurred if the proper process for obtaining authorisation had been followed.

318. Mr Fitton wrote a report in which he claimed the use of CSDC was good practice[373]. Mr Arundale again has fundamental concerns about the accuracy and integrity of Mr Fitton's report (§552). In oral evidence Mr Fitton said that when writing the report he was not aware that, contrary to the Code of Practice, CSDC had not been authorized for use by the Home Secretary. Nor was he aware of what he described as the "quite damning criticisms" of CSDC by Mr Alder[374].

319. For the reasons set out above, the CSDC should not have been not have been used by GMP in general.

320. In addition, the CSDC should not have been authorized for deployment into the red Audi on 3 March 2012. That is because of the obvious dangers of the deployment of CSDC into the red Audi (listed above), and the dubious and limited advantages of doing so. Balancing those factors, deployment of it into the red Audi was likely to have increased the risk to life.

321. Under GMP's policy, Mr Sweeney was responsible for authorizing the special munitions, based on advice by Mr Granby as to the tactical advantages and disadvantages of the specific munition[375]. Mr Sweeney should not have permitted it to be deployed into the red Audi on this operation. Mr Granby should have advised Mr Sweeney that it should not be used in the subject vehicle in light of the tactical advantages and disadvantages of it. Mr Granby should have consulted the tactical advisor before seeking authority from Mr Sweeney, but failed to do so. It appears that for the 2 March 2012 deployment, Mr Lawler decided not to approve

[373] K/76
[374] 1 March/106 and 117
[375] G2/1782 and 1786

CSDC since it was a "bad option"[376] and was surprised it had been used the next day.

322. Further, the deployment on this particular occasion of the CSDC by X9 into the red Audi was, in any event, unjustified. There were many obvious dangers in doing so, which are listed above. There was a serious risk that it would cause one of the occupants to move in a way that led to him being shot. Indeed, as Mr Arundale notes, this may well be what happened here.

323. There was no – or no sufficient - justification for deploying the CSDC. X9 removed the pin from the CS canister before coming to a stop. This is irreversible, and suggests he intended to use it whatever the subjects were doing. X9 gave no reasons in his first statement as to why it was necessary for him to use it. When later asked by the IPCC to explain why he did so, he gave reasons which were generic, and were not based on the non-compliant behavior of the subjects at the time. Mr Sweeney accepted that the CSDC should only be used if the subjects were in fact non-compliant. Even in oral evidence, the main reason X9 gave to justify his use of the CSDC appeared to be merely that Mr Grainger was sitting in the driver's seat. X9 did not see the occupants doing anything, or being non-compliant[377].

Causation

324. We invite the Chairman to find that the CSDC was discharged, or alternatively may have been discharged, prior to the fatal shot. The evidence to indicate it was discharged before the fatal shot is set out later in these submissions.

(c) AFOs not clearly identifiable as police

325. There was a failure to ensure that the subjects were aware that the approaching men were police officers. The AFOs ought to have been

[376] Y/2235
[377] 29 March/133-142

clearly identifiable as police officers at the point of the interception[378], and they were not.

326. It will be important in most cases that the subjects know the approaching AFOs are police officers. If subjects do not know this, they may react unpredictably or defensively. They may consider they are under attack, and seek to flee or protect themselves. If a subject reacts in this way, he might be shot. So there would have been an increased risk to the lives of the subjects if officers were not clearly identifiable as police. As Mr Fitton accepted, in ensuring that the risk to life is minimized, it is very important to ensure the AFOs are identifiable as police officers[379].

327. Moreover, this reduces the risk to the lives of the police and public. It would be suicidal for a subject to point a gun at the police or public if he realized he was surrounded by a number of heavily armed specialist firearms officers.

328. It was particularly important in this case for the three subjects to know that the approaching men were police. That is because Mr Totton had a particular reason for thinking he may be attacked by others.

329. The AFOs were not clearly identifiable as police. A number of the AFOs were wearing respirators, and Q9 had a torch on his weapon. That might suggest they were armed police. Alternatively it might suggest they were serious criminals, conducting an organized hit on Mr Totton. We do not know if Anthony realized, from these ambiguous factors, whether the AFOs were police. Respirators and a torch are not, in themselves, sufficient to show clearly to the subjects, in a fast moving strike, that these were armed police officers.

[378] Mr Arundale 27 April/96, line 19 onwards
[379] 1 March/124-125

330. Q9 said he wore a baseball cap. X7 did not have the badge at the front of his jacket out, but wore his police cap[380]. It was far from certain that Anthony would have seen Q9's cap, as Q9 was shining his laser sight and then his torch at Anthony. The difficulty Anthony would have had in seeing Q9 can be seen on the video reconstruction, at 12.35.12, for example. Dr Seaman noted that the torch would, at dusk, produce an "intense glare" from the perspective of the subject looking at it through the windscreen[381]. Mr Totton said that, because of the torch light shining at the red Audi, he was not able to see into the alpha car, nor whether anybody in the alpha car had any police markings, hats, or anything like that[382]. The Manual at §2.38 states that officers should consider the effects of laser sights upon the subjects[383]. Q9 accepts that his torch was very bright and it is possible that Anthony would not have been able to see the police cap[384].

331. U9 said he had the lapel badge on the front of his strike jacket out[385]. The subjects may have been looking elsewhere and may not have spotted this relatively discreet police sign in the dark, in the short space of time available. It was accepted that this would not have been very visible in a dark car park[386].

332. W4 wore nothing that could have identified him as a police officer[387]. It appears that the following relevant officers were wearing no unambiguous police markings: X9[388], G6[389], J4[390], and W9[391].

[380] 11 April/55/lines 19-21
[381] 12 April/87
[382] 18 April/64-65
[383] See also Mr Arundale's report at §479 and 502.
[384] 6 April/163-164
[385] 28 March/63-64
[386] U9, 29 March/39-40
[387] 10 April/157-158
[388] 29 March/118
[389] 31 March/52
[390] 31 March/157
[391] 5 April/59-60

333. The following officers do not appear to have been sufficiently near the red Audi to have been clearly visible to Anthony, before the fatal shot: U2[392], H9[393], G11, Z15.

334. No blue lights and sirens were used. The reason one or both of those were important is that they would have been clear and obvious in this case. Less obvious measures, such as writing on a cap, may not have been readily apparent in a fast moving MASTS strike, at dusk. All of the cars were fitted with blue lights and sirens, yet they were not used[394]. Blue lights need only be used as the police cars are coming to a halt, in the last second or so before they box in the subject car. As with other types of warning, used in this way they would not increase the chance that the subjects would flee.

335. Mr Arundale noted that sirens may interfere with an AFO's attempt to communicate and direct the subjects. But he accepted that that concern that did not apply to blue lights. He indicated that this is something which should have been considered as a matter of potential tactics[395].

336. It appears that no one clearly shouted "armed police" before the fatal shot:

a. Mr Higgins said the shouting was after the crack of the (MP5) firearm[396].

b. X9 did not hear anyone shout "armed police" and did not appear to do so himself, before he deployed the CSDC[397].

[392] 30 March/120-121
[393] 10 April/72, who was in any event not wearing anything that could have identified him as a police officer.
[394] G1, 13 April/99-100. The IPCC asked each of the AFOs what identified them as police officers, and none of them suggested blue lights or sirens were used.
[395] 27 April/127
[396] 13 April/155-156
[397] 29 March/130-131

c. Some officers shouted "armed police" after the fatal shot, such as U9[398]. But the question is whether warnings were shouted before that shot.

d. Mr Totton said that, before the shot, he "assumed it could have been the police but I didn't know for sure". He thought his car radio was on low. He did not hear anyone shout anything like "armed police, put your hands up" before the shot, and there were no blue lights and sirens[399].

e. Mr Travers says he became aware that the AFOs were police when he saw red beams coming from the scopes of the guns in the alpha car. However, he said the police gave no warnings prior to shooting through the windscreen[400].

f. Mr Delaney was entirely clear in his witness statement that he did not see or hear any indication that the AFOs were police, until well after the shooting. He repeatedly said he thought the incident may have been drug or gang related, and it was only when he saw a subject being put into a car with handcuffs on, that he released police were involved. His statement was made about a month after the shooting[401]. He said that there were no blue lights or sirens, no shouts of 'armed police', no caps or markings on their clothes to indicate they were police[402]. He was fairly close to the cars just before the shooting, and could be expected to have heard a distinct shout of 'armed police' or the like. He gave some evidence, as to timings or the exact order of events, that was plainly mistaken. However, the Chairman may feel he can place reliance on Mr Delaney's evidence about the absence of warnings, as it was clear and consistent.

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[398] E/139 states the order of events was: "I made to made to the rear nearside passanger door. At this point I was aware that the CS canister had been deployed by X9. I then opened the door and saw a male sitting inside. I identified myself as an Armed Police officer…"
[399] 18 April/31, 38, 43
[400] A/195
[401] A/200-201, 6 April 2012
[402] 27 Feb/121-123

g. Similarly, Jessica Brown did not hear any shouts, any warnings, or anybody identify themselves as police[403].

337. Q9 and a couple of other AFOs said "armed police" was shouted before the fatal shot. It is submitted the evidence above, which indicates that "armed police" was not shouted before the shot, should be preferred. That is because it includes independent evidence; Q9's claim is self-serving as he is open to serious criticism if he shot before any warning was given; and Q9's credibility is at issue for the reasons set out below.

338. Since the AFOs were not clearly identifiable, Anthony may have thought that he was being attacked by others, and may have moved his hand to try to escape. He may have been confused about what was happening and not recognised the mortal danger he would be in if he lowered his hand. There is a real prospect that, if the AFOs had been clearly identifiable, he would have frozen and complied, and would not have moved in a way that led to him being shot. In consequence, this is a significant error.

339. Mrs Schofield is keen to point out that Anthony had a kidney transplant following a serious illness. He knew he was lucky to be alive and would not have done anything to put himself at risk.

340. It is unclear whether this failure to ensure police were clearly identified was the fault of the command team or of AFOs. X7 said during the briefing on 3 March 2012: "All officers to be identifiable as police officers"[404]. The Chairman may consider this was sufficient, and the AFOs should have done more to make themselves identifiable.

341. Alternatively, the Chairman may consider that Mr Granby ought to have given a more specific direction, including that blue lights and sirens should be used if possible. The reasons in favour of that include that Mr Granby

[403] 28 Feb/57
[404] C/344

had overall responsibility. He knew about the Brass Handles incident, so would have been aware of the particular imperative in this operation for the police to show this was not another assassination attempt on Mr Totton. The AFOs did not necessarily know about that incident, and so Mr Granby was in a better position to know the importance of clear identification in this particular case.

Eyes on/ eyes off

342. From about 18.52 until 19.05 no surveillance officer could see the subject car or its occupants – eyes were lost. This was described as being "something of a disaster" and of "acute concern"[405]. 'Eyes on' was said to be "of vital importance"[406]. The subjects could have been off committing an offence. Mr Arundale said that: "Disruption should have been seriously considered because I think this is a situation where it was required"[407]. He said, to protect the public, "many commanders would immediately call in a disruption activity"[408]. There was a failure to consider it.

(d) Mr Sweeney

343. There are six concerns about Mr Sweeney's involvement.

344. Firstly, Mr Sweeney appears not to have put sufficient time and attention into the operation before authorizing the use of firearms and special munitions. It appears that the discussion on 2 March 2012 between Mr Granby and Mr Sweeney about the operation, was only 6 minutes 42 seconds long[409]. It is difficult to see how they could have properly

[405] X7, 11 April/69, lines 15-19
[406] 5 April/77/20-22
[407] 28 April/43, line 22 onwards
[408] 26 April/169
[409] F/338, indicates call started at 8.45pm, and F/336 indicates firearms authority was granted 8.50pm. K206 indicates call began at 8.45pm, and emails were exchanged at 8.50pm. Mr Granby agreed the emails were exchanged after the call ended: 23 March/89. Mr Granby's handset billing records note a call to Mr Sweeney at 20.45 on 2 March 2012 lasting this length of time: R/546

considered what was necessary in that period[410]. More importantly, it can be seen from the following matters that they did not properly consider what they should have done.

345. The second concern is that Mr Sweeney should have placed tighter constraints on the action of Mr Granby and the tactical plan[411]. The tactical parameters he imposed were insufficient[412]. Mr Sweeney was primarily responsible for considering tactical parameters, and considering and testing the tactical options[413]. Mr Arundale agreed that "the primary failed rests with ACC Sweeney" in respect of the inadequate tactical parameters "but there is also responsibility on Mr Granby and the tactical advisor"[414].

346. Third, he failed to properly identify or consider the reasons for authorizing the deployment and use of special munitions[415]. Fourth, he failed to identify more fully the known risks associated with MASTS, and how they would be mitigated. Fifth, he failed to ensure alternative tactical options were prepared[416].

347. Finally, Mr Sweeney's strategy was inadequate and failed to meet the expectations set out in the Manual[417]. It was a series of banal and obvious generalities. It failed to explain how those abstract statements would be applied in the specific operation in question. It failed to contain what Mr Arundale explained should have been in a strategy, which was "a clear statement of what this operation is seeking to achieve". It ought to have

[410] Some of the matters they would need to consider are described at 23 March/92. Mr Sweeney's responsibilities are set out in more detail in the Manual: F/662, §5.20, F/683 §6.49. See also Mr Arundale at §338.
[411] Mr Arundale's first report, §7; and 27 April/121, lines 17-21
[412] Mr Arundale, 27 April/55, lines 7-11
[413] F/662, §5.20, F/683 §6.49. See also Mr Arundale at §338.
[414] Mr Arundale, 27 April/56
[415] Mr Arundale, 27 April/121, line 22 onwards.
[416] Mr Arundale, 27 April/122, lines 3-10
[417] Mr Arundale, 27 April/49

included clear statements about tipping points, special munitions, and mitigation of risks, for example[418].

(e) Mr Granby

348. Firstly, Mr Granby failed to identify and consider an appropriate range of tactical options[419]. He only considered two tactical options. Only two options are noted in his log: [F/405]. They are "unarmed tactics" and "MAST". The considerations for and against are sparse. He also failed to consider sufficient contingencies. There should have been a contingency for loss of surveillance[420].

349. Mr Arundale noted Mr Granby's approach was "neither appropriate nor acceptable" (§367). Mr Arundale concluded: "identifying only one armed tactical option was a fundamental omission…" (emphasis added, §338). Mr Arundale lists 7 alternative tactical options at §380 which could have been considered: see also §381-388. In particular, he considers that high profile disruption (lights/sirens/patrols): "should have been considered… [it] could have been used to prevent the suspected criminal activity and enable alternative arrest strategies that would have presented less risk" §388. This is important because of the overriding importance of the need to minimize the risk to life.

350. Mr Granby accepted that he did not consider enough tactical options or subsets of options[421]. The two options set out in his log, and the risk assessments which he considered in respect of those two options, are what he in fact considered. This is not merely a failure of recording, but of substance. Mr Granby said that "all risk assessments … are documented in my TFC log" [H/39]. He accepted that there was a clear and important duty to make full and proper records in a firearms operation[422]. Policy

[418] 26 April/177-182, 27 April/48-53. The criticisms of Mr Sweeney's strategy are also set out in Mr Arundale's first report at §296-299
[419] Mr Arundale, 27 April/122, lines 20-22; and first report at §338, 393-5, and §450
[420] Mr Arundale, 27 April/70, line 25 onwards
[421] 23 March/108
[422] 23 March/49

makes clear that full records should be made in the TFC log[423]. This indicates that Mr Granby did not consider other tactical options but omitted to write them down in his log. Indeed, he did not give any clear evidence that he did in fact consider more than the two options set out in his log[424].

351. Mr Granby's log states that the tactics were: "As per authority 75/12"[425]. This indicates that he had decided that the tactics and rationale were the same as in set out in Mr Lawler's book (which was authority 75/12) for the previous day's operation. That is shown to be false by three factors. Firstly, Mr Granby did not have Mr Lawler's logbook at the time he wrote this note. Secondly, Mr Granby's tactics and rationale were different to Mr Lawler's[426]. Thirdly, Mr Lawler's log did not explain the rationale for each tactic, but instead referred to Mr Fitton's book. These factors brought Mr Granby to accept that what he wrote in his log was incorrect[427].

352. The next concern about Mr Granby's conduct, is that he failed to assess the risks and benefits linked with his chosen strategy. Further, he failed to meet the standards and expectations set out in national guidance and to be expected of a reasonably competent TFC[428].

Tipping points

353. At [E/59 and E/66-67] Mr Granby gave a variety of reasons why he considered the tipping points were met. Many of these reasons are incorrect, for example:

[423] E.g. special munitions: P&P/415
[424] 23 March/105-106, and 24 March/2-4
[425] F/405 and see 24 March/2-4
[426] C/389
[427] 24 March/4/line 7
[428] Mr Arundale, 27 April/122, line 23 onwards

a. It appears that Mr Granby decided at 19.03 that the tipping points were met. That is what his log says, and what he said in his signed witness evidence[429]. It is what Y19's contemporaneous note says[430].

b. At E/59 Mr Granby said that one reason he decided the tipping points had been met was that "the three subjects were in the stolen vehicle". Yet Mr Wallace broadcast over the radio at 19.03 that he could not see if anyone was in the vehicle[431]. So at 19.03 Mr Granby did not know whether the subjects were in the vehicle or not.

c. It was not until 2 minutes later that DC Evans said there were men in the front seats of the red Audi. He could not see into the rear. This meant he could see only two men in the car, and did not know if there was a third person in the rear[432]. It may be that DCI Cousen was at fault here. His note indicates he told Mr Granby that there were three people in the vehicle[433].

d. At E/59 another of Mr Granby's reasons was that "the three subjects… were wearing gloves", at E/66 Mr Granby noted: "The three were wearing bland jogging suits", and at E/67 his third bullet point reason was: "The fact that all three subjects were wearing jogging suits and gloves". But there was no surveillance to show the three subjects were wearing bland jogging suits and gloves[434]. All the surveillance had seen was: "All three wearing sports clothing, Gloucester [Anthony] wearing gloves"[435].

e. At E/59 Granby claimed the subjects "now appeared to be ready to leave the vehicle". No surveillance officer had indicated, or seen

[429] F/426 and E/59.
[430] C/626, 21 March/162/ lines 15-21
[431] 9 Feb/80-81
[432] 8 Feb/158-160
[433] 16 Feb/
[434] See, for example, [F/1205], 9 Feb/71-75, Mr Wallace; DC Clark 16 Feb/34 and 22 Feb/94-97.
[435] R/118

anything which would go to show, the subjects were ready to leave their vehicle[436].

f. Mr Granby's fourth reason included that the subjects "had spent several minutes driving around the centre of Culcheth carrying out what I considered to be counter surveillance measures" whereas he had no basis for concluding they had done so[437].

354. Mr Granby's approach to the question of whether the tipping points were met and whether the subjects were about to commit a robbery is epitomized by his comment at E/58: "the subjects… were in the advanced stages of preparing a robbery". In oral evidence he accepted this "was my assumption as opposed to evidentially what the situation was"[438].

355. Mr Granby's evidence about tipping points indicates either he was seeking to mislead the investigation as to the basis for the MASTS strike, or he took a slapdash and careless approach, not befitting of the importance of the matter at issue.

(f) Failure by Mr Granby to obtain sufficient tactical advice

356. No tactical advisor was involved or consulted by Mr Granby before firearms authority was granted on 2 March 2012 by Mr Sweeney, or indeed before the strategy, tactical plan, and Powerpoint briefing for the AFOs on 3 March 2012 had been finalised.

357. A tactical adviser should have been involved in the process before each of those steps took place. That is firstly clear from policy: it is the TFC's duty to consult a tactical advisor as soon as practicable[439]. A number of the tactical advisor's duties[440] must be carried out before firearms authority is granted and before the tactical plan decided upon. An example is that

[436] 9 Feb/73, Mr Wallace
[437] 9 Feb/71-75, Mr Wallace
[438] 24 March/77
[439] 21 March/17-18
[440] Defined at K/1355-1359 and F/662-665, §5.24

tactical advice should be obtained by the TFC before the TFC seeks authority from the SFC for a special munition (such as CSDC)[441].

358. Secondly, the need to consult a tactical advisor early on was clear from practice. C/Supt Ellison, and a number of others, said that a TFC would not seek authority from a SFC without having input from a tactical advisor first; and a tactical advisor would routinely be present at the risk assessment meeting. That is in part because tactical advisors are supposed to bring subject matter expertise to the room[442]. There is an added reason why it was important to consult a tactical advisor at an early stage on this operation, which was that an advanced option was being considered, MASTS[443].

359. It does not appear that Mr Granby had a good reason for not obtaining tactical advice before making those key decisions. He gave a number of reasons for not doing so, but none of them appeared to be sustainable. For example, he initially said: "certainly Mike Lawler had drawn upon tactical advice", before conceding that he did not know if Mr Lawler had done so or not[444].

360. Mr Granby had ample time to consult a tactical advisor. He could have done so simply by picking up the phone. It is difficult to know exactly what impact this had on the operation. But it is a significant matter. The tactical advisors are supposed to play an important role. For example, Mr Arundale's view was that: "Competent specialist advice is essential".

361. The tactical advice which was obtained was too little, too late. The first time a tactical advisor was involved by Mr Granby was when Mr Allen arrived early in the morning of 3 March 2012[445]. By that point, the tactics and strategy had been decided upon, special munitions (including CSDC)

[441] G2/1786; Mr Allen 21 Mar/40-41; Y19 21 March/142
[442] C/Supt Ellison 21 Feb/93-94; Mr Allen 21 Mar/18-21, 25-26; Y19 21 March/114-117
[443] 23 March/70
[444] See further 23 March/70-75
[445] 21 Mar/24

authorized, and all set in stone in the Powerpoint briefing. As Y19 put it in respect of CSDC, the operation "is in motion so it is not something that was open to discussion"[446].

362. Mr Granby and Mr Allen only discussed two basic options: unarmed tactics and MASTS[447]. It appears that Mr Allen did not give any other significant advice, since (i) he didn't recollect doing so, (ii) made no note of doing so[448] and would normally have made a note if he had given that advice, (iii) he had no reason not to make a record and plenty of time to do so; and (iv) the tactical plan had already been finalized before he came on board[449]. Y19 gave no advice on important matters, such as on special munitions[450]. He did not discuss the pros and cons of CSDC and was unaware of anyone else having done so[451].

363. Finally, Mr Allen accepted that there ought to have been a review of the tactics after it became apparent that the likely targets (CIT deliveries or financial premises) had closed or gone, and the risk period had passed, at about 1pm on 3 March 2012. It appears that he was not involved in any review of the tactics at that stage, for the same four reasons as in the paragraph above[452].

(g) Inadequate tactical advice

364. Mr Allen and Y19 failed to offer full and appropriate tactical advice, and fell below the standards to be expected of reasonably competent tactical advisers[453]. Mr Arundale raises a series of concerns about the tactical advisors, PS Allen (Q3) and Y19[454]. For example, PS Allen and Y19

[446] 21 March/146
[447] That can be seen from Mr Allen's signature at F/413, cf 24 March/7
[448] The only notes he made are at C/620 and C/625.
[449] 21 Mar/33-34 and 64/ lines 10-15
[450] 21 March/143
[451] 21 March/ 146-151
[452] 21 Mar/46-49
[453] Mr Arundale, 27 April/123, lines 5-10
[454] §342-346, and §389-391

failed to propose an appropriate range of tactical options to the TFC[455]. Mr Arundale states there were "fundamental issues relating to the quality and impact of the tactical advice" (§346) and states these are operational failures, not merely recording errors. He indicates the errors meant there was a failure to minimize risk (§376). Again, that is important, because the tactical advisors accepted that they were bound to give advice which minimized risk to life.

365. The GMP Chief Firearms Instructor, Marcus Williams also appears to have been of the view that the tactical advice was flawed as a matter of substance. Mr Williams' report to the IPCC was misleading in part because it presented the flaws as matters of recording, not substance[456].

(h) Long days

366. On 3 March 2012, the AFOs paraded at 4.30am[457]. This meant some of them had to get up at around 3am or 3.30am. Anthony was shot shortly after 7pm. So they had been on duty for more than 14 ½ hours. Some said they would undoubtedly have been tired by 7pm at night[458].

367. AFOs were not active during the day and said they were able to rest. But AFOs need to be extremely alert to do their job. Other fatal shootings have occurred after FOs had been on duty for similarly long periods. For example, the firearms officer who killed Azelle Rodney had been on duty for 13 hours when Mr Rodney was shot and killed[459]. The Chairman may think it appropriate to make a recommendation that policy should suggest that commanders should give consideration to a maximum length of duty, say 12 hours, and that policy should identify potential problems with long days.

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[455] §389-91
[456] 19 April/64-66
[457] A summary of the SFO officers' shifts from 27 Feb to 3 March 2012 is [G2/651] and [G2/1802]
[458] X9: 29 March/107
[459] Azelle Rodney Report, §24.25

(5) Post incident concoction of evidence

368. Steps were taken to destroy, disguise or concoct evidence after the shooting. We only touch upon seven examples in this section. Other examples are given elsewhere in these submissions.

369. The first example is the inexplicable destruction of the key records of a number of relevant personnel involved in the planning and control of the operation[460]. For example, DC Mills' daybooks 'disappeared' from a tray on his desk[461]. Senior officers appear to have destroyed their contemporaneous notes of the shooting, such as Mr Lawler[462]; Mr Heywood (an Assistant Chief Constable at the time)[463]; and Mr Brierley[464]; and SOCA records of the intelligence – of obvious significance in this intelligence-led operation - have be lost or destroyed[465]. It would be surprising if only one junior officer had destroyed contemporaneous records of an operation that led to a fatal shooting. But for so many officers, including very senior officers, to have done so indicates the destruction was designed.

370. The second example of concoction of evidence is DCI Cousen's attempt to intentionally mislead the inquiry with his claim to have checked GMPICs to check the veracity of key intelligence (see above).

371. Thirdly, on 29 March 2012 DCI Cousen sent an email to others at GMP which said:

> "with the latest developments with the Mark Duggan case I believe that it would be prudent to liaise with the Met, and in particular the SIO, to establish how and what they presented in their statement before I present mine" (emphasis added) R/1289.

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[460] DC Mills' daybooks disappeared from a tray on his desk: R/475. Other officers who appear to have destroyed their contemporaneous notes include Mr Lawler, see e.g. 8 March/9-11; ACC Heywood e.g. 7 March/115; Mr Brierley, 24 Feb/47-48; and SOCA: gist of closed hearing [1], §20.
[461] R/475
[462] E.g. 8 March/9-11
[463] 7 March/115
[464] 24 Feb/47-48
[465] Gist of closed hearing [1], §20

372. DCI Cousen duly met the SIO/deputy SIO in the Mark Duggan case. His email indicates he intended to tailor "how and what" he presented in his account, to what he heard about the SIO's statement in the Duggan case.

373. The fourth example is post–shooting concoction of evidence between DCI Cousen and Mr Heywood. Mr Heywood wrote a log. Page G1/3601 contains an entry which purports to explain what information he received from DCI Cousen during a telephone briefing at 13.45 on 1 March 2012[466]. He claimed he wrote the log on 2 March 2012, on the basis of a note in his daybook written during the 13.45 briefing on 1 March 2012[467]. He indicated the information set out there formed the rationale for his authorization of firearms authority at 14.05 that day.

374. This was wrong. DCI Cousen did not obtain the intelligence in the redacted passage on page G1/3601 until after Anthony's death[468]. That means he could not have given it to Mr Heywood until after the shooting. Mr Heywood was forced to accept that his log gave the false impression that this intelligence was available to him to be taken into account in authorizing the deployment of firearms officers[469].

375. There are two concerns about all of this. Firstly, it suggests efforts were made *post-facto* to find a justification for the firearms operation, which the officers did not have prior to the shooting. Secondly, it indicates Mr Heywood mislead the investigation.

376. That second concern was enhanced by Mr Heywood's oral evidence to the Inquiry. He claimed, in oral evidence that "without the redacted information [on G1/3601], there is still an absolute need for a firearms operation around David Totton"[470]. Yet the transcript of the closed hearing

[466] Transcript of closed proceedings, 2 Mar/page 3; see also A/20 "I recorded this summary in my [SFC] log".
[467] 7 March/7
[468] Gist of closed hearing [3], §7.
[469] 7 March/21-22
[470] 7 March/23

shows Mr Heywood agreed that, absent the redacted intelligence on G1/3601, he did not have any intelligence that the subjects were going out to commit a robbery[471].

377. Fifth, GMP failed to disclose a large range of relevant information. Important material, obviously relevant to this inquiry, was withheld. Many thousands of pages were disclosed late in the course of the inquiry, at times after the relevant witness had given evidence. Similarly, GMP redacted important information without any good basis. One example (among many) is the entry in Mr Granby's log at C/559 at 12.45 saying "Subjects are running out of potential targets".

378. Sixth, GMP made improper arrangements regarding the production by AFOs of their first accounts, which appeared to be aimed at encouraging the officers to confer with one another. This is dealt with in more detail below. The arrangements included failing to ensure all relevant officers provided a personal initial account[472]; delaying detailed accounts for 6 days; arranging for the Mark Duggan shooter, V53 to speak to the AFOs, and for the AFOs to attend training together in the meantime; and sitting the AFOs in a room together for several hours whilst they wrote those accounts.

379. Seventh, the statements made for the purpose of this investigation failed to openly disclose obviously relevant information. For example, Mr Granby failed to disclose his course failure in his witness statement[473]. The Chief Firearms Instructor, Mr Williams, wrote in a statement requested by the IPCC that he had, at some time in the past, checked whether Y19 was qualified, and concluded that he was. Mr Williams failed to mention that he had obtained new information since that time which showed Y19 was not qualified[474].

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[471] Transcript of Mr Heywood's closed evidence, page 27, lines 12-15
[472] Which should have been provided: the Manual §7.96, P&P/384 and Mr Simpson, 19 April/1-2.
[473] 26 April/87
[474] See, e.g. 19 April/51

(6) The shooting

(a) The law, and what questions should be addressed

380. It is submitted that the Chairman ought to ask the following questions in respect of the fatal shooting:

a. At the time he fired, did Q9 believe he needed to use force because he or his colleagues were under imminent threat of being shot by Anthony?

b. Did Q9 have reasonable grounds for that belief?

c. Was it reasonable to shoot Anthony in the circumstances as Q9 honestly and reasonably believed them to be?

d. Was the shooting lawful or unlawful?

381. The shooting would be unlawful if, on the civil standard of proof, one or more of questions a, b and c are answered negatively.

382. The reasons why we submit that this is the correct approach are as follows.

Questions (a) and (b)

383. The test for self-defence (which encompasses the defence of another) has two limbs. Essentially, firstly, did Q9 believe there was a threat of imminent attack? Secondly, was Q9's use of force reasonable?

384. As to the first limb, there are two different approaches to self-defence in domestic law. The first is that which is applied in criminal law. The test for that context is set out in s.76 of the Criminal Justice and Immigration Act 2008. In particular:

> "(3) The question whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the

circumstances as D believed them to be , and subsections (4) to (8) also apply in connection with deciding that question.

(4) If D claims to have held a particular belief as regards the existence of any circumstances –

(a) The reasonableness or otherwise of that belief is relevant to the question whether D genuinely held it; but

(b) If it is determined that D did genuinely hold it, D is entitled to rely on it for the purposes of subsection (3), whether or not –
(i) It was mistaken, or
(ii) (If it was mistaken), the mistake was a reasonable one to have made…"

385. The test in civil law is different. In that context, as Lord Neuberger explained in *Ashley v Chief Constable of Sussex Police* [2008] 1 AC 962:

> "85 … where a defendant was not actually under the threat of imminent attack, self-defence can only be an answer to a claim in battery if he reasonably, as well as honestly, believed that he was under such a threat."

386. Thus, in civil law, the defendant must have reasonable grounds for his belief. If the defendant has an honest but mistaken belief that there was an imminent threat, and the belief was unreasonable, his defence fails.

387. In *Ashley*, the House of Lords explained why there is a different limb 1 test as between civil law and criminal law. The explanation was that the ends served by the two systems are different. In criminal law, since punitive sanctions may be imposed, the presumption of innocence must apply. The law must ensure a person is not punished for a crime they did not commit, and in that sense criminal law is focused on the defendant. By contrast, in civil law there are no punitive sanctions. The function of civil law is to identify and protect the rights of the rights of every relevant party. It must strike a balance between the defendant's right to act in self-defence, with the claimant's right not to be unjustifiably shot. That is why the test in civil law is less generous to the defendant: *Ashley,* §17-18. See also §3, 53, 76 and 85-88.

388. The reasons set out by the House of Lords in *Ashley* as to why the "honest and reasonable" test should apply in civil law, apply equally, or even more strongly, at an inquiry such as this. The functions of the inquiry are very different to those of the criminal trial. No punitive sanction will be imposed on Q9 as a result of the inquiry. To the contrary, s.2(1) IA 2005 states that the inquiry panel is not to rule on, and has no power to determine, any person's civil or criminal liability. Q9 faces even less prospect of sanction at an inquiry than within a civil claim.

389. The functions of the inquiry are far closer to the functions of civil proceedings as described in *Ashley*. The inquiry's terms of reference include to inquire generally into the circumstances in which Anthony came by his death and to make such recommendations as may seem appropriate. This is not, unlike the criminal law, focused on Q9. Its functions are broader, and were described by Lord Bingham in *Amin*[475]*:*

> "to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others."

390. Maintaining public confidence in the state's monopoly of the use of force is one of the functions of the article 2 inquiry. In order to do so, the bar must not be set too low[476].

391. Thus, the rights of Q9 to defend himself or others must be balanced against the right of the deceased not to be subjected to physical harm by

[475] *R (Amin) v. Secretary of State for the Home Department* [2004] 1 AC 653, §31

[476] See also *Ramsahai v The Netherlands* [2008] 46 EHRR 43, §325; and *Enukidze and Girgvliani v. Georgia* no. 25091/07, 26 April 2011, §274: "the Court expects States to be all the more stringent when punishing their own law-enforcement officers for the commission of such serious life-endangering crimes than they are with ordinary offenders, because what is at stake is not only the issue of the individual criminal-law liability of the perpetrators but also the State's duty to combat the sense of impunity the offenders may consider they enjoy by virtue of their very office and to maintain public confidence in and respect for the law-enforcement system…".

the intentional actions of another, and the wider interests of maintaining public confidence and learning lessons.

392. To achieve that balance, the family submit that the Chairman ought to determine whether Q9's belief was based on reasonable grounds: (for analogous reasons to those given in *Ashley* at §17-18 and §76). If it was not, the chairman ought that question were not answered, that would overlook the interests of the victim (as in *Ashley*, at §86) and the wider public.

393. The approach set out above was adopted by the Chairman of the Azelle Rodney Inquiry. He asked both the limb 1 question raised by criminal law, and that raised by civil law[477]. His approach was not challenged when E7 applied to judicially review the Chairman's conclusion, nor was any criticism of it made by the Divisional Court[478].

394. The criminal law test is applied at an inquest[479]. But it does not follow from the coronial approach, that this inquiry should overlook the civil law limb 1 test. The reasons why the criminal test applies at an inquest are complex, and include the particular historical development of the conclusion of "unlawful killing" at inquests. This is analysed in detail by the Divisional Court in the *Duggan* case[480]. That complex of reasons does not apply to a public inquiry such as this one. The Chairman of the Azelle Rodney inquiry did not consider he was bound to follow the approach in coronial law (§19.8), and no complaint about that was made by E7 or the Divisional Court.

395. For those reasons the Chairman ought to address question (b), above.

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[477] §19.10. http://webarchive.nationalarchives.gov.uk/20150406091509/http://azellerodneyinquiry.independent.gov.uk/docs/The_Azelle_Rodney_Inquiry_Report_(web).pdf

[478] *E7 v. Sir Christopher Holland* [2014] EWHC 452 (Admin)

[479] *R (Duggan) v. HM Coroner for North London* [2017] EWCA Civ 142, §82.

[480] [2016] 1 W.L.R. 525, e.g. §37 to 47.

396. In any event, when addressing question (a) above (whether Q9 honestly believed Anthony posed an imminent threat), it is submitted that the Chairman should consider whether Q9 had reasonable grounds for his belief. If Q9 did not have reasonable grounds for his belief, that would be a powerful reason for coming to the conclusion that the belief was not honestly held and should be rejected.[481] As it was put in *R v. Beckford* [1988] AC 130, 144: "Where there are no reasonable grounds to hold a belief it will surely only be in exceptional circumstances that a jury will conclude that such a belief was or might have been held". Similarly, in *Da Silva v. United Kingdom* [2016] 63 EHRR 12, the Grand Chamber said that in deciding whether the force was justified:

> "the Court will have to consider whether the belief was subjectively reasonable, having full regard to the circumstances that pertained at the relevant time. If the belief was not subjectively reasonable (that is, it was not based on subjective good reasons), it is likely that the Court would have difficulty accepting that it was honestly and genuinely held." §248. See also §244, 246, 251-256, which indicate that the domestic investigation should take this approach.

397. It is important to consider this factor because the honesty of Q9's belief and its reasonableness are at issue.

398. In question (a) we have used the words "that he or his colleagues were under threat <u>of imminently being shot by Anthony</u>" instead of the words used by Lord Neuberger in *Ashley:* "that he or his colleagues were under threat <u>of imminent attack</u>".

399. That is firstly because at the time he was shot, Anthony could only have posed an imminent threat of serious harm if he had a firearm. He was confined in the red Audi, with the door closed, boxed in.

400. The <u>possibility</u> that he might pick up a knife or baseball bat did not, while he was sitting in the driver's seat with the door closed, justify shooting him. If he picked up a baseball bat or knife, Q9 could have reacted to that

[481] *Da Silva v. United Kingdom* [2016] 63 E.H.R.R. 12, §248; *R v. Williams (Gladstone)* (1984) 78 Cr. App. R. 276; 281. S.76(4)(b)(ii) Criminal Justice and Immigration Act 2008.

threat. There would be time to assess whether shooting was justified in those circumstances, depending on who was close to Anthony. But the mere possibility that he might do that was insufficient to justify lethal force.

401. Nor did Anthony pose a threat by using his car to ram the police cars that justified him being shot. Of course, a car can kill, and if Anthony were driving towards an officer, at speed, who had nowhere to escape, that may justify lethal force. But that was not the situation here. Anthony could not drive forwards, as his car was touching the alpha car. No officers were behind the red Audi. Anthony might, theoretically, have reversed, before then putting the red Audi in first gear and driving forward to ram a police car. But he could only reverse about 4-5 feet, and so would not have been able to get up enough speed to cause serious harm to the police cars.

402. More importantly, the fatal shooting was not justified by the possibility that Anthony might do that. If Anthony had begun to reverse, Q9 could have assessed whether shooting him was justified in the circumstances as they pertained at the time. The Hatton gun was intended to be used to disable the red Audi, and that may well have occurred before Anthony had been able to reverse into a position where he could cause a threat. But since Anthony had not even begun to reverse, the mere possibility that he might do so did not justify him being shot.

403. Indeed, Q9 did not attempt to justify killing Anthony on the basis that Anthony posed a risk of using some other type of weapon, or by the possibility that Anthony might use his car to ram police cars. Q9 justified shooting Anthony squarely on the basis that he believed Anthony was grabbing a firearm which he was going to use to shoot a police officer, and there was no other option but to shoot Anthony[482]. The question for the Chairman is whether Q9 did honestly believe that, on reasonable grounds. This is why question (a) is phrased in the way it is.

[482] See, e.g. 6 April/99, lines 1-5

404. In *R v. Williams (Gladstone)* Lord Lane CJ suggested that if the jury in a criminal trial concluded "that the defendant believed, *or may have believed*, that he was being attacked" the prosecution fails. That is correct in a criminal trial because the prosecution must disprove self-defence beyond reasonable doubt. But at this inquiry, where the Chairman is primarily considering whether the shooting was unlawful on the civil standard (the balance of probabilities), the shooting is not lawful if Q9 merely *may have believed* he was being attacked. The Chairman would have to conclude that, on the balance of probabilities, Q9 did believe he or his colleagues were being attacked.

Question (c)

405. As to the second limb of the test for self-defence, in domestic law, the ordinary question is whether the force was reasonable in the circumstances that the defendant honestly (in criminal law) or honestly and reasonably (in civil law) believed them to be.

406. However, in this case, if the force was not absolutely necessary, then it would not have been reasonable. The Manual states that firearms officers may only shoot when it is absolutely necessary to do so[483]. The AFOs were essentially briefed on 3 March 2012 that lethal force would be unlawful unless absolutely necessary[484]. If an AFO used lethal force when it was not absolutely necessary, then that would be contrary to briefing, training and policy, which implies that it was not reasonable. Moreover, Q9 said that if he had not judged it necessary to discharge the round, he would not have done it[485]. "Necessary" and "absolutely necessary" appear to mean the same thing: there was no alternative.

407. Lethal force is contrary to article 2 unless it is absolutely necessary. The article 2 procedural duty requires the investigator (here the Chairman) to

[483] For example [P&P/384] §§1.24-1.25, 1.30-1.31, §7.97; and see Mr Arundale, 27 April/129
[484] C/345-346
[485] 6 April/210/17-19

apply a standard which is not materially different to the "absolutely necessary" test. That can be seen from the reasoning in the *Bennett* cases. In *Bennett v. United Kingdom* [2011] 52 EHRR SE7 the ECHR considered an inquest in which the specific direction to the jury on the law, regarding limb 2 of the self defence test, used the words 'absolute necessity' rather than 'reasonable'. The ECHR noted that the Coroner had devoted some time in evidence and in her summing up to the jury, explaining that officers are trained not to use lethal force unless it is absolutely necessary to do so[486]. In that context, the Court held that there was no material difference between the domestic 'reasonableness' test and the 'absolute necessity' test in its application to the particular case at issue. It was for this reason that the inquest was compatible with the article 2 procedural duty. It is implicit that if there is some material difference between the domestic standard and that of absolute necessity, then to apply the former would be incompatible with the procedural duty. The same conclusion is implicit in the finding in *Da Silva* (in the passages noted above).

408. Similarly, the High Court rejected a submission that the coroner's specific direction to the jury on the law should have used the words "absolute necessity" rather than "reasonable", on the basis that, in that case: "to kill when it is not absolutely necessary to do so is surely to act unreasonably"[487].

409. This indicates that the Chairman here should consider whether the lethal force was absolutely necessary. If the force was not, then it was not reasonable or lawful.

Question (d)

410. If the Chairman answers 'no' to questions (a) and/or (b), then the family submit that he ought to find that Mr Grainger's shooting was unlawful. If question (a) is answered in the affirmative, but (b) in the negative, such

[486] *Bennett v. United Kingdom* §72-74.
[487] See Court of Appeal's judgment, *R (Bennett) v. HM Coroner* [2007] EWCA Civ 617, §3, 9 and 14-15.

that Q9 probably had an honest but unreasonable belief that he was under imminent threat, then the force was unlawful. That ought to be recorded. That is consistent with the fact that the inquiry cannot impose any punishment on Q9, is inquisitorial, and involves a balance between the rights of the police with those of the victim and the public.

411. If both questions (a) and (b) are answered affirmatively, but question (c) negatively, such that it was probably not absolutely necessary and reasonable for Q9 to fire, then the shooting was unlawful.

(b) Conferring

412. In considering the oral evidence given by the firearms officers, the Chairman is invited to take into account the real risk that the firearms officers' recollections have been contaminated by what they heard of the accounts of the colleagues, and in particular of Q9.

413. After the shooting Q9 went and sat in the delta vehicle. J4 went over and spoke to him[488]. The AFOs then went to the post incident suite and all gathered in one room, including Q9. They sat together for some 4-6 hours[489].

414. On 8 March 2012 all of the officers got together again, including Q9. None of the AFOs (bar 3 officers) had yet provided any account. V53, the firearms officer who on 4 August 2011 shot Mark Duggan dead, prompting national rioting, attended the meeting to speak to the AFOs. V53 had a private meeting with Q9[490]. The meeting lasted, overall, for an hour or so, with the private discussion about 15-20 minutes[491]. It was originally said that the purpose of V53 being there to provide welfare support and to discuss the PIP procedures[492]. In later evidence, the purpose was altered, to being merely to provide welfare support. It is difficult to

[488] 31 March/173
[489] 30 March/56, per X9; 31 March/78, per G6.
[490] 6 April/7
[491] 6 April/116-120
[492] 5 April/117-118, per W9

imagine anyone more inappropriate than V53 to provide welfare support, given the adverse impact on public confidence a meeting at this stage between V53 and the AFOs was likely to have[493]. There were many other people available to provide welfare support who would have been far more appropriate. As indicated in the Manual, welfare support could have been provided by a legal adviser, the relevant staff association, occupational health, a professional health advisor, or a counselor[494].

415. On 9 March 2012 all of the AFOs including Q9 sat together in a room and wrote their witness statements[495]. J4 (the officer who sat with Q9 in the van immediately after the shooting) prepared a flipchart containing information the AFOs then put into their statements. The fact that all of the officers had conferred with each other when making their statements was unusual. For example, J4 and DC Talbot confirmed they had never been involved in a procedure like this[496].

416. Since then there appears to have been considerable further collaboration between AFOs. In particular, they appear all to have been reading the transcripts of the evidence given to this inquiry.

417. This all carries with it the danger that the officers may subconsciously tailor their evidence about the incident to the benefit of their colleague. The firearms officers are a close-knit, loyal group[497]. In the police shooting case of *R (Saunders) v. IPCC* [2009] PTSR 1192, Underhill J. (as he was) noted:

> "13 … [Conferring] obviously has the potential to impact on the value of evidence which an officer may subsequently have to give about an incident. That evidence will often depend very heavily on the officer's first account, to which he will be allowed to refer in giving his evidence. However much an officer who has conferred with colleagues

[493] R/503-504, statement by Mark Williams, 5 April 2017; see also 4 April/10-15 per W9 and 6 April/7 per Q9.
[494] See, for example, P&P/379, §7.64-7.68.
[495] See, for example A/272
[496] 10 Feb/93-94.
[497] See, for example, Marcus Williams, 19 April/114, who said the firearms circle is quite a small circle nationally.

> may strive to record only what he has seen or heard for himself, there is a real risk that his recollection will have been "contaminated" by what he has been told; and he may in perfect good faith incorporate elements in his own account which have in fact derived from other witnesses, or subconsciously suppress elements which seem to him inconsistent with their accounts. That is a matter of common sense and common experience, but it is confirmed by psychological studies—helpfully reviewed and summarised in the recent paper published by the Research Board of the British Psychological Society entitled Guidelines on Memory and the Law (June 2008): see in particular section 6(ii), at p 30. There is also the risk that, quite apart from such innocent contamination, officers collaborating in producing their notes or statements may be tempted deliberately to produce an account which does not accurately reflect the individual recollections of each... Similar risks of contamination are of course well recognised in other contexts: see eg *R v Richardson* [1971] 2 QB 484 , 490 b-c (witnesses not to be shown each others' statements before giving evidence); *R (Green) v Police Complaints Authority* [2004] 1 WLR 725 (risk of "trimming" if complainants see other witnesses' statements—especially per Lord Rodger of Earlsferry, pp 747–748, para 71); and *R v Momodou (Practice Note)* [2005] 1 WLR 3442 (witness coaching—especially, p 3453, para 61)."

418. As will be seen in more detail below, several officers have altered their accounts over time, in a way which means they fit more closely with that of Q9. For example:

a. In his 9 March 2012 account, G6 said that he heard a shot at a time when X7 was next to Anthony's window. Later, G6 altered his account. He said he said he did not hear a shot at that stage, but instead heard the window smashing prior to the discharge of CSDC.

b. W4 said in oral evidence that he thought Anthony was reaching for a firearm. This was the first time he had ever mentioned this.

c. W9 initially said upon approaching the red Audi, his attention was immediately drawn to Mr Totton. In oral evidence he said that in fact he glanced at the Anthony's door area, and there was no one by the car.

d. X7's initial accounts were that when he was running towards the red Audi he heard a sound that he assumed was or may be a collision between cars. In oral evidence, his account altered and he said this sound was a gunshot.

419. In considering what reliance to place on the accounts of G6, W4, W9 and other AFOs, the Chairman is invited to consider whether the recollection of each officer may have been "contaminated" by what they have heard about Q9's account. As is well recognized (see *Saunders*) the AFOs may in perfect good faith have incorporated elements in their own accounts which have in fact derived from Q9, or subconsciously suppressed elements which seem to be inconsistent with that of Q9.

(c) Training

420. In considering the evidence of the firearms officers, and of Q9 in particular, it is important to remember that this was a fast moving incident. A person acting in the heat of the moment may not be able to weigh to a nicety the exact measure of any necessary action. The Inquiry is able to assess the events with hindsight and detached reflection, in the calm atmosphere of the courtroom. Moreover, evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose (s.76(7)(b) CJIA 2008).

421. However, the AFOs involved in this case were specialist firearms officers. They were selected and highly trained to be able to assess the circumstances in front of them and make rapid judgments about threat. Their training includes repeated exercises and drills focused on ensuring the AFO can make a careful assessment of the threat posed by the subject, before shooting[498]. Specific scenarios are conducted, often at increasing pace, which help the AFO to be able to rapidly assess the situation in front

[498] 6 April/141, 143-144, and 5 April/185-187, per Q9; G1/143, 169/171/187, 927/ 947. Q9's extensive training is summarized at G1/797-805.

of him. The scenarios included vehicle stops. Q9 explained that one of the things that was "constantly tested" in training was his judgment of whether there was a threat which justified discharging his firearm. His SFO training lasted some 8 weeks each year[499]. In consequence, higher standards can be expected of Q9 than an ordinary member of the public.

422. In *Nachova v Bulgaria* [2006] 42 EHRR 43 the Grand Chamber said:

> In line with the above-mentioned principle of strict proportionality inherent in Article 2 … the national legal framework regulating arrest operations must make recourse to firearms dependent on a careful assessment of the surrounding circumstances, and, in particular, on an evaluation of the nature of the offence committed by the fugitive and of the threat he or she posed. §96
>
> … law enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value…§97.

423. Q9 can be expected to have carefully assessed the circumstances before shooting.

424. In *E7 v. Sir Christopher Holland* [2014] EWHC 452 (Admin) at §54, Sir Brian Leveson said that "there is considerable force in the expressed concern that minute dissection of fractions of a second with the benefit of hindsight will discourage an appropriate response". Those were obiter comments in a permission decision, involving much shorter time periods than are at issue in this case (§51-53), and the issue did not need to be determined (§55). It appears that Sir Brian Leveson was merely reflecting the well recognized principles described in paragraph 420 above. He could not have been suggesting that the court should decline to carefully scrutinse the facts, or that the test for self-defence should be altered to avoid discouraging AFOs to respond properly. That would be contrary to authority and principle.

[499] 6 April/186

425. In a case like this, in order to satisfy its terms of reference, it is necessary for the inquiry to take careful evidence about exactly what happened; and for the Chairman to reach relevant conclusions. It is one thing to recognise that a person acting in the heat of the moment may not be able to weigh to a nicety the exact measure of any necessary action; it is quite another to say that the inquiry should fail to ascertain the circumstances of death because doing so will require precise conclusions about what happened and about the order of events.

(d) Why the shooting was unlawful

426. In summary, the family invite the Chairman to conclude that:

a. At the time of the shot, Q9 did not have an honest belief that he or his colleagues were under imminent threat of being shot by Anthony.

b. Q9 did not have reasonable grounds for that belief.

c. The shooting was not absolutely necessary or reasonable in the circumstances as Q9 honestly and reasonably believed them to be.

d. The shooting was unlawful.

427. The reasons are, in summary, that Q9 did not see Anthony holding a gun. Q9 was not given any evidence to show Anthony did, in fact, have a gun. The intelligence indicated at most that Anthony might have one. Nor was Q9 told Anthony would be willing to shoot at police. Q9 saw Anthony make only a small, ambiguous movement, lowering his right hand somewhat. In the context of there being no intelligence that Anthony in fact had a firearm, that movement could not reasonably have brought Q9 to believe that Anthony was about to fire a gun.

428. There are a number of respects in which Q9's evidence about what he perceived were the circumstances surrounding the shooting, and about what he was told about the threat posed by AG, was false.

429. Further, there is a dispute as to when Q9 fired. One version of events is he did so after X7 had reached Anthony's window and indeed after the CSDC had been discharged. The other version is that Q9 fired much sooner, as the AFOs were just leaving their own vehicles. On either version, this is an additional reason why shooting Anthony was not necessary to prevent an imminent threat of a police officer being shot:

a. If X7 was by Anthony's window, X7 had Anthony covered, and Q9's role was redundant. Further, CSDC discharge would be expected to disable Anthony, and was an explanation as to why Anthony dropped his right hand.

b. Alternatively, on the second version of events, it was not necessary to shoot Anthony on the basis put forward by Q9, which was to prevent Anthony from shooting AFOs *laterally* through the front side doors of the red Audi. The AFOs could not be shot as they were not there.

i. Anthony unarmed

430. The starting point is that Anthony was unarmed. There were no weapons in the red Audi: [O/89]. Q9 does not claim he saw Anthony with a gun or indeed anything that Q9 thought was a gun. As Mr Beer put it:

> "One of the things that may mark this case out is that it is one of the rare cases where a police officer has shot a person who was in fact unarmed, [and] where the officer does not suggested that he had seen a weapon before firing."[500]

431. The idea that a police officer can shoot someone dead without seeing any weapon is likely to be of acute public concern. We do not suggest that there should be any rule preventing officers from firing until they see a gun. But for the sake of public confidence in the state's monopoly of the use of force, the circumstances in which a shooting will be lawful must be strictly curtailed. Q9 will need cogent and compelling grounds to show the shooting was justified.

[500] 27 April/14, lines 13 to 17

ii. Briefing did not show Anthony had a firearm

432. The briefing given to Q9 on 3 March 2012 (F/1267 to F/1270) did not show that Anthony did in fact have a firearm with him that day. Nor did it show that Anthony would be prepared to shoot at police. The briefing indicated that it was possible the subjects might have a firearm, but did not go higher than that. Q9 accepts that there was no intelligence suggesting there would be a firearm in the vehicle. He agreed that he would not, in the absence of any mention of firearms, assume that there was intelligence that the men had firearms[501].

iii. Small and ambiguous movement

433. Against that context, the movement Q9 saw Anthony make did not give Q9 a reasonable basis for believing Anthony was about to shoot a firearm at the police. The justification Q9 gave for claiming he had this belief, was:

> "I saw the driver lower his right hand to his groin area. It was deliberate movement as if to grab a firearm. I felt this was a threat to the oncoming team and so I discharged one shot." [C/357]

434. But Q9 could only see from Anthony's sternum upwards[502]. That is, from about the nipple height upwards. Q9 could not see Anthony's groin area. He did not see Anthony form his body in a way as if he was about to fire a weapon[503].

435. Contrary to his written evidence, quoted above, all Q9 could see was Anthony's hand being lowered below the level of his sternum. In oral evidence Q9 accepted that his written account was inaccurate, and that all he actually saw was Anthony's hand going out of view[504].

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[501] 6 April/25 and 34
[502] 6 April/89-90
[503] 6 April/99
[504] 6 April/91-92

436. The movement was ambiguous. Anthony may have been reaching down to turn off the engine. Or to open the door. Or to open a window. Or to rest his hand on the steering wheel. Those were real possibilities that could not be discounted.

437. This small and ambiguous movement of Anthony's hand, in the context of there being no intelligence that Anthony in fact had a firearm, was not a reasonable basis for Q9 to believe that Anthony was about to pick up and then fire a gun. The fact that the belief was not based on reasonable grounds indicates it was not honestly held by Q9.

438. If the intelligence given to Q9, taken together with this small movement, was sufficient to justify lethal force, that would set the bar for the use of lethal force by the police too low. It is difficult to see how the public will have confidence in a legal system which permits the police to shoot and kill someone with such limited justification.

439. It would have been suicidal for Anthony to pick up a gun when surrounded by a number of highly trained specialist firearms officers. If, as Q9 claims, it was made clear to Anthony that the men were armed police, then this means it was even less likely that Anthony posed an imminent threat.

iv. Q9's honesty

440. In deciding whether Q9 honestly believed Anthony posed an imminent threat of picking up a firearm and shooting at police, the following points are relevant. There are a number of respects in which Q9's evidence about the circumstances he appears to have relied on to justify the shooting, was dishonest:

a. The key reasons Q9 gave for shooting were, on his own evidence, wrong. Firstly, Q9 said the reason he shot was "I saw the driver lower his right hand to his groin area". That was untrue. Q9 could not see Anthony's groin area, or indeed anything below his sternum. Since this movement was the basis that Anthony was killed, it was obviously

vital for Q9 to describe it accurately. This exaggeration by Q9 of the crucial basis for shooting Anthony, significantly undermines Q9's credibility.

b. In oral evidence, Q9 said he believed Anthony was about to shoot, laterally, at other AFOs. Yet he was forced to accept that the other AFOs were not in range. They could not be shot 'laterally' at that stage.

c. There were four significant pieces of information which Q9 claimed to have been told. That claim was untrue. No-one gave the following information to Q9[505].

d. First, Q9 claimed that the 3 March 2012 briefing made him "sure that firearms were in the vehicle"[506]. The briefing did not provide reasonable grounds for Q9 to be *sure* that the men had a firearm. It indicated that the men *might have* a firearm.

e. More specifically, Q9 claimed he understood the words in the briefing "the subjects are engaged in armed robbery", in context, to mean armed with firearms[507]. That is unsustainable. "Armed" obviously does not refer only to firearms. The ordinary and obvious meaning of "armed" means in possession of some type of weapon. It is not limited to a firearm, but extends to any type of weapon. That is how most AFOs understood it[508]. As many of the AFOs accepted, it could obviously refer to any type of weapon, "baseball bats, axes, knives", and does not necessarily mean firearms[509]. The contents of the briefing of AFOs did not entitle Q9 to be sure Anthony had possession of a firearm.

[505] 16 Feb/66-81
[506] 6 April/200
[507] 6 April/22-24, 36 and 42-43
[508] U2, 30 March/107; Z15, 4 April/67; W9, 5 April/36.
[509] See, e.g. W9, 5 April/36.

f. Second, Q9 claimed he was told that in 2008 Anthony was "involved… in the supply of … firearms" [B/30]. There is no support from anyone else for the suggestion he was involved in the supply of firearms. Operation Blythe in 2008 led to Anthony being charged (although acquitted) with conspiracy to supply heroin, and to Anthony pleading guilty to conspiracy to handle stolen goods. But there was no evidence from that operation that he was involved in the supply of firearms. Operation Blythe is dealt with in more detail below. In oral evidence Q9 said he did not take Operation Blythe into account on 3 March 2012[510].

g. Third, Q9 said Totton was convicted of possession of a shotgun in 1999 with Anthony [B/39]. Q9 had no basis for this. It was wrong. At some stage in the past, Totton ran into a house with another and a shotgun was found in the house [F/1167]. Anthony was not involved in that incident at all.

h. Fourth, Q9 said he understood that: "this group of offenders were in some way linked to a robbery at a bank in Bolton where one offender had opened fire on an attending police patrol with a shotgun"[511]. The Bolton robbery has been considered above. It is obviously an important matter in respect of threat assessments – it included attempted murder using a firearm of a police officer. Q9 had no basis for his claim. There was no suggestion in any of the briefings Q9 was present at that Anthony was involved in that robbery in any way[512]. When Q9 was pressed in oral evidence by Mr Beer about where this information came from, he was very vague and could not give a clear answer[513].

[510] 5 April/198 and 201
[511] A/268, and see slightly different account in Q9's interview, e.g. B/77-78, 102
[512] On 1.2.12 DCI Cousen indicated (apparently wrongly: G2/1400, 1412) that there might have been some intelligence that **Totton** may have been involved in that robbery. He made no suggestion that **Anthony** or Rimmer was involved: 16 Feb/72-80; and see note of 1.2.12 briefing at F/1146-8.
[513] 6 April/46-52

i. The only relevant mention of the Bolton robbery was during the briefing of AFOs on 1 Feb 2012, at which Q9 was present. There was no suggestion then that Anthony was involved in the Bolton robbery. DI Cousen said: "Intelligence also links subject one [Mr Totton] to the preparatory phases of robberies in the North West area, whereupon firearms have been discharged, on one occasion at police."[514] Q9 said he brought the Bolton robbery up with his team during the afternoon of 3.3.12. Q9 accepts that X7 told him that it was not these subjects (Anthony, Totton and Rimmer) who committed the Bolton robbery[515]. Q9's claim, in the face of a clear instruction from X7, that he believed Anthony was linked to that robbery, is insupportable. In oral evidence Q9 said this information played no part in his thinking on 3 March 2012[516].

j. Q9 indicated the fact that the two front occupants were wearing gloves supported his belief that they were committing armed robberies[517]. He could not see any other reason for them wearing gloves, and said you do not need to wear gloves to conduct a recce. Again, this is not credible. The weather at 6.20pm on 3 March 2012 was, with windchill, 5 degrees celcius[518]. The men were sitting in a stolen car, and may not have wanted to leave fingerprints. It would be unsurprising if they wore gloves, doing a recce, as they had on previous occasions[519].

k. Q9's account is inconsistent with the expert evidence (which is summarized in more detail below). The experts concluded that, since the bullet track through Anthony was 45 degrees left to right, and 10-

[514] Transcript of briefing: F/1148. What Cousen said appears to be wrong. The crime report contains no suggestion that Totton was involved in that offence: [G2/1400-1406]. See also 16 Feb/70-72
[515] 6 April/52-53
[516] 6 April/54
[517] 6 April/202
[518] www.wunderground.com/history/airport/EGCC/2012/3/3/DailyHistory.html?req_city=Manchester&req_state=&req_statename=United+Kingdom&reqdb.zip=00000&reqdb.magic=1&reqdb.wmo=03334
[519] In particular 29 Feb 2012: F/1200, e.g. entries at 19.20 and 19.59.

20 degrees down, Anthony was turned partly away from the front left window. Q9's evidence was that Anthony was sitting flat against his seat, facing forwards. Q9 said Anthony had not twisted his body at all[520]. Q9 accepted that his account was inconsistent with the expert evidence[521].

l. Q9 said that he shot Anthony 3-4 seconds after the alpha car stopped[522]. Thereafter, the CS canister went into the red Audi about 10 seconds after Q9 had shot Anthony[523]. It follows that Q9's evidence was that it was some 13-14 seconds after the alpha car stopped until when the CSDC was used. As will be seen below, that clearly conflicts with the accounts of the other AFOs. None of them suggested the time between the alpha car stopping and the CSDC going in was anything like as long as 13-14 seconds. For example, X9 and X7 indicated that the CSDC was deployed within a couple of seconds at most after the alpha car stopped. Similarly, Mr Higgins said the period between the MP5 shot and the first Hatton round was 2 seconds[524]. (We know from other evidence that the Hatton rounds were fired after the CSDC was deployed.) This undermines Q9's credibility.

m. Q9 claimed that he did not know Anthony was the driver[525]. The evidence set out above in paragraphs 144-148 indicates that was untrue.

n. Finally, Q9's account should be subjected to close scrutiny as he has an obvious motive for altering or concocting his evidence: to avoid a finding that he unlawfully killed Anthony.

[520] 6 April/203/lines 2-3
[521] 6 April/135
[522] 6 April/97-98
[523] B/58
[524] 13 April/155-156, 171
[525] 6 April/124, lines 14-15

v. Factual dispute

441. There are additional reasons why the shooting was not justified, which depend on the resolution of factual disputes involving the order of events as Q9 perceived them. There were essentially two competing versions of events. The version we will examine first was that at the time of the fatal shot, X7 was standing next to Anthony, at the red Audi driver's window. In addition, CSDC was discharged just before the fatal shot. The second version of events was principally put forward by Q9. When Q9 fired, the AFOs were not close to the red Audi, but were deploying from their own vehicles. Some of the competing evidence relevant to this factual dispute is set out below. We then turn to analyse why, on each version of events, the shooting was not justified.

First version: X7 had Anthony covered at the time of the fatal shot

442. There is evidence to show that X7 was next to Anthony's window, and had him covered, well before the fatal shot.

443. X7 said this in his 9 March 2012 account[526]:

> "I ran from my door and around the front of my vehicle towards the driver of the Audi. My immediate intention was to challenge the driver and ensure the vehicle could not be used as a weapon.
> As I did this I heard a noise. I assumed it was the sound of the vehicles colliding and continued my effort to get to the driver. I cannot recall my exact position when I heard this noise, as I didn't pay much attention to it. My priority at that time was the driver of the Audi.
> As I got to the drivers door of the Audi I was the window was down, though could not see the driver's hands. I shouted "ARMED POLICE SHOW ME YOU HANDS" whilst pointing my MP5 at the driver.
> As instructed, the driver raised both hands in front of him and looked directly at me. I could see he was wearing gloves. I shouted instructions at the driver to keep his hands up. Moments later I saw a CS dispersal Canister activate within the vehicle. The driver reacted to this by flinching slightly to his right. I continued to shout armed police and to keep his hand up where I could see them.
> For no apparent reason, the driver slowly lowered his hands down out of my sight. As he lowered his hands I shouted at him to keep his hands up. The driver did not comply. I feared he was either reaching for a weapon or he was going to attempt to drive the car. I struck the Anthony on his upper right arm with the muzzle of my MP5 in an

[526] E/89, emphasis added

effort to gain compliance. This had no effect. I quickly glanced down to his lap to see what he was reaching for and could see nothing there. I looked back to the driver's face and saw his eyes roll back and he slumped to his right hand side".

444. In oral evidence, X7 demonstrated what Anthony did when he put up his hands. X7 indicated that Anthony's arms were bent at the elbows and his hands were at about the height of Anthony's shoulders[527]. X7's description of the location of the hands varied slightly – at one stage he said Anthony's hands were at "chin level" at another, "certainly the upper chest". But the way X7 demonstrated the position of Anthony's hands did not vary and is likely to be more accurate than his attempts to describe the position of Anthony's hands.

445. X7's initial account said he was not sure whether the first sound he heard was a collision or gunshot: C/635. That account was written straight after the shooting, when X7 may have been tired and emotional. The detailed account was written later, as the Manual puts it: "Detailed accounts should … be left until the officers involved in the shooting are better able to articulate their experience in a coherent format"[528].

446. It is notable that in his detailed account X7 says he assumed the noise he heard as he was running towards the red Audi was the sound of vehicles colliding. The alpha vehicle and red Audi appear to have collided[529], causing damage to the police car. X7 said he did not pay much attention to the sound, which would have been odd if it had been a gunshot, potentially one being fired at X7.

447. X7's account in oral evidence was different. He said he thought the sound was a gunshot. This is difficult to believe. If he had thought that this noise was or even might have been a firearm, that would obviously have been a

[527] E.g. 11 April/133 and 174.
[528] P&P/384, §7.97
[529] See the photos at O1/162-166, 241, 438, which show a mark on the side of the alpha car in the same location as the red Audi was touching it: O1/391. Mr Botha, who visited the scene, said: "The nose of the red Audi was in contact with the officer driver's door of the silver Audi…" Q/38

very important thing to say in his statement. X7 was very familiar with the sound of the MP5 and agreed it is very different from the sound of a collision from a car[530].

448. X7 said in oral evidence that he was in or around the passenger door of the alpha car when he heard the sound, and he had yet to pass the bonnet of his car. Yet in his written accounts he was unable to say or to recall where he was when he heard the noise[531].

449. More importantly, it is clear that Q9 did not fire the fatal shot until X7 was at the red Audi window, because the movements X7 described Anthony doing occurred before, not after, the fatal shot. X7's account had the following key features:

a. X7 arrived at Anthony's window;

b. Anthony put up his hands and looked directly at X7;

c. moments later, X7 saw a CSDC activate inside the vehicle;

d. Anthony reacted by flinching slightly to his right;

e. after that, Anthony started to lower his hands towards his lap, out of sight;

f. Anthony then stopped moving.

450. Anthony's movements that are underlined above must have happened before Q9 shot him. That is apparent not least from Q9's evidence, which was that after Anthony was shot, he did not move again. Q9 continued to focus on Anthony after the shot, and was clear that there was no further movement.

[530] 11 April, 117-124
[531] 11 April/95-97

451. For example, Q9 said in his interview that after he shot Anthony:

> "A: He slumped back in his seat… his hands were dropped… his right hand went down towards his lap and then his left hand's come down er prior to me firing the shot.
>
> Q: … **so having been shot was there any further movement?**
>
> **A: not that I can recall, no**… **his hands didn't come above the dashboard again**". Emphasis added [B/109-113].

452. During his oral evidence Q9 agreed that this was correct[532]. He affirmed for a second time:

> "Q: **Did he make any further movement after slumping back in his seat, as far as you could see?**
>
> **A: No**, only his shoulders seemed to drop slightly"[533] (emphasis added).

453. And for a third time:

> "Q: … Anthony Grainger's hands went down the once and never went back up again.
>
> A: Yes"[534].

454. So Q9 was clear that Anthony made no further movement after he was shot. Anthony did not raise his hands, did not turn to face X7, and did not flinch to his right. The movements X7 described must have happened before the fatal shot.

455. After having shot him, Q9 continued to keep an eye on Anthony:

> "I was covering Anthony Grainger for any further movement… Grainger still posed a threat… I had shot him and didn't know whether the round had been effective"[535].

456. Q9 said he did not transfer his attention to Mr Totton at any stage[536]. He had a good view into the red Audi[537]. If, as Q9 claims, he thought Anthony

[532] 6 April/95
[533] 6 April/106/lines 9-11
[534] 6 April/136-137
[535] 6 April/106, lines 21-23, and 109-110

had got a gun in his lap, it is unsurprising that Q9 would continue to keep at least some of his attention on Anthony, to see if he was about to shoot someone. Q9 did not see Anthony move again.

457. No one else saw any movement from Anthony after the fatal shot. W4 and Mr Totton did not see him move, although, unlike Q9, their attention may not have remained on Anthony consistently[538].

458. Timings and distances indicate X7 is likely to have got to Anthony's window well before the fatal shot. It appears X7 got out of his car before it stopped, since, for the reasons set out above, the sound X7 heard was probably the alpha car colliding with the red Audi. In any event, X7 got out as quickly as he could[539]. He "ran straight over to the driver"[540]. The distance to the red Audi window was only a few meters. 100m can be run in less than 10 seconds, and an average fit male can do so in less 20 seconds, which is at 5m per second. Q9 and W4 said there were 3-4 seconds between when the alpha car stopped and when Q9 shot Anthony[541]. Q9 said he did not lift his gun and point it out of the window until after his car had stopped. He then shouted 'show me your hands'. The subjects did so for about 2 seconds before Anthony lowered his hand and was shot. Even if he did not get out until his car had stopped, X7 would have got the short distance to Anthony's window well within that 3-4 seconds.

459. X9's evidence supports the above analysis. X9's account is that when the CSDC was deployed Anthony had his hands raised. X9 got out of the Bravo car before it stopped, and ran the 3 meters or so from his car to the red Audi as fast as he could. That could not have taken more than a second or two. His initial account states:

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[536] 6 April/111
[537] 6 April/124, lines 9 to 11
[538] 18 April/70, lines 12-15, per Mr Totton;
[539] 11 April/128-129
[540] E.g. C/635
[541] 6 April/97-98

"…the Bravo slowed to a point where although not at a standstill, I was able to alight from my vehicle. I exited the vehicle via the rear nearside passenger door…

I then ran between the front of the Bravo car and the rear of the car and made directly to the front passenger window of the subject vehicle. I remained focused on the nearside of the car and without delay; I smashed the passenger window and deployed the CS canister into the vehicle. As I did so, I looked into the car and saw one male in the rear of the vehicle, and the driver Anthony Grainger, who upon the window smashing appeared to me to raise his hands from below the dashboard towards chest height, I believed either through shock of being challenged or to capitulate.

The CS canister deployed instantly filling the cab of the car with CS gas." Emphasis added, E117.

460. In his oral evidence, X9 said that he ran as fast as he could from his car to the red Audi[542]. He clarified:

"Q: … you even start your exit before your vehicle comes to a stop?
A: Yes, indeed I do.
Q: That is to give an indication of just how quickly you want to move into position, correct?
A: Yes.
Q: … you want to get to the car within seconds, literally. Would that be fair?
A: Yes, sir, yes…
Q: We are talking a couple, two or three seconds, maximum. Aren't we?
A: Yes, we are."[543]

461. X9 confirmed in oral evidence that Anthony's hands were raised after the window had been broken and CS gas deployed. He saw no sign that Anthony had been shot at this stage[544]. Anthony did not appear to be injured in any way when he raised his hands. He was able to raise his hands from below the dash board towards chest height.

462. Since we know, not least from Q9, that Anthony did not move again after being shot, what X9 saw – the CSDC being deployed and Anthony then

[542] 29 March/131
[543] 29 March/157
[544] 29 March/144/ lines18-23

raising his hands towards chest height – must have happened before the fatal shot.

463. X9 clarified that in saying Anthony may be capitulating he meant: "Giving up, giving in, surrendered."[545] X9 did not hear the report of any firearm before he deployed the CSDC or before Anthony raised his hands[546]. X9 was not wearing ear plugs[547]. There was nothing wrong with his hearing[548]. Q9 did not have a silencer on the gun he shot Anthony with[549].

464. The pathological evidence suggests that it is *theoretically* possible that Anthony could make the movements X7 and X9 describes after being shot. But what is in general possible must yield to the specific: what the eye-witnesses say in fact happened. Dr Rodgers noted that there is nothing in the pathology that tells us whether or not Anthony did in fact move after the fatal shot[550]. It is the eye-witness evidence that must determine whether or not Anthony did move.

465. G6's first account also indicated that X7 was at Anthony's window, covering him, at the time of the fatal shot. That account, written on 9 March 2012, was this:

> "As I rounded the front of the alpha vehicle I could see X7 in front of me challenging the male in the driver's seat. This male I now know to be Anthony Grainger 35 years. I then went along the driver's side of the Audi in order to get to the rear off side door and cover it. As I reached the front off side wheel arch of the Audi I was right behind X7 and I heard a shot…" (emphasis added) E/123.
>
> G6 went around the car to the rear off side door and later "heard a third shot" [E/124].

466. In oral evidence G6 clarified that in saying X7 was "challenging" Anthony, he meant X7 was shouting "armed police" and holding his MP5

[545] 29 March/ 171
[546] 29 March/131 and 144-145
[547] 29 March/117/ lines 13-14
[548] 29 March/156-158
[549] G2/655
[550] 12 April/43

on his shoulder, pointing it at Anthony[551]. G6 agreed that X7 was "covering the driver".

> "Q: …your colleague [X7] has clearly got Mr Grainger covered before you hear anything. Correct?
>
> A: Yes.
>
> Q: And then you hear a shot, as you describe in your first statement.
>
> A: Yes."[552].

467. The second and third bangs were from the shotgun. G6 indicated that X7 was next to Anthony very quickly. G6 said he (G6) was in the front passenger seat of the bravo car, and his vehicle was very close to the alpha vehicle – a few meters away. G6 only had a short distance to travel and got to the red Audi as quickly as he could[553]. G6 rounded the front of the alpha car, and as he was doing so saw X7 already at the red Audi driver's door.

468. In a written account dated 21 May 2012, G6 changed his evidence. He said that when he said in his 9 March 2012 signed witness statement that he heard a shot at a time X7 was next to Anthony, he actually meant he heard the window smashing: E/127. His new evidence is not credible, for these reasons:

a. G6 was a highly trained specialist firearms officer, and had been for 8 years since 2004, who would have heard the sound of an MP5 shot many times on the firing range[554]. His door was cracked open as his vehicle came to a stop. The MP5 shot is very, very loud without ear defenders[555]. He would have recognized the difference between an MP5 shot and a window smashing.

[551] 31 March/59.
[552] 31 March/87
[553] 31 March/85-87
[554] 31 March/63 and 79
[555] X7, 11 April/98, lines 19-22

b. Similarly, G6's new account is that he did not hear the MP5 shot. Again, this is difficult to believe, since G6 was very familiar with that sound, in a position to hear this very loud noise.

c. When he wrote his first account G6 knew Anthony had been fatally shot and this was the first fatal shooting he had been involved in. He had given the incident careful thought before writing his account and wanted to get it right[556].

d. G6's explanation for changing his account is not credible. He claimed he did not know until the end of May 2012 that the red Audi's window had been smashed. It was only then, he claimed, when he was told "CSDC was taken offline and that we weren't to smash the windows… it was at that point when I realized that that is exactly how it had gone into the vehicle"[557]. He could not remember who told him this.

e. It is not credible that G6 had not contemplated the possibility that the CSDC had gone into the red Audi by the front window being broken, before the end of May. After the shooting, G6 "pushed Grainger towards the passenger side of the [red Audi]"[558] where there was an obvious pile of broken glass, which can be seen in the photo at O1/517 and O1/245. G6 spent at least 20 minutes[559] standing a few feet away[560] from the obviously broken window and piles of glass when giving first aid to Mr Grainger. He must have been concerned to look inside the red Audi, just next to him, whether out of curiosity since a man had just been fatally shot inside it, to check what the other occupants were doing, or to check if there was a gun in it[561]. Even if he didn't look, it is difficult to believe that the extensive discussions he had with his colleagues and others in the days after the incident, or in

[556] 31 March/80
[557] 31 March/65
[558] E/124
[559] E/157, per Z15
[560] See M1/272, per David Griffiths
[561] Other AFOs accepted that one of the first things they would do is check for firearms, 5 April/ 122/lines 7-11.

the ‘re-orientation training’ before he wrote his account, he was given no cause to suspect that the CSDC might have gone in through a broken window.

469. U9 did not hear any shots being fired before the red Audi window was broken and the CS deployed into the vehicle[562]. He apparently got out of the Bravo, and was only meters from Q9, at the time when Q9 must have shot his weapon. U9’s hearing was fine. He had a respirator on but this did not interfere with his hearing. He accepted that a firearms officer on an operation would need to deploy and use all of his senses. Active hearing is an important part of the job. That was particularly true here, where he had been informed that the subjects may have been armed. He said he would certainly have employed his hearing to listen out for whether he was being shot at[563].

470. U2 was the driver of the Bravo car. He said this in his first account:

> “The officers in my vehicle got out and ran towards the car. I then applied the hand break of the vehicle and got out. As I opened my door I heard a loud crack, which though experience sounded like a conventional firearms report.” [E/132].

471. His oral evidence included this:

> “Q: Between you pulling up and applying the handbreak and hearing the crack, how long a time was there?
>
> A: Not very long, not very long…. Generally speaking I would be getting out of the car within a matter of seconds.
>
> Q: I am thinking in particular of between you pulling up and hearing the crack, so a couple of seconds?
>
> A: I couldn’t put a figure on it, but, yes, a matter of a couple of seconds at most.”[564]

472. When U2’s evidence is taken together with X9’s, it indicates that the gunshot occurred slightly after the CSDC was deployed. X9 was in the

[562] 28 March/77 and 29 March/4-6
[563] 29 March/2-4
[564] 30 March/136

rear passenger seat of U2's car. He got out before the car stopped. As noted above, he ran to the red Audi as fast as he could. X9 said this took "a couple, two to three seconds, maximum". Since the red Audi was only about 3 meters from where Bravo stopped, it is likely to have taken X9 only a second or so to get to it. U2 said it was "a couple of seconds at most" from the point he pulled up and put the handbreak on until when he heard the gunshot. But X9 got out of the car before U2 had stopped, and so was already running towards, or already at, the red Audi, when U2 pulled up and put the handbreak on.

473. Z15's account appears to support the conclusion that X7 was at Anthony's window before the fatal shot. When he first saw the red Audi, Z15 saw an officer at Anthony's window, "challenging" Anthony[565]. Z15 looked at the windscreen, and did not see a bullet hole in it[566]. Z15 had not heard a shot before this point. He was not wearing ear defenders[567].

474. The expert evidence is consistent with the conclusion that, before the fatal shot, Anthony turned to look at X7, and then flinched away from the red Audi's front nearside window being smashed and the CS Gas being deployed. The gunshot wound was at 45 degrees to Anthony's midline[568]. That means Anthony was turned 45 degrees away from the trajectory of the gunshot. That trajectory was considerably less than 45 degrees away from the midline of the red Audi (that is, the line running from the centre of the bonnet to the centre of the rear). This shows that Anthony was turned partly away to his right[569], at the time he was shot. Dr Seaman demonstrated this during his oral evidence. His torso was visibly turned significantly away to his right. The bullet track was also 10-20 degrees downwards through Anthony's body. That indicates Anthony was leaning forwards somewhat at the time he was shot.

[565] E/156
[566] 4 April/123
[567] 4 April/127-128
[568] Dr Lawler A/265c; and Dr Rodgers: 12 April/32, 47-48
[569] Q/71 and 12 April/85, per Dr Seaman

475. This means that Anthony was turned away from the front passenger window, and towards X7, at the time of the shot. That is consistent with Anthony having turned towards X7 who was standing at his window, and having then flinched away from the front passenger window being smashed and the CSDC being deployed.

476. The other expert evidence did not help as to whether or not CS gas was discharged prior to the fatal shot.

477. The evidence above supports the conclusion that X7 was at Anthony's window, covering him, in advance of the fatal shot. It also indicates CSDC was discharged shortly before the fatal shot.

Q9's version of events: no AFO near to the red Audi

478. Q9's evidence was that he saw none of his colleagues close by the red Audi at the time of the fatal shot[570]:

"Q: Was there anyone close by the car?

A: Not that I saw."

479. Similarly:

"Q: At the time that you fired your shot, you did not see any of your colleagues near the Audi?"

A: No…"[571]

480. Q9 was not in a position to say that his colleagues had emerged from behind the alpha vehicle before he fired his gun. He did not see them. He accepted he was not in a position to say that his colleagues were in the line of fire of Mr Grainger[572]. He therefore did not have grounds for believing they were at imminent threat of being shot by Anthony.

[570] 6 April/213/ lines 3-4.
[571] 6 April/103, lines 1-3
[572] 6 April/101-104

481. W4 supported Q9's account. W4 said that none of the officers were near to the red Audi at the time of the fatal shot. At the time of that shot, the AFOs were "still in the process of starting to deploy from [the alpha] vehicle"[573]. X7 was not near to the red Audi before the gunshot. W4 accepted that on his account, X7 was not at risk from Anthony at the time of the shot[574].

482. The following matters undermine the credibility of W4's evidence:

a. As Mr Beer put to W4 during questioning, there are a number of important matters that W4 either missed out or described wrongly relating to the precise moments just before the shots[575].

b. For example, W4's written account was: "I saw [Anthony]… drop down his right hand towards his lap". In oral evidence he was forced to admit that he could not have seen this. He could only see Anthony's sternum upwards – not his lap area. All W4 saw was Anthony's hand being lowered straight down – it was not angled towards his lap[576]. He could have been going to the door handle or ignition key or steering wheel. W4 had no basis for giving the impression, as he did, that Anthony was reaching for a weapon on his lap.

c. In oral evidence W4 said he thought Anthony was reaching for a weapon[577]. This was the very first time W4 had suggested this. It was not mentioned in any of his written accounts. It is incredible that W4 really did think this – central to the question of whether his colleague's decision to kill someone was justified - but omitted to put it in his statements. He could give no explanation for this[578].

[573] 10 April/174, 190
[574] 10 April/215 and 219.
[575] 10 April/168-169
[576] 10 April/169-170
[577] 10 April/171
[578] 10 April/182

d. Similarly, in oral evidence W4 said he was in fear for his safety. This was not in any of his written accounts. Again, he accepted this would have been a highly relevant matter, and if it had been true he should have put it into his statement[579].

e. W4 said there was "definitely not" enough time for X7 to get to the window of the red Audi[580]. That is not credible. W4 accepted that X7 may have got out of the alpha car before it stopped. W4 said it was 3-4 seconds from when the alpha car stopped until the gunshot[581]. There was easily enough time for X7 to get the few meters to the red Audi within that period.

f. In his first account W4 said he saw the red ultra dot on the two subjects. In oral evidence he accepted he could not see the red ultra dot. In oral evidence, W4 claimed he could see Q9's torch and the green strobe, but could not explain why he did not mention those in his written accounts. In oral evidence W4 said he drove onto the car park at normal speed and did not accelerate[582]. In his first account he said "Once I confirmed its position I accelerated towards the red Audi…".

g. W4's account is inconsistent with those of X7 and X9. W4 says that when those two men were next to the red Audi, Anthony did not raise his hands or move in the way described by X7 and X9[583].

483. W4's account included evidence that was consistent with that of Q9, yet was clearly wrong, in particular his suggestion that Anthony dropped his right hand towards his lap. It is also notable that W4 appears over time to have adapted his account in a way which fits better with that of Q9. There is a concern that his evidence may have been "contaminated" by what he has heard about Q9's account.

[579] 10 April/184
[580] 10 April/215/lines 15 to 17
[581] E/105, 10 April/186
[582] 10 April/158
[583] 10 April/191

484. It is difficult to see if anything can be taken from W9's evidence. W9's 9 March 2012 account included this:

> "As I ran around the back of the alpha car, my attention was I heard someone shouting "armed police show me your hands". As I began to shout "armed police" I heard a crack like ice breaking and a bang from a weapon being fired. I had my MP5 up and as I was in fear for the safety of myself and my colleague I put my safety catch to fire. As I ran towards the [red Audi] my attention was immediately drawn to a male in all grey wearing a black woolen hat, he had his back to me facing the rear of the red Audi… I do not recall seeing any other officers around the red Audi.": E/108 (emphasis added).

485. In oral evidence W9 somewhat altered his account. Rather than saying his attention was immediately drawn to Mr Totton, in oral evidence he claimed he looked over to the driver's side of the red Audi. Further, rather than saying he does not recall seeing any other officers around the red Audi, in oral evidence he said he actively saw that there were no other police officers near to the red Audi at the time of the fatal shot.

486. There are a number of reasons why W9's altered, oral evidence, that there was no-one at the driver's door of the red Audi at the time of the fatal shot, appears unreliable. His attention was focused elsewhere and he had at best a brief, obstructed glimpse of the driver's side of the red Audi:

a. W9 was initially looking away from the red Audi, as he ran around his vehicle.

b. At the point he turned towards the red Audi, W9 thought the police were being fired upon. His attention was immediately drawn to Mr Totton on the passenger's side of the vehicle. He was unable to see Mr Totton's hands. Even in oral evidence W9 accepted that his "main concentration was on Mr Totton", that seeing Mr Totton was a big surprise[584]. W9 would have been focusing on this potential lethal threat.

[584] 5 April/99/lines 21-25, and 5 April/133-134, 136

c. W9's oral evidence was that he only had "a quick look" or "a glance" elsewhere[585].

d. He had his respirator on, which impedes peripheral vision.

e. He was asked whether he saw the bullet hole in the windscreen and said "I might have looked towards that direction but I have not paid attention"[586]. He did not see the bullet hole.

f. He did not see inside the red Audi[587]. He did not see the driver. He did not see Q9 leaning out of his window. He did not see Q9's torch shining into the red Audi. Indeed, he did not see X7 deploying at all[588].

g. The fact that W9 did not see a number of obvious things indicates he only had a fleeting glance and may have missed X7 standing at the driver's door.

487. W9's oral evidence about where he was at the time of the fatal shot varied somewhat. It appears W9's oral evidence was that he was "going round the back, the boot area of the police Audi" at the time of the shot[589]. W9 said he got out when his vehicle stopped: "Q… I think you say you get out when the vehicle stopped, correct? A: Yes."[590] W9 accepted that X7 could have got out of the vehicle before him[591].

488. Mr Totton's account is different to both of those set out above. He indicated that the fatal shot occurred before the alpha car had come to a complete stop: "As that car has pulled up, before it has even stopped, that

[585] 5 April/99/lines 21-25, and 5 April/133-134, 136
[586] 5 April/98/19-25
[587] 5 April/99
[588] 5 April/132-136
[589] 5 April/93/11-21, and 99/21-24
[590] 5 April/128/lines 4-6
[591] 5 April/128-129

is how quick it was. As it has pulled in, that is when it happened…"[592]. That conflicts with Q9's version of events, which was that there were some 3-4 seconds before the shot.

489. There is inconsistent evidence about whether or not Totton was in the car at the time of the shot or when CSDC being deployed[593]. For example, Q9 indicated Totton remained in his seat until after the fatal shot[594], while W9 said Totton was out of the car at that moment. There appears to be an outline of CS residue on Totton's seat, which could suggest he was in it at the time of the shots[595]. There is no obvious CS residue on his clothing in photos, but there is no obvious CS residue on Anthony's clothing either [Q/50]. Totton was restrained by a number of police officers, on the wet ground, and this may have removed CS residue[596]. Dr Seaman could not say whether Mr Totton was in the vehicle at the time of the CSDC discharge or not[597]. In any event, the question of whether Mr Totton was in the vehicle or not does not, of itself, help determine whether the first or second version of events set out above is the correct one.

Whether the shooting was lawful: first version of events

490. On the first version of events, the shooting was not lawful for one or two additional reasons.

491. If X7 was next to Anthony's window, Q9 would have seen him:

a. X7 was in Q9's line of vision, right next to Anthony.

[592] 18 April/70, see also 64 and 79
[593] For example, X9 initially said that when he approach the red Audi he could see the driver and "could see there were other occupant**s** in the vehicle and I couldn't see what **they** had in their possession…": 29 March/138. The plural is emphasised to show his evidence was that there was a driver and more than one other occupants. He later changed this account and said there was no front seat passenger at this stage.
[594] 6 April/106
[595] O/297-298, 12 April/93, per Dr Seaman
[596] 12 April/91
[597] 12 April/63

b. X7 would have been in, or just outside, Q9's arc of fire. Q9 was trained to pay careful attention to the circumstances in front of him, including whether other officers are in or near his arcs of fire. There were a number of training exercises aimed to help AFOs pay attention to their arcs of fire[598].

c. Q9 was told in the briefing on 3.3.12 to assess arcs of fire: F/1290.

d. There was nothing blocking Q9's view which would have prevented him from seeing X7 there[599]. The front windows and the windscreen of the Red Audi were not tinted[600]. Moreover, the front driver's window, between Anthony and X7, was rolled down[601]. Q9 was very close[602].

e. Q9 was using an MP5 and the torch was on before he fired. Expert A6 says the torch provides "significant surround light for peripheral vision… **ideal** illumination in low light situations"[603]. Q9[604] and others[605] accepted there was some lighting from the buildings behind the red Audi which fell onto the car park.

f. W4 said that if X7 had been standing at the window when Q9 shot, he would have been visible[606].

492. Q9 would also have heard X7 at the red Audi driver's door, shouting. X7 said he shouted commands to Anthony before Anthony turned, with his hands raised, to look at X7. There was nothing wrong with Q9's hearing

[598] G1/75 (GMP confirmed Q9 had received that training on 10-14 May 2010: 21 April 2017 email from CTI at 15.18), see also G1/169, 171, 187, 927 and 947. Q9's extensive training is summarized at [G1/797-805] and see 5 April/185-187
[599] 6 April/127/lines 22-24
[600] O/152
[601] O1/114 and X7's evidence
[602] See Q/15 for example, which shows there was 188cm between Q9's window and the red Audi windscreen
[603] Emphasis added, H/206
[604] E.g. 6 April/83
[605] W4, 10 April/193; G6 31 March/53-54; V3: A/170.
[606] 10 April/193 and 215/lines 9 to 12

and he probably would have heard X7's command to Anthony, if it occurred before the fatal shot[607].

493. If Q9 was aware X7 was next to Anthony, the shooting would not have been justified. Q9 essentially accepted that, if X7 was there, it would not have been necessary for him to shoot Anthony:

"If X7 was there then my job would have been redundant then".

494. Likewise, W4 accepted that there would have been no need for Q9 to shoot Anthony if X7 were covering him, by his window[608].

495. The reasons why Q9 was bound to accept that the shooting would not have been necessary if he saw X7 covering Anthony, are that X7 had a much better view of what Anthony was doing with his hands; he had his gun pointing at Anthony from a foot or two away; and he had Anthony covered. It would not have been necessary for Q9 to shoot Anthony, because X7 would have done so if there was a sufficient threat.

496. Further, or alternatively, if CSDC was discharged prior to the fatal shot, the shooting would not have been lawful:

a. Q9 would have seen the CSDC instantly fog the inside of the red Audi. The video clip of CSDC being used shows it immediately fills the inside of the car with an opaque gas, which would have been entirely obvious to Q9. X9, who discharged the CS gas, said it "instantly filled the can of the car with CS gas"[609]. He said this was "instantaneous"[610]. Q9 says the CSDC "fogged the car"[611]. That meant Q9 could no longer see the driver at all, and could not see that Anthony posed a threat[612].

[607] 6 April/128-129
[608] 10 April/192
[609] A/109
[610] A/112
[611] B/58, albeit Q9 claims this occurred 10 seconds after he shot Anthony
[612] 6 April/112

b. There are three reasons why, after Q9 had seen the CSDC fog the car, he would not have been justified in shooting Anthony. Firstly, Q9 understood the CSDC would incapacitate the subject. X9 said that CS is likely to prevent the subjects from being able to shoot at officers or the public. He said that if CSDC is discharged, and if the subjects "are in possession of a firearm… they would not be able to aim that weapon or fire it at any of my colleagues". That is because of the shock and distraction of the window being broken, the canister being deployed and the effects of the incapacitant. X9 said his colleagues would have recognized this, from their training[613].

c. Secondly, an apparent explanation of Anthony lowering his right hand was in reaction to the CSDC being deployed. Q9 did not have reasonable grounds for believing it was necessary to shoot Anthony because there was an imminent threat of Anthony picking up a gun and shooting an officer, since Anthony may well have been reacting to the CSDC.

d. As has been seen above, X9 agreed that someone smashing a window immediately to your left when you are in a vehicle will produce a reaction immediately. As Y19 put it, after CSDC is discharged, "you obviously go to the self preservation bit of I need to get rid of the irritant out of my eyes and such. So you can make undue movements". Anthony may have been grabbing for the door handle to get out, or for his T-Shirt to cover his mouth, or gripping the steering wheel in shock. X9 thought that Anthony may have flinched in response to the CSDC being deployed[614]. U9 said that when he (U9) opened the rear red Audi door Mr Travers was hunched down from the CSDC being put into the car.

[613] 29 March/162-163, see also 61-62
[614] 29 March/168/ lines 17-25

e. Thirdly, while the CSDC fogged the inside of the subject car, Q9 would not be able to see anything that demonstrated Anthony posed an imminent threat.

Whether shooting was lawful: Q9's version of events

497. Q9 said he fired because he thought Anthony would shoot "laterally", with his gun out of Q9's sight, either across David Totton or through the red Audi driver's door. That is, Q9 said he fired because he thought Anthony would shoot:

> "A: Laterally across the car, laterally across the car so either laterally to his left through the passenger door/passenger window or upward towards the driver's window." [615]

498. Q9 did not claim that he shot because Anthony posed a serious threat by somehow shooting through the engine of the red Audi. Q9 was concerned with the threat of Anthony shooting sideways, or laterally.

499. But none of the AFOs were at imminent risk of being shot by Anthony "laterally". They were not to the right or left of the red Audi, near to its front doors, in a location where they might have been shot.

500. Q9's evidence was that he saw none of his colleagues close by[616]. Q9 "had no idea where X9 or W9 were", or indeed where X7 was[617]. He therefore had no basis for believing they were at imminent threat from Anthony[618]. Likewise, W4 said the AFOs were "still in the process of starting to deploy from [the alpha] vehicle"[619] at the time of the shot. W4 appeared to accept his account implied that X7 was not at risk[620].

501. So on Q9's own account, he did not believe there was an imminent threat of one of his colleagues being shot. By the same token, the shooting was

[615] 6 April/100 and 212
[616] 6 April/213/ lines 3-4.
[617] 6 April/101
[618] 6 April/101-104
[619] 10 April/174, 190
[620] 10 April/219,

not "absolutely necessary". It was not necessary because there was an alternative option which would have protected his colleagues. Q9 could have paused, at least until his colleagues were visible and moving towards the red Audi front doors, to see whether Anthony was reaching for a gun rather than the door handle.

502. Q9 did not appear to try to justify the shooting on the basis of a pre-emptive strike, to prevent Anthony from lifting up his gun over the dashboard and then firing it through the windscreen or windows. The shooting would not have been justified on that basis. Q9 would have been able to see that Anthony had picked up a gun before he (Anthony) was able to aim and then fire it. Q9 was about 1.88m away and was focused on Anthony. He had his firearm aimed at Anthony's chest, Q9's finger on the trigger guard, his laser sight trained on Anthony. Q9 could have shot Anthony in a split second if he had seen a gun or seen Anthony move in a way which indicated he was about to shoot[621].

503. In consequence, even if Q9's version of events is accepted, then this provides an additional reason why the shooting was unlawful.

(e) Other issues

504. It is sometimes argued by those who represent the police that, essentially, the fact that an officer shot someone dead proves it was justified. It is argued that the officer would not have shot the deceased unless he honestly believed there was an imminent threat. That submission is misconceived. It would imply that every police shooting is automatically lawful. The fact that Q9 shot Anthony does not itself prove he honestly believed there was a threat. We do not suggest that Q9 set out that day to kill Anthony. But police officers make errors. Q9 should be judged on the circumstances as he perceived them to be, not by reference to a generalized presumption of innocence.

[621] 6 April/176

Subsequent developments

505. Totton and Travers were found with balaclavas rolled up, on top of their heads. That suggests they thought they might need to disguise their identity, whether because they were in a stolen car conducting reconnaissance, or for some other reason. DC Talbot said balaclavas could be used for any form of serious criminality[622]. It is a leap too far to suggest this proves they were about to commit a robbery.

506. Anthony did not have a balaclava on. Instead, a black woolen hat (not balaclava) was found on the floor near to the driver's side of the Audi[623].

507. Totten, Rimmer and Travers offered guilty pleas to conspiracy to steal (rather than rob) cash from G4S, Lloyds TSB and Sainsburys before their trial[624]. As Ms Moore noted "the basis of this plea was that they were in the relevant supermarked car park with a view to stealing cars rather than as the prosecution allege, to attack cash in transit vehicles"[625]. To state the obvious, theft is a crime that does not involve violence or weapons. It is not clear exactly to what this related. There was no Lloyds or G4S in Culcheth[626]. There was a Sainsbury's in Culcheth, but there was also one in Stoke. The Lloyds appears to have been in St. Helens[627]. Their pleas were not accepted. They were acquitted at trial of robbery.

(7) Training and competency

508. There are serious concerns relating to the training of officers involved in this case. They include that a number of the officers centrally involved in this incident were not competent to perform the roles they did.

509. Mr Arundale deals with this topic in detail in his first report at §147 onwards, in his supplementary report and in oral evidence. We agree with

[622] 10 Feb/78
[623] M/326 and I/128
[624] I/129, and H/88
[625] 21 Feb/52
[626] F/1283
[627] W/78

his analysis and do not repeat more than a summary here. We draw attention in particular to the serious concerns he summarises in his supplementary report at §96 (d to g).

510. **Y19** was not operationally and occupationally competent to perform the role of tactical advisor for Operation Shire on 3 March 2012[628]. That is essentially because it was a requirement of national policy introduced on 10 June 2011[629] that, in order for a tactical advisor to be competent to give advice in an advanced option, such as MASTS, the tactical advisor was required to be trained in that specialism[630]. Y19 he had not done the MASTS practitioners' course. He had been involved in no MASTS training sessions or operations in the 12 months up to March 2012[631]. Alan Wood says this was an "unequivocal bar" to advising on MASTS[632].

511. This lack of experience was significant for this operation. Mr Williams indicated that Mr Allen and Y19 had "a lack of knowledge in the MASTS tactic, and hence they were unable to formulate rationales for decisions as they didn't know what alternatives there were". Y19 accepted this[633]. He had never been involved in an operation before this one when CSDC had been considered[634]. Mr Arundale explained why operational competence in MASTS was important in general, and of particular importance in this operation where advanced options, MASTS and special munitions, were being used. Mr Arundale indicated that Y19's lack of technical competence was not a technical breach. It increased the risk to the subjects of this operation, and had potential consequences for what happened[635].

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[628] Mr Arundale, 27 April/118, lines 10-13
[629] 7 March/86. GMP accept this at §35 of their Opening Statement, as did Y19: 21 March/100-101. See also Mr Arundale §179. It appears there was a failure by GMP to take note of the change in national policy, as described on 7 March/86-91
[630] 19 April/43-44
[631] Mr Lawler, 7 March/88
[632] H/187
[633] X43, 21 March/177
[634] 21 March/143
[635] §180 of his first report, and 26 April/112-119

512. **Mr Allen** was apparently not competent to perform the role he did. He had the role of a "planned tactical adviser" for this operation[636]. The GMP SOP for Firearms and TAC advisers says that planned tactical advisers should "have either observed or are practitioners in" 8 tactics. Mr Allen was not a practitioner in 4 of them, including the tactic of dynamic intervention[637]. This may have been significant. It appears that an additional reason why he should not have given advice for a pre planned operation was that he had not been authorized as a planned tactical advisor[638]. PS Allen had also failed recent training[639]. Mr Arundale says "a fundamental question remains about [PS Allen]'s actual experience as a MASTS AFO" §177.

513. **Z15** ought not to have been undertaking the duties of an AFO on 3 March 2012[640]. He failed a Metropolitan Police SFO course on 27 February 2012. He committed 6 safety breaches, including at least three extreme safety breaches in potentially life threatening situations. If the failure had been communicated to the Chief Firearms Instructor at GMP, Marcus Williams, he would have suspended Z15's authority, and Z15 would have played no part in the operation on 3 March 2012.[641] However, there was a failure to ensure Mr Williams received records of the training outcome. This was at least in part the fault of GMP in failing to distribute or to obtain the course records[642].

514. Mr Arundale concluded that Z15's failure, and the question of whether he should continue to be permitted to deliver advanced firearms options, required immediate assessment by GMP upon Z15 being sent home from the course. He said:

> "The safety breaches evidenced on the part of Z15 are so fundamental and inherently dangerous that I cannot envisage any force taking action

[636] 21 March/52
[637] 21 March/9-11
[638] 21 March/11-12
[639] K/321-388 and 909
[640] Mr Arundale, 27 April/118, lines 13-16
[641] X/19-21; 19 April/111
[642] Marcus Williams, 19 April/97-98

other than immediate suspension from all AFO duties whilst the situation was fully assessed"[643].

515. Similarly, Mr Lawler said he would have expected the course outcome to have been communicated to GMP promptly, either on or immediately after 27 February 2012, in part because Z15 may have been in action the next day after the course[644].

516. Z15's authority should have been immediately suspended and he should not have taken part in the MASTS operation on 3 March 2012, given the "life-threatening" nature of his performance on the course[645]. When senior officers discovered about the course failure, Z15's authority was suspended. That ought to have happened, for the same reasons, prior to 3 March 2012.

517. However, Mr Williams, who was ultimately responsible for deciding whether Z15 should continue to be operational, said he did not get the course reports until 2 weeks later – after the shooting[646]. It appears, although is not clear, that the fault was either with Z15 or Mr Nutter. An email on 27 February 2012[647] from the MPS to Mr Nutter informed him that Z15 had been asked to leave the course due to safety issues, and that Z15 would bring his feedback reports back the next day. Mr Nutter did not remember whether Z15 had done so or not.

518. **Mr Granby** failed a Northern Irish Specialist Firearms Commander course on 15 April 2011 [U/5]. The failure did not automatically mean he was not competent to continue in the role as TFC, and Mr Granby had passed some other courses. However, Mr Granby failed to satisfy a considerable number of the course's performance criteria. Although the course was focused on specialist operations, his performance appears to have been poor in areas of expertise that he would need as an ordinary

[643] Supplementary report, §75, see also 26 April/123
[644] 8 March/73-74
[645] 8 March/79-80, Mr Lawler; Mr Arundale, supplementary report, §96(g).
[646] E.g. Mr Nutter's evidence, 21 April/95-97
[647] See 27 Feb 2012 email to Mark Nutter at Y/296-297 for example

TFC. For example, there were significant failures in his use of the conflict management model ("CMM"), which is fundamental to firearms commander decision making[648]. Mr Arundale's supplementary report notes, at §84:

> "Having now heard Mr Granby's oral evidence my opinion is not further strengthened by his lack of application of the CMM/DMM throughout Operation Shire, his failure to proactively lead and influence the operation and the level of unchecked assumptions he made regarding key issues…"

519. At §154 onwards of his first report, Mr Arundale noted that the concerns raised about Supt Granby were "very relevant" to his role as a TFC for a MASTS deployment (§162); and "were so fundamental to his role, that his removal from firearms command issues should have been given serious consideration" (§163). It was not properly addressed and considered by GMP[649].

520. Mr Granby informed Mr Lawler about the failure and reasons for it, in April 2011. Mr Granby says he also informed Dave Anthony, Neil Wain and Ian Hopkins[650]. Mr Arundale states that "a 'failure' as significant as Supt Granby's" should have been brought to the immediate attention of the Chief Officer. He recommends that there should be a mandatory requirement (§157) that written feedback from all courses should be formally and independently forwarded to the responsible person, who should consider the implications (§166).

521. It is unclear whether X9 was properly trained, particularly in the use of CS gas: Mr Arundale §189. Mr Arundale did not consider that X7 was technically occupationally competent for the role that he was expected to carry out on 3 March 2012[651].

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[648] Mr Arundale, 26 April/94, see also U/12
[649] Mr Arundale, 26 April/86 and 27 April/119, lines 1-8
[650] U/30 and 23 March/39
[651] 26 April/100-101, and 27 April/118, lines 19-22

522. There are a number of more general concerns about the organization of GMP firearms training. Mr Williams was head of firearms training unit and the force's chief firearms instructor on 3 March 2012. He said there were a number of problems in the firearms training unit when he arrived. He could find no training records for firearms officers at all. This caused him significant difficulties in terms of monitoring officers' training, and knowing whether they were qualified. It was "a very frustrating time for me", he said[652]. He also explained that funding and staff reductions had been "too severe and left the Unit unable to deliver the required volume of training and for it all to be recorded appropriately"[653]. This gives the impression of a training unit in disarray.

523. Those matters demonstrate a serious systemic failure. It was serious because it impacted on the operation that led to Anthony's shooting. For example, the systemic failure to communicate training records to responsible firearms instructors in GMP meant Mr Williams did not get sight of Z15 or X7's training outcomes before Anthony's shooting. It was serious because it applied to the whole GMP firearms training unit, potentially affecting all AFOs within that force and a large range of firearms operations. That could put the wider public at risk. And it was serious because if we heavily arm police officers and ask them to conduct high risk, fast paced arrests, it is of great importance that everything possible is done to ensure the officers are properly trained and supported.

Conclusion

524. Anthony's family respectfully invites the Chairman to identify clearly and in detail the fundamental failings from the start to the finish of the operation that led to his fatal shooting. That is for the sake of Anthony, his children, and his family, since Anthony would still be alive today if the operation had been conducted properly. But it is also for the sake of others who may find themselves in a similar situation in the future. The lives of the subjects, the police and the wider public are at stake in these high-risk

[652] 19 April/100-105
[653] H/275

operations. It is rare that independent scrutiny is brought to the secretive GMP firearms and intelligence units, particularly with the level of exposure and expertise that this inquiry has involved. It is an invaluable opportunity to learn how changes may be made to prevent others being shot in the years to come.

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12 May 2017