

Closing Statement on behalf of Greater Manchester Police

Scope of this Document

1. This document does not and cannot purport to deal with every relevant issue and piece of evidence. It is intended to assist with core issues. We do not intend to read it out in its entirety. It is longer than we would wish but this reflects the large number of witnesses called to give evidence from GMP and the breadth of the TOR. We have deliberately recorded our detailed factual submissions about certain aspects in attached appendices for ease of reference and to avoid referring to them in oral submissions. We are conscious of the scale of the task facing the Chairman as he prepares his report.
2. The ambit of the Inquiry has been wide. We think that the central issues, encapsulated in the terms of reference remain the central issues. That being so, we intend to structure this document along the lines of the TOR including, where necessary, as subsets, related issues that have arisen as the Inquiry progressed. When assessing the evidence for the purposes of reaching any necessary conclusions, we anticipate that the Chairman will be greatly assisted by re-reading the statements of those witnesses called to give oral evidence, especially those who are, or who may be, the subject of criticism. When doing so, we respectfully invite the Chairman to bear in mind that when such statements are prepared it is not with a view to anticipating the number of issues or level of detail operating in this Inquiry process.
3. This document is drafted without sight of how CTI will advise the Chairman on legal issues. The benefits of a legal document from CTI before oral submissions are made include the potential avoidance of repetitious submissions in written and oral closing submissions, often an agreed approach to the issues that require legal definition and most importantly a transparent understanding of the advice that the Chairman will receive about the application of legal principles to his task. We understand that, instead, CTI prefers to provide a reactive response, if necessary, to the submissions of others. We had hoped to avoid the risk of serial submissions but we reserve the right to make further submissions in the event that there is disagreement about the operating legal principles.

4. Likewise, it is not known what legal principles or issues the other CPs will identify. Naturally Article 2 and the question of whether Q9's use of force was justified will feature. We will deal with the use of special munitions by Z15 and X9 later in this document, neither of which, we submit led to the death of Mr Grainger or risked life to any other. We reserve the right to respond in oral submissions to any legal submissions made which impact upon GMP. We confine ourselves to a succinct statement on the law:
 - a. There can be no doubt that this Inquiry must satisfy the investigative obligation arising from Article 2 notwithstanding the unfortunate passage of time from the date of Mr Grainger's death to the conclusion of this phase of proceedings. It is well settled that an Article 2 investigation must address the principal issues arising from the available evidence. Here therefore (and without quoting at length the underlying case law because it is not necessary) the Inquiry is required to scrutinise whether the force used was strictly proportionate to the aim of protecting persons against unlawful violence – i.e was no more than absolutely necessary and whether the operation was planned and controlled so as to minimise, to the greatest extent possible, recourse to lethal force. Case law also makes it clear, finally, that the purpose of an Article 2 investigation is to ensure that so far as possible 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 a relative may at least have the satisfaction of knowing that lessons learned from the death may save the lives of others.
 - b. The Chairman has a wide discretion as to the approach he takes to the evidence. He is entitled to reach conclusions without being bound by rules designed for other types of court case and without feeling constrained by any one standard of proof. He is bound by section 2 of the Inquiries Act 2005 and should, we submit, remain conscious about the way in which any findings which imply fault are expressed and should identify the standard of proof used, so that the reader of his report can understand fully the force and reasoning of what has been found. We endorse the approach of Sir Christopher Holland in his report into the death of Azelle Rodney (Para 1.12):

“As to these issues my task is twofold: to find facts and to make judgments upon them. Given the essential nature of an inquiry, I see my task as inquisitorial and unfettered by any fixed burden or standard of proof. That said, when making a finding that does not reflect common ground, I will record the degree of confidence behind the finding.”

- c. As in Azelle Rodney, the Chairman here has the power to set out findings whether or not those findings are material to causation as strictly defined. Sir Christopher Holland indicated:
- “I believe I should exercise that power by being as candid as possible about my findings and the reason for them. That is conducive to allaying public concern. If I reach a conclusion that something could have been done differently and that it had some potential to make a difference in a life-or-death situation, then it may lead to a useful lesson being learned. If I am clear that it would have made a difference in Azelle Rodney’s case then I should obviously say so. Equally if I am clear that it would have made no difference, or I cannot be clear either way on causation, then I should also make that plain” [para 1.14]*

- d. We are aware now of the summary of the law on use of force to be provided by those acting on behalf of Q9 and in particular the submissions about the recent Court of Appeal case arising from the Duggan Inquest¹. We gratefully adopt Q9’s submissions. We observe in addition that section 3(1) of the Criminal Law Act 1967 applies to those tasked with arresting Mr Grainger and his companions:

“A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large”.

5. Accordingly and in light of the above, this document is designed to assist in identifying those issues within the TOR which, we suspect, rest on common ground and those which do not. It will also deal with causation. Before we turn to those issues and TOR, we wish to make some preliminary observations.

Role of GMP in the Inquiry Process

6. We indicated at the outset that GMP fully supports the purpose of this Inquiry and that obviously remains the case. We also indicated that GMP

¹ [2017] EWCA Civ 142

considers that it has a necessary and important role in providing as much information and evidence as possible, even if that points to internal or individual fault. That too remains the case, whatever the views of others and regardless of the logistical challenges over disclosure that have arisen given the breadth of issues, individuals, departments and categories of documents / information. GMP corresponded with the Chairman in mid-March 2017 to explain the history of disclosure to date and the actions in hand to continue the process. That process has continued to require the input of an extended team and the time-consuming process of redaction, sometimes of duplicated documents. It has led to information which is both positive and negative in terms of practice and procedure. At all times, the process has been conducted in good faith.

Expert Evidence

7. We foreshadowed in our opening remarks the organisational inability to agree with all of Mr Arundale's conclusions. That remains the case but there is a great deal of agreement. As before, we acknowledge that Mr Arundale has endeavoured not to apply unrealistic standards and has sought to be fair. We re-state that where GMP disagrees with some of his views, it is because, as he himself acknowledged, there can, reasonably, be differences, sometimes wide differences of opinion, about operational issues and about time critical judgments, neither of which are exact sciences. That much is evident from a reading of all of the expert reports commissioned by different agencies in the wake of Mr Grainger's death and we submit that it is something that the Chairman must be very alive to. It is of interest that once the Core Participants had questioned Mr Arundale, Mr Beer did not ask further questions of the expert stating "*Sir, in the light of the very modest challenges made to Mr Arundale's core conclusions, I don't have any questions for him*". GMP cannot challenge Mr Arundale's conclusions. Nor can any other CP. Mr Arundale is a sole expert witness. To challenge his views, alternative expert evidence is required. That was not available here as the other experts were not witnesses. The only other way to challenge expert evidence is to demonstrate that the factual basis upon which it is premised is wrong. The facts are for the Chairman and we cannot therefore at this stage challenge Mr Arundale on that basis. All that we can do, and all that we could ever do, is to ask him whether he would agree or disagree with any alternative propositions. In that way our questioning of him is, as we indicated at the outset, a naturally limiting exercise.

8. Every day, up and down the land, juries are told that they do not have to accept expert evidence even if it is uncontested. In deciding what weight, if any, to attach to the expert's evidence, the tribunal may take into account his or her qualifications, experience, credibility, and whether the opinion is based on established facts or assumptions. Mr Arundale has immersed himself in the policy and procedure of armed policing. In that sense he is qualified as an expert. He knows as much, no doubt, as there is to know about the operative Codes of Practice, Manuals of Guidance and parts of the National Police Firearms Training Curriculum. He has considerable experience of holding senior roles within predominantly rural forces. He can provide a knowledgeable opinion on whether policy and guidance has been complied with. His opinions range widely in his two reports and include how course failures should have been handled and how AFOs should have acted on the ground. The Court is naturally entitled to accept any of the opinions expressed by Mr Arundale but should, we submit, take real care in doing so bearing in mind some of the limitations of his experience. He has never been an AFO. He has been exposed to specialist techniques and training but has never had to deliver or pass the courses that are now the subject of his and your scrutiny. He has never been a firearms instructor or chief firearms instructor managing the training requirements of a large Firearms Training Unit. He has never worked in or with a sizeable cadre of commanders or had to resource a cadre of the size and type operating within GMP. It is of genuine concern that he could not, after expressing his opinions on the judgment and decisions of AFOs, TACs, X7, Mr Granby and Mr Sweeney, provide the Chairman with any indication at all of how many MASTS deployments he had commanded in any capacity (in forces which are predominantly rural). He was able to refer to one MASTS example of country house burglary/cash point theft. In his report he has set out in some detail his command experience with the implicit purpose of conveying the sense that he is eminently qualified and experienced to comment upon the command issues raised by Operation Shire which is a case about a MASTS deployment as well as other things. Yet in answer to our questions:

- a. Mr Arundale conceded he did not profess to have experience in a force bearing any resemblance to GMP;
- b. He could give no indication of the number of "Shire" type deployments he had commanded either as a TFC or SFC. He had no experience of investigating one and therefore no experience of

conducting the duties that an SIO would need to conduct when engaging with Firearms commanders.

- c. When pressed to give even a general representation of the number of MASTS deployments he had been involved in eg less than ten or more than fifty, he declined on the basis that it was “*very difficult to say*”. We, in turn, find this inability, puzzling on the part of an expert in firearms policing who is opining upon a MASTS deployment. The reality, we suspect, is that Mr Arundale’s actual experience of MASTS deployments is extremely limited and his experience of MASTS deployments risking non-compliance by subjects who might be armed possibly non-existent.
9. We therefore submit that the Chairman must consider with care, when analysing Mr Arundale’s evidence, the type of experience as an expert he brings to a particular issue. In any other forum, the specific experience of an expert is of critical relevance to the weight to be attached to their views. Any doctor commenting on the care, substandard or otherwise taken by, say a surgeon would rightly be questioned about the number of such procedures he or she had performed and when - or if questioned about a failed diagnosis, would be quizzed about how many patients he or she had treated with a comparable disease/condition. Any difference of opinion between pathologists might ultimately be settled by considering how many post mortems involving the same type of each had performed. The same applies here. The Chairman, we submit, must ask himself whether Mr Arundale has enough useful experience of “doing” to have the final word. He has not held a firearms command role since 2008 and when he did prior to 2008, he operated in force areas which may be landlocked and may be near conurbations but are nothing like GMP or West Midlands. We submit that the Chairman should set Mr Arundale’s experience alongside the detailed explanations and rationales given by those whose judgment he has questioned – officers who actually do the job, officers who have to pass the training not just observe it, and officers who deal on a daily basis with organised criminals affiliated to large associated OCGs, geographically embedded in communities where surveillance officers stick out like sore thumbs. It also makes a comparison of his experience with that of the experts from whom the Inquiry has not heard, interesting. Their opinion on tactical and operational MASTS related issues might (and probably is) more informed from a practical point of view. We do submit that the Chairman should read their collective evidence (and in particular the description of their professional backgrounds) in order to understand the

acceptable divergence of views and how that might apply to the witnesses tasked with commanding Shire from a firearms point of view and to the officers on the ground. Fairness requires this, given the inability of CPs to challenge the expert evidence.

10. Nothing that has emerged during the course of the Inquiry has lessened the view taken by GMP (and previously the CPS) that on 3 March 2012, Mr Grainger was at an advanced stage of committing, with others, a serious criminal conspiracy. GMP maintains that the suspicions held by those investigating Mr Grainger, David Totton and Robert Rimmer were both reasonable and correct, just as the suspicions held about those subsequently convicted as part of Operation Shire 2 were reasonable and correct. The subjects of Operation Shire were rightly viewed, as Mr Arundale agreed, as high risk and dangerous individuals who were surveillance conscious, sophisticated in their offence planning and determined to commit serious crimes and to evade detection and apprehension. You do not need to be surveillance conscious unless you are committing crimes. Your consciousness does not need to be as sophisticated as that demonstrated by all three subjects (and the Corkovics) unless the criminality is very serious and likely to attract lengthy custodial sentences. The Inquiry chose to call David Totton to give evidence. Whether he gave evidence upon which the Inquiry could safely and properly rely, will be a matter for the Chairman to assess, alongside the extent to which his evidence was exposed to critical scrutiny. During the course of his evidence however it was apparent that:
 - a. The “Fenton” debt account lacked any semblance of credibility – the subjects were present in Culcheth to commit a serious robbery which was likely to be accompanied by the use of weapons to threaten or exert force. Q9 was entitled to view them thus. If, and only if, business was unproductive, the sought-after robbery would become a recce;
 - b. The Audi was deliberately used by Mr Grainger (and the others) for its ability to perform in a flight/pursuit situation. It was parked very deliberately in the corner plot – as Totton said:
“to plot up...it was the one we felt comfortable with...because we could get to see what was coming in and out of the car park”
 - c. The subjects would have done everything they could to avoid arrest in a disruption situation;

- d. Mr Grainger knew exactly what he was doing and who he was doing it with and assumed all the risks that go with being a close associate of someone like David Totton. Those risks included apprehension by armed officers.
11. Despite the many hours understandably spent dissecting the planning of this operation, we venture to submit that the Cousens, Sweeneys, Granbys, X7s and X9s of the world, familiar with the reality of serious crime in Salford would have a keen and ready appreciation of the four propositions advanced in paragraph 10 above. None of that comes from sitting on committees or from a manual. It comes from operational experience and it is very relevant to their decision making.
 12. **Summary of Core Submissions**
 13. This reality and other relevant factors that we will deal with means, in our submission that²:
 - a. Regardless of the deficiencies in record keeping within logs and in spite of the intelligence errors, the deployment of armed officers to support surveillance and to arrest the subjects on 3.3.12 was appropriate. It was appropriate on 25 and 26 January even without the closed material. The SIO reasonably operated on an understanding that intelligence received in the early evening of 2 March 2012 indicated that the subjects including Mr Grainger were planning to commit a robbery on 3 or 5 March. Mr Totton's evidence about their presence on 3.3.12 was not capable of belief;
 - b. The threat individually posed by Mr Grainger was, if anything, underestimated by the planners and the AFOs. His role and that of Mr Rimmer in the 2005 Preston robbery was misrepresented to AFOs in the relevant briefing on 3.3.12 and it ought not to have been. Totton's suspected role should have been alternatively expressed so that its accuracy and reliability was qualified. Whether any perception by Q9 of Mr Grainger's individual /collective threat contributed to his thought processes is a matter for the Chairman, as is the effect of the inaccurate depiction of the 2005 Kirkham

² We do not deal with the honestly held belief of Q9 as it will be the subject of separate legal/factual submission by Mr Davies QC.

robbery. The AFOs could realistically have been provided with more individual and collective information which would have caused the threat posed by Mr Grainger to have been viewed just as seriously and would have caused the collective threat to remain assessed, correctly, as high (especially given the factor of an unknown 3rd party – Travers) and as one which connected certainly Totton and Mr Grainger to previous suspected armed robberies involving firearms. The threat posed by the group was correctly assessed in the sense that it was legitimately suspected that the subjects were associates who knew and endorsed each other's criminal history – in Totton's case in particular, a history of violence and suspected offending with firearms. It was legitimately suspected that the subjects were conspiring to commit the type of robbery that usually involved the use of firearms or other weapons and Q9 was lawfully entitled to perceive them as such;

- c. The threat assessment conveyed in a firearms briefing is important and relevant but it is the situation on the ground that ultimately drives the judgment and conduct of deployed AFOs. Most of the AFOs agreed with this. As Supt Ellison said (approved by Mr Arundale)
“The AFOs don't need to know all of the nuances and the ins and outs of each individual. They need to know they are potentially faced with the 2 vehicles, with the subjects and or associates who may be in the vehicle with the intent of committing a cash in transit robbery...the ICI section gives them some indication of the potential behaviour that a subject or associate might exhibit but beyond that they are trained in their own way as AFOs to respond to what they see before them.”
- d. It was reasonable to plan and command throughout the 3.3.12 and at 18.30pm on the basis that the subjects were in the advanced stages of conspiring to commit armed robbery and that they had or might have access to firearms or other weapons or be “otherwise so dangerous”. We set out in Appendix 1 the relevant information around the assumed “Intent” of the subjects;
- e. MASTS with the contingency of special munitions was an appropriate choice in terms of tactical options and remained so reasonably throughout. The authorisation to deploy such munitions would have been even more justified had the relevant officers known about the 1997 incident involving Mr Grainger;

- f. Disruption, could, as a contingency have featured more in the planning and record keeping. Given the variables of what may occur (and without knowing where it would occur) at the planning stage, there was not much, meaningfully, that could be planned. Some commanders might have opted for a form of disruption (format unknown) shortly before or after 7pm. Other reasonable commanders would not;
- g. There were deficiencies in log keeping by the SFC, TFC and TACs. The TAC logs in particular make it very difficult to understand what tactical advice was given and why;
- h. Insufficient care at a collective and individual level was taken in the preparation of the briefing for AFOs to ensure the accuracy of all of the information provided to the AFOs. The briefing contained avoidable errors;
- i. It was reasonable to call State Amber and State Red when Mr Granby and X7 called them and Mr Arundale does not suggest that it was unreasonable. Other reasonable commanders might have waited or called them earlier;
- j. It was reasonable to call a strike on the Audi, to “T bone” the subject vehicle and for Q9 to provide static cover as he did. The attending AFOs were highly trained and able to deal with last minute or even unspoken manoeuvres;
- k. The use of CS per se and the shotgun breaching rounds was honestly considered by X9 and Z15 to be justified but in any event played no part in the death of Mr Grainger. Both were deployed after he had been shot and neither caused a real or immediate risk to anyone’s life;
- l. The potential involvement of others and the planned secretion and removal of a weapon at the scene cannot be ruled out. The Inquiry has heard no direct evidence about this. The true situation will never be known. The Chairman will ask himself why the subjects were waiting and what they were waiting for. He will bear in mind that the search cordon was very limited and therefore the failure to find weapons in the car and car park is not determinative of the issue;

- m. There is no evidence that Mr Grainger's arrest was in any way connected to the police investigation known as Operation Samana, and that earlier suggestion has not been pursued, rightly, with any vigour in these proceedings.
14. As we understand it, (leaving k, l and m aside), Mr Arundale does not disagree with any of those broad propositions. We deal with the issues of competence and CSDC later in this document.

The Terms of Reference

The Objectives and Planning of the Operation

15. We repeat: the objectives of the operation were simple in nature (sustained public protection) but challenging in execution (dedicated investigation of surveillance conscious dangerous organised criminals leading evasive lifestyles).
16. It was necessary to protect the community at all stages, with doing more than simply disrupting a group of individuals which had, broadly speaking, only one aspiration – to commit serious organised acquisitive high end crime. There has been no realistic suggestion that the SIO could have investigated and prosecuted these subjects for alternative serious crimes. Had Mr Cousen been able to, he would have done so. He explained that dedicated surveillance by the DSU provided no evidence that could be acted upon to justify arrests for suspected drug offences. He was able to explain more about this in closed proceedings.
17. The planning included using different intelligence streams including dedicated covert surveillance and the use of trackers. Mr Cousen and his team could have acquired more historic information about the known subjects and it is clear from the systems audits that their focus was on more recent intelligence including regular COPUs. In fact the historic intelligence would not particularly have advanced the investigation but it would have been of more use from a firearms command perspective and was available anyway to the TFU via GMP intelligence systems.
18. The planning was also challenging because of the nature of organised crime. As Mr Fitton explained [1.3.12, p151/8] - you cannot isolate

individuals and you cannot isolate a group of subjects from an affiliated OCG – because the affiliations are loose and interchangeable with unpredictable combinations.

19. It was noted that “Risk to subjects” was not specified in Mr Cousen’s Investigation Risk assessment document. He explained that at the point of planning any arrest there would have been a separate operational assessment [14.2.12, p46/21].
20. DC Clark liked having sensitive intelligence confined in the Chronology for disclosure/CPIA purposes [22.2.17, p12]. The document was not designed to capture all recent surveillance intelligence which of course would be captured elsewhere (logs etc). We note Mr Arundale’s recommendation about one running intelligence document. It was not explored in great detail with those officers who might be burdened with the task of preparing it during any number of busy operations. It would, of necessity, be incomplete and we see wide but reasonable divergences of opinion over both its feasibility and contents. Whilst acknowledging that the Shire team could have performed more research as to historic intelligence, they were relatively limited in what they could do to develop the current intelligence beyond assessing surveillance and covert intelligence which DI Cousen and DS Hurst did together, in any event. DC Clark explained that detailed work was conducted, where possible, on phones. It plainly would have been possible to cut and paste the entries on the Intelligence Chronology “post-split” into a separate document. This was not done but given the limited access by others to the document because of its sensitivity, this has no significant relevance and in fact stands contrary to Mr Arundale’s observation that the background information about the wider OCG would have been of use and relevance from a command point of view.
21. The Shire team relied upon sensitive intelligence from the NCA. This is relevant to the next TOR as well. It is apparent from evidence heard in our absence but now gisted that some of the intelligence disseminated to GMP by NCA and recorded on the Intelligence Chronology was inaccurate and out of date. The team received it in good faith and justifiably treated it as reliable and up to date. It was of some but not determinative importance. Totton was a legitimate subject who could have been split away from the Corkovics in terms of investigation planning sooner, had the inaccuracies been known.
22. Although important evidence about this was heard in closed sessions of evidence, we submit that there is no viable suggestion that the Shire team

failed to try and obtain reliable contemporaneous intelligence or failed to act upon available intelligence. The intelligence was obtained by a law enforcement agency (independent of GMP) which was experienced in the collation and assessment of intelligence. That agency was also experienced in the *gisting* of intelligence, and the distribution of that intelligence to external police forces nationwide. In short, GMP was entitled to rely on the intelligence provided to it by the NCA. GMP was entitled to rely on the intelligence as part of the developing picture as it applied to an active covert investigation. In relation to the *gisting* of intelligence, GMP was entitled to conclude that they were accurate.

23. Dep SIO Hurst explained that the CLIO management system slightly overtook the need for the team to use the intelligence database system for storing information. [7.4.17, p25]. She did not consider having one composite reference document for all intelligence because the team could access the systems, there was a chronology and there was ongoing surveillance data [7.4.17, p48].
24. The Operation was kept under regular review and was reasonably resourced. Appropriate dialogue with the CPS was maintained. It may be convenient to deal with two separate but related issues under this heading: (i) the suggestion that arrests were going to be effected come what may on 3.3.12 perhaps because the SIO was under pressure from senior officers to bring the operation to a close, and (ii) that any such arrest was too early and not in accordance with previous advice from the CPS, especially because no weapons were sighted.
25. Mr Cousen denied being under any pressure to effect arrests [15.2.17, p153]. This line of enquiry, foreshadowed in CTT's Opening Statement, originated entirely from the statement of Nicky Moore dated 25.6.14 [E/267]. By 26.1.12 when he spoke to Ms Moore, Totton had only been back in the country for 13 days. The SIO did not regard the resources being used as unusually large. His recollection of his conversation accords entirely with that of Ms Moore [21.2.12, p35/4 and p45/15] namely that they discussed evidential sufficiency because amongst other things, the SIO would need to account to his supervising officers for the following week's deployment. Ms Moore was herself clear that up until 3.3.12 the police were well aware that there had not been enough evidence to charge [21.2.12, p4/23] and the police agreed with that assessment [21.2.12, p13/9]. Likewise, the SIO was aware from Nicky Moore's view, expressed on 1.3.12 and noted in his policy book [K/1237], that the sighting of

Totton with a hacksaw was insufficient to merit a charge.

26. There is only evidence of three dated contacts with Ms Moore – 26.1.12 [SIO], 21.2.12 [emails with Talbot] and 1.3.12 [verbal with Talbot]. In none of the available records for these contacts is there any sense of the police being under pressure and the number of contacts is hardly suggestive of the police demanding a result. Ms Moore said nothing to suggest that the police were under pressure or indeed that they put her under any pressure. Notwithstanding that she was asked questions about this a number of times by CTI, her evidence was clear, and dispels any suggestion that pressure may have been brought to bear upon her, or upon officers involved in the operation to achieve a result or a desired outcome – she remained of the view that all the SIO had done was explain that he would need to tell his supervising officers about evidential sufficiency so that resources could be managed.
27. The notion that the police were going to arrest that day come what may is inherently unlikely, not least because the available intelligence posited an alternative offence date on Monday 5th March. The police would have no control over the subjects' movements which might be unpredictable, unknown or prone to change. A plan to arrest in any event would require the complicity (not put in questioning) of the TFC and OFC. No suggestion, or questions to this effect, were directed to these witnesses who performed an integral role on 3 March.
28. CTI sought to suggest that the theory was borne out because the team had made arrangements to effect arrests. This was standard procedure according to Mr Cousen [16.2.17, p21/7] especially with multi-handed cross border situations with high risk prisoners. It had occurred before on 31.1.12 [K/1201, 1204 and P/17] – DS Hurst had made enquiries about custody at Ashton, just as she would for the 3.3.12. This occurred again on 1.3.12 [K/1239], when it seemed possible that arrests would be made. DS Hurst also said this was routine, as was the step of contacting crime scene management and did not indicate any pre-determined plan to effect a strike/arrest [7.4.12, p91 to 93]. Mr Cousen also relied on closed material to explain why on 3.3.12 he thought it sensible to make those arrangements. This type of organisation is not evidence of an unthinking determination to arrest at any cost.
29. Surveillance teams were booked for the ensuing week [see emails at W/78 and 141] – this had been arranged on 29.2.12 and 2.3.12. Similarly DS

Hurst had arranged on 2.3.12 shifts for her team to staff OPs [email W/370] for the next week. This is plainly supportive of planning for further investigations beyond the weekend.

30. At 17.20pm on 2.3.12, Chris Brierley sent Jeannette McCormick an email [M1&2/85] which demonstrated that at that time Mr Cousen was not pushing for any activity and was happy to rely on the VTD.
31. Mr Cousen had gone home following a long shift and had been content to leave DS Hurst to update Cheshire and Mr Fernandes on duty as cover. There was nothing to suggest that anything further was going to happen that day. His reference in an email timed at 16.28pm on 3.3.12 to DS Hurst “They will come!!!” has all the hallmarks of a collegiate and encouraging reply rather than a sinister or witless desire to arrest at all costs. As he points out in his Rule 9, this response dated 11.4.17 should not be taken in any other way. He could not possibly have known that the TFC would call state Amber later in the day.
32. ACC Heywood said [2.3.17, p12/13] that there was no sense that by early March the operation had to be brought to head.
33. We know that Shire continued in any event post arrest for a further month – this does not suggest resources were an immediate issue. DC Talbot told the Inquiry that he had known far more resource heavy operations.
34. The transcript of the briefing on 3.3.12 (F/1178) makes it clear that arrest was not a foregone conclusion – the TFC indicates that he will make the decision as to whether to arrest during the “powers and policy” section.
35. Most importantly, Q9 said [6.4.17] that there was no pre-determination about whether there would actually be a strike – it would depend upon what happened and command decisions.
36. In fact the advice from Ms Moore was that something more than preparatory conduct was needed including, according to DC Talbot, weapons or relevant clothing [10.2.17, and see Talbot policy book for 1.3.12 K/65]. At no stage were weapons a pre-requisite as the subsequent charging and continuation of proceedings would demonstrate. Ms Moore said she would have discussed weapons and clothing in terms of evidential sufficiency and was clear that although she could not recall the details, she would not have said that it was necessary for the suspects to be seen with

weapons [21.2.17]. This is consistent with her subsequent charging decision.

37. Mr Cousen agreed Tipping Points on 1.3.12 which he knew may fall short [15.2.17, p167/6] – again hardly suggestive of prosecution zeal. By 3.3.12 those tipping points had changed – moving to Culcheth has been removed as had the fourth – proximity to Culcheth, which RC explained in more detail on closed material.
38. Cross Border Issues: In Appendix 5 to this document we set out a summary of the relevant facts. Those facts are not easy to follow because of the composition of the “M” Bundles. Our summary submissions about this issue are as follows:
 - a. GMP provided Cheshire with full details of the subjects, the threat assessment and working strategy and the AFO power point during the afternoon of 1.3.12. They were demonstrably available to the Cheshire SFC, TFC and TAC;
 - b. By early morning on 2.3.12, additionally, the Cheshire duty inspector and FIB had the contact numbers of the SIO, Dep SIO and Cover (Fernandes). By 14.55pm on 2.3.12, the officer in the Cheshire FIB (Holliwel) had his own copy of the power point [M7/28] but does not appear to have done anything significant with it;
 - c. After Cheshire had rescinded the firearms authority on 2.3.12, it was re-recorded in the electronic de-brief [M5/49] that:
“Concerns raised that GMP felt there was sufficient threat to inform Cheshire FIM, however they would not divulge what the threat was. This might have placed Cheshire officers at risk, which may have been mitigated with more information from GMP”, and, “It was discussed that to take mitigating action was the most appropriate tactic in the circumstance in order to protect the public. It was suggested that better sharing of information from GMP would be beneficial in future incidents.”

Virtually every Cheshire police witness was questioned about this although none was able to identify himself or herself as the author. The TFC, Christopher Brierley from Cheshire, was not prepared to agree with it, expressing a realism that GMP at that stage of proceedings might not have wanted to provide more details about

the operation [24.2.17, p95] – to use his words [24.2.17, p97] – “*So I don't think I laboured the point with him [Cousen], I just kind of understood that there was a lot more that he probably knew that he was not at liberty to tell me.*”

Reference was made in the opening to the fact that TFC Christopher Brierley in a phone call on 3.3.12 at 07.14am [M8/36] referred to flawed intelligence coming from Cheshire the previous day. He was asked about this [24.2.17, p87/14]:

“Q: Just pausing there, for a minute, when you reference there "flawed intelligence", can you just explain what you meant?

A: Not really, no. Possibly just I wasn't -- I was fairly confident I was not told everything, so the intelligence I was working from may be -- "flawed" was probably not the right word. But I am trying to think back about the use of one word, so it would be difficult for me to be too critical about it.”

Christopher Brierley was also asked about this and said [24.2.17, p 76/25]: *“From what I have written there, my interpretation would have been that as soon as we need to know something, they will inform us. That would have been my interpretation of that. That if they feel that they were going to come on to us, that at the earliest opportunity they would tell us.”*

- d. Mr Brierley sent the locum Bronze, Christopher Unsworth, the power point on 3.2.12 at 08.38am [M7/43]. The locum FIM had a copy by 13.10 on 3.3.12 [M8/16];
- e. The GMP command logs demonstrate the ongoing communication and updating of Cheshire during the 3.3.12. See F/422 – calls were made at 08.10, 08.15, 08.30, 09.45, 12.55 and 15.20;
- f. It is quite conceivable that communication could have been better (both ways) especially about certain issues including the use to which the Cheshire ARV officers might be put although that subject had already been discussed earlier in the day and about the arrival of the subjects in Culcheth. Despite lengthy questioning of Cheshire witnesses which appeared to be formulated throughout on the basis that GMP had continuously kept Cheshire uninformed, this was not the general impression given by Cheshire officers;
- g. It is to be remembered that once the subjects travelled along the East Lancs Road, although it was suspected that they would travel

to Culcheth, they could in fact have travelled anywhere including St Helens. By then the operation was at a very dynamic phase;

- h. We submit that there is nothing about the cross border arrangements which caused or contributed to the death of Mr Grainger or could be said to have affected the outcome (we deal with disruption later in this document).
39. Finally in terms of this TOR and in terms of planning, we submit that it was correct to assume that the occupants of the Audi on 3 March were dangerous and might be armed. In so far as this is an issue for an expert, we note that Mr Arundale agreed.

The information available to those who planned the operation, and the accuracy, reliability, interpretation, evaluation, transmission and dissemination of such information

40. The management and assessment of intelligence about all Shire suspects including Mr Grainger was, we submit, conducted in good faith. At the opening of this Inquiry, GMP acknowledged and apologised for the fact that some errors were made and that apology naturally stands. GMP does not flinch from these errors. No obvious explanation for them has emerged after detailed scrutiny of all those potentially involved beyond human error, inattention and/or lack of knowledge about the intelligence systems and assessment. Notwithstanding these admitted errors, there is no evidence to suggest that intelligence about Mr Grainger was deliberately distorted or overstated. There would be no reason to do so given the accuracy of the intelligence around Totton and Rimmer.
41. Some important aspects of this TOR must, unfortunately, be dealt with in closed submissions.
42. It possibly remains unclear as to precisely how the 2005/2008 Preston robbery errors arose, although this will be a matter for the Chairman to consider. No one person could account for it in a process lasting throughout the 1, 2 and 3 March and involving a significant number of people. Mr Lawler thought that any errors in his log as to the 2005 Kirkham incident were likely to be his rather than the SIOs. Mr Cousen stated that he had read out the email from DC Mills [at Bundle R/11] ie that he had given a faithful account of the available intelligence. X7 said

[11.4.17, p34-35] that Mr Cousen did refer to the 2005/2008 robbery but indicated that as a piece of intelligence it only related to Totton. X7's notes about this [produced by the IPCC during X7's evidence on 11.4.17] were broadly consistent with Mr Cousen's evidence and the Mills email. By the time of the power point briefing, the details of the robbery had become more expansive and inaccurate. However the error arose, it is apparent that between the SIO, H9, the TFCs and OFCs, the error should have been spotted and corrected and it was not. There was possibly, an unenquiring cut and paste of the error from the briefing documents during the first 3 days of March. We fully acknowledge that this is not acceptable and demonstrates a collective lack of attention to important detail.

43. We have noted the assessment by multiple expert opinion, that such errors were unlikely, adversely, to have affected the planning of the operation or to have muddled in isolation the judgment of any key decision maker. We note Mr Arundale's comment, without pleasure, that such errors are apparently quite commonplace. We agree that the errors did not affect the planning and an expert can properly comment on whether such errors would have caused any changes to the planning or, importantly, to the contents of the threat assessment, working strategy or choice of tactical option. In fact no witness has made that suggestion. The question of whether such errors affected the final outcome is not, we think, the proper subject of expert evidence. That is an issue squarely for Chairman bearing in mind the facts as he finds them, especially in relation to Q9. The available intelligence about Mr Grainger's co-conspirators was highly relevant to the threat assessment. Further information, could, properly, have been given to the AFOs about Totton and Mr Grainger and the OCG to which they were affiliated. We deal with the briefing to the AFOs on 3.3.12, and the "Q9" issue, later in this document.

Pre March Issues

The Subject Profile [F/11]

44. A considerable amount of time was spent on this document. When a subject profile is prepared, the use to which it is going to be put is not known [7.2.17, p11/8]. It seems clear that more dialogue should occur as to its possible use and the risk assessment or summary section should come with a health warning that it is based on graded intelligence but not graded further. That said, the contents of the risk assessment section have not been shown to be inaccurate and this document has acquired an

importance in the Inquiry which it lacked during Shire for reasons we will explain. It was not of particular use to the investigators who were more interested in contemporaneous intelligence. Mr Arundale (para 224-5) found it reasonable from a firearms command perspective. We have already dealt with Ms Griffiths' regrettable error in opening and it does not seem to us that as issues go, it requires much more attention. It was unfortunate and avoidable but we note: (a) it was not communicated to AFOs and (b) from a command perspective, according to Mr Arundale, of no significance in terms of threat assessment.

45. In fact, Mr Grainger's profile underestimated his suspected involvement in serious crime. It was prepared for the purpose of needing to effect a possible arrest at his home address. It did not contain the details of the affray from 1997, it did not refer to all of the offences that he was connected to including Operations Vulture [7.2.17, p69/6] and Blythe, it did not mark in any detail his association with Totton and it excluded his OPUS warnings. It could therefore have been more detailed although a subject profile was and is not intended to be comprehensive – its purpose in Shire was to provide a foundation to be developed [7.2.17, p64/9]. Had it been supplemented with more details say of Vulture, Blythe, Ascot etc, it would have heightened the perception of the risk Mr Grainger posed.
46. DS Hurst, the Deputy SIO, was questioned about the profile and indicated that she had either not read it or had paid little attention to it. She would not seek to develop the profile despite its September date because it had no 'one' primary function [7.4.17, p57] and in fact from an operational point of view, only Stoke, in January 2012, would have been added by way of update and the team all knew about that anyway and were daily kept up to date with known surveilled movements. Mr Talbot, the OIC, said such profiles were unimportant as the team conduct their own checks but it was useful for housing a subject or finding out financial information [10.2.17, p39]. Mr Cousen referred to it as a 'snapshot' with current intelligence taking precedence [14.2.17, p53/4] and DS Hurst called it a "starting point" [7.4.17, p66] with other daily checks taking priority.
47. The investigative team had far more information than that contained on the profile from live intelligence, the Intelligence Chronology, Operation Ascot and DC Clark as Russell Kelly explained. The team was reviewing intelligence on a daily basis and did not, in any event, view Mr Grainger as the main target.

48. The information which was available and which the team had, entitled them to view Mr Grainger as a criminal who associated with and offended with an OCG which was capable of and responsible for multiple armed robberies.
49. The focus in this Inquiry has been almost exclusively on Mr Grainger's profile. This is understandable up to a point. However, Totton's profile was more important because he posed the highest risk. Neither his nor Rimmer's profile were suggested to be inaccurate. The contents of both adequately:
 - a. Justified the assessment of both men as dangerous and the authorisation of armed officers to effect any arrest;
 - b. Justified the assessment that Mr Grainger was a trusted associate of Totton.

Warning Markers

50. We acknowledge that the evidence given about the systems in place for creating and maintaining warning markers and the average officer's understanding of them was less than satisfactory, as was the account of Mr Grainger's warning markers. Whether this reflects the quality of the witness, or the quality of the system (or both) is not clear.
51. Mr Grainger's OPUS "Crimes" [C/727] included section 18 on 19.5.01, section 47 on 30.10.99 and section 20 x 2 on 4.12.97. OPUS "Offences" [C/737] revealed "wounding w/i" ie section 18 for 7.1.02 and serious assault for 9.12.97. His OPUS warnings were not included on his subject profile and are dealt with later in respect of the firearms briefing.
52. There is insufficient evidence to know why Mr Grainger's PNC marker for violence was retained. Sharon Ross was a nervous and unclear witness. She did not know why the PNC VI marker was retained. Since 1997, AG had been suspected of being involved in two separate assaults. The section 18 matter dated 19.5.01 incident resulted in an arrest but was "NFA'd". It is not known whether this was in fact used to merit retention of the 1997 Affray related marker. The "2009" [or 1999] incident did not result in an arrest but related to a serious incident. The 1997 "affray" had in fact

involved an arrest for section 20 x 2.

53. Departing from her witness statement, Ms Ross said that the 1997 related marker on review in 2002 should have been lifted if Mr Grainger had not come into contact with police [8.2.17, p110/20] or alternatively in 2008.
54. Pausing there, we note that the incident in 1997 was in fact a very serious incident regardless of its date. Even allowing for the fact that Mr Grainger was a much younger man at the time, it demonstrated his use of a vehicle as a weapon in an escape setting and his conscious facilitation of others' use of weapons. By conducting themselves in that way, he and his accomplices, to evade apprehension for a relatively minor offence, were willing to risk a higher sentence [section 12a Theft Act 1968 ie Aggravated vehicle taking vis section 12 theft of vehicle] and to offend more seriously and dangerously [w/s Holmes H/170 and OPUS crimes C/727].
55. Any firearms commander or indeed arresting officer would want to know about that incident (Mr Arundale agreed with this, not least because it would justify serious consideration of authorisation of special munitions). Mr Cousen said that he would not check behind markers [14.2.17, p105/1 & 118/3] and would find current intelligence more important than the markers in any event [14.2.17, p131/7]. Supt Ellison said a marker is just a warning – he would want information about it but would only consider it alongside other intelligence and any history of offending [21.2.12, p108/6].
56. The Warnings on the profile of Mr Grainger were (PNC) VI and DR. Regardless of any policy issues over the correctness of the retention of the violence marker, there is no evidence to suggest that this, of itself, affected any decision making whatsoever. Any experienced commander viewing the profile and the other available information would, correctly, operate on the basis that Mr Grainger endorsed the violence of his associates, and if conspiring to commit armed robbery, was jointly capable of the use of violence.
57. There has been little focus on the warnings for Rimmer, Totton and Travers (see Ross statement H/161). They speak for themselves and accurately informed the threat assessment and ICI.³

³ Totton's include VI and WE – to include physical violence, CS, petrol bomb, folding lock knife. Rimmer's include VI - stabbing victim in stomach and Travers includes WE and VI including machete and pick axe handle (used against police officer) and knife

58. Historic intelligence around Mr Grainger was plainly not of significance to Mr Cousen. He was not aware of the details around Vulture, Ascot or Blythe. It is not clear what he might have done differently had he been aware. The information, as we have observed, was of more relevance to firearms commanders and officers. We are aware that Q9 has dealt with this in some detail in his written submissions.

Operation Vulture – the factual information relating to this case is unfortunately incomplete and therefore Mr Grainger’s alleged role in the offences and the reasons for the dismissal of the charges unknown. DC Clark’s statement at E/264 summarised what he knew of the evidence/information relating to Mr Grainger. This came to the fore during a period when Deputy SIO Hurst was working away from the operation and though she did not know when she became aware of it, once she became so aware, she did not “develop” it in any way because she was conscious that if it was needed, it would be on the force systems. [7.4.17, p31-2]. Mr Grainger was ultimately indicted for Conspiracy to Commit Robbery on 31.5.96 with Totton, a charge which was dismissed at half time. He featured elsewhere on the indictment. Count 4 robbery 10.6.96. He was also indicted for attempted robbery on 14.11.95 [with others G2/1169 – no court result]. Mr Cousen did not know that in fact originally Mr Grainger had been indicted for conspiracy to rob throughout the Vulture period, ie 8 October 1995 to 11 June 1996.

Operation Ascot – It is apparent from John Mulvihill’s statement at A/26 that Mr Grainger was conducting highly suspicious activity on 12 and 28 April 2006. His MO included wearing gloves, driving stolen cars on false plates [with the means to torch for example the Citroen] and conducting reconnaissance on robbery targets, in this instance a bank near Preston. The robbery bracketed by his behaviour involved the discharge of a firearm at police officers and concerned close associates of Totton [Peter Anderson, David Cullen and Aaron and Bradley McClennan].

Operation Blythe – Likewise, Mr Cousen did not know about body armour and a smoke grenade, masks and balaclavas being found at Mr. Grainger’s property 8 Thanet Close in the context of Operation Blythe [16.2.17, p134/21]. In fact, body armour was also found at the industrial unit involved in that operation as well.

Briefing to Supt Ellison and Stoke

59. We do not know how interested the Inquiry will be in the operational aspects of the Stoke activity. Given that Totton was not questioned by CTI about Stoke, that the other February deployments were not analysed and that the SFC for 25.1.12 was not called, we have understood that Supt Ellison was required to give evidence in order to demonstrate the suggested contrast between his slower and more methodical approach to the authorisation of firearms compared to that of officers such as Mr Lawler and Mr Granby. As it has been addressed in evidence in some detail, we deal with it in these written submissions. DC Clark briefed Supt Ellison on 25.1.12. The potential disadvantages of conducting such a briefing without warning and notes are obvious, but the briefing plainly assisted the TFC and DC Clark had detailed knowledge of Totton and his associates. We know from Supt Ellison's log that he has recorded historic intelligence which is not mentioned in DC Clark's report about the briefing and vice versa, ie there will always be some disconnect between what is said and what is recorded. There is very little disagreement – DC Clark thought he referred to Vulture. Supt Ellison does not recall mention of Op Vulture but has noted in his log under "Capability":
"SOCG intel indicating an involvement with criminal groups that are known to have used and discharged firearms, intel and info refers."
60. The purpose of the briefing was to provide information to the TFC that would enable him to assess the capability of Totton who had recently been identified as the driver of the red Audi. DC Clark thought it was relevant to tell the TFC that Mr Grainger had been a co-accused and that Totton and his wider group had access to firearms. As part of this context, he referred to Mr Grainger and to operations Vulture and Ascot [22.2.17, p83].
61. He thought it was relevant that Totton had been arrested in two separate operations where firearms had been recovered [Vulture and the 1999 Lee Tansey incident] and then in a further operation [Ascot] when a firearm had been discharged at an officer. All of that was undoubtedly relevant. In a number of instances, DC Clark made it clear that successful prosecutions had not resulted, and in respect of Vulture, he made it clear that it was the McClennans implicated in the April 1996 firearm aspect. Mr Grainger was referred to as were others. In the subsequent AFO briefing, Mr Grainger featured as a subject rather than an associate for reasons

which are not apparent [although in fact he was a subject – he would be driving the stolen BMW to Stoke which contained a sledgehammer]. DC Clark was clear that Mr Grainger was only referred to by him as an associate of Totton [22.2.17, p85-87] and in fact there is no evidence that he suggested that Mr Grainger had been convicted of any offences as a result of the operations he identified.

62. The context of the briefing to Supt Ellison was different because it was dictated to by different sources of intelligence. Even without the hacksaw and the reference to the Preston robbery in “2008” (2005), and even without the additional sensitive intelligence including item 41 on the Intelligence Chronology, it is of real note that he chose the same tactical option with an implied arrest strike (though with different contingencies) that Mr Lawler and Mr Granby more quickly selected upon without the benefit of such a briefing. When choosing that option, Totton was the only subject. The option reflected Totton’s past and his association with other known serious criminals. [21.2.17, p180/9]

“Sometimes you have to work on some reasonable working assumptions as to what might happen in any deployment. Sometimes the association map and the activity we have seen with the surveillance for example could lead you to make certain assumptions and it is bolting the fact and the assumptions together which actually is the skill in defining whether the criteria is met.”

63. Exercise of that skill may have taken Supt Ellison several hours on 25.1.12. J4, the TAC, said it was not usual to have a three hour risk assessment meeting [31.3.17, p126]. But, for all that, the outcome was essentially the same. Quite simply this is because of the suspected intent of Totton and because Totton was sufficiently linked to Manchester and Salford organised criminals to merit a high degree of assessed risk [21.2.17, p125/17]. This is why MASTS, notwithstanding the studied analysis that an expert witness can undertake without pressure of time, was the obvious option in the circumstances, just as it would be between 1 and 3 March.

64. It is notable that Supt Ellison was influenced as a TFC by the evidential requirements of the CPS (Bundle W/172 &177) - when telling his Staffordshire colleague about contingencies he said:

“[if] targets do not engage with G4S vehicles leaving the depot...CPS consultation by our Robbery Unit confirms that “spotting” activity by the subjects around the depot, specifically involving vehicles would now support a conspiracy charge. If this takes place, the MAST will be used to effect the arrest of the subjects immediately. Ongoing

surveillance will not allow the offence to occur”.

His email to his SFC (ACC Shewan) at W/177 is not so very different in terms of its tactical plan to that which would occur in Culcheth:

“MASTS SFOS will be plotted off close to the offenders, awaiting confirmation from surveillance officers that the “suggestive” behaviour is complete. At that point, it is my intention to go to State Amber and effect the strike.”

65. If the offenders therefore were in the vicinity of the suspected target, there was no suggestion of disruption, only a strike. Even when the weekend risk lowered because there not going to be so many van deliveries, MASTS remained the operating option, the ongoing overall threat remained assessed at high and the working strategy remained unaffected (also confirmed by his email dated 27.1.12, Y/191). It was only if the subjects were not on the move or in the vicinity, that disruption would be used to protect identifiable van deliveries.
66. Mr Arundale thought that Supt Ellison’s approach and decision making were reasonable. He considered the working strategy, threat assessment and contingencies to be informed and measured. Bearing that in mind, it is informative to note that despite the lengthier process and more detailed paperwork:
 - a. The recorded planning around contingencies in the event of a loss of surveillance may demonstrate better practice but in reality remained a known, if unrecorded, option for Supt Granby on 3.3.12;
 - b. The tactical option of choice was the same even without Mr Rimmer and Mr Grainger being in the original equation;
 - c. Once the tipping points were met, there was going to be an intended strike with special munitions as a bolt on in the event that the subjects were non-compliant [21.2.12, p182/4];
 - d. The authorisation lasted a considerable period of time, even when the subject vehicles were static for lengthy periods.

***The decision to deploy armed police officers and to make arrests,
and the criteria applied in reaching those decisions (including
command and control)***

1-2 March 2012

67. GMP remains of the view, as does Mr Arundale, that there were more than sufficient grounds to authorise the deployment of armed officers at various stages of Operation Shire, and on 2 and 3 March 2012, because there was reason to suppose that officers may have to protect themselves from offenders who were in possession or had immediate access to a firearm or were otherwise so dangerous so as to render such deployments appropriate. This is also the collective view of those experts instructed by the IPCC, CPS and GMP. Mr Arundale had reservations about the lack of detail in authorising the issue of specialist approved munitions, and it has been acknowledged that the decision making around that should have been more thoroughly recorded. Notwithstanding any suggestion of cultural inevitability, we do consider, as does Mr Arundale, that such authorisation was appropriate, subject of course to the COP 2003 issues around CSDC.
68. We do not think that it is likely to be helpful to address the Chairman orally in great detail about the deployment on 1-2 March. Instead in Appendix 1 and 2 to this document, we set out what we consider to be some of the salient facts contributing to the reasonable assumption by then that the occupants of the Audi were intent on committing robbery and that the deployment of armed officers was required. We frankly acknowledge there that there were aspects of the planning and recording which were wanting on 1-2 March. This included:
- a. Errors in the power point and oral briefing to AFOs as previously identified and dealt with elsewhere;
 - b. Lack of sufficient detail in the command logs to provide a clear audit trail and comprehensible rationale after the event;
 - c. Retrospective drafting of log entries without confirmation on the face of the log that this had been done;
 - d. Destruction of Mr Lawler's day book;
 - e. At times, an inappropriately informal approach to intelligence, derived in part from involvement in covert tasking responsibilities

and because of the assumed association between subjects.

69. All that being so, even though such errors occurred, the deployment of armed officers to effect a potential arrest was justified and MASTS with the supplement of special munitions was appropriate. ACC Heywood was clear that regardless of his own misunderstandings about intelligence, he would still have authorised the deployment of armed officers [7.3.17, p23/17].
70. Additionally, and for the reasons set out in Appendix 1, it was appropriate for GMP to assume an intention on the part of the subjects to commit robbery. Whether others agree with it or not, we submit that Mr Cousen honestly feared on 1 March that the subjects were, or might be, planning to commit an overnight robbery, similar to that which had occurred in Kirkham, Preston in 2005. He was right to assume that the sighted hacksaw had been to Culcheth. Totton's suggestion that the hacksaw was a registration plate is not remotely credible. By the early evening of 2 March, due to the receipt of sensitive intelligence, the SIO's focus had changed and he considered it necessary to plan for an arrest on the Saturday or following Monday.
71. In asserting that the police were correct to, and indeed required to operate during 1 to 3 March on the basis that the subjects were planning to commit robbery, we note that the early stages of an armed robbery can look very much like a recce and vice versa. It is exceptionally difficult for the police to know which will be which and they must plan for both. It is very common for the police not to know the full range of individuals likely to be involved (as here with Travers) – not least because the criminals know that a late change in line up can successfully limit police planning and limit the process of intelligence and evidence gathering. It is even rarer, as Mr Arundale agreed, to have intelligence in advance about possession of firearms. The police were correct to operate on the basis, as Mr Arundale also agreed, that the subjects might be armed.

***The decision to deploy armed police officers and to make arrests,
and the criteria applied in reaching those decisions, Command and
Control of the Operation***

3.3.12

72. Again, our submissions about 3.3.12 are necessarily detailed because there has been so much focus, rightly, on the events of the 2 and 3 March. We hope that it is convenient to deal with these TOR in themes.

The Passage of Information From SIO to TFC and the TFC's Assessment

73. Mr Cousen called Mr Granby at 19.07pm on 2.3.12. The call lasted 17 minutes and 41 seconds (billing requested and provided after Mr Cousen gave evidence. He thought the call had lasted around 30 minutes – 14.2.17, p76). He provided Mr Granby with sensitive information which was described in closed hearings [15.2.17, p58]. He said that he would have told the TFC that Mr Grainger was suspected of being the driver [15.2.17, p12/8]. He was clear that he described limited entries on the Intelligence Chronology which related only to subjects and which avoided reference to the Corkovics [15.2.17, p93]. He did not give Mr Granby a copy of the Intelligence Chronology [15.2.17, p22/1 & 24/11]. In fact, it would appear as though Mr Arundale would not be concerned had the SIO referred to the Corkovics and had he given Mr Granby the Chronology. He said that crime reports would not be taken to TFC briefings but would be obtained if the TFC requested more information about a crime or a copy of a report [14.2.17, p71/20].
74. Mr Granby in turn said that he took from what he had been told at 7pm on 2.3.12 that the subjects intended to carry out an armed robbery [23.3.17, p61/1] and that the offence was to occur on the Saturday or Monday [23.3.17, p6]. Mr Cousen referred to parts of the subject profiles [23.3.17, p69/17] and told him that the operation had been split [23.3.17, p120/8]. He agreed that the SIO referred to specific items on the intelligence chronology [23.3.17, p123/2]. He was conscious of the Salford OCG aspect of risk assessment [23.3.17, p118/16]:
- “I was going to say, as a caveat, I suppose my experience on running quite a number of MASTS operations, involving particularly Salford OCGs, was that you would start off perhaps with a number of subjects and then there would be, I use the phrase “interoperability”, so different people from different groups may drop in to support a particular enterprise, for want of a better word. So I was mindful that the intelligence picture indicated that the focus was on Totton, but I didn't want to lose sight of the relevance that Mr Corkovic or the Corkovic family and some of their associates might have. So it did feed into that wider picture....the focus was relating to Mr Totton.”*
75. He agreed that at the authorisation/choice of tactical option stage the threat assessment would be informed by the person who posed the highest level of threat [23.3.17, p138/12] but that after that, AFOs would need to

be provided with threat assessments for each individual because each subject may pose a different threat. The reference to all subjects being involved in armed robberies came, he said from COPU (ie the intelligence chronology) [23.3.17, p140/12]. The reference to the Preston robbery was plainly inaccurate. He agreed that he should have taken more care to check the basis of the “information/intelligence” section on the power point briefing at F/1267 [23.3.17, p143/23-p144]. He agreed that the threat assessment in respect of Mr Grainger was overstated [23.3.17, p146/24] but that his association with the likes of Totton meant that their joint engagement brought risks of violence to officers [p148/11] especially so far as Mr Grainger was concerned with the use of the car. He had not been particularly aware of Mr Grainger before 2.3.12 but he was aware of Totton. He had acted as TFC in operation Ascot. He had taken particular notice of the fact that despite being the subject of an assassination attempt in March 2006 at the Brasshandles, Totton was active enough to be arrested in operation Ascot a few months later [24.3.17, p151/23].

76. He also said:

“Again, there was no specific intelligence to suggest they were in possession of firearms, but I think looking at backgrounds -- and I am thinking particularly in relation to Mr Totton on this and his history, and the overarching intent, it would have been a reasonable assumption to make that the individuals would have had access to firearms.”
[23/3/17, p151/20]

77. It is clear, importantly, that Mr Arundale would appear to agree with that assessment.

78. We acknowledge that the relevant TFC log book contains insufficient detail about the underlying intelligence to explain subsequent thought processes. It does not look like Supt Ellison’s. It may well be that Mr Granby set significant store by Mr Lawler’s previous involvement and drew from it but not exclusively [23.2.17, p68/8]. The speed of his decision making we would posit is explained in part upon his experience, upon the nature and content of the intelligence that he was briefed on, and upon the very recent input of Mr Lawler and ACC Heywood.

79. In terms of threat assessment, he was aware of Mr Grainger’s long standing association with Totton and would have been aware of his capability and by inference his intent [24.3.17, p156]. Mr Grainger's voluntary association with someone like Mr Totton informed his view as a tactical firearms commander of the individual threat that Mr Grainger posed and the collective threat, when with others. He went on to say:

“My approach would be that it would be the collective threat and potentially the threat

posed by the individual who posed the greatest risk that you would have to plan for and take cognisance of.?’

80. He believed that he would receive more sensitive intelligence updates the following morning and this influenced his decision not to consult a TAC that night. He did not know (and ought to have known) that he required TAC advice before seeking authorisation for specialist munitions [24.3.17, p19/11]. Mr Sweeney stated that with a long running operation such as Shire there was already an existing body of advice and learning from previous deployments [22.3.17 p 13]. That being so, a TAC became more relevant upon receipt of new information.
81. Neither the manual nor the SOP suggests explicitly [or at all] that the TAC should be present at any risk assessment meeting which is surprising in the light of the agreed evidence that it was, and should have been, common practice. Likewise, the Manual does not set out what role the TAC has, if any, in analysing available intelligence. The onus on the TFC [para 5.22 MOG] is that he/she should consult the TAC as soon as possible. Sgt Allen indicated that there was flexibility around the extent to which, if at all, a TFC would seek advice about calling state amber [21.3.17, p45].
82. We appreciate that best practice would have been to consult a TAC before approaching the SFC. There is nothing to suggest one way or another that the outcome would have been any different although we fully appreciate that this is an issue for the Chairman. Mr Arundale fairly remarked in his report (para 406) that consulting a TAC the following morning was reasonable in the circumstances and that importantly there had been TAC input before the operational deployment.
83. When questioned, Mr Granby agreed that the number of tactical options [and subsets within them] considered was too few [23.3.17, p108 and [24.3.17, p37/8] but that any further reflection about other options would have resulted in the same selection. We acknowledge that his scant record keeping in respect of tactical options was insufficient and now prevents extracting from his log a rational understanding of his thought process at the time. His choice of tactical option was perhaps a blend of independent thought, significant experience of this type of criminality and convenient reliance on the choice that Mr Lawler ultimately made under authority 75/12. Put another way, it was possibly a blend of concluding, perhaps too quickly, that MASTS was the appropriate choice because others had also come to this conclusion, and also because that was his rapidly obtained (and correct) assessment given what he knew. His assessment, and the view he came to, were we submit, correct.

84. He did seek authority to use specialist munitions and he explained his reasoning [24.3.17, p23 to 28]. He thought it should only be used when occupants of a car were non-compliant. He agreed this brought risks but was part of maximising safety of armed officers.

Was the risk just thought to be that of a CIT robbery?

85. The answer to this question is 'no'. The working strategy of ACC Sweeney included retail staff, although this did not translate to the TFC's final working strategy. The power point briefing made clear that the target was unknown and expressly catered for retail premises. Mr Arundale agreed [28.4.17, p33] that the cessation of CVITs on 3.3 12 did not alter the appropriate tactical option and that it was sensible to consider and plan for target premises being cash/retain based.

Conversation with SFC

86. Mr Sweeney stated [22.3.17, p44 to 51] that before the authorisation process he had obtained the 2.3.12 power point briefing and a copy of the intelligence chronology because he had spoken at 9am on 2.3.12 with ACC Heywood about Shire. It was from ACC Heywood that he heard of the 2005 Preston robbery [22.3.17, p93-94]. He said that he presumed he had asked his staff officers to obtain more information in particular about Rimmer and this would either have been done via open source research or researching the GMP systems (in fact an open source search will provide details of the stabbing for which he was responsible). There is no evidence of the systems being searched. He also said he would consider the most current intelligence first although more historic intelligence would assist with obtaining a broad understanding of the subjects [22.3.17, p41].
87. It is accepted that the process of authorisation was short. The billing shows a conversation of 6 minutes and 42 seconds. According to Mr Granby, this was because Mr Sweeney already knew quite a lot about the operation [23.3.17, p79, p83/7, p93/23]. By this time, Mr Granby had received an email from Mr Lawler containing the details of the previous day's deployment including the working strategy and threat assessment (Y/6). Mr Arundale also agreed that this dissemination of knowledge would have quickened the process. The process was probably also short because both officers were experienced and knew how the other worked.
88. Mr Sweeney was clear that MASTS was the preferred option. He was aware, he said, that Mr Granby would be consulting a TAC the following

morning [22.3.17, p72/7] and that Mr Granby had spoken to Mike Lawler in some detail about the previous deployment. His reasons for selecting MASTS are set out in his written evidence but he told the Inquiry [22.3.17 p177/3]:

“Because -- I think there were four reasons really. The first, and the overarching priority, about minimising the risk to the public by the operation taking place as it did. The second is about it provides you with the opportunity to provide -- to minimise the risk to those other subjects involved in the operation. It gives us that tactical capability to respond to a series of tactical generic options. And, fourthly, it helps us when we have issues that emerge or contingencies required on the day, it gives you that capacity to undertake those kind of responses. So it is more flexible, I think in a nutshell”.

Mr Granby said that both the TFC and SFC formed the view quite quickly that an unarmed tactic was inappropriate [23.3.17, p105/10]. There is an issue raised by CTI as to whether Mr Sweeney actually gave authorisation on the phone or several minutes later by email. Mr Granby believed that authorisation had been given by phone, as did Mr Sweeney. In one sense it is an arid issue because: (a) either way, the entire process was short, and (b) a longer process would probably have resulted in the same decisions being made in all the circumstances.

89. Mr Sweeney told the Inquiry that he authorised special munitions because of the power of the stolen Audi and the fear that Totton and Rimmer were violent individuals. He also bore in mind the unpredictability that could surround OCG behaviour [22.3.17, p122]. We acknowledge that such an authorisation should only have taken place after the TFC had consulted a TAC. We do not think, in the circumstances, that this would have made any difference.
90. The threat posed by the subjects was, we submit, correctly identified. The threat posed by Mr Grainger individually, and collectively was, if anything underestimated as Mr Arundale agreed [28.4.17, p15]. Had the planners known that Joseph Travers was going to be present the suspicion in relation to the proposed offence would have increased given his antecedents and the overall threat assessment would not have lessened [24.3.17, p153/15].⁴ As an “unknown” he would have been assessed as high risk.

⁴ JT had warnings for violence, drugs and weapons and according to OPUS was a Group 1 offender. [P/353]. He was convicted [PNC I/309] when he was 18 of robbery and received a three-year Young Offenders' Institute sentence. He was then convicted in October 2004 of a section 18, so he was 19 at the time (and only recently released), and received two-year young offenders' institute sentences. At the same time was convicted of a further robbery committed on the same day as the section 18 offence, for which he received consecutively a 54-month prison sentence.

91. The working strategies of the SFC and TFC were expressed differently – Mr Sweeney did not think that this was much of an issue of itself given the differences [22.3.17, p12/7 and p29/13 and p30/11]. He also considered that the working strategy for the “overnight” type of offence and the “Saturday” type of offence would have been very similar [22.3.17, p106/16]. Mr Granby included retail staff within the general public. We fully accept that they ought, as a subset of people at risk, have been identified separately in the working strategy.
92. The working strategy was not so very different from that prepared by Supt. Ellison (agreed by Mr Arundale to be informed and measured, 28.4.17 p11). Having acknowledged that retail staff ought to have been expressly included by the TFC in accordance with the SFC’s strategy, we do consider that Mr Arundale’s essential criticisms of the working strategy reflect, we think, a counsel of perfection which is probably unrealistic in a long running operation such as Shire and within a busy force such as GMP. We invite the Chairman to conclude that although Mr Arundale’s textbook approach has its merits, any criticisms do not render the strategy unreasonable⁵ and, very importantly, did not affect the outcome:
- a. He thought that it should explicitly record that evidential tipping points must give way to operational ones. We think that this is implicit and that Mr Arundale unwittingly may be applying 2014 amendments about sustained public protection. None of the relevant officers demonstrated a lack of understanding about sustained public protection. In fact this would be of significance mainly to the TFC and OFC and they both understood the reality. If Mr Arundale is right, it would be recorded in every operation ie it would just become a formulaic paper point. The lack of it, in black and white, does not mean, as he suggested, that it became less reinforced. It was perfectly obvious that the planner and commanders would not allow the subjects to commit the robbery and that operational safety took primacy over evidence gathering;
 - b. He thought that the working strategy ought to have contained a list of the benefits and disadvantages of special munitions. Again we do wonder whether this too amounts to a counsel of perfection. Command officers would know perfectly well what the pros and cons, the risks and benefits attaching to such munitions were. As CTI himself recognised – the standing pros and cons are defined and self-evident;

⁵ Mr Molloy (E/421) an experienced TFC in the Met and NCA, who had passed the PSNI Joint Services Course thought it was reasonable thus demonstrating the wide standard of reasonableness

- c. He thought it ought to have contained an express reference to the national decision making model (NDM). Again we submit that this would be implicit and the logs contain visual reminders of the NDM and how it is to be applied. We think this observation very much risks log entries becoming formulaic paper exercises.

Post Authorisation / 3.3.12

93. Next day, Mr Granby conducted a further review with TAC, SIO and X7. He and GMP agree that this was not appropriately recorded. We also fully recognise that the log entries, particularly of Sgt Allen were not fit for purpose. Mr Granby did not make sufficient notes about his conversation with either TAC, Sgt Allen or Y19. He did not record the additional option of Overt/foot strike which Y19 recorded after the handover review with Mr Granby at 3.15pm [24.3.17, p9/9]. He explained that part of the reason for this was that nothing had changed significantly during the day [24.3.17, p11/7].
94. At 08.45, Mr Granby had the first of a series of reviews that he would have with the SFC. He was quickly aware of the further “recce” on 2.3.12 and the fact that the vehicle had visited a petrol station. This was the type of “updated” intelligence he had previously referred to wanting to receive before continuing with his tactical plan. He viewed the intelligence chronology and specific parts of the subject profiles including the summary relating to their risk [23.3.17, p115-116]. He focused on the chronology rather than other documents and considered that the focus was on and remained on Totton [23.3.17, p127/18]. He continued to review VTD and DSU information [23.3.17, p129].
95. There has been much scrutiny of CVIT times and opening hours. It needs to be remembered, without the benefit of hindsight, that officers never knew the likely target and therefore had to minimise the risk to any potential target in Culcheth and beyond. This is not the exact science that has been implied by CTF’s questioning. This uncertainty was made clear time and time again and it was also made clear to the AFOs in their briefings. It was therefore incumbent, we suggest, upon the SIO and planners, by 7pm on 2.3.12, to work on the basis that the robbery might not even take place in Culcheth (this was why Mr Granby did not insert a CROPS officer see 24.3.12, p137). If the robbery did occur in Culcheth, it might occur on any cash in transit, at a financial institution or, especially as time passed, any cash based business. This has not been recorded in precise detail [24.3.17, p51 and p62]. The implicit suggestion from

questioning that the firearms deployment should have ended, or that MASTS ought to have been replaced with another tactical option merely because certain institutions had closed, is we submit unrealistic and entirely informed by hindsight given the sensitive intelligence that officers such as the SIO and TFC were in possession of and given the movements of the subjects. It is not a contention that Mr Arundale would support. It did not follow, as has been suggested, that because certain businesses had closed by a certain hour that no robbery would take place [24.3.17, p57/24 and p58/24]. Such a suggestion completely ignores the eventual presence of the 3 subjects at 7pm in Culcheth. If it is so obvious that they were not planning to commit robbery, what were they doing there? Mr Granby said [24.3.17, p57] that the closed material was critical to his decision making during the day on 3rd and this is why he assumed that if other premises had closed that he would still need to consider evening opening businesses.

96. Mr Granby was clear that he did review whether MASTS remained the correct option and did so in the context of knowing that various potential targets had fallen away for the day [24.3.17, p57/18], and having received some sensitive intelligence about the time frame [24.3.17, p.60]. Mr Sweeney agreed that throughout the day the question of potential targets was reviewed as is apparent from the entries at 12.45 and 14.40pm.
97. We submit that the TFC retained regular contact with the SFC on 3 March, while accepting, of course, that the content and outcome of the reviews could, and should, have been better recorded.

Disruption

98. Mr Sweeney said [22.3.17, p151] that if by 8pm there had been no foundation for an arrest, then there would have been mitigation in conjunction with Cheshire (rather like Supt Ellison) in the form of the available local ARVs. He developed this at pp193-196. If the evening wore on, there might have been disruption or if the subjects had driven home in any event, there would then be planning around the Monday.
99. We acknowledge that disruption should have featured in the logs as a contingency as it did in Supt Eillison's. We also appreciate that had it featured in writing, it might have been given more consideration later in the operation, if only to be rejected. Mr Arundale is not in fact saying that these subjects should have been disrupted, just that it should reasonably have been seriously considered from 18.30pm on. We deal with the question of whether disruption should have occurred later in these submissions.

Tipping points

100. The officers involved in the identification of TPs on 1.3.12 now agree that they were flawed in that the application of the first [one or more suspects travelling to Culcheth] was non-sensical [eg Lawler 8.3.17, p15/22].
101. We note that DCC Chesterman [ACPO Armed Policing] and CI Kevin Nicholson when reviewing ACC Sweeney's logs considered not only that the authority to deploy armed officers was appropriate, but also that the agreed tipping point for arrest was appropriate [G1/3769].
102. Mr Cousen summarised his understanding clearly in his w/s dated 16.12.14 at H/82 – namely that they are formulated but remain flexible. On 3 March regardless of the revised written tipping points, it was considered better to let the subjects drive to their chosen location. There has been no persuasive suggestion that the subjects could realistically have been arrested in Boothstown. There is a very wide “margin of discretion” around this issue and conducting a strike en-route to Culcheth, had that been possible, carried its own risks. Mr Granby said that he gave consideration to arresting the suspects at Boothstown. Had, for example, he had seen them with a weapon at that point, he would have declared state amber there [24.3.17, p44/24].
103. In fact, Culcheth and Worlsey were very close to each other so to Mr Cousen there was no difficulty in letting the subjects drive on during 3.3.12 to test where they were going [16.2.17, p41/18]. The SIO considered that the subjects would commit an offence but he remained unaware of the targeted premises hence his decision to allow public safety considerations to override gaining better evidence. Had the car driven to Culcheth, and within a short amount of time driven back as on previous occasions, then according to Mr Cousen, he would have had a difficult decision to make about whether to effect arrests.
104. On 3.3.12 at the AFO briefing, the TFC told the AFOs [C/336] that “*if two or more subjects are seen in the stolen Audi... taking into account the circumstances at the time or two, further information or intelligence to corroborate previous intelligence that the subjects are committing acts which are more than preparation for the commission of the robbery and thirdly assessment from SIO and TFC that the subjects are engaged in a significant criminal enterprise and their behaviour is indicative of this.*”
105. Mr Arundale is not critical of this aspect of the operation. He considered, in our view rightly, that at the critical time, operational tipping points did take primacy over evidential ones, though as it happened, there was

overlap. Mr Cousen plainly had no difficulty with that. The approach therefore was correctly guided by public safety issues whatever the alleged deficiencies in written rationales around tipping points and the working strategy.

Firearms Briefings

106. We consider that this issue will and should focus at a later stage in terms of lessons to be learned and recommendations. Ultimately the TFC has ownership of a firearms briefing and the OFC has a duty to ensure that AFOs are appropriately briefed. What has been less clear from the oral evidence is the system in place, if any, for achieving the dissemination of accurate and relevant intelligence during such a briefing. It is not the role of the SIO to check the briefings before they are delivered. Mr Cousen expected the intelligence he imparted to be shared as necessary [14.2.17, p57/7 & 21]. At the time, SIOs had no training about which intelligence would be relevant to a TFC or any template to use to record intelligence provided [p66]. Mr Cousen considered his role to be that of providing updates [14.2.17, p138-139, 165-167]. Had he heard the errors, he says he would have corrected them.
107. Mr Granby thought that someone from the robbery unit had worked with the “briefing officer” to create the power point [23.3.17, p123/13].
108. H9 was involved in the preparation of the briefing. He had accompanied X7 and other officers on a visit to Culcheth during the morning of 1.3.12 [10.4.17, p35]. They identified relevant premises for inclusion on the briefing. H9 explained that often the wording would be very “wide spanning”. The TFC would dictate the intelligence content and the OFC would be involved as well. Sometimes the AFO would attend the risk assessment. [10.4.17, p15→]. He thought that the OFC and TFC would check the briefing for accuracy. Sometimes the planner would receive a package, sometimes he would be left to interrogate the force systems such as OPUS. X7 said that it was not uncommon to “cut and paste” parts where appropriate [11.4.17, p31]. The audit of OPUS reveals that no firearms officer checked OPUS on 1 and 2 March 2012.
109. Assessing the evidence as a whole, it seems likely that a “cut and paste” exercise did occur to a significant extent between the 1 and 3 March without separate checks being conducted to establish the accuracy of certain parts of the briefing, with particular reference to the “Information/Intelligence” and “Threat Assessment” sections. Generally this would not necessarily be a problem if the operation did not change.

Repeat deployment on long running OCG operations was common. It does become a real issue however if inaccuracies creep into the process, as here.

The Content of the Briefing on 3.3.12 [F/1267]

110. The “Information/intelligence” section of the briefing contained 4 items of information. Some of that information was inaccurate as the Inquiry knows. In Appendix 4 we set out a summary of the evidence as to what individual officers took from this and from the individual threat assessments.

"The subjects of this operation are believed to be engaged in armed robberies in the north-west region." F/1267

111. This was the subject of criticism. The Force Robbery Unit would not have been investigating the subjects had they not suspected them of committing robbery. The intelligence recorded on the Chronology, which post-dated the start of Shire, confirmed this view and GMP were not to know that it was inaccurate. It was, we submit, realistic to believe that the type of robbery planned by Totton and his associates related to financial institutions or other institutions (including CIT) carrying large quantities of cash. It was therefore reasonable to believe and to warn AFOs that this being so, the subjects were believed to be armed when committing such crimes.

112. Different AFOs took different things from this. Only two made assumptions about firearms. X9 said he thought this meant that they had access to firearms. Q9 went further (and was alone in doing so) and said that he inferred from this that they would therefore be armed with firearms. The majority made no such assumptions.

"There is intelligence to suggest that these subjects were responsible for a robbery in 2008 where they broke into a bank and lay in wait for the staff to arrive. On their arrival they were held at gunpoint, shotgun and handgun, tied up and forced to hand over keys to the strong room. The subjects made good their escape with a substantial amount of the money."

113. In terms of the date, Mr Cousen stated that as both the TFC and TAC on 1.3.12 had noted 2008 as the relevant date, it may have been his error, confusing the month with the year [14.2.17, p161/10]. He said that he had read out the Mills email to Msrs Lawler and Fitton [14.2.17, p161-163] because the whole purpose of seeking authorisation was the sighting of the

hacksaw. Mr Lawler acknowledged that the error about the number of subjects implicated might have been his.

114. The AFOs understandably believed that this applied to all three subjects. They had different interpretations of its reliability. Q9 said that he understood that it was intelligence rather than evidence of convictions but assumed that it was reliable [7.4.17, p31]. This intelligence was overstated and it will be for the Chairman to decide what role this overstatement played, if any, on the events on the ground. Q9 plainly had his own independent view of the subjects. The issue is frustrating for GMP because in fact intelligence of a similar vintage (Op. Ascot) and an older vintage (Op. Vulture) existed to suggest that Mr Grainger and Totton were involved in serious offending involving armed robbery. Op. Blythe revealed Mr Grainger to be a man in possession of body armour. In that sense it was correct for the AFOs to approach the occupants as suspected armed robbers capable of using firearms or other weapons towards officers. None of that however, excuses the error made about the Kirkham robbery in 2005.

"The subjects have access to a stolen red Audi A6 displaying VRM [then the index is given] currently parked in Boothstown." AND "The subjects have been observed conducting recces in Culcheth town centre, although it is unclear at this time what the specific target may be."

115. Both of these statements were correct and implied serious criminality. U9, for example took from it that *"We had a group of travelling criminals, access to stolen vehicles, they had been on preparatory recces to commit crime and they may be in possession of firearms"* [28.3.17, p21/15]

Not Being Told "There is no specific intelligence that the subjects have access to firearms"

116. We have summarised the AFO evidence about this in Appendix 3. We submit that this did not have any bearing on the outcome. It would have been useful to have given the same warning on 3rd March as was given on 2nd March. Each officer knew that if there had been specific intelligence they would have been told about it.

Threat Assessment
Collective v Individual

117. We do fear that while there has been a lot of focus during the course of the evidence on assessment of the individual threat, this has been at the

expense of the assessment of the collective threat. This is very natural given that the Inquiry is examining the particular circumstances of Mr Grainger. It does however, in the firearms deployment context, risk a lack of reality and we suspect a tendency to hindsight. We make this observation with full insight about the overstatement of certain aspects of the intelligence. The individual threat assessment is necessary. It becomes especially relevant if the subjects are individually identified by the relevant AFO. Here, however, that did not happen because of the dynamics of what was happening on the ground. There was a consensus endorsed by Mr Arundale that the collective threat generally has priority. As U9 observed – the individual threats described in briefings tend to become more blurred in the split-second reality of operational work on the ground [28.3.17, p15-16]. He was asked:

“Q: How do you treat the information you have been given about each of their individual capabilities when you are confronting them?”

A: Yes. I think it is an overall story of what the group is like. And whatever subject you are confronted by, you will deal with them as they appear to you at that time, you wouldn't go off any intelligence or threat assessment per se for that individual, because you wouldn't have time to.” [28.3.17, p25]

U9 also explained that where there is a disparity of risk posed by an individual on paper, you still just take each individual as you find them during the strike bearing in mind the time frame and the uncertainty about identification [29.3.17, p 31]. This was a view endorsed by the majority of officers. Officers, we submit, would be entitled to fear, that any weapon that Totton may have in the front of the car, would be accessible to the driver, especially in a flight situation.

118. Most other officers also agreed that if the assessed intent is to commit armed robbery, then the threat is a collective one and it includes the car. As it is not always possible to separate occupants into individual risks, an AFO is thrown back on the collective impression and intent. It is very clear that different officers took away different things from the confection of information provided to them at the briefing. This cannot be completely guarded against. For example, Z15 stated that the most important information to him was the suspicion that the subjects were engaging in robberies and that they had a high performance stolen car on false plates and that there have been recent recces [4.4.17, p72-73].

Individual Capability (F/1268-70)

119. The Capability section of the threat assessment in the briefing focused on warnings. This too is summarised in Appendix 3. Different officers took

different things from this which makes it an issue for future discussion in terms of lessons learned. For obvious reasons we focus on what Q9 took from this. Q9 said that a warning could be based on intelligence or on a conviction [6.4.17, p38]. He said that he did not treat Mr Grainger's warnings as convictions although there remains uncertainty as to how he viewed Totton's [6.4.17, p41-42]. He thought Group 1 Offender meant that Mr Grainger had been highlighted in respect of serious violent crimes but that did not highlight in his mind Mr Grainger's dangerousness. He said that he did not rely upon the Group One Offender status which he took to imply someone who had been highlighted as a serious violent criminal [6.4.17, p44].

120. Chief Supt Ellison [21.2.17, p149/11] stated that the form of words around Mr Grainger's "WE" marker [*“previously conspired to commit robberies with firearms”*] would not suggest fact – it would suggest that *“it serves to outline that he has been involved in a group that has conspired to commit robberies with firearms but not necessarily him personally”* It is for the Chairman to decide how the average AFO would receive this language in the context where the other 2 subjects have justified and very serious warning markers. Mr Grainger had in fact been arrested and indicted for conspiracy to rob [Vulture – first indictment G2/1168A-D, and then for robbery and attempted robbery – G2/1168]. In 2006 he featured suspiciously in Operation Ascot but was not arrested or charged with any offence. As discussed, there is no explanation for the warning on OPUS for Weapons – it might relate to previous arrests for or suspicion about committing robbery. We fully acknowledge that the organisational inability to explain the warning signal is unacceptable.
121. The reality is that GMP (and plainly the CPS) did think that Mr Grainger had previously conspired to commit armed robberies but this should have been more accurately depicted. Likewise, there had been numerous arrests for section 20/18 offences although none of these had resulted in convictions pursuant to the 1861 Act and this could have been clearer. It was not obviously helpful to refer to Mr Grainger as a Group 1 offender (although Totton and Rimmer were), and Mr Grainger's offending and suspected offending did bring harm to, and pose a threat to, the community.
122. The briefing also contained information about the hacksaw and the source of this remains unknown. Mr Cousen disputed that he would have briefed anyone that a subject had been seen near the bush-line – he relied upon the fact that he had not said anything like that on 1.3.12 when briefing Mr Lawler and X7 and that he had made no note of such a sighting anywhere [15.2.17, p52/19]. Q9 was asked about his reliance on this and indicated

that to him it signalled that the subjects might be targeting Sainsburys.

123. Q9 had been briefed on 15.12.11 and 26.1.12 and deployed on Operation Blythe. He said [5.4.17] that he would work on the intelligence that he received on the day he was deployed because intelligence could change and be refreshed. He also said [6.4.17] that his assessment of the likelihood that they would have a firearm was in part because he had previous knowledge from a previous briefing (January 26th) about their capability. The Chairman will need to assess whether intelligence known by Q9 before 3.3.12 played any part in his decision making, noting Q9's own evidence about the 2000 Bolton incident during which a firearm had been discharged at officers and to which Totton was suspected of being linked. Indeed, the collective effect of all of the intelligence issues featured above will be a matter for the Chairman, after careful consideration of all of the evidence, in particular, the evidence of Q9. It is open to the Chairman to come to a host of different conclusions, including a conclusion that he cannot establish what effect the described intelligence had.

The TACs

124. Sgt Allen accepted that his log was inadequate and that a greater number of tactical options ought to have been recorded along with the reasons for rejecting or approving them. He agreed he ought to have recorded more information about contingencies but failed to do so. He did consider that these issues would all have been discussed because this would have been his practice [and that the TFC would have wanted to discuss them]. This failure to record was, he said, his failing. [21.3.17, p77].
125. In terms of causation however, Sgt Allen at the time agreed that MASTS was the most appropriate option.
126. Y19 (whose competency we deal with below) reviewed the threat assessment and working strategy and agreed that they were as they should be. He discussed "all aspects of the assessments" with Sgt Allen and there was no reason to change the assessments and working strategy. He wrote up 3 tactical options – unarmed, MASTS and Overt strike and reviewed them with Mr Granby and signed this off at 15.15pm [C/621]. It amounted to a review of what Sgt Allen had previously discussed with the TFC with Y19 applying his mind to the pros and cons irrespective of what had been earlier agreed.
127. We agree with Mr Arundale that the contribution of the TACs on 3.3.12 was wanting and difficult to analyse because of the limitations in their record keeping. In our submission, we think it is very difficult to speculate

about the effect, if any, of this and that the Chairman should therefore guard himself when, or about, doing so.

Rehearsals/Training

128. We do not consider that the inability to conduct rehearsals affected the outcome of this incident at all. The Chairman has heard various evidence about the difficulties involved due to the layout at Leigh. Even if a rehearsal had been carried out at Openshaw, it would have been very early in the morning and it might not have involved the same configuration of vehicles as on the car park. Mr Arundale is not critical in this respect. Nor, we note, is he critical about the way in which MASTS training scenarios were composed after May 2010 when the content of the course was subject to formal conversion.

The Calling of States Amber and Red

129. The subjects were observed by DC Clark arriving in Boothstown at 6.29pm. Mr Grainger was wearing gloves. Totton was identified but the third male was not. It is not all clear how DC Clark's broadcast was understood by Mr Cousen to mean that all the subjects were wearing gloves. However the error occurred, by the time Totton was at the car park he was wearing gloves. All the men were wearing non-descript outfits, consistent with a desire to make it difficult to identify them. Two had rolled up balaclavas and Mr Grainger had a small black hat.
130. The Inquiry knows that eyes were "lost". DC Wallace kept the vehicle under observation, on foot, from a balcony between 6.45 and 6.52pm. At around that stage the TFC and OFC agreed that the Delta car should make to the area in order to "provide options". This is an example of the flexibility that MASTS allows and it should be noted that this appropriate step was not recorded in advance as a possible contingency. The lack of recording did not prevent it from being used as a contingency.
131. Whilst the car remained un-sighted, the direction was given for the other teams to get closer. DC Evans entered the car park in his car and then walked away having been able to confirm that there were at least 2 occupants, both in the front seat. This was at, or about, 7.05pm. The TFC has this as 7.03pm and noted that 3 were "on board" rather than the 2 that DC Evans had seen. This discrepancy has not been explained although in fact 3 were on board. The TFC liaised with the SIO and they agreed that

the tipping point had been reached, hence the calling of State Amber and thereafter the calling of State Red. Mr Granby was satisfied by the time Amber was called that there were still three people in the vehicle [16.2.17, p61-63]. This was because the VTD and the surveillance team combined provided nothing to suggest otherwise. DI Cousen was under the impression that there were enough DSU officers wrapped around the car park, including with eyes on the cut through in the Cherry Tree hedge to know that the occupants had not exited. As he said:

“But that was my professional opinion based on having the detective inspector with me, as well, from the DSU, based on my professional experience and based on what was happening on the ground, as well, and it was proved to be correct.” [16.2.17, p110]

132. In concluding that by 19.03, the tipping points had been met, the TFC bore a number of matters in mind. The car had been stationary for 18 minutes. It had not, as with other trips, been driving around. Mr Granby relied upon the various facts that there were 3 occupants including, he rightly assumed, Mr Grainger and Totton. He bore in mind their clothing, including gloves, their location in a high performance car on false plates, in a place where previous recces had occurred, their arrival which had involved counter surveillance driving (u-turns/reciprocals). He recognised that the Audi was parked in proximity to establishments that might close late with a day’s takings [24.3.17, p86-97].
133. X7 said [11.4.17, p170-173] that once Amber was called he viewed that as authority to arrest. Given the limited capability of surveillance officers, disruption was not an obvious alternative and it was not one he gave any consideration to. It would mean that he and his men in 4 cars would have to be far enough away not to be observed (problematic once Amber called) but close enough to intervene if necessary. It would only be if something very obvious and significant changed in those circumstances that he would draw back and withhold state RED. This, we maintain, was a reasonable approach to adopt.

Disruption

134. In his report and oral evidence Mr Arundale expressed a view that there could and should have been more planning around disruption, and that at or just before the point of contemplating the calling of states Amber and Red, a tactical pause should have occurred in order to consider disruption as a contingency. The benefits of disruption are stark: if it works, there has been no armed arrest at that location and the robbery has been prevented. The potential pitfalls make for a much longer list.

135. In terms of sustained public protection, we do not consider that disruption should have been considered at or around 7pm for very long at all although it should have been considered in more detail earlier in the operation. Had it been considered at 7pm in any detail, it should have been rejected and quickly. We consider that Mr Arundale's well intentioned view in this respect, as in a few others, is somewhat utopian and may be a reflection of his immersion in theory over practice and perhaps his lack of operational experience of this type of MASTS deployment coupled with subjects who could easily have been non-compliant. In any event, Mr Arundale agreed that effecting an arrest either as soon as the Audi arrived on the car park or at 7.05pm was within reasonable decision making boundaries for the TFC and OFC.
136. Mr Arundale agreed that it was sensible to operate on the basis that such subjects would know perfectly well when premises opened and closed and that by 7pm it was a reasonable assumption that the subjects were in the car park to commit armed robbery. That being so, in our view, any sight of police officers (overt or spotted covert) is likely to have induced sustained attempts at rapid flight in a very high powered motor vehicle, stolen, without doubt, for its ability to reach high speeds very quickly. This has now been corroborated by Totton himself and would have been obvious to all concerned.⁶
137. Should the comparison be drawn, disruption was easier for Supt Ellison to plan. The ability to use disruption as a tactic was informed not only by the fact that the subjects had only expressed interest in cash vans using the G4S depot but also had expressed interest in early morning activity. The type of disruption was not on the targets but on the van and so would not alert the suspects and ruin the investigation to date. [21.2.17, p184].
138. We submit, that however possible it might have been to plan for covert types of disruption ie using officers in a way that suggested their presence was unconnected with the subjects, that brought with it a long list of potential disadvantages which include:
- a. It assumes there was no imminent risk to life. No-one could safely say that – it is the inevitable by-product of applying hindsight;
 - b. It just displaces and splits risk in the sense that had evidential tipping points been met, there would need to be three alternative arrests at three separate locations, no doubt using armed officers in

⁶ See para 11.10 of the Shire DCS for an example of how such criminals can behave in a pursuit situation - I/1093.

circumstances where it might not be known whether those homes housed weapons (8 Thanet Close contained smoke grenades...) or might result in siege situations;

- c. It risks a prolonged police pursuit or an unpredictable response from the subjects – this is what is meant by handing over control to the subject. At his trial, Totton said that he had researched roads so that he could avoid dead ends in a pursuit situation should the police “come on top” [G2/901, 903 and 911]. He told the Inquiry that flight would be the priority during any offence and this is obviously why the Audi was parked as it was on 3.3.12;
- d. It would require the disrupter to know where the subjects were. If one or more were outside the vehicle, and whether any subject was armed;
- e. It seriously risks operational compromise. Mr Arundale talked of subtle methods. These criminals are acutely aware. If spooked, it could jeopardise the entire operation (and that into the Corkovics – should news spread);
- f. It risks the loss of evidence – if these subjects had been disrupted, the police might never have identified Mr Travers. If they had sped off with a follow, hats and clothing and the car could have been disposed of. Technical surveillance in the form of the VTD would be lost. That being so, the prospect of prosecution might be considerably weakened if not obliterated.

139. That could not all be factored into a collapsing time frame whilst the car remained on the car park as Mr Arundale suggests. It could not be planned in any detail in advance as one could plan a follow on a scheduled CVIT delivery. Mr Arundale agreed that in a dynamic and fluid situation such as here there was no ‘one’ option – re disruption, many would have to be thought about but could not really, we suggest, successfully, be planned for and this is why we characterise his views about this as somewhat Utopian. It presumes that officers had plenty of notice as to where subjects would go, how many they would be and who and what they might do, so as to have disruption officers and plans in place. It fails to recognise, we submit, the uncertainties and un-predictabilities. We also invite the Chairman to consider what ACC McCormick had to say about the use to which the Cheshire ARVs could be put [23.2.17, p109].

140. In his witness statement at H/28, Mr Granby said that he considered arrests for lesser offences and disruption but he considered this to be

incompatible with long term public protection. He developed this in his oral evidence [24.3.17, p158/7] and said in conclusion:

“I think the other risk associated with that is any form of approach to a vehicle, the subjects in that vehicle would have a very early view of police attention and an opportunity to embark on an escape and a pursuit.”

141. Mr Sweeney would have considered mitigation/disruption in more detail closer to the 8pm cut off.
142. We do invite the Chairman to consider how a similar post incident Inquiry would play out, had the police done nothing but delay arrests or forego them completely. In those circumstances had things turned out differently, with a road user, subject or pedestrian dying in the flight phase, or a member of the public being injured badly or killed in a subsequent robbery or even an officer injured or killed during a home address arrest, then the entire focus would have been on why the police did not conduct the planned strike whilst they were in a prime position to do so.
143. We also respectfully remind the Chairman of the relative luxury of Mr Arundale’s position when purporting to provide expert advice on this issue. In effect, he is really saying *“Here is where I think things were not done properly on 3.3.12, but I’m not going to tell you how I would have done it”*.

This was laid bare when we asked him exactly how disruption could have looked given the circumstances as they panned out at 6.45pm on 3.3.12 [28.4.17, p42]

“That may not be able to be delivered but what I would say is that would be the ideal situation and scenario and it could be as simple as police officer walking through Culcheth” – we pause to ask exactly where? – *“..might be enough to spook them...”*

Q: That might be a uniformed officer, if they were in the car park then walking directly across the car park?

A: I am not suggesting that as a planned contingency but these things happen.... You can plan all the way up from considering scenarios...from one officer walking through an area to two officers, to a high profile entrance with blue lights and sirens...”

The actions of officers during the arrest phase, and the circumstances in which the officer who fired the fatal shot came to discharge his weapon

Sequence of Events in the Car Park

144. The more significant issues in this respect would appear to be:

- a. The T boning of the Audi;
 - b. The general sequence of the fatal shot including Mr Grainger's movements and whether the CS went in before or after the fatal shot was fired;
 - c. The use of special munitions.
145. All of the officers present had been trained in unconventional enforced stops. It was, they said, practised during every MASTS training session. Despite the length of questioning on the topic from a variety of counsel, no officer, expressed any real concern over the way in which officers from the first three cars were expected to deploy, approach the subject vehicle and find work. H9 [10.4.17, p8-9] explained like others that the training and practice was very fluid. There was an assumption: "*...depending on where your vehicle was placed, it would be obvious that if you were closer to the offside, for instance, then those individuals are likely to go to that side, so wherever your vehicle was placed, you were likely to go to the closest side or the shortest distance.*"
146. We have provided short summaries of the officers' accounts in Appendix 4.
147. The sequence of events is entirely fact specific and we do not propose to make detailed submissions about it. We are also conscious that Q9 is separately represented and that his own representatives are likely to deal with this issue in some detail.
148. In summary, we submit:
- a. Even if a further review had occurred to consider disruption, there is nothing to suggest that it would have affected the outcome. We do not agree with Mr Arundale that disruption was viable even if it had been identified as a contingency and even if some tentative plans had been put in place to resort to it;
 - b. T boning the Audi was appropriate and a better option than driving round to try and effect a nose to nose position – Mr Arundale agrees;
 - c. The AFOs would know from their training, regardless of what was or was not broadcast, how to find work compatibly – Mr Arundale agrees;

- d. Rimmer's suspected absence could have been broadcast and would have been useful information – there is nothing to suggest that this affected the outcome;
- e. It was reasonable for Q9 and X7 to agree that Q9 would provide static cover from the rear seat of the Alpha vehicle – Mr Arundale agrees;
- f. On the balance of probabilities, both front seat occupants heard Q9's command and initially complied with it – this is not an issue for Mr Arundale. Totton denied that there had been any instruction before the firing of the fatal shot and that at the time his hands were down and therefore not visible. He was referred to the transcript of his call with Mr Schofield on 23.2.12: "*Did Anthony, did Anthony have his hands raised or anything?*" *You answered: "Well, it would have been -- well, I am not too sure because I am looking at the thing, obviously. But he would have put them up, wouldn't he."*
- g. X7's account of the sequence cannot be correct if it is to be suggested that Q9 had not fired the shot by the time that X7 reached the driver's door of the red Audi. What he probably saw was Mr Grainger after he had been shot – this is not an issue for Mr Arundale;
- h. It is difficult to think of a reason why Q9 would shoot a subject unless he honestly considered it to be necessary and in the wake of perceived non-compliance. He did not know which subject he was shooting. The role of the intelligence he received in the briefing, and his assessment of the same, together with the assessment of the intent and general capability of the subjects he received in the briefing, and his assessment of the same, are all matters for the Chairman's assessment. These matters fall to be considered alongside Q9's account of events in the car park, the warning he gave to Mr Grainger, Mr Grainger's reaction to that warning, and Q9's assessment of the risk that posed to himself and to his fellow AFOs - these are not issues for Mr Arundale;
- i. The evidence demonstrates that CSDC was deployed after the fatal shot had been fired. It did not in any event incapacitate Mr Totton

(or anyone else) – this is not an issue for Mr Arundale. There is no need in this document to rehearse the medical evidence in detail. According to the pathologist, Mr Grainger suffered massive internal bleeding but would not have died instantaneously but within minutes and he would have lost consciousness “very quickly” [Dr Rodgers 12.4.17, p33-4]. Pathology cannot assist with whether Mr Grainger’s arms were raised at the point of injury. The post mortem cell tryptase level did not prove one way or the other whether Mr Grainger was shot before or after the use of CS [p41]. More than once Dr Rodgers indicated that Mr Grainger might have appeared dead very quickly but that equally he might have been capable of some movement after the shot was fired but before quickly losing consciousness [eg p43]. Dr Lawler agreed with the evidence of Dr Rodgers [p52]. Dr Seaman’s evidence did not undermine in any way the proposition that the shot was fired before the introduction of CS into the vehicle;

- j. Leaving aside “CSDC” historic issues, we invite the chairman to conclude that X9 honestly believed that it was reasonable and proportionate to use the CS because his perception (wrongly) was that the car was not under control because the driver did not seem to be compliant. When he deployed it, the front passenger seat was already empty – we do not think that this is an issue for Mr Arundale. There is a genuine range of opinion around the practice of removing the ring as X9 did (which Mr Arundale is entitled to opine on) – X9 acted within reasonable boundaries and in accordance with his training. Ditch drills were additionally trained. Mr Whittle stated (U/50)

“X9 is a Counter Terrorism Specialist Firearms Officer (CTSFO) and therefore fully trained in Dynamic Intervention and the use of manually operated pyrotechnic devices. He has been trained to hold manually operated pyrotechnic devices with the fly-off lever in web of the hand before removing the pin. The CS Dispersal canister (CSDC) operates on the exact same principle. This practice prevents the device from initiating should the operators grip loosen. There is therefore very little chance of the device initiating whilst the officer is holding it inside the vehicle they are in. Should the officer decide that the use of the CSDC is not required it can be discarded in a safe direction.”

- k. We acknowledge that X7’s reference in the briefing to disabling the vehicle has the hallmark of presumed use of the shotgun breaching round. That said, we invite the chairman to conclude that Z15

honestly believed at the time he deflated the tyres that there was still a risk that the driver could operate the vehicle in a dangerous way. In fact this would not have been possible because Mr Grainger had already been shot. It was his judgment bearing in mind the distances involved, the nature of the red Audi, the suspected indictable criminality and that the fact that the driver was still in situ that there was a risk that a skilful driver could reverse the car and try either to drive away along the verge or to ram its way through the gap between the Alpha and bravo cars [p161]. This judgment should not be dismissed. It should be remembered that officers will see all sorts of desperate and aggressive behaviour including the use of a car as a means of escape and as a weapon. As he said “*But it is not about getting out. Once that car is in motion, it is a serious danger.*” Mr Molloy (E/529) remarked that Mr Grainger’s unresponsiveness (due to being shot unbeknownst to Z15 or X9) might be grounds for the officers taking the action they did;

- l. Leaving aside the submission that neither the use of CS nor the tyre deflation caused or contributed to injury or death, we understand the concern that the use of special munitions causes. There are advantages and disadvantages with most options and contingencies and the use of respirators thereby potentially limiting immediate identification as a police officer and verbal communications is a very live issue. Mr Arundale has commented on the overt/covert aspects of this MASTS deployment in the context of the subjects’ potential fear that the police officers were in fact rival organised criminals. In fact, we do not consider that there is any real evidence that either Totton or Travers considered that they were under attack from other criminals. They have never suggested that in their statements, nor did Totton during the course of his recorded telephone conversation with Mr Grainger’s step-father or in his oral evidence before the Inquiry;
- m. Appropriate efforts were made to save Mr Grainger’s life – this is not an issue for Mr Arundale.

COMPETENCE

149. At the time of opening submissions, we acknowledged and apologised for issues surrounding the technical competence of certain officers.

Competency issues have been developed further during the Inquiry because of the CTSFO course failures of X7 and Z15 which became apparent when Mr Williams double checked his emails and disclosed those relating to the course failures. We are conscious of the concern that will be caused not just to the Core Participants but to the public by issues around continuing professional development of firearms officers. We think some of the difficulty is explained by the challenges involved in maintaining operations units and training units of the size experienced in GMP. Some is also explained by a healthy diversity of opinion as to how any shortcomings in professional development should be managed. Some is explained by the operational demands on the force at a time when officers were required to be trained to higher standard because of the Olympics. Some is explained because of changes due to be implemented within GMP which required a more specialist standard within the AFO cadre. Competency is another area where, regrettably, we respectfully submit that Mr Arundale's approach has been, in part, a little unrealistic.

150. In respect of each of the officers who fall to be considered under this heading the Chairman should, we submit, consider the following:
- a. There was no central (or any) guidance available about how forces should deal with course failures, particularly external course failures. Local force discretion operated which means, inevitably, that there will be wide divergence on how such issues were dealt with. This observation was somewhat dismissed by CTI. We in turn wonder, given the scrutiny applied to this, why such an issue in the firearms arena should be left to "common sense". In fact the failure rate in respect of CQC Cover and Movement was high, something Mr Arundale was unaware of;
 - b. Any local approach will justifiably include a consideration of the nature of the failure and any communications from the course providers, the timing of any such communication, attitude, qualifications and experience of the AFO and the operational force requirements;
 - c. The outcome of the process will depend upon the professional and subjective views of the CFI and head of Ops/TFU;

- d. Unlike Mr Arundale, the CFI and the Head of the Ops team will know the officer in question and have an informed insight about his fitness and capabilities;
- e. Despite the fact that the FTU should have been the point of contact for the Met CTSFO course rather than the TFU, nothing of substance turns on this. Marcus Williams was emailed about the course failures on 28.2.12 and was out of force almost immediately for a week. From 3.3.12, Z15 and X7 were offline;
- f. Mr Arundale's opinion about course failures is given in circumstances where he has never held the post of CFI, has never undergone or delivered the training in issue, and purports to have, years after the events in question, a more accurate and informed view of the nature of the failures than the course providers themselves. He did not have the appreciation that other officers such as Mr Nutter and Mr Williams had of course failure rates especially on the CQC Cover and Movement module. His view has been formed solely from reading the entries of instructors who, if Mr Arundale is correct, would be under a "common sense" imperative to express views forcefully to the local force and to utilise urgency in doing so;
- g. Marcus Williams, the CFI, knew Mark Williams as a friend. Any failure to mention the course failures of X7 and Z15, was not deliberate or sinister. His views about competency, given his position should not be dismissed lightly. He considered whether Z15 should continue to operate on line and whether he should have any sort of safety warning. He formed a subjective view of the officer and of what might have happened on the course. In GMP, the officer would not have trained to such a degree that he could commit such safety breaches and this was a further consideration as was the assessment that he was a slower learner compared to others. Marcus Williams was applying common sense.

151. Mr Arundale's approach has, we believe, been infected by hindsight and is unrealistically lofty.⁷ We respectfully submit that the Chairman would be better advised to consider the facts for himself, including the

⁷ An obvious example of this is suggested by Mr A's comment para 158 that a Not Yet Competent assessment on the PSNI JS course "doesn't necessarily negate the officer's existing accreditation as a force TFC"

communications from the course providers and to focus on the explanations and evidence provided by officers such as Mr Lawler, Mr Nutter, Mr Whittle and Mr Williams.

Supt Granby (J18) – the TFC

152. We remain of the view that Mr Arundale has overstated the significance of this officer's unsuccessful attendance on the Joint Services PSNI course in 2011. It was not necessary on the particular facts to give serious consideration to removing Mr Granby from his TFC duties upon his return from NI. In any event, we do not believe that the failure on the course or the organisational response to that failure has any relevance to the events of 3.3.12. We submit that any shortcomings that may be found by the Chairman in the performance of Mr Granby on 2 and 3 March were not the result of the course or GMP's continuing trust in Mr Granby.
153. During the course, Mr Granby received feedback that he needed more experience with multi-disciplinary specialist investigative assets [ie non police] and to understand the capability and operational strengths that those assets could bring to an operation.
154. Mr Granby said [24.3.17, p148/16] *“The specialist firearms commanders' course is focused about working with individuals from Security Services, from military personnel, so there is a more complex layer of interoperability, of different agencies feeding information into a firearms commander.”*[24.3.17, p 165]
*“Q Is it fair to say that there is a focus here overall on an ability to manage and coordinate, intelligence, firearms and other investigative assets within the context of a specialist firearms commanders' programme yes?
A. I think it is that understanding of the specialist investigative assets and the multidisciplinary assets, that perhaps where I think that is highlighted where they, the development needs were identified.”*
155. Mr Lawler did not consider that the content of the course compared, in terms of general TFC competency [8.3.17, p124/24] and that it would have made no difference to Mr Granby's role as a tactical firearms commander doing normal, day-to-day operations [7.3.17, p99]. This was because in his view, Mr Granby was an experienced TFC, the PSNI course was about specialist extension learning, and his “Not yet competent” status as a specialist commander did not tell Mr Lawler anything about Mr Granby's competent everyday activity. He was firmly of the view that an exercise specific failure given the different specialist context did not render Mr Granby unfit as a TFC. Mr Whittle agreed (U/45). Mr Lawler had

attended the course himself and was clear that his failure would have made no difference to his general TFC role [7.3.17, p99].

156. The 2011 materials, from D.C.C. Simon Chesterman (Working Group on Armed Policing Lead) [U/4] and course notes [U/8] made it clear that if a delegate was assessed as not meeting the required standard of the programme their existing accreditation would not be affected. The course notes contained the caveat that if a critical issue were identified that raised a concern about operational practice, it would be conveyed to the Chief Officer of the relevant force. No such critical issue was ever identified or communicated, the onus, as the providers would know, being very much on them to communicate such an issue. No safety or operational issue was communicated at all. Mr Granby promptly informed his force of his failures – both Supt Giladi and Mr Lawler.
157. We are reinforced in our opinion that Mr Arundale has, regrettably (and wrongly), applied hindsight by the following exchange [28.4.17, p85]:
*“Q: The course providers, Mr Arundale, would be well aware, wouldn't they, of the nature of Mr Granby's performance, because they have assessed it, and they would be well aware of how it fell short, because they have assessed that, and they would also be well aware of his role within GMP?
A. They would be, but they may not be aware of the implications of that handwritten document being disclosed in subsequent proceedings if an incident resulted in an untoward occurrence.”*
158. Supt Granby attended 6 hours of command training on 26 January 2012 in GMP during which he was required to apply the CMM/NDM in the context of the policing response to shooter incidents and was assessed as competent to act in the position of a TFC.

X7 – the OFC

159. GMP has already acknowledged and apologised for X7's lack of technical competence stemming from his incomplete attendance in November 2011 on mandatory command NPIA training.
160. The effect of any absence from the course, will be a matter for the Chairman, but we note previously expressed expert opinion (including Mr Arundale's) that this failure was not critical. There is no evidence that it affected the quality or nature of X7's decision making. We note that the NPIA course was not a pass/fail exercise and individuals are not assessed against learning outcomes or criteria.

161. X7 had also failed to pass on two occasions the MPS CTSFO course. He was a SFO. In March 2012 this would not cause him to lose any existing accreditation but it would mean in due course that he would not be able to command or participate in any CTSFO deployment and according to revised requirements would not be able to continue in the Ops team [11.4.17, p11]. He felt that a combination of Mr Grainger's death and the failure of the course would create scrutiny and that as an experienced AFO, a move to the ARV team would be suitable where the level of pressure was different [11.4.17, p15]. None of that means that he was not capable of performing his duties on 3.3.12. Indeed if it is to be suggested with hindsight that certain types of failure disqualify firearms officers/commanders from certain roles and duties, then there really ought to be clear and comprehensive written guidance to that effect.
162. Mr Arundale agreed [28.4.17, p79] that the local force would be entitled to set store before receipt of the course materials upon the content of the communication from the course providers – this would enable the force to decide how best and when to proceed. There was nothing about the communication from the MPS concerning X7 which would alert the reader to any sort of critical issue. X7 failed the CQC element which bears little resemblance to the issues confronting X7 as an OFC on 3.3.12.
163. The failure was communicated to Mr Nutter on 27.2.12 [Y/122]. He quickly asked that the course materials be sent directly to the CFI. He notified the CFI the following day. Mr Williams was then away from force for a week during which Mr Grainger sustained his fatal injuries. Mr Williams' emails (Y/304 & 898) demonstrate that he was still not in possession of the MPS training records by 5.3.12. Z15 had apparently brought them back North on 28 February 2012. Their whereabouts in the intervening period has not been resolved. Marcus Williams obtained the MPS records on 12.3.12 (Y/112) and thereafter acted upon them promptly.
164. We do not therefore consider that X7 should have been deemed unfit to perform his duties on 3.3.12. His performance on 3.3.12 should not, with hindsight, be seen through the prism of his performance on a CQC module of the CTSFO course.

Z15

165. Z15 (shotgunner) was asked to leave the MPS CTSFO course on 27.2.12 for a variety of safety breaches, which, had they occurred within GMP training would have been viewed extremely seriously [Bundle Y/125, Email 15.3.12 Inspector Marcus Williams to Chief Inspector Lawler]. There was

a suspicion in GMP that by allowing Z15 to continue intensive training after committing safety breaches, he was overloaded with the consequence that other breaches were allowed to occur in circumstances that would never have obtained in GMP training. Z15 was clear that he felt that he had had a bad day in respect of the CTSFO course. His failure, notably, related also to the Cover and Movement element of the CQC module.

166. Z15 could not recall what he did with the course notes on his arrival back at Openshaw.
167. The CFI reviewed Z15's course records and emailed CI Lawler about it [X/20] on 15.3.12. If he had known the contents on 28 February, he would have taken Z15 off line [19.4.17]. He said the notes initially read quite badly but that on closer inspection their impact became diminished. That view was informed in part upon Z15's account of what occurred at the subsequent review. Mr Lawler likewise thought that he would have kept Z15 off line, had he known of the course comments until his situation could be reviewed [8.3.17, p80]. In fact tolerance of Z15 has been amply rewarded in the sense that despite being a slow learner, he qualified as an SFO in 2013 and in the Spring of 2014, he qualified as a CTSFO. Mr Nutter [21.4.17, p145] described him as a very credible member of the team – calm and methodical.
168. The Chairman will need to decide whether Z15 should have been off line by 3.3.12 and if so, in reality, what difference that made to the outcome. The email [Y/122] informing GMP of his failure said that it related to safety breaches. Mr Lawler, could, had he chosen to, sought more information in which case a decision could have been taken before 3.3.12. The same email also went on to indicate that the officer would be offered a place on another course coming up, if space allowed and both Z15 and GMP relied on this as a factor to take into account in terms of any urgency as to his fitness. That email did not obviously warn the reader as such of the apparent scale of Z15's failure.
169. It will be necessary for the Chairman to consider what Z15 did on 3.3.12. In fact, the criticism of Z15 is that he deflated tyres when there was no operational need. That is a matter of judgment in circumstances where he had been briefed on the basis that the stolen vehicle in question was very powerful and would enable serious offenders to seek to escape in a volatile way. There is no criticism that on 3.3.12 he breached specific weapons safety rules or ran into someone else's arc of fire etc. Z15 was clear that his recent failure on the course did not affect his mindset at all [4.4.17, p50]. There is no demonstrable link between his course failure and his

decision making on 3.3.12.

Q3 - TAC

170. We believe that Q3 was qualified to act as tactical advisor (TAC) on Operation Shire. He qualified as an OFC in 2010 and a TAC on 9.2.11. He was re-accredited as a TAC on 31.3.11 and underwent TAC refresher training on 25.10.11. His last MASTS refresher training was on 24 November 2011 and he received OFC refresher training on 23.2.12. Q3 handed over to Y19 shortly after 3pm on 3 March.

Y19-TAC

171. GMP has accepted and apologised for the fact that Y19 was not occupationally competent in the role of MASTS and therefore not occupationally competent to perform the TA role on a MASTS operation. Wrongly, GMP's Tactical Advisor SOP had not been amended in summer 2011 to take account of the change in requirements from the 2006 NPFTC.
172. It will be for the Chairman to consider, what if any, relevance this has to the decision-making process on 3 March and we have dealt with this above. Y19 was an AFO. He said [21.3.17, p102] that though not trained in the MASTS tactic, over the years as a TAC he had attended numerous sessions involving MASTS training sessions and actual operations and was fully aware of the MASTS tactic and how it has to be applied as part of a firearms operation. He had been refreshed in TAC in the five months prior to the strike and had attended MASTS training on 30 November 2011. He should therefore have had a good level of knowledge around foot and vehicle tactics from a MASTS platform. He took over the role when the operation was already up and running. We note that in fact his log keeping was better than that of Sgt Allen.

X9

173. Although not developed during the Inquiry, in his written report, Mr Arundale left a question mark over X9's technical competence in the use of CSDC. Mr Whittle confirmed X9's attendance at training on 17.3.11

(I/731 and 735) which seems to have included delivery of CS for X9. He also explained in his w/s (H/177) that from the available records for the training on 24.11.11:

“Instructor Notes and a copy of the Munitions Requisition Form showing 2 x Inert CS Dispersal Canisters drawn from the Armoury to complete the training which I produce as Exhibit ref A17/2. The use of the CS Dispersal canister (CSDC) was included in that training and is to be deployed by the officer in the B3 position. All students rotate within the vehicles to undertake the various roles. He was therefore operationally competent in the use of the CS Dispersal canister (CSDC).”

174. We do consider that this officer was operationally and occupationally competent in the use of CS munitions.

The suitability or otherwise of the firearms, ammunition and other munitions deployed in the operation

175. Leaving CSDC aside, the firearms, ammunition and other special munitions were entirely suitable.
176. In its Opening Submission GMP acknowledged the force of Mr Arundale’s observations about its use of CSDC and apologised for the fact that, plainly, such use had not gone through the required health check process. In this section, we do not attempt to summarise all of the relevant evidence and we refer the Chairman to what we said during those opening remarks. We do not know how much the Chairman will wish to consider or assess individual fault about what occurred given the terms of reference and what we submit was the limited role that CS played in the events of 3.3.12.
177. The 2003 COP on Police Use of Firearms and Less Lethal Weapons 2003 [V/8] required the involvement of ACPO and the Secretary of State to assess the suitability of weapons systems, to approve the independent evaluation of such systems and the arrangement of training to operate such systems to accredited standards. In particular it was for ACPO to consult with the Secretary of State about the appropriateness of any new weapons systems. Andrew Holmes indicated that he understood all of that to be the case [20.4.17] although he considered the reference in para 4.3.5 to “a needs analysis” to be force specific rather than centrally assessed.
178. There is no question that the device should have been subject to rigorous and centrally co-ordinated research and operational and technical ACPO

and HO scrutiny. The Secretary of State had not been consulted and had not been involved in any technical and medical evaluation. There is also no question that GMP reposed too much faith in information provided by the manufacturer which was an issue the COP was designed in part to avoid.

179. Mr Holmes candidly accepted that none of the requirements/suggestions set out in Graham Smith's email dated 18.1.15 (V/98) had been progressed. This meant that information that GMP had accepted from the manufacturer was not independently verified and the product not subject to required medical testing. He did not know why those requirements were not addressed. We agree that there has been no adequate explanation for this.
180. Mr Holmes did not include in his 2007 briefing paper (V/137) various important details. He did not reflect the requirements suggested by HOSDB in their email 18.1.05 (V/98). He indicated that the CSDC complied both with the spirit of the COP and expressly with para 4.3.1 (V/139). He denied, as did the other relevant witnesses that errors or misstatements were motivated by a maverick desire to rush through a project which would otherwise have stalled had HOSBD's concerns been articulated and we invite the Chairman to accept this. Mr Holmes was not present at the meeting on 12.6.07 of the GMP Firearms Policy Group Meeting but instead Mr Brian Davies presented the brief instead. Mr Holmes agreed that Graham Smith's email of 13.6.12 (V/156) should have served as a block because it made clear that there was no HOSBD approval, nor would there be until further appropriate testing had been carried out. There is no evidence that ACC Thompson or Brian Davies saw this critical email though this will, possibly, be an issue for the Chairman. Mr Holmes thought that he would have forwarded it to Brian Davies. There is no evidence that the three conditions itemised by ACC Thompson had been explored or met. CC Thompson was not slow to acknowledge his role in the diligence process. We agree that there has been no adequate explanation for the failure to ensure HO approval.
181. We fully acknowledge the concern that the unauthorised use of the CSDC for several years will cause. We suggest that it is possible that between the disparate communications and the overlapping but separate involvement of numerous individuals including and in particular John Harte, Andrew Holmes and Brian Davies, various (misplaced) assumptions have been made in good faith. This might include a sense that:

- a. What in fact was changing was the method of delivery and where it was delivered rather than the component parts⁸ or the development of a new weapons system ie changing the dispersal was a subset of something already authorised (B Davies);
- b. The manufacturers had provided detailed data and were known and trusted suppliers to GMP's own approved UK supplier (Beechwood);
- c. The concentration of the CS had been clarified as had the fuse time. Each canister would contain less than the 5-gram limit suggested in the Himsworth Report;
- d. HOSDB would not be in a position to process this in a reasonable time meaning that concerns over RIP would continue un-mitigated [email 18.1.05 email from Graham Smith V/98 and evidence of B Davies 21.4.17]

182. In fact, well before 2016, the following were or ought to have been aware of GMP's "unauthorised" use of CSDC:

- a. NPIA (Alder review), including Kevin Nicholson;
- b. IPCC (investigations into the deaths of PC Ian Terry and Mr Grainger);
- c. ACPO, including Simon Chesterman – the weaponry database and leaking grenade in 2012;
- d. HOSBD – Graham Dean, Graham Smith, Matthew Symmonds.

183. We do think that it is important to note the following:

- a. It is abundantly clear from the available documents that GMP's intention was to maximise safety and minimise the risk of injury to operators and subjects (see, for example, the original briefing paper at V/137 and the report at V/998. The force considered that it needed to retain a CS option especially because of its experience of non-compliant subjects. There was a desire to avoid having to

⁸ The 2011 MOG (Policy Bundle p313) simply refers to "CS Munitions"

point a shotgun into a car containing subjects especially in the rear and a desire to avoid pyrotechnic devices and a fragmentation risk in confined space. It was intended that CS would disperse very quickly due to the smashed/open windows and opened doors (V/158). Indeed, notwithstanding the lack of a health check, there is no evidence that it has caused concerning levels of injury;

- b. The perceived need to deploy CS was based firmly on the STRA (V/380) – “...but we should have great care in conforming to be like others as the STRA says we are not”;
- c. It was always and only intended as a contingency (V/353);
- d. The CS RIP round was an already recognised weapons system and GMP could, legitimately and subject to operational justification, have considered firing it via a shotgun into static and moving vehicles. We do find it difficult, in the light of the way Mr Arundale has expressed himself, to understand why central governance has permitted RIP to continue on a “grandparent’s rights” basis given the requirements of the COP. It had “slipped the net” [28.4.17, p61] but has not attracted the same opprobrium;
- e. COSHH assessment and safety data was retained (V/104, 127), handover and warning sheets used (V/173), risk assessments were conducted (V/115, 520) although they lacked assessment of the risk of harm to the occupants of the subject vehicle;
- f. When a problem was discovered (V/262), its use was suspended and the correct load established;
- g. A Firearms Commanders Guide was drafted (V/376) at ACC Thompson’s insistence;
- h. If the detailed steps identified years on by Mr Arundale in his second report at paragraph 16 were so obviously required, it is surprising that they do not feature in the COP or any other document of use. In fact upon further questioning it became apparent that those steps were dotted about a disparate number of documents including research papers.

184. We also consider it important to place on record the fact that GMP has never made any secret of its use of CSDC in a firearms policing world that is small and in which, according to Mr Arundale, even SFCs from any force would know that CSDC was not a home office approved weapons system.

Had GMP been acting out of maverick or over enthusiastic short-cutting zeal, this would not be so. GMP has demonstrated total transparency about its desire to use CSDC and the steps taken to research the canister including filing all paperwork for the “audit log” [V/154] and declaring CSDC on weaponry database [V/361] which in itself was referred in ACPO Meetings in 2007 and 2008 of Working Group on Armed Policing and was accessible [V/516, 334]. The database was created for the benefit of that Working Group [V/366]. Furthermore:

- a. It was squarely inserted into the MASTS GMP SOP;
- b. Its introduction and continuing use were fully documented in the annual STRA eg V/290,296;
- c. John Alder of NPIA’s Police Firearms Training Licence Team and his boss Andy Latto were perfectly well aware of its use from early 2009 and according to Mr Arundale would have been aware of its non-authorisation – apart from the former expressing a personal opinion by email, neither did anything about it which sits most uneasily next to Mr Arundale’s views especially as they signed off the SOP in the knowledge that GMP was isolated in its use [see documents at V/835, V/935), G2/1860, G2/1944 & 1958 &1964];
- d. On 20.12.11, the GMP armourer notified HOSDB of a leaking grenade (V/723). The reply copied ACPO in, in early Jan 2012 (V/723). The matter was then debated by ACPO on 27.1.12 (V/725) – Graham Smith and Graham Dean were both present – Graham Dean (V/722-23) from HO notified the GMP armourer that ACPO whilst being aware that CAST had not done any work around the device, advised GMP to consult the manufacturer. None of that sits easily either, with the way in which Mr Arundale has expressed himself. Notably, this was not something that he could explain;
- e. DCC Chesterman (ACPO armed policing) reviewed ACC Sweeney’s log along with Kevin Nicholson (NPIA) in 2012 as part of a series of reviews. Neither expressed concern about the fact that GMP were plainly using CSDC operationally.

185. It would therefore appear as though GMP’s use, unauthorised as it was, caused no consternation amongst the very bodies, who, if Mr Arundale is correct, ought to have sounded the alarm and we do wonder whether that is because of some of the observations made in paragraph 179 above. Be that as it may, we submit that GMP’s conduct does not reflect some sort of

settled desire to operate outside of the COP. Its intention was one of “noble cause”.

Whether (and, if so, to what extent) the judgment, reactions or operational effectiveness of any of the planners, commanders or firearms officers were compromised by extended hours of duty or by limitations in their professional capabilities

186. We dealt with this issue in Opening. Nothing has changed and we do not propose to make further submissions about it, save to observe that there is no evidence to suggest that the tour of duty that day resulted in any compromise to the judgment, reactions or operational effectiveness of any of the planners, commanders or firearms officers. It is submitted that welfare was appropriately reviewed throughout.

The extent to which Mr Grainger’s injuries would have incapacitated him whilst he remained conscious and whether, after Mr Grainger was shot, his life could have been saved.

187. We do not consider that we can usefully add any comment about this TOR given the medical evidence available to the Chairman.

*Post Incident Procedures
Events on 3 and 4 March*

188. The Inquiry has heard detailed evidence in relation to the Post-Incident Procedure (“PIP”). The applicable procedures are set out in Chapter 7 of the Manual of Guidance (MoG) [Policy & Procedures/366-393]. Given the nature of the incident, a PIP was bound to be initiated given that a weapon had been discharged by police resulting in fatal injury. Such a case was subject to mandatory referral to the Independent Police Complaints Commission (IPCC) or another independent investigative authority [MoG, paras. 7.9, 7.10, 7.11].
189. In this case, the IPCC assumed the role of the independent investigative authority very shortly after the incident (in effect by about 8.40pm). This meant that the IPCC had primacy in relation to the PIP and how it would be managed. During the course of 3 March and 4 March, the IPCC made decisions as to which officers should provide initial accounts. Ultimately three officers were required by the IPCC to give such accounts: Q9, X7

and Z15. The decision making was driven by the IPCC. All three gave initial written accounts having been given the opportunity to consult with legal advisers. Positive decisions were made by the IPCC not to request written / initial accounts from other officers, including commanders. The IPCC were fully conversant with the guidance in Chapter 7 of the MoG, including that which applied to the provision of written accounts (stages 1-4, paras. 7.91-7.106) [Policy & Procedures/383-386].

190. In relation to the chronology of events, and by way of summary:

- a. The scene at Culcheth was secured by the TFU. At 7.24pm, Det Supt Geraint Jones, the on-call Senior Detective in Cheshire Police, was contacted by Insp Alan Fairclough (Cheshire Force Incident Manager). He was notified that there had been a police-related shooting in Culcheth. Supt Jones took up the role of Initial Investigator [A/203]. He kept a record of his activities and key initial decisions [M3/124-145, 147-167]. He travelled to Cheshire Police HQ and managed the incident from there. Once there, he decided that the “post incident management” process for the TFU should occur at GMP and not Cheshire [M3/137];
- b. The TFU officers involved in the incident were directed to make their way to GMP’s Firearms Training Facility at Claytonbrook, Manchester. C/Insp Simpson was appointed as the Post Incident Manager (“PIM”). Q9 arrived at Openshaw at 8.15pm and had his weapons retrieved from him [A/236]. C/Insp Simpson gave Q9 guidance in relation to conferring and took him to Claytonbrook;
- c. DI Helen Spooner was the SIO cover for Cheshire Police on 3 March 2012. At about 8.20pm, she was called by Supt Jones and informed about the shooting incident. She was informed that the GMP officers involved in the incident had left the scene for a post-incident de-brief in their Force area, and that the IPCC and the Coroner had been notified of the incident [A/205];
- d. The IPCC were notified. At about 8.20pm, Jim Donaghy (Deputy Senior Investigator, IPCC) received a call from Peter Orr (Senior Investigator, IPCC) informing him of the fatal shooting. At about 8.40pm, Peter Orr spoke to Catherine Bates (Investigator, IPCC). He asked her to attend the Post Incident Procedure (“PIP”) at Openshaw Complex at 10.00pm [A/214]. Ms Bates noted that the

Principal Officers were the officer who discharged the weapon (Q9) and Mark Granby [C/649];

- e. At 9.15pm, C/Insp Simpson opened a Post Incident Management Suite at the Claytonbrook complex [A/233];
- f. At 9.45pm, Ms Bates received a telephone call from C/Insp John Brennan of GMP's Professional Standards Bureau ("PSB"), to inform her that the location of the PIP had moved to the Claytonbrook Complex. She was informed that: GMP would be complying with the ACPO MoG (Chapter 7); initial accounts would be secured from the officers, and the weapons would be made safe and the ammunition counted and this process would be audio and visually recorded [A/214];
- g. DI Spooner was informed that an inner and outer cordon had been established at the scene and that Mr Grainger and the vehicles involved in the incident had remained in situ. She instructed that a tent should be erected in case of inclement weather and to protect the dignity of Anthony Grainger [A/205]. At 10.10pm, DI Spooner arrived at the scene and reviewed the cordons with the Crime Scene Manager. It was agreed that the vehicles should remain in situ until first light (when aerial photographs could be taken) [A/206]. Those photographs, incidentally, demonstrate the limited nature of the scene. The scene related to the shooting of Mr Grainger and not to Operation Shire;
- h. At 10.40pm, Ms Bates arrived at the PIP Suite. The firearms officers arrived shortly afterwards. At 11.00pm, Ms Bates received a briefing from C/Insp Simpson and his deputy. In the course of the briefing she was informed that two solicitors had arrived for the TFU officers [A/215];
- i. At 11.25pm, Karl Thurogood, the Police Federation representative, informed Ms Bates that the officers' solicitors were resistant to all officers providing initial accounts [A/215]. Ms Bates called Peter Orr, the Senior Investigator. He spoke directly to the deputy PIM. Mr Orr decided that: (i) the principal officers – the officer who discharged his weapon (Q9) and the Silver Commander (Mr Granby) – should provide individual accounts in accordance with Chapter 7 of the MoG; (ii) none of the officers should be treated as

principals unless they were standing next to the officer who discharged his weapon [A/215]. At the direction of the IPCC, two officers were therefore being asked to provide individual accounts in accordance with the procedures set out in the MoG;

- j. At 11.35pm, C/Insp Simpson briefed all of the TFU officers involved in the incident. He outlined the purpose of the process and how it would be conducted. He also outlined the guidance in relation to conferring with others before making their initial or subsequent accounts. He was to repeat this process at 01.00am on 4 March together with Police Federation representatives [A/237];
- k. At 11.55pm, Ms Bates (together with another IPCC Investigator) received a more detailed briefing from C/Insp Brennan and other GMP officers [A/216]. In the course of the briefing Jim Donaghy arrived and took the IPCC lead in providing directions to GMP. He became the primary decision-maker. He was informed by C/Insp Simpson that officers had been briefed not to confer;
- l. At 12.00am, Peter Orr informed Supt Jones that the IPCC was not in a position to manage the scene and therefore requested that Cheshire Police should retain ownership of the scene. Supt Jones agreed to do so, and developed an initial forensic strategy for the scene [M3/159-160];
- m. At 12.35am, following discussions as to the progress of the PIP, Jim Donaghy made a policy decision to the effect that initial accounts would be provided by three officers: (i) Q9; (ii) the OFC (X7); (iii) Z15. Mr Donaghy was leading the IPCC investigation and he was there 'on the ground'. He was acutely aware of the time it was taking to process the individual AFOs and for their weaponry to be returned in accordance with procedures set out in the MoG. His decision effectively displaced the earlier directions from Peter Orr. Ms Bates recorded that C/Insp Simpson again confirmed that the PIP would be compliant with ACPO guidance in respect of conferring;
- n. Later, at 01.15am, Mr Donaghy met with Mr Sweeney (SFC), Mr Granby (TFC) and Y19 (TAC). He informed them that he did not intend to get initial account from them at this stage;

- o. From 02.30am, Q9, X7 and Z15 began individual consultations with their legal representatives [A/237]. Following these consultations, written accounts were provided by the three officers. At 04.15am, Jim Donaghy received X7's written account. At 04.44am, he received Q9 and Z15's written accounts;
- p. During the morning of 4 March, Darren Quinlan (Deputy Senior Investigator, IPCC) attended the scene [A/225]. He provided directions to the assembled IPCC investigators and he reviewed the scene and the cordons. Following this review, he agreed that the cordons could be reduced. The cordons were removed from surrounding rounds and the car park remained cordoned off. Jim Donaghy was informed at 12.17 that the cordon had been reduced [workbook, R/593].

Post Incident Procedures

Events between 5 – 9 March

- 191. From 5 March onwards, the evidence suggests that the process by which the AFOs would give detailed accounts was given anxious consideration. It is clear that a number of AFOs expressed concern and frustration that they had not yet given their accounts.
- 192. As set out in the MoG: (i) detailed accounts should not normally be obtained immediately; they can be left until the officers involved in the shooting are better able to articulate their experience in a coherent format usually after at least 48 hours [MoG, para. 7.97]; (ii) the independent investigative authority [*in this case the IPCC*] will wish to have detailed statements from witnesses; these statements may be taken by the independent investigative authority or be provided by the witnesses themselves; the manner in which the statements are obtained or provided will be decided by individual witnesses subject to the legal advice they receive; where officers decide to provide their own statements then these should be (except in exceptional circumstances) submitted to the independent investigative authority within 7 days of the date of the incident under investigation [MoG, para. 7.98].
- 193. Guidance is also provided in relation to conferring [MoG, para.7.99]. As a matter of general practice officers should not confer with others before making their accounts (whether initial or subsequent accounts) for the

reasons set out. However, if in a particular case a need to confer (on other issues) does arise, and where some discussion has taken place, officers must document the fact that this has taken place in order to ensure transparency and to maintain public confidence.

194. In relation to the chronology of events, and by way of summary:
- a. The guidance permits a period of *at least* 48 hours before a detailed account / evidential statement should be provided;
 - b. The guidance permits a choice as to how the detailed account / statement is to be provided. Statements *may* be taken by the independent investigative authority. There is evidence to suggest that this was given active consideration in this case (see email from Darren Quinlan [IPCC] to senior IPCC personnel on 8 March; he had met with the Police Federation who are said to have no concerns and support the IPCC position that the IPCC interview the officers on tape and obtain statements) [R/1290];
 - c. However, the guidance also stipulates that statements *may* (in the alternative) be provided by the witnesses themselves. This is what happened here;
 - d. On 8 March, the AFOs met with representatives from the PFOA. Welfare issues were addressed. The Inquiry has heard evidence that V53 attended this meeting and he too addressed welfare issues. On 9 March, C/Insp Brennan of GMP's Professional Standards Bureau notified the IPCC by email that the AFOs had seen members of the PFOA on 8 March. In the course of this email he informed Mark Bergmanski (who had been appointed to the role of Lead Investigator for the IPCC on 5 March) that as a result of that meeting the AFOs "now do not wish to provide statements on audio to the IPCC, but intend to commence writing their own accounts., within the law, later today or tomorrow" [email, Y/1041]. Mr Bergmanski acknowledged this email on 12 March [Y/1044]. On 13 March, Darren Quinlan states that the IPCC received a call from Karl (Thurogood) on Friday (9 March) stating that a process that would have involved starting to interview the officers in the week commencing 13 March was 'too late' for the officers and they wanted to do their statements 'last week' [email, Y/1061];

- e. Here the AFOs did decide to provide their own statements. They were made on 9 March, 6 days after the incident. They were submitted to the IPCC on 13 March. The IPCC were in possession of detailed evidential statements far quicker than had the process of interviewing on tape been done. Conferral did take place. The fact of conferral having occurred was made explicitly clear in the witness statements provided.

195. No commander or firearms officer goes to work planning or wishing to injure or kill. The pressures on such officers are immense. We are profoundly conscious of the permanent loss to Mr Grainger's family and partner and of the fact that notwithstanding the detailed and lengthy nature of this Inquiry some questions remain unanswered. This is an undesirable but obvious by-product when a complex series of events and judgments involving significant numbers of individuals is scrutinised microscopically years after the event. We do submit that GMP's officers came to give truthful and co-operative evidence and to answer questions about decisions which were made in good faith – decisions designed to protect the public and to prevent the commission of serious crime. GMP is committed to learning lessons from Operation Shire and from the untimely death of Mr Grainger and to assisting the Chairman at a later stage of proceedings about how practice and procedure has moved on and how it might still be improved.

12 May 2017.

Appendix 1 : Intent to Commit Robbery

Suspicion that it was Robbery

The Chairman has heard from Totton directly and can assess his explanation for his presence in Culcheth.

Criminals such as those under suspicion are highly surveillance conscious. They change car, phones and addresses regularly as Mr Totton implicitly accepted in evidence. They constantly suspect and fear being the subject of covert surveillance. The early stages of a robbery can look very much like a recce and vice versa. It is exceptionally difficult for the police to know which will be which.

Here the police were entitled to rely and did rely to an extent upon:

Historic intelligence – Vulture and Ascot for example.

The intelligence Chronology entries 4, 5, 23, 36, 40, 41

Item 41

On 15.2.17 [p101] Mr Cousen was asked about item 41

“Q. What did you take from it?”

A. Exactly as it said there, that David Totton was involved in the commission of armed robbery offences at banks, building societies and other premises where large sums of cash are kept. And, in addition to that, there he is planning to commit offences of robbery with his close friend Idgy and others, including Anthony Grainger and other twin brothers Aaron and Bradley.”

It was then suggested by CTI that the lack of the commission of a robbery undermined the intelligence on the chronology. In fact at the time item 41 arrived into Shire, Totton and AG and RR went to Stoke. Mr Cousen was firmly of the view that they had been spooked and had chosen to lie low for a while. On 21.2.12 there was a further recce by Totton and AG to St Helens. Mr Grainger plainly continued to suspect that he was under surveillance because on that day he drove at very dangerous speeds when driving back to the lay up (K/1040 – 116 mph East Lancs Rd). Then the Culcheth reces started up. The activity was not inconsistent, on the face of it, with the intelligence at all.

The Audi went to Culcheth on 27.2.12 (8.15pm) but this was only detected via the VTD.

On 29.2.12 movements were entirely indicative of a recce at approx. 6.45pm– 11 minutes on the Jackson Avenue car park, a drive around Sainsburys and its exit road, then back onto the Jackson Avenue car park for 13 minutes with two occupants, both periods on car park affording a relevant view of the Sainsburys exit confirmed by DC Wallace. [Wallace 9.2.17, p35 plus written surveillance evidence]. On the same day there was sighting of a hacksaw.

The **Hacksaw** seen on 29.2.12 at the end of the recce when the cars were being laid up again. The inference put by CTI [15.2.17, p40] that it was unreasonable to conclude that the hacksaw went to Culcheth is unrealistic and rather surprising. The stolen Audi was seen at 18.03 in Sandringham Road [O2/839]. It moved and went to Culcheth under surveillance. Its occupants conducted clear reconnaissance which included a gratuitous drive through Sainsburys car park with the metal gate to its offside as it exited. By 19.33pm it was travelling back along the East Lanc Road [O2/842]. Totton was seen at 19.59pm on Beatrice Road

walking from the Hazlehurst Road direction. He had a hacksaw in his hand and put it in the boot of his own car as the video footage clearly shows. By 20.03 the stolen Audi had been parked in Sandringham Road. The VTD download from the Audi [K/1046] shows that on its return it entered Worsley and drove around in a large (counter surveillance) loop. By 19.59 the Audi was on Worlsey Road which is in the immediate vicinity of where Totton was then seen. The obvious, indeed only inference is that he had been dropped there in order to return to his own vehicle. The stolen Audi was then driven back to Sandringham Road by Mr Grainger by 20.03pm. Therefore whilst it is wrong to say that Totton was sighted with a hacksaw close to financial institutions in Culcheth, it is not wrong to infer that Totton had been in Culcheth doing a recce, in possession of a hacksaw. In any event, DI Cousen took it sufficiently seriously to task officers to check for any damage in Culcheth at limited premises [policy book K/1237].

There was a further surveilled recce on 1.3.12 at approx. 6.55pm and another, proved only by VTD on 2.3.12. at 6.40pm.

By the evening of 2.3.12 he had received some sensitive intelligence which caused him to assess that a robbery would occur on the Saturday or Monday at an unknown premises.

Mr Cousen felt that he had to assume that any robbery might be CVIT related but did not know and was consistently clear that the target was unknown [15.2.17, p186/11].

By lunchtime on 3.3.12 no banks or building societies would be open and no known cash deliveries would take place. Nicola Moore, an experienced prosecutor, did not consider the closure of institutions to reduce the likelihood of a robbery [12.2.12, p32/18]. It was put to Mr Cousen [17.2.17, p8/4] that by lunchtime he had no belief that the suspects would target premises and actively carry out a robbery. This is a surprising proposition to put in all the circumstances and must be analysed predominantly but not exclusively in the context of evidence heard in closed session. Leaving aside the closed evidence, such a proposition begs the following questions

- Why would an experienced SIO continue to operate on the basis that a robbery would or might take place if he actually had no belief that it would or might take place?
- Why would he arrange deployment of DSU officers? None were due to work on Shire on 3.3.12 – once the SIO received the intelligence update at 6pm on 2.3.12 he started making arrangements for more staff [see his policy book K/1245] including with DS Johnstone at the DSU. He arranged for his own staff to come in the following morning at 5am ie all at very short notice. He said more about this in closed which is cited in our Closed document.
- Why would he permit the ongoing deployment of TFU officers and an ornate command structure involving very senior officers?
- Why would he put in place the detailed arrangements for forensic examination/scene management/prisoner transport and processing?
- Why would he disturb his own weekend off after a 60 hour week and after the 24 hour shift of 1-2 March?
- What was the point of including in the briefing reference to other premises as well as banks/building societies? [F/1283] Targets were described as “potential” and included the Co-op, Sainsburys, Bet-Fred and Thomas Cook.

On 3.3.12 there were potentially three counter-surveillance moves with three suspects – two on or around Church Lane and the other taking the long route in to the car park as witnessed by DC Wallace [9.12.17].

The clothing of the subjects was consistent with intention to commit armed robbery.

Remaining stationary on the car park instead of driving around was highly suggestive.

Most significantly the Chairman has been able to observe DT for himself. The explanation given at trial and again here was not truthful. Five apparent trips to find Fenton took place – yet at no stage did AG even get out of the car preferring for some periods, including 3.3.12 to remain stationary without any sort of view of where the elusive Fenton might be.

Appendix 2 : Decision to deploy armed officers 1-2 March 2012

Information Passing from SIO to TAC/TFC

Appropriate persons were present at the risk assessment meeting [appears to have been SIO/Dep SIO, Lawler, X7, TAC Mr Fitton, Rep from DSU, and possibly H9 who was going to prepare the power point]. This was the first TFU risk assessment meeting that DS Hurst had attended and so she did simply observed rather than making meaningful contributions. [7.4.17, p42-44]

Mr Lawler thought that any errors in his log as to the 2005 Kirkham incident were likely to be his rather than the SIOs. Mr Cousen stated that he had read out the email from DC Mills [at Bundle R/11] ie given a faithful account of the available intelligence. X7 said [11.4.17, p34-35] that RC did refer to the 2005/2008 robbery but indicated that as a piece of intelligence it only related to Totton. His notes about this [produced by the IPCC during X7's evidence on 11.4.17] were broadly consistent with RC's evidence and the Mills email. By the time of the power point briefing, the details of the robbery had become more expansive [exaggerated] than those contained either in the email or in Lawler's log.

The TAC noted at 12.30 on 1.3.12 essentially 5 pieces of intelligence [combination of TAC log at G1/2917 and Fitton's h/w notes [back of Tab 2 of his witness bundle] –

- "Intel suggests that Totton/Grainger plus one are believed to be planning a robbery in the Culcheth area, not known at which particular premises or even if cash vehicle in transit or not." – this was strictly accurate and sufficiently borne out by evidence of previous recces.
- "They have been performing recces in area using a stolen Audi estate A6, using plate LO8 LO8 at least two recces in the area, CPS not happy that evidential threshold has yet been met." – this was accurate apart from the wrong VRN subsequently corrected.
- G1/2925 - "*Subject broken into a financial premises and then laid down and waited for staff to arrive. They have then demanded keys, tied up staff. It is believed that this MO may be used again. Used hacksaw in incident.*" The TAC could not recall whether it should have been "subjects" - his recollection was that this, [as well as the wider picture] featured around Totton, not AG [1.3.17 p34/6]
- G1/2925 - "*Yesterday an item was placed in the rear of own vehicle DSU have indicated that during recce, a hacksaw has been produced, believed from the bin bag.*" – part of this was accurate – there is no evidence that the hacksaw was physically sighted in Culcheth. There is perfectly respectable evidence, by a combination of surveillance and inference, that it was taken to Culcheth.
- G1/2927 - "*DSU inform meeting that heavy items in pocket of subjects yesterday during recce potentially walkie-talkies.*" – this originated from DSU but the details remain unclear.

Information passing from TFC/SIO to SFC

ACC Heywood's record keeping was not adequate for the purpose. There was insufficient detail now, years later, to understand that rationale for authorising the deployment of armed officers or for him to even recall the details of his own rationale. In addition, it is clear that his notes were written after the event so that information available to him after but not before has been inserted as if it had been relevant to the decision making on 1 March when it plainly was not. GMP acknowledges that this is unsatisfactory and that regardless of the reasons for the retrospective entry, such a process has the capacity to mislead.

All of that being so, he cannot now remember the reasons for important parts of his decision making. It seems likely that the sighting of the hacksaw motivated events on 1.3.12 and not other types of covert intelligence that ACC Heywood thought might have been relevant. That is why the AFOs were scheduled to come on duty in the early hours and that is why conventional DSU surveillance occurred during the early evening without the benefit of armed support.

It also seems likely that ACC Heywood was infected by what he knew about Totton from his covert tasking role. Whilst observing that it is very difficult for police officers to disregard everything they reasonably know about a suspect, we acknowledge that this generic approach is not appropriate, without more, from a senior officer such as ACC Heywood.

We know that ACC Heywood has not recorded all relevant details. This does not mean that such details were not present/discussed. Eg he has not noted that the TAC Fitton was part of the authorisation conversation but he plainly was.

ACC Heywood relied on background knowledge of the subjects, in particular Totton. He thought [wrongly] that both Totton and Mr Grainger had convictions for serious violence and that Totton had a conviction for a firearms offence [1.3.17, p182-84] but conceded that he may have "lumped" them together [1.3.17, p185]. Again, we acknowledge that this is not appropriate.

All that being so, even though he made those errors and even though he was not entitled to rely upon the parts of his log redacted out [because they had not at the time been received by GMP] he would still have authorised the deployment of armed officers [7.3.17, p23/17].

Mr Lawler could not recall the details of any mitigation plan. That is because it was not properly recorded and it should have been. He should not have destroyed his Day Book. Although his recollection of the intelligence situation was limited, he considered that the SIO must have assessed that any trip by AG and Totton at 6.30-7pm on 1.3.12 was not a robbery and would only have been a recce. He could not recall why the SIO would have thought this but it seems likely that if such an assessment was made it was because there was a fear that any robbery would occur during the night as with Kirkham.

Mr Lawler's explanation for assuming that the offenders might be armed: [8.3.17, p37/6]

"Q. But you qualified that qualification by saying: There is no specific or direct intelligence that the subjects are in possession of weapons, but my assumption is they will be.

A. Correct, sir.

Q. Because of their past history?

A. Because of their past history, because of the intelligence that I have been given, because of the risk assessment and because of the reces they had already done in January in stolen motor vehicles."

Mr Lawler was clear that regardless of confusion about tipping points:

"The plan was not to stop them at all costs getting to Culbeth, because again we wouldn't exactly know what they were going to do. The plan was to carry out a MASTS and if the tipping pointing point would be met, it was to strike on them. Hopefully that was going to be before they arrived at Culbeth, because we didn't know what they were going to do once they got there, sir. "[8.3.17, p20/13]

Appendix 3 : Events of 3.3.12 – The Briefing Evidence

"The subjects of this operation are believed to be engaged in armed robberies in the north-west region." F/1267

U9 said he took from this that they were "travelling criminals" and this reflected the general belief of the SIO [28.3.17, p19].

X9 said that he considered that this meant that they had access to firearms [29.3.17, p99].

U2 said [30.3.17, p105/19] that this inferred that the subjects were "otherwise so dangerous", with access for firearms/weapons.

G6 understood that it was assessed that the subjects might use any sort of weapon, not necessarily a firearm [31.3.17, p15] as did Z15 [4.4.17 p67]. J4 [31.3.17, p 129] and W9 [5.4.17 p35-36] said that he would infer that they were believed to be preparing to or were believed to be committing robberies using weapons of some description, not necessarily firearms [p131].

W4 [10.4.17, p137] and G11 [11.4.17, p191] and N7 [13.4.17, p10] said that they interpreted "armed" broadly and that it was not confined to firearms.

H9 said that most AFOs would understand from this that the subjects might be armed in any way or otherwise so dangerous and most would have experience of dealing with a range of offenders who armed themselves in differing ways [10.4.17, p66-67].

G1 [13.4.17] said that could be a reference to being armed with a firearm or any form of weapon.

V3 understood this to be a reference to robbery where a firearm or other weapon might be used [13.4.17].

Q9 said that he assumed from this that "armed" meant equipped with a firearm because of his previous Shire knowledge, the Preston 2008 information and the references to AG and DT [6.4.17, p22-23, 36, 43]. He is the only officer who formed this assessment.

"There is intelligence to suggest that these subjects were responsible for a robbery in 2008 where they broke into a bank and lay in wait for the staff to arrive. On their arrival they were held at gunpoint, shotgun and handgun, tied up and forced to hand over keys to the strong room. The subjects made good their escape with a substantial amount of the money."

U9 took from this that all 3 subjects had been responsible for this robbery.

X9 thought it meant that the subjects had access to firearms and might have been convicted of the robbery even though no one suggested that they had been convicted [29.3.17, p99-100].

U2 [30.3.17, p106] did not view this as any sort of conviction because there was no suggestion that the subjects had been arrested, rather it was believed that the subjects had been involved.

G6 took it at face value and considered that it meant that there was reason to believe that they had had access to a handgun and shogun. He did not take it to mean that they had been convicted.

J4 [31.3.17, p131] took this to suggest that they had been involved but not convicted as did Z15 [4.4.17, p68] and W4 [10.4.17].

Z15 stated that unless intelligence was described as “strong” etc he would not take away very much from it [4.4.17, p72/7].

W9 said that he considered that the intelligence relevantly referred to all three subjects but that the way in which it was phrased suggested that any evidence about it was uncorroborated [5.4.17, p169].

H9 said broadly the same thing – that it was intelligence but “*not good enough to take further*” [10.4.17, p61]. It suggested to him that the subjects were involved in criminality.

Q9 said that he understood that it was intelligence rather than evidence of convictions but assumed that it was reliable [7.4.17, p31].

W4 said that it was not conviction based but just intelligence [10.4.17, p138] and therefore could not be taken as read.

G11 assumed that this was reliable because it would have been through a process [11.4.17, p192] but he would simply regard it as information, no more, no less. The Delta officers broadly agreed.

G1 took this to refer to all three subjects [13.4.17] as did the other Delta officers.

Not Being Told “There is no specific intelligence that the subjects have access to firearms”

U9 said that this would not make any difference [29.3.17, p33/11]
“It wouldn't change what we would actually do on the ground. The initial threat was always the driver, because they are in control of the vehicle and that may cause injuries. And then everyone else taken as we find them at the scene.”

U2 said [30.3.17, p83-85] that this was not unusual ie that that there had been no sighting or intelligence but the assumed intent was serious crime: *“But it is all based on the fact that, you know, we are at an unknown stage, which is why the investigation or the priority still remains with the surveillance of the subjects as opposed to if we had sufficient evidence that, you know, that they had committed an offence or had possession of prohibited items then we would just simply be able to go and arrest them at their home address.... So I wouldn't agree that it is self fulfilling. The fact that we are there would suggest that the command structure believe that the threat is so much that they require an armed asset to deal with that particular group.”*

G6 said that he simply understood it to mean that there been no sighting or intelligence but because of their background and intention to commit armed robbery, there was a risk they had access to firearms/weapons [31.3.17, p20]. J4 agreed with this [31.3.17, p134].

Z15 took it at face value and said that it would not alter the risk for him [4.4.17, p74].

W9 said [5.4.17, p29 and] that practice about this varied from TFC to TFC – in the absence of hearing such words, he, as an AFO, would assume that they might have access to weapons/firearms.

W4 [10.4.17, p142] said that this form of words was a matter of style and varied from TFC to TFC. He said that he would expect to be told if there was specific intelligence that subjects

had firearms. If he did not receive such a form of words he would not take away any sense that the subjects would be armed.

H9 [10.4.17, p62-3] said that it was quite common not to be told anything about firearms specific intelligence. He said [p64], as did X7 [11.4.17] what a number of AFOs said – that if Mr Lawler asserted a negative (“there is no specific intelligence”) that was a matter of style because failing to say it implied the same thing.

G11 said that if there was positive intelligence that subjects had access to firearms he would expect to be told and that he had never been receipt of that sort of intelligence before [11.4.17, p194-195] – which meant that they may or may not have access to firearms.

X7 said that it was very rare to have specific intelligence that the subjects would be armed and that generic forms of words such as those used by Lawler on 2.3.12 were entirely non-specific.

N7 said that if there was no information that they were suspected of carrying firearms, he would still expect to be told [13.4.17, p13]. If nothing was said at all N7 would assume that there was nothing specific that the subjects had *weaponry, including firearms*.

Threat Assessment

From Capability of DT

U9 “He is a violent individual who has had historic access to firearms.”

U2 when asked about DT’s markers said *“The frankest way of putting it is potentially that the subject has been named or seen to do something and whether it is a witness not coming forward or whether it has not been found at court, they have been involved. I would be satisfied that they had been involved in 10 incidents of assault. Whether he was subsequently charged a penalty for that particular offence is a different matter, but I would be satisfied that the, our intelligence system would place those 10 incidents in respect of this particular individual.”* And *“I am satisfied that information has been gained credibly in that our intelligence system, how I deal with that individual would be based on his or her response to my intervention with that individual. I have dealt with lots and lots of subjects with lots and lots of antecedents who have complied with everything that I have asked them to do. So my level of force, if you like, or my level of contact with those reduces based on their reaction, irrespective of what it says on a briefing. I hope that is clear.”*

Officers gave varying accounts of what they took from warnings. None assumed that they inferred convictions. Z15 for example presumed that they probably did not involve convictions [4.4.17, p69].

W9 said that he would treat the 1999 shotgun possession as meaning that DT had been arrested or convicted of the matter [5.4.17, p12-13] because at least some detail of the warning marker had been given (sometimes nothing would appear apart from “FI”). W9 knew that DT was “more active” than AG [5.4.17, p5].

Q9 said that a warning could be based on intelligence or on a conviction [6.4.17, p38]. He said that he did not treat AG’s warnings as convictions although there remains uncertainty as to how he viewed DT’s [6.4.17, p41-42].

W4 thought that the greater detail involved in DT’s warnings suggested that they were conviction based [10.4.17, p139] and that he had been arrested for offences of violence.

Higgins said warnings were on the PNC and OPUS and could relate to convictions or intelligence but he would expect such warnings to be current. [13.4.17].

Several officers were aware of DT from other alleged criminality including the attempt on his life. (eg Higgins 13.4.17)

From Capability of RR - it was apparent to officers because of the reference to his sentence that RR had been convicted of what, on any view, was a very serious assault with a knife.

From Capability of AG

U9 took it that AG had a previous history for firearms and may have one at that time of being confronted. His group 1 offender status would not be that important to him.

X9 took from it a sense that the subjects had “previous” for using violence and weapons [29.3.17, p98/21].

U2 said that he took from this that AG was conspiring with an OCG which involved a very well known Salford criminal ie DT [30.3.17, p112].

G6 said that the phrase “Group one offender” implied someone assessed to be prolific or dangerous and involved in serious crime [31.3.17, p18]. There was a mixed understanding of what Group 1 Offender status suggested.

Z15 [4.4.17] would not assume that warning markers implied a conviction and stated that usually intelligence and convictions remained distinct during briefings. If the intelligence is linguistically non-descript, he would not take much cognisance because the primary concerns would be with the contemporary situation (is suspected intent, the use of stolen car and previous recces).

Q9 did not take from AG’s “ICI” that it was based on convictions [6.4.17]. He thought Group 1 Offender meant that AG had been highlighted in respect of serious violent crimes but that did not highlight in his mind AG’s dangerousness. He said that he did not rely upon the Group One Offender status which he took to imply someone who had been highlighted as a serious violent criminal [6.4.17, p44].

W4 was asked about warning markers. He did not know whether they were based on convictions or wider intelligence material [10.4.17, p139]. He thought AG’s warning reference to violence (VI) was intelligence based and that Group 1 offender meant persistent serious offender suspected of committing higher end crime [10.4.17, p140].

G11 [11.4.17] thought that warning markers were based on a variety of information ie convictions/intelligence etc but he would treat it as accurate and having been through a system.

Whether AFOs retain info from earlier briefings

U9 said [28.3.17, p12/18] *“I don't think you can ever ignore the previous ones you have been on, especially if it is the same subjects. However, the information may have changed depending on what that operation was, it might be the same operation or a different one. You get to know what the subjects' capabilities are from previous jobs, so I wouldn't say you completely forget it but each day you take each briefing as it comes.”*

X9 said the same [29.3.17, p90/14]. U2 [30.3.17, p76] said that officers tended to focus on what they were told on the day as did G6 [31.1.17, p9] and J4 [31.3.17, p127].

W9 said that you would focus on the intelligence that you were given on the day although he might retain knowledge from earlier briefings [5.4.17, p4-5].

G11 said that although he had been deployed on Shire in December 2011, he did not use intelligence from that time in March because it was standard procedure to rely upon information given on the exact day of the briefing [11.4.17, p186].

Q9 who was briefed on 15.12.11 and 26.1.12 said [5.4.12] said he would work on the intelligence that he received on the day he was deployed because intelligence could change and be refreshed. He also said [6.4.17] that his assessment of the likelihood that they would have a firearm was in part because he had previous knowledge from a previous briefing (January 26th) about their capability.

N7 [13.4.17] said that it was common for intelligence to change on a daily basis and that therefore officers would focus on the intelligence provided on the day of the briefing.

ICI is very important part of what AFOs take from a briefing. W9 was clear that regardless of which subject was more dangerous than another, once on the ground he would not distinguish them without more because they were suspected of conspiring with one another, they were all in the same vehicle and represented at that stage a collective threat until that changed ie unless one was separated and capable of identification. (5.4.17, p173-175) He also had experience of offenders who might be assessed as dangerous who comply and others who are not so assessed who do not comply (5.4.17, p173).

Q9 said that he would rely upon the current briefing [6.4.17, p46, 54]. He was aware from a previous briefing on 1.2.12 combined with a conversation outside of that briefing about the risk assessment which preceded it that DT had been linked to a robbery in Bolton where a firearms had been discharged at officers [6.4.17, p48]. He thought that this robbery involved the same OCG.

Appendix 4 : Sequence of Events on the Car Park

ALPHA

X7 [11.4.17 – OFC – front seat passenger Alpha car – police cap and jacket (with marking on back only) - no respirator]

He explained that in the half hour before the strike anything could have happened. Although he became aware that during that time the Audi had parked up in the corner of the car park, he knew that eyes had been lost and he also knew that its position could change at any moment. It was therefore not a situation, as suggested by others, where he had 30 minutes to formulate one plan and communicate it. It was far more dynamic than that. He said that [11.4.17, p81-82] he did pass on instructions to his men at a very late stage (shortly after called state RED) but he thought, regardless of his statement that this was before his vehicle reached the car park. Regardless of location [p84] he was sure that he had made a broadcast about which car should deploy men to which side of the Red Audi.

He thought that he might have alighted after W9. He went round the front and along the hedge, drawing his weapon at some stage and bringing it from low port as he closed in on driver's side of red Audi. He thought he had his TAC light on using the pressure pad at the front of the weapon. The driver was his main concern because the car could be used as a weapon. He said that he heard a bang when he was "in and around" the door of his own vehicle although he could be specific. Contrary to the propositions put by CTI, his oral account is not particularly different from his hand written account when the relevant section is read in its entirety [F/499]. He shouted to driver "ARMED POLICE SHOW ME YOUR HANDS". He assumed he was the first to arrive at the vehicle. The driver's hands were

below the dashboard and after his command, the driver raised his gloved hands by elbow pivot and turned his head towards X7. He initially kept his hands up but he said that the CS then went in seconds later. He did not recall the window being smashed. He thought AG flinched to his right hand side along with an involuntary twitch of his head. X7 kept his weapon on aim and saw AG slowly lowering his hands which disappeared from X7's view. He repeated his command. He said that he was close enough to see that in fact AG was not reaching for anything on his lap and so there was no need to shoot him. He did not notice the front seat passenger at all. He therefore could not account for AG slumping other than his assumption that he had fainted. He had not seen or heard any contact which could account for the chest injury that he saw.

W9 [4.4.17 – rear near seat Alpha –cant recall if wearing blue police issue jacket-respirator]

He was very clear that X7 had broadcast the plan about what Alpha and Bravo occupants would do both in written and oral evidence [5.4.17 p68/2, p69/19] but he deliberately deviated from that plan. He did this because having surveyed the scene, he realised how close the hedge was to the stolen Audi and it would be tight to get to the offside. His priority was to contain the vehicle hence X7 going around the front and hi approaching the nearside [p86 & 89]. He alighted and went around the back of the Alpha vehicle towards the nearside of the red Audi [p82] and heard X7 shout “Strike Strike” and someone else shout “ARMED POLICE SHOW ME YOUR HANDS”. He also shouted “ARMED POLICE”. Seconds later (perhaps 3 – page91) then he heard an unusual crack like ice cracking and a weapon bang and appreciated that this sound was distinct from the sound of a shotgun being discharged (p92). He did not think that X7 was by the offside front window of the red Audi by that stage (p160). He thought that the engine was running and that the boot was slightly open (p96-97). He saw DT by the nearside. DT's back was to him and he could see his right hand (p100). Upon being asked why he did not shoot DT, he explained that as his back was to the officer, he posed no immediate threat and he had not made any sudden movements and no firearm was visible (p101-102 and 162). He shouted “ARMED POLICE SHOW ME YOUR HANDS” upon which DT immediately lay down on the ground. Somewhat surprisingly this was categorised in re-questioning by CTI as DT disobeying the officer's command (with the implicit suggestion which not put that this might undermine the officer's reasons for not shooting DT). Dropping to the floor might be said to be a form of compliance and was plainly viewed as such by W9. After placing his knee on DT's back he heard the sound of smashing glass (p105) and whilst he was being cuffed by the rear of the car, he heard the sound of a shotgun being discharged (p106)

Q9 [5-6.4.17 – rear offside Alpha vehicle –green civilian jacket police cap – no respirator]

He was aware that the Audi had privacy glass although he thought that this extended to the front windows [6.4.17 p61-62]. He knew where the car was parked. He thought that X7 broadcast the plan the T-bone the red Audi [6.4.17 p 68] but not the plan for Q9 to cover from the rear [p77]. He was sure by assumption [p80] that the plan for the Alpha car to cover offside and the Bravo car to cover nearside was broadcast. He illuminated the front occupants. He did not know which was which but said this would make no difference as there was a deemed collective threat from the occupants of the car [p88-89]. Upon shouting/screaming [p181] “ARMED POLICE, SHOW ME YOUR HANDS”, both occupants raised gloved hands. DT kept his up [p90]. He said that AG lowered his right hand in a sudden and deliberate movement towards his lap/groin [p91]. He inferred from the speed of the movement that it was deliberate and saw that AG started to lower his left hand as well [p93]. The speed of the movement also confirmed in his mind that AG had a firearm [p101]. He regarded the right hand as the threat [p94-96]. He discharged his weapon when he did because he feared that if he gave AG more time, it might enable AG to use a weapon against the oncoming team, across DT or towards the driver's door [p100]. DT kept his hands up and

so he returned his cover to AG and after this DT left the vehicle as if crawling out [p106-107]. He was asked about X7's version of events by Mr Thomas QC and disagreed with it. He said that he confined his arc of fire to the windscreen [p162].

W4 – [10.4.17 - Driver Alpha vehicle -no visible police identification – no respirator]

He said that there was a discussion in the car on approach about the fact that Q9 would provide static cover. He could not recall what was broadcast to the other cars. He drove at a normal car park speed with some late acceleration. He did not pull up suddenly. After stopping, he was aware of Q9 shouting “ARMED POLICE SHOW ME YOUR HANDS, SHOW ME YOUR HANDS”. [p159] He did not draw his weapon and knew that he was vulnerable but was aware that Q9 was covering the front occupants. He was aware of the three occupants. He was aware that Q9's TAC light and green strobe was on even though this was not in his first written statement but was in later statements (E/104 & H/239). He saw both front occupants raise their hands. The driver dropped his right hand to his sternum area. AG was wearing gloves, as was DT. At the time the shot was fired and the windscreen broken, X7 and W9 had not reached the driver's side, they were still deploying from the vehicle and had not yet emerged from the nearside of the Alpha vehicle. After the shot was fired, he thought he saw AG's left hand lower. He saw other officers approach the vehicle. He said the CS was used after the first shot was fired.

BRAVO

U9 [29.3.17 – o/s rear B car. Wearing black jacket with police sign and respirator]

Cars pulled up at normal speed so as not to alert Audi. He wore a police badge and a respirator and exited the rear offside of the B vehicle. He would have shouted and by the time he got to the nearside and before CS was used, the front passenger seat was no longer occupied. He could not see where the occupant had gone [p65] which is not surprising because DT was behind the vehicle already. He could see because window not tinted [p73-74]. He thought he heard 2 shotgun reports [p77] but was unaware of any other discharges (we say because it had perhaps happened already)

X9 [29-30.3.17 – n/s rear B car – CSDC. Wearing green jacket with police sign and respirator]

He used his CS. His general motivation in using CSDC is to incapacitate car occupants quickly and to distract them so that it is safe quickly to extract them and so that the subjects cannot focus violent attention on any officer [29.3.17, p162/15]. His specific reasons for using it on 3.3.12 are set out in the transcript for 29.3.17 at pp140-142. By the time he used it the front passenger seat was empty. This was his only reason for deploying to the rear offside. If he is right, the CS was used after DT had reached the rear of the red Audi and therefore after AG had been shot but before the two discharges of the shotguns (which he also heard). In his written statement quoted on 29.3.17 at p143 he said:

"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"

U2 [30.3.17 – Driver B car - Wearing green jacket with police sign and respirator]

As the driver he would expect to be the last out and to “find work” [p130/17]. Alpha car stopped very close to red Audi. He heard a loud crack as he opened his car door which he instantly recognised as a non-shotgun [p193] firearm discharge, possibly through a medium such as glass [p137/3]. W9 was at the rear of the Alpha car at this time. He approached the near side of the red Audi on aim, the front seat being empty. By the time he reached the Audi, JT was already out of the rear seat because it was empty [p140/8]. One of the 2 subjects at the

rear of the car was struggling and trying to get up so he kicked him in the leg [p140/15]. He thought it might have been DT [p199]. He saw officers struggling, as he assumed, with the driver. He went on round to the rear offside and confirmed to G6 that the rear was clear [p147]. He became aware that he had been shot and heard the 2 shotgun discharges. After AG had been removed from the car, this officer was aware of an “exhale” from AG [p159/14]. He did not see the CSDC being deployed [p193].

G6 [31.3.17 – Front near side B car – not wearing visible police identification - was wearing respirator]

His w/s dated 9.3.12 [E/122] suggested that he heard a shot as X7 was in the process of challenging AG in the driver’s seat. His later statement dated 21.5.12 [E/126] contains a revision to the effect that after considering information learned subsequently, he believed the first sound was that of a window being broken because it was quieter than a firearms discharge and he had not heard the extra crack (p67). He saw X7 move across the front of the Alpha vehicle and decided to follow him, filling the space he thought W9 was going to occupy (p58). He went to the rear, shouted “Locked doors” and was told by U2 that the rear was clear. At this time the shotgun rounds were being discharged (p61). He thought that the CS went in after the first shotgun discharge and before the second. After that he attended to Mr Grainger.

CHARLIE

J4 [31.3.17 – Front seat passenger C car - no visible police identification - respirator]

He was a qualified OFC and TAC. He alighted and went at a medium pace between the rear of the Alpha car and front of the Bravo car to the nearside of the red Audi (p161). The window was smashed and the seat was empty (p162). AG looked asleep and was unresponsive to his commands. He thought the engine was running, he assumes because of the sound he thought he heard. (p164). He stepped over the bonnet of the red Audi and had not by this stage heard any shots. He tried to grab AG’s gloved left hand and at that point became aware of shotgun rounds being discharged (p170).

Z15 [4.4.17 – C3 rear near side passenger – no visible police identification - discharged shotgun rounds -respirator]

On arrival he could not see any of the red Audi’s occupants. He went round the back of C, along its offside, past the offside of the Bravo and then to the nearside of the red Audi [4.4.17 p116.] He said that the Alpha vehicle had provided a good block but that there was 10-15ft to the rear of clear space. After seeing the photos he agreed that the available distance at the rear was not as great as that [p128] and he agreed that he did not see AG with his hands on the wheel [p120]. Like J4, he thought the engine was running and agreed that there no signs that anyone intended to cause the vehicle to move. He went straight to front nearside wing and could see that there was no front seat passenger. He did not recall seeing the windscreen smashed. He discharged the first shotgun round because he felt that the driver was planning to escape. He agreed that the driver was not actually doing anything but he thought the driver was failing to respond to challenges and “everything in the round” indicted to him that he should disable the vehicle. He was not aware of any other shots having been fired or glass having been smashed. DT was horizontally away from the rear tyre and with his head away from the vehicle, horizontal when the second round was discharged X9 and W9 were “dealing with him”. He ensured that he was between the weapon/tyre and others including officers and DT [p128...]. It was his judgment bearing in mind the distances involved, the nature of the red Audi, the suspected indictable criminality and that the fact that the driver was still in situ that there was a risk that a skilful driver could reverse the car and try either to drive away along the verge or to ram its way through the gap between the Alpha and bravo cars [p161]. This judgment should not be dismissed. It should be remembered that officers will see all

sorts of desperate and aggressive behaviour including the use of a car as a means of escape and as a weapon. As he said

“But it is not about getting out. Once that car is in motion, it is a serious danger.”

H9 – [10.4.17 – Driver Charlie vehicle- no visible police identification and no respirator]

Charlie officers would know to “look for work” which is what he did. He chose to approach the offside of the red Audi because there were sufficient officers located to its near side. Like X7 he was clear that the driver’s window was open. He thought that AG’s non-compliance was strange and might be attributable to fainting. He was aware of CS but didn’t see it deployed and he had a recollection of the sound of a shotgun.

G11 – [11-12.4.17 – Charlie rear offside passenger]

G11 ran from his vehicle towards the grass and to the rear of the red Audi. By that stage the CS had been dispersed and the front nearside window smashed. He assisted U9 in apprehending J Travers by pulling the latter from the car and taking him to the ground. DT was already out and at the rear being detained by other officers. He was aware of only one firearms discharge – the shotgun at the rear nearside tyre.

DELTA

N7 [13.4.17 – Delta driver – no visible police identification – no respirator]

He said, as per his statement, that at 7.05pm they were instructed to detain **three subjects** [p25]. He did not recall what broadcasts were made after that by the OFC although he recalled being informed at some stage of the loss of “eyes”. His car was cut off from the main convoy because of heavy traffic and as a result he was not sure where the other three cars were going. He continued along Common Lane and stopped just after the junction with Jackson Avenue (photo O1/318 – where silver car is). His three occupants left the vehicle. He said that there was no panic. He turned around and drove to the height barriers of the car park. He spoke with U2 and realised that a subject had been shot. He radioed that information to Mark Granby immediately. Throughout he heard only one firearm discharge seconds after he brought his vehicle to a stop and was not able to say whether if it was a MP5 and a shotgun. He was aware that he was not to confer and observed this when dealing with Q9.

G1 [13.4.17 – previous Shire OFC – team leader Delta car - respirator]

He was the team leader in the Delta car. His vehicle’s role was to assist in any arrest of the subjects if they were on foot. Alternatively they would know to fill in and find work. He mistook the relevant car park which had been broadcast hence stopping on Common Lane. En-route to the grassed area to the east of Common Lane he heard a loud bang which sounded like a gunshot and changed route towards the relevant car park. By the time he reached the red Audi some 15 to 20 seconds later, DT and JT were in the process of being detained and officers were trying to extract AG from the front. He did not recall hearing a plan broadcast but was monitoring more than one channel at the time.

V8 – Philip Higgins 13.4.17 Delta-black jacket with police badges – respirator]

He was clear that they were told over the radio that there were 3 people in the subject vehicle. As he went towards the wrong car park he heard the crack of a firearm which sounded like an MP5 and thereafter the sound of a different firearm twice. He heard shouting after the first discharge which were loud and forceful. On arrival he was aware of CS having been used, he saw the hole in the windscreen and then assisted as per his written statement. He now thinks that he heard over the radio information to the effect that the subjects were putting hats/balaclavas on even though he did not record that in his statement.

V3 – [13.4.17 -delta vehicle - respirator]

He was also clear that once en route after state Amber he heard broadcast information that there were still three subjects in the vehicle. Once he had started running, he heard two loud bangs in relatively close succession. On arrival he saw U2 trying to pull AG out of the vehicle. He did not notice any CSDC dispersal or damage to the vehicle. He assisted as per his written statement.

Stephen Delaney [27.2.17]

The evidence of Stephen Delaney should be discounted in its entirety because it is plainly unreliable. He was not challenged about his written and oral evidence that the silver Alpha vehicle arrived 1 minute after the red Audi [A/200 and 27.2.17, p98/24]. Thereafter he provided in oral evidence a string of observations absent from or in contradiction to his written statement. The details absent from the statement include:

- The occupants of the red Audi laughing at him after he swore at them [27.2.17, p89/12]
- That there may well have been 2 occupants [27.2.17, p89/24]
- The front seat passenger of the Alpha vehicle went to stand by the white and red cars parked in and shouted “Get out of the way” and “Move”. [see photo O1/325]
- The driver of the Alpha car got out and went to the boot of the car and dived in stomach first and then shouted “Get out of the car” and “Put the bag down” [27.2.17, p100/19 and p102/19]. This is despite going so far as to say in his statement that “*I cant remember hearing people get out of the cars*”
- That the sound of breaking glass occurred in between the second and third thud/shot [27.2.17, p104/18]
- A couple of panda cars arrive [p105/15] very shortly afterwards.
- The only kids he saw were with a man and dog just walking past. [27.2.12, p117/20]

Despite having various officers in his sight, he saw no weapon at any stage or CS.

Jessica Brown [28.2.17]

Regrettably this witness can in no way be described as reliable. The account in her witness statement, of itself, lacks credibility. It bears no resemblance to undisputed facts about the location of vehicles on the car park. The notion that Ms Brown would have noted or would have been able to hear an engine running or note the details of a driver from her location by the red post box is unrealistic. Furthermore the notion that she would fail to mention to anyone at the time she had observed the prone victim of a shooting lacks any semblance of credibility as does her apparent ability to see either through a fence or sufficiently over it from a suggested elevated position on a box. Significant details were added in her oral evidence including the suggestion that by the time of the first shot, a marked police vehicle was parked up by the parade of shops [28.2.17, p39/21]. Added to that, the contents of her statement bear no resemblance to the accounts given to PC Riley and various media outlets. The lack of a signature in PC Riley’s notebook does not render the contents unreliable especially given the consistency of the recorded account with what Ms Brown told the media. Before being questioned by counsel to GMP she was aware that she was going to be shown video footage of her oral statement. Before she could be shown it, she volunteered “her mistake”. This pre-emptive evidence lacked reliability. Despite detailed questions from CTI about the contents of her statements to the media, at no stage did she indicate that in her only televised statement to the BBC she made a mistake and told subsequent journalists about this. Only minutes before Ms Brown had told the Inquiry she could not even remember speaking with the BBC [28.2.17, p33/17] Ms Brown therefore has no cogent explanation for the differing accounts and in particular for the repeated publication of her “mistake”. Even if, as the Chairman explored, any discrepancy over her actual location at the relevant time could be explained by wishing to conceal her teenage movements from her father, this does not explain the difference between

the two accounts. Walking from the newsagent to a park and then home is as innocuous as having a pizza.

Not Being Told that RR was not Present

The general sense of the evidence was that whilst this would have been useful, it would not necessarily affect how the AFO's dealt with risk and threat on the ground, where they would prioritise the conduct of the subject. (G6 was more emphatic about this and said that he would want to know if a child or innocent friend were in the car 31.12.17, p39).

Z15 said that he would have liked to know [4.4.17, p101].

W9 said that a change in subjects was not unusual but would have been information that he would have wanted to know. He knew that there three men in the car at the time of the strike [5.4.17].

Q9 agreed that this would have been important information [6.4.17 p58].

W4 would have found that useful information because he would know that there was an unknown 3rd party and therefore an unknown threat [10.4.17, p145]. However he would not altered his threat assessment because if a group of people are suspected of committing armed robbery, he would view the group as a whole [10.4.17, p145]. Said that he was aware by the time of the strike that RR was not present and thought that this would have been communicated to the other AFOs [11.4.17, p58].

Appendix 5 : Cross Border Issues⁹

Cross border communications with Cheshire 1 to 3 March

At 16.26pm on 1.3.12 the threat assessment, working strategy, etc were sent by GMP to Nick Bailey, the TFC for his and the SFC's attention [DCC Gerrard] [M5/105]. It referred to the three subjects by name and identified 4 tipping points. The TAC Phaedra McLean had those details by 16.30pm [her log M5/97] and stated that she would not have needed to see the power point document [27.2.17 p48/21]. The power point was in fact sent to Bailey by X7 by email at 17.13pm on 1.3.12 [M1/17].

By 7am on 2.3.12 the duty inspector had a copy [M7/22] of the 2.3.12 powerpoint briefing to AFOs [a copy of the PPt is at C/583]. This is because Peter Crowcroft had emailed it to him at 04.58 on 2.3.12 [M7/29]. By noon Brierley had all three numbers of SIO, Dep SIO and cover because Holliwel had emailed them to him [M7/24].

By 9 am on 2.3.12 the Cheshire FIB contact Stephen Holliwel had the contact numbers of SIO and Dep [22.2.17, p160 and statement of Holliwel M1/63]. He had been asked to develop the generic B21 intelligence passed by DS Hurst to DC Oxton but had not been given by GMP the details of subjects. Cheshire had in fact been aware of the names of the subjects since 1 March. It was not clear from the questions asked by CTI of Mr Holliwel what in reality is being suggested would have occurred differently, had Holliwel conducted any such research. As it is Holliwel did not contact either SIO or Dep SIO to obtain the sort of information which was lacking from Rocque Fernandes [23.2.17, p33/4]. He did not ask for

⁹ Relevant to planning and to command & control

the names of the subjects [23.2.17, p64/4] and appears not to have known that others in Cheshire had those details. By 14.55pm on 2.3.12 Holliwel had his own copy of the power point [M7/28] but does not appear to have done anything significant with it. His word intelligence document was not updated.

Rob Cousen said he was not responsible for telling Dickinson at 09.05 on 2.3.12 that any robbery would centre around a cash delivery [15.2.17, p 187-8]

After Cheshire had rescinded the firearms authority on 2.3.12 it was re-corded in the electronic de-brief [M5/49] that

“Concerns raised that GMP felt there was sufficient threat to inform Cheshire FIM, however they would not divulge what the threat was. This might have placed Cheshire officers at risk, which may have been mitigated with more information from GMP” and

“It was discussed that to take mitigating action was 12 the most appropriate tactic in the circumstance in order to protect the public. It was suggested that better sharing of information from GMP would be beneficial in future incidents.”

Virtually every Cheshire police witness was questioned about this although none was able to identify himself or herself as the author. Christopher Brierley was not prepared to agree with it, expressing a realism that GMP at that stage of proceedings might not have wanted to provide more details about the operation [24.2.17, p95] – to use his words [24.2.17, p 97] – *“So I don't think I laboured the point with him [Cousen], I just kind of understood that there was a lot more that he probably knew that he was not at liberty to tell me.”*

Cheshire had therefore on 1.3.12 the very information which GMP AFOs had the following day. The fact of the matter is that Christopher Brierley did not forward the power point onto Mr Holliwel in FIB until 14.55pm on 2.3.12 despite having been in possession of it since 7am [it having been emailed at 04.59]. ACC McCormick said she would not expect to receive the latest power point briefing dated 3.2.12 [23.2.17, p133/13] although Christopher Brierley would [24.2.17, p113/7].

ACC McCormick felt that disruption and visible presence around CIT was the most sensible approach given the limited information. [23.2.17, p96]. It was not until 17.20pm that she received from Mr Brierley the power point briefing dated 2.3.12. – M4/250 [23.2.17, p97].

Reference was made in the opening to the fact that Christopher Brierley in a phone call on 3.3.12 at 07.14am [M8/36] referred to flawed intelligence coming from Cheshire the previous day. He was asked about this [24.2.17, p87/14]:

“Q Just pausing there, for a minute, when you reference there "flawed intelligence", can you just explain what you meant?

A. Not really, no. Possibly just I wasn't -- I was fairly confident I was not told everything, so the intelligence I was working from may be -- "flawed" was probably not the right word. But I am trying to think back about the use of one word, so it would be difficult for me to be too critical about it.”

Did GMP tell Cheshire that suspects were coming?

1.3.12

The plan on 1.3.12 seems tolerably clear and was agreed. The TFC Peter Crowcroft thought that Op Shire would start at 1am on 2.3.12 [M1/51] which was broadly correct. If the operation, ie the deployed MASTS officers ran onto Cheshire, then as per the email from Bailey to Lawler [M1/44] it was understood that GMP would inform the Cheshire FIM and TFC. If the suspects or Audi moved prior to the deployment of AFOs then the contingency was for a GMP ARV in Leigh to intercept. It was just a contingency.

2.3.12

ACC McCormick said [23.2.17, p118]

An email sent at 17.20pm to Cheshire from GMP on 2.3.12 [M7/41] stated

“GMP have technical on a vehicle, stolen, that is being used by the group and will notify Cheshire via the FIM if intel suggests they are coming on to us tonight or any other night over the weekend. If that is the case, we can treat it as a spontaneous incident and react accordingly.”

ACC McCormick was asked about this:

“Again in terms of the email we saw where GMP were saying that Cheshire would be informed as soon as the subjects were moving by reference to technical as well, would you have expected GMP to have notified Cheshire that the subjects were on the move?”

A. Not necessarily to me. If they came close to the Culcheth area, because at this time there was potentially a number of locations that it could have gone to, I was aware of the tipping point in the briefing that we had been given. If and as they came towards Culcheth I would expect them to contact our force incident manager to make us aware that they may be coming onto the area. It would be sort of custom and practice as they came over the boundary -- if they had time, accepting it is very dynamic -- that they would do that, just to let us know.

Q. Can you assist in terms of if it was a route along the East Lancashire Road where the boundary would fall in terms of the requirement to notify there was going to be potential to be crossing on to your territory?

A. It is very difficult around that area because literally within half a mile you have got three forces, so knowing that area, if they were sort of the Astley area, they could go to -- stay on GMP and go to Leigh or go to Culcheth. So probably, I am talking local knowledge here, but there is a roundabout just on the border with Cheshire, if they turn left they are coming into Cheshire if they turn right they are into GMP, if they go straight on they are into Merseyside. So at that sort of area I would expect them potentially to contact us. That said, it is only if they are able to because of the dynamic nature.”

Christopher Brierley was also asked about this and said [24.2.17 p 76/25]:

“From what I have written there, my interpretation would have been that as soon as we need to know something, they will inform us. That would have been my interpretation of that. That if they feel that they were going to come on to us, that at the earliest opportunity they would tell us.”

Mr Brierley sent the locum Bronze, Christopher Unsworth the power point on 3.2.12 at 08.38am [M7/43]. The locum FIM had a copy by 13.10 on 3.3.12 [M8/16].

See also Mr Granby's log at F/422 onwards for continuing comms with Cheshire