THE ANTHONY GRAINGER INQUIRY

CLOSING STATEMENT ON BEHALF OF Q9

I. Introduction

1. This is a Closing Statement on behalf of Q9, the authorised firearms officer ('AFO') responsible for discharging a single shot at ANTHONY GRAINGER with lethal effect as part of a MASTS deployment on 3 March 2012. This deployment was one of a number during GMP's Operation Shire in 2012.

2. A written Opening Statement ('the Opening Statement') dated 9 January 2017 was served on his behalf, and supplemented by oral representations at the Inquiry on 19 January 2017. This document and the transcript are available on the Inquiry's website. Everything stated in them is adopted without repetition: the core points made on behalf of Q9 are contended to have been both confirmed and reinforced by the subsequent evidence. The evidence, including the pathological and forensic evidence, has corroborated his account of events. He acted lawfully.

3. The Inquiry's Terms of Reference extend significantly beyond the issues addressed on Q9's behalf either in Opening or Closing. The issues addressed on his behalf are deliberately limited to those directly relevant to his involvement. He accordingly does not seek to address, for example, the process by which intelligence was evaluated and presented to him at briefings; the role and credibility of other authorising and/or commanding police officers and staff; any issue covered by the closed element of hearings (recognising that insofar as possible the closed sessions have

produced open gists); the planning of the operation and choice of tactical options; the use of CSDC;[1] or any detail as to post-incident procedures.

4. The issues so defined of direct relevance to Q9 are as follows:

   i. The purpose and intent of DAVID TOTTON; ANTHONY GRAINGER; ROBERT RIMMER and JOSEPH TRAVERS ('the subjects', although TRAVERS was an unknown until arrest) as disclosed by Operation Shire;

   ii. The content and effect of operational briefings given to Q9 as part of Operation Shire, including material omissions from the intelligence briefing that would have produced an increase in the threat assessment in respect of the subjects;

   iii. Events on 3 March 2012 generally;

   iv. The immediate circumstances of the shooting, applying the relevant law;

   and

   v. The circumstances of Q9's initial account on 3 March 2012, and witness statement on 9 March 2012.

5. Just as this document is necessarily selective as to subject matter, it is equally not intended to provide a comprehensive summary of the evidence on any particular point. The Inquiry has access to the transcripts of evidence and a significant quantity of underlying documentary and other evidence. It will doubtless review it again. This document takes a

[1] CS Dispersal Canister, a form of specialist munitions

signposting approach to such material in order to produce an analysis of proportionate length. Themes rather than exhaustive detail are rehearsed. References to the transcript follow the formula [day of Inquiry]/internal page number/line number. The transcripts on the Inquiry website are headed by reference to the day of Inquiry.

6. In absolute summary, it remains the central contention on behalf of Q9 that his use of force was lawfully justified based on his belief at the time. As a matter of law his actions are to be judged according to his belief at the time even if mistaken. Further, as a matter of fact, his belief that the subjects were intent on committing armed robbery and had the capability to access and use firearms was objectively reasonable. It remains accurate: it is contended the subjects were planning to commit armed robberies with firearms, initially targeting G4S cash-in-transit vehicles in Stoke, then switching targets to commercial premises in Culcheth.

7. The Inquiry is invited to address as a matter of fact the purpose of the subjects of Operation Shire when in Stoke and Culcheth.

8. Although inaccuracies in the content of the briefings have received detailed scrutiny in questioning by CTI, in reality the intelligence briefings significantly under- rather than over- stated the criminal backgrounds and level of threat represented by the subjects of the briefings. Stated directly, whatever inaccuracies arose in the intelligence briefing, the ultimate outcome was correct: the subjects were correctly assessed to be intent on committing armed robbery and had the capability to use weapons up to and including firearms. In context, the proper conclusion was that firearms would be used.

9. In other words, such inaccuracies as have been explored in molecular detail in evidence in respect of the intelligence element of the briefing made no difference to the assessment. Had all the intelligence that should have been

used been reflected in the briefing, the risk assessment - most particularly as to ANTHONY GRAINGER - would have increased in severity.

10. These contentions are explored in greater detail below.

11. As to the findings of fact required of the Inquiry, the Court of Appeal handed down judgment in *R (Duggan) v HM Assistant Deputy Coroner for the Northern District of Greater London* [2017] EWCA EWCA Civ 142 on 29 March 2017 i.e. during the public hearings of the immediate Inquiry. Not only does the judgment provide a useful reiteration of the principles of law applicable to self-defence/defence of another, it defines what is required in terms of determinations as to the use of lethal force by the State under Article 2. The answer is clear: what is required is a determination applying the approach of the criminal law, and Article 2 does not require a separate determination applying civil law principles: see in particular [93] – [98].

12. The approach under Article 2 should be the same whether the investigative/procedural obligation is being discharged through an inquest or a public inquiry: the difference between the two lies elsewhere, including as to the admissibility of evidence heard in closed hearings. The immediate Inquiry was not established to address the civil law question in addition to the clearly defined Article 2 obligation.

13. If a contrary approach is advanced by the Inquiry, CTI; or another core participant, further oral submissions may arise.

II Defined issues

i. <u>The purpose and intent of DAVID TOTTON; ANTHONY GRAINGER; ROBERT RIMMER and JOSEPH TRAVERS as disclosed by Operation Shire</u>

<u>General</u>

14. There is an obvious and strong public interest in the Inquiry reaching determinations of fact as to the actual criminal purpose of the subjects of Operation Shire. This includes determinations of fact as to (1) their purpose in visiting Stoke; and (2) their purpose in relation to Culcheth.

15. It is not clear from the approach of CTI in questioning whether the Inquiry intends to reach such determinations. The Inquiry has however indicated that questioning on the issues is relevant.[2]

16. The public interest lies in the Inquiry addressing the entirety of these events, not simply procedural and operational matters involving the police. As a context for its overall understanding of the events under investigation, the public is entitled to know what conclusions the Inquiry has reached as to what the subjects were doing in Stoke and Culcheth.

17. Any different approach would be both wholly artificial and misleading.

18. The risk of the public being misled is particularly acute where, as here, a jury at a criminal trial - not having access to the intelligence and other material available to the Inquiry - was not sure of guilt to the criminal standard of proof.

[2] In the course of questioning of Totton on behalf of Q9, the Chair explained "The relevance of these questions, so that you know, Mr Totton, is that they go to the question of whether your real reason for associating with Anthony Grainger at this time was, as I think is being suggested, not to steal cars but to conduct armed robberies. So they are relevant questions, all right?" [46/90/2-6] [46/91/17-18].

19. One of the subjects – DAVID TOTTON – gave evidence to the Inquiry. His account was challenged directly in questioning on behalf of Q9 as to events in both Stoke and Culcheth.[3] He claimed he was not at the Inquiry to answer questions on those topics and was reminded of their relevance by the Inquiry.[4] The Inquiry should resolve the factual issues identified in that questioning.

20. The other subject physically in Culcheth on 3 March 2012 – JOSEPH TRAVERS – declined to attend the Inquiry to give evidence. The Inquiry can and should draw appropriate inferences from that decision. As a minimum it means that no or minimal weight can be attached to his previous accounts.

21. In a related but more limited sense, the Inquiry necessarily should be asking itself what the observed activity by the subjects throughout extended surveillance tended to indicate as to capability and intent, and accordingly what the appropriate operational response was from the police?

22. For example, if it was reasonably concluded that the subjects were originally targeting cash-in-transit vehicles in Stoke, this demonstrably is relevant to the probability of firearms being required to conduct an armed robbery. Firearms rather than lesser forms of weapon are required to rob such highly secure targets. Security guards cannot negotiate with a firearm.

23. Coupled with the wider intelligence picture, the activity in Stoke self-evidently informs the reality of the subjects' criminal purpose in Culcheth. That intention was to commit armed robbery, using weapons up to and including firearms.

[3] Transcript [46/88 to 98]
[4] Transcript [46/91/17-18]

Stoke, 25 – 26 January 2012

24. The Inquiry has access to the original surveillance material; the evidence from the criminal trial of TOTTON, RIMMER and TRAVERS, including surveillance and telephone data and schedules; and the evidence of TOTTON to the Inquiry itself. No attempt is made to summarise this significant volume of detailed evidence.

25. In relation to Stoke the Inquiry is ultimately presented with a straightforward binary choice.

26. Were the subjects engaged, as is contended on behalf of Q9, in planning a sophisticated robbery of G4S cash-in-transit vehicles in the vicinity of the G4S depot in Stoke, such an armed robbery necessarily involving the use of firearms, or were they simply intent on stealing three Citroen motor cars to match up with documentation for equivalent cars supposedly held by ANTHONY GRAINGER?

27. To this binary choice there is contended to be only one rational answer.

28. The following points are emphasised, without purporting to represent an exhaustive list:

    i. From the surveillance evidence alone it is obvious that the target related to G4S rather than the Citroen garage;

    ii. As reflected below, the subjects – most particularly TOTTON and GRAINGER – were sophisticated career criminals with previous history of engagement in armed robbery and other offending involving (or appearing to involve) the use of firearms. The proposition that they

should reduce the gravity of their joint offending to stealing cars (other than cars suitable to commit armed robbery), for proportionately extremely low potential reward relative to the potential of a successful cash-in-transit robbery, is intrinsically wholly improbable;

iii. The degree of sophistication associated with the activity – stolen high-powered cars driven by different routes to and from Stoke; the use of jerry cans to avoid detection at petrol stations; leaving mobile telephones in Manchester; the use of changes of clothing and other ant-surveillance techniques; etc. – is all illustrative of high-level organised crime rather than simply stealing Citroen cars;

iv. The account as to the Citroen garage only emerged after interview and in response to access to the surveillance and other evidence. The target cars were not given a manufacturer in the defence statements, and instead characterised as 'prestige'. This is an ambitious description of a Citroen;

v. When questioned as to this at the Inquiry on behalf of Q9[5] – it is observed that no preceding counsel asked TOTTON any questions in relation to events in Stoke – it was obvious that TOTTON was wholly unable to articulate a credible plan for how the burglary of the Citroen garage would have occurred;

vi. For example, on TOTTON's account, that somehow the two unnamed other subjects would have obtained access to the garage, disabled the alarm and CCTV, and accessed the

[5] Transcript, 46/88-92

office and safe using only hand-held power tools; that he did not know for sure where the keys were kept; that he did not know where the cars were as between the forecourt and showroom; that he did not know if these unregistered cars had number plates; that the burglary would have taken place when staff were arriving for work; he gave no credible account of how the stolen cars would have got through the electronic barrier on the forecourt; or why GRAINGER was waiting 500m away and would have been collected to drive a stolen car only once the others had emerged; etc;

vii. There is no corroboration whatsoever for the Citroen narrative.

29. It is no surprise that TOTTON was so reluctant to address these points in evidence. The reason he could not explain the plan to steal Citroens is that there was no such plan. The true criminal enterprise was in reality both cautious and planned meticulously: these sophisticated criminals had used significant counter-surveillance measures and were using high-powered stolen cars on false plates.

30. The Inquiry is invited to reject the account in relation to the Citroen garage as wholly implausible, and find (1) that GMP officers reasonably interpreted these events at the time as consistent with agreement by the subjects to commit a sophisticated armed robbery using firearms of G4S cash-in-transit vehicles in Stoke; and (2) this was in fact what was occurring. In other words, the interpretation of the police was not just reasonable, but correct.

31. Activity in Stoke obviously provides the context in which to interpret subsequent events in Culcheth.

Culcheth

32. Leaving aside the question of whether the subjects were intending to commit armed robbery on 3 March 2012, as distinct from some future date, the Inquiry is once again presented with a binary choice.

33. Were the subjects, each of whom was a resident of Manchester, in Culcheth – a market town in Cheshire – five nights in a row, culminating in 3 March 2012 in order to commit armed robbery at a commercial premises (including potentially Sainsbury's at closing time on a Saturday), or were these visits directed at finding a man supposedly called Fenton who owed GRAINGER a (variable) sum of money in relation to the sale of a car (or cars)?

34. To this binary choice there is again contended to be only one rational answer.

35. The following points are emphasised, without purporting to represent an exhaustive list:

    i. The criminal background of TOTTON and GRAINGER makes it intrinsically likely that they were planning a high-yielding armed robbery as distinct from investing many hours in a fruitless attempt to enforce a low-value cash debt relating to the sale of a car;

    ii. GRAINGER would have been most unlikely to extend credit facilities to anyone to whom he was selling a stolen car, still less someone of whom he appeared to have such a limited knowledge such as 'Fenton';

iii. As was recognised by a series of witnesses that were asked, and agreed by the Inquiry's expert witness IAN ARUNDALE,[6] the circumstances were wholly consistent with the subjects planning an armed robbery;

iv. The surveillance and communication evidence, including counter-surveillance measures, is wholly consistent with armed robbery at a commercial premises in Culcheth, including the secure room at Sainsbury's, and wholly inconsistent with searching for either Fenton or his motor car as claimed;

v. Leaving mobile telephones in Salford, and the use of standard armed robbers clothing (layers of anonymous upper clothing; nondescript tracksuit bottoms; all three men with balaclavas or beanie hats; all three with gloves, TOTTON's being reinforced and matching the pair recovered from RIMMER's home address) is consistent with armed robbery and disproportionate to debt recovery;

vi. TOTTON's account as to events has not even been consistent as between his criminal trial and the Inquiry (the number of cars supposedly supplied by GRAINGER to Fenton; the quantum of the debt; at trial they were looking for him from an unidentified workplace, at the Inquiry outside public houses; the balaclavas in the defence statement were to prevent 'recriminations', at the Inquiry to

[6] Transcript 52/2/25: Mr Arundale accepted "[A] reasonable TFC in that situation, with that understanding, or something close to that understanding, reasonably could have inferred that those men were there that night to commit armed robbery"; and "… that is a reasonable assumption for the firearms operation, irrespective of what the motivations of individuals were I would expect a reasonable TFC to assess that that was the situation."

prevent CCTV recognition in the event of a police chase; etc);

vii. The admitted fact that on 3 March 2012 not one of the subjects left the stolen Audi when it was parked in the Jackson Lane car park over the half hour period preceding the strike in order to look for Fenton in the adjoining public house car park. If TOTTON's account is true, this alone is manifestly nonsensical.

36. Much more could be said. Stated shortly, TOTTON's account as to Fenton is and remains completely implausible.

37. As in relation to Stoke, it is no surprise that TOTTON was so reluctant to address these points in evidence. The Inquiry is invited to reject his account as wholly implausible, and find (1) that GMP reasonably interpreted these events at the time as consistent agreement by the subjects to commit armed robbery using firearms in Culcheth; and (2) this was in fact what was occurring.

38. In other words, the interpretation of the police was not just reasonable but correct.

Conclusions as to Stoke and Culcheth

39. Based on the lack of questioning of TOTTON by other core participants as to his purpose in either Stoke or Culcheth, no core participant appears to dispute the inherent implausibility of TOTTON's account as to either Stoke or Fenton. Further submissions may arise if a real issue is defined.

40. Pending any such definition of a factual issue, and in any event, the Inquiry is invited to determine matters as rehearsed above.

41. The evidence clearly justifies a finding that the subjects – close friends and criminal associates as they were – were planning commercial scale armed robbery using firearms. The intelligence demonstrates it was not the first time they had done so.

ii. The content and effect of operational briefings given to Q9 as part of Operation Shire, including material omissions from the intelligence briefing that would have produced an increase in the threat assessment in respect of the subjects

General propositions

42. A number of propositions relating to operational firearms briefings appear to be uncontroversial:

    i. They are directed at AFOs (and other firearms officers) for the purposes of informing risk and describing tactics during operational firearms deployments;

    ii. The intelligence provided to the AFOs should be sufficient to meet these objectives, but not be disproportionately detailed such that the operational effectiveness of any deployment is lost;

    iii. Aside from tactical direction, and repetition of use of force principles, the core practical consideration is ICI, namely Identity; Capability; Intent;

    iv. This is intended to be a practical operational consideration: 'what is the capability and intent of the subjects in terms of the firearms deployment?';

v. *Per* IAN ARUNDALE in questioning on behalf of Q9, the expectation is that AFOs will treat the intelligence they are given as accurate and reliable and will not question it;[7]

vi. The reasons for this are obvious;

vii. Self-evidently, all relevant intelligence going to the ICI communicated to the AFOs should be accurate, reliable and up-to-date;

viii. Equally self-evidently, any briefing to AFOs should have the same qualities. AFOs are entitled to rely on what they are told;

ix. Where – as here - there is a group of subjects with a common criminal intention, the capability and intent of the group will reflect the most serious risk, with individual risk assessments only becoming relevant if members of the group separate <u>and</u> they are identifiable as such (it is observed that neither contingency applies to the immediate facts). [8]

Inaccuracies in the intelligence provided during the briefing of 3 March 2012

43. As a matter of context, Q9 had deployed to Stoke as part of Operation Shire and was accordingly aware of the general background when briefed again on 3 March 2012. As with other officers, he based his threat assessment on what he was told on 3 March 2012. The ICI was of course the same.

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[7] Transcript [52/159/13-25 to 160/1-6]

[8] *Per* Arundale, 52/160/7-19 to 161/1-11

44. He was not present at the briefing on 2 March 2012 and there is no evidence that he was aware of its content. Even insofar as different – e.g. the absence of an instruction that there was no specific intelligence that the subjects had firearms – Q9 does not contend that these differences would have made a difference to him.

45. It will be for the Inquiry to decide whether the inaccuracies are properly described as producing a result that was 'grossly' or 'wildly' inaccurate.[9] These adjectives as used by CTI are not adopted on behalf of Q9.

46. In any event, the issue should be approached from a practical perspective: did the differences between the underlying intelligence and the briefing adversely affect the ICI? Did the ICI affect the conduct of the operation or subsequent decision-making?

47. It is contended that the ICI was not materially adversely affected. Even restricting the intelligence to the material considered before and used at the briefing, the correct ICI was that although there was no specific intelligence that the subjects had a weapon; or a specific target premises; or a specific date; the subjects were conducting reconnaissance on commercial premises in Culcheth, with the capability and intent of committing armed robbery involving weapons up to and including firearms.

48. This was the core information acted on by Q9 and others.

49. Errors obviously occurred in the detail of what was communicated. They should not have done. They are not, however, demonstrated to have made a practical difference.

[9] Transcript, 36/100/5-25; 41/31/21-22

Material omissions from the intelligence considered and communicated

50. Of far greater significance is the intelligence in relation to the subjects that was neither considered by GMP's intelligence officers nor communicated to AFOs. As IAN ARUNDALE agreed in questioning on behalf of Q9 and GMP, specific matters summarised below should have been considered as part of the intelligence and the failure to refer to them produced an understatement of risk. This applies most specifically to the reality of the threat represented by ANTHONY GRAINGER.

51. In chronological order, the relevant matters are as follows.

Operation Vulture: conduct 1995 – 1996; trial 1997

52. Operation Vulture was a pro-active operation led by the GMP robbery squad in 1995 – 1996 directed at armed robberies. It involved surveillance of criminals including the CORKOVIC family, TOTTON and ANTHONY GRAINGER.[10]

53. DC CLARK said in evidence that it involved '… a sustained pro-active operation' in which ANTHONY GRAINGER '… was seen to be a constant associate of the co-accused involved in the conspiracy to commit robbery', and "… was seen to carry out reconnaissance on the bank that was subject to an armed robbery on 31 May 1996, the Royal Bank of Scotland in Prestwich'. In the currency of that armed robbery a shotgun and sledgehammer were used to threaten staff. Immediately prior to the robbery he was seen in Prestwich in the company of his co-accused, none of them of course being residents of Prestwich.

[10] CLARK E/264 and [22/114 – 117]

54. On GRAINGER's arrest 10 days later he was in possession of sequentially numbered banknotes from the robbery.

55. The operation came to a head on 10 June 1996 with an armed robbery at a Post Office in Salford. ANTHONY GRAINGER, TOTTON, PETER ANDERSON and STUART ELLIS were seen to leave TOTTON's address in a private hire vehicle that travelled to the area of the Post Office, and then to walk into a walkway or alleyway. A short time later the robbery occurred at the nearby Post Office, with staff being threatened with a handgun and axe.

56. An area search was then conducted by the police. ELLIS was found in a nearby address, this address was found to contain a firearm; two masks; and the cash stolen from the Adelphi Post Office. The period between the robbery and this recovery was short.

57. The four men, and STUART GRAINGER, were indicted with armed robbery. All that is known as to the trial is that "After the prosecution case was put forward, two weeks into the trial, the evidence was reviewed by the judge who subsequently made the decision to dismiss the charges due to inconsistencies in the surveillance evidence".

58. The evidence described above continues to provide a compelling case against the subjects of Operation Shire. As ARUNDALE agreed, it was relevant to the intelligence picture and risk assessment.

59. From an intelligence perspective, this provides strong evidence that ANTHONY GRAINGER, STUART GRAINGER, DAVID TOTTON and others conspired to commit, and did commit, armed robberies in 1995 – 1996. No explanation has been provided to address the evidence (most specifically perhaps the non-surveillance evidence) as summarised by DC CLARK. TOTTON effectively refused to engage with the issue when

questioned on behalf of Q9. The trial judge's ruling has not been obtained as part of the Inquiry.

Dangerous driving, 4 December 1997

60. The dangerous driving incident involving ANTHONY GRAINGER as driver and DEREK IANSON as passenger.

61. The Inquiry has watched the on-board recording from the pursuing police car, and an oral summary was given during IAN ARUNDALE's evidence on 27 April 2017. In short, it involved GRAINGER deliberately reversing a stolen car into a police car having been brought to a stop; IANSON smashing his way through the back of the stolen car using some kind of wrench; and a high speed pursuit in Manchester through red lights in busy traffic at night for about 5 minutes culminating in the stolen car mounting a pavement.

62. The offence ultimately admitted by GRAINGER was that of dangerous driving. He was sentenced to 18 months' imprisonment. In reality, and as was readily accepted by IAN ARUNDALE, this was demonstrably a crime of violence.[11]

63. It was and remained relevant to the risk assessment against GRAINGER. It demonstrates an instinctive willingness to use a vehicle violently against the police, endangering the public, even to escape a relatively minor arrest for TWOC.

Bolton bank robbery, 2000

64. In 2000, police officers were called to a robbery in progress at the Natwest Bank in Bolton. Upon arrival a shotgun was discharged at them causing

[11] Transcript, 52/165/17-20.

pellet injuries to a number of officers. One officer, who approached the getaway car parked outside the bank, was shot with a MAC 10 machine gun.[12]

65. This robbery was connected to DAVID TOTTON and STUART GRAINGER because the MAC 10 machine gun used against the police was the same weapon used by STUART GRAINGER to murder DEREK IANSON in May 2000.

STUART GRAINGER's murder offence, May 2000

66. STUART GRAINGER was convicted of DEREK IANSON's murder on 1 March 2001. He was sentenced to life imprisonment with a minimum term of 20 years.

67. On 7 April 2006, in making a determination of the minimum term to be served by STUART GRAINGER, Mr Justice Butterfield made the following observations,[13] (with added emphasis):

> "5. For some time there had been a vendetta carried on against the deceased man, Derek Ianson, by the defendant, his elder brother, and associates, of whom Paul Higginson his co-accused was one. Ianson and his family had been forced to leave the area but had returned. About 10 days before the murder there was a confrontation between the defendant and Ianson. Ianson got the better of Grainger and knocked him down. Shortly before the murder was committed Ianson was again confronted by the defendant. The defendant was armed with a meat cleaver but Ianson was not intimidated and the defendant backed off.
>
> 6. About half an hour later two masked men appeared at the home of Ianson. The men were respectively the defendant and his co-accused Higginson. The defendant was armed with a MAC 10 type handheld machinegun and Higginson was armed with a

[12] CLARK, E/39.

[13] R *v Stuart Darren Grainger* [2006] EWHC 673 [QB] (supplied to Inquiry on behalf of Q9 from open sources)

> handgun. Ianson was mown down by repeated bursts of machinegun fire in his front garden. In the region of 26 rounds were fired. The two gunmen ran to a Ford Focus motorcar which had been stolen in a burglary about a month earlier."

68. The trial judge had assessed this as "… a killing which took place within the context of a campaign of actual and threatened violence against the deceased by the defendant and his associates." In questioning on behalf of Q9, ARUNDALE agreed that this information, which showed ANTHONY GRAINGER being involved in a vendetta at the background of this top-end offending, was material that should have been reflected in the intelligence briefing.[14]

69. The murder – in reality an execution – of IANSON demonstrates a number of matters, not least the ready access of firearms such as a MAC 10 to STUART GRAINGER. ANTHONY GRAINGER was part of the feud leading to the murder.

<u>Brass Handles shooting, March 2006</u>

70. In March of 2006 TOTTON was the subject of an assassination attempt at the Brass Handles public house in Salford. Members of a rival organised crime group directed the attempt. AARON TRAVERS – brother of JOSEPH - was also shot. The gunmen were disarmed by others inside the Brass Handles before being shot and killed outside. Those responsible have never been identified and CCTV from inside the public house was destroyed.

71. Three people have been convicted in relation to the attempted murder.

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[14] Transcript [52/170/24] to [52/171/25].

Operation Ascot, 2005 – 2006

72. Operation Ascot was a covert police operation focused on two individuals, thought to be part of a wider OCG, suspected of committing armed robberies involving firearms on banks and financial institutions in Greater Manchester and the surrounding areas.

73. After such a robbery on 28 April 2006, four individuals were arrested as they made their getaway. In addition to the large quantity of cash stolen, the police recovered balaclavas; gloves; a sledgehammer; and 2 semi automatic pistols. One of these had been discharged at police.

74. During the extended surveillance operation, DAVID TOTTON and ANTHONY GRAINGER were seen to be assisting the OCG by moving vehicles in preparation for the robberies. Although their actions were considered highly suspicious, the CPS formed the view that there was insufficient evidence to charge them with conspiracy to rob. Others were charged and convicted for offences as a result of this operation.[15]

Operation Blythe, April 2008

75. Operation Blythe was a covert, intelligence-led, operation investigation the supply of heroin and amphetamines from Unit 6, Outwood Industrial Estate, Radcliffe, Bury. During the surveillance operation, various individuals were observed at the premises, including ANTHONY GRAINGER. A search warrant of the premises was subsequently executed and quantities of heroin and amphetamine as well as cutting agents were recovered.[16]

[15] Mulvihill A/22; Clark A/34
[16] MG5 Case Summary, P/367; G1/3173-3178; K/275

76. During a search of ANTHONY GRAINGER's home address (8 Thanet Close, subsequently occupied by TOTTON and RIMMER) following his arrest, officers found £1,300 in cash; two sets of body armour; a smoke grenade; overalls; balaclavas; and masks.[17]

77. In his evidence to the Inquiry, MR ARUNDALE stated that possession of these items was "… an indication of the nature of the intent of that particular group of individuals" and that there was "… no legitimate purpose for possessing those items". He agreed that it was indicative of an association with firearms. Clearly, and as MR ARUNDALE agrees, it was material that should have been included, or at the very least considered for inclusion, in the firearms briefings.[18]

78. ANTHONY GRAINGER was charged with two counts of conspiracy to supply Class A and Class B drugs and was also charged with handling stolen goods in relation to cars found at the industrial unit. He subsequently pleaded guilty to the handling charges and was sentenced to 20 months' imprisonment. He was acquitted of one of the drugs charges and the Crown offered no evidence in relation to the other after the jury failed to reach a verdict.[19]

Wider intelligence and association

79. In addition to these matters, TOTTON said in evidence that he had been a friend since childhood of both ANTHONY and STUART GRAINGER and had continued to visit STUART GRAINGER during the latter's imprisonment for murder.

[17] MG5 Case Summary, P/367.
[18] Transcript, 52/173/3-14
[19] K/275

80. The close association with RIMMER is also admitted and well documented.

Analysis of intelligence not considered by GMP, and not used in briefings

81. On any rational view of the underlying intelligence TOTTON is correctly assessed as a high-end member of an OCG who is a career criminal. Any assessment other than that he had the capability and intent to use firearms would have been a false assessment. This does not appear to be contentious.

82. He is a close friend from childhood of the GRAINGER brothers and had engaged in firearms related offending with each before events in Operation Shire. The risk assessment for the subjects of Operation Shire correctly reflected the threat represented by TOTTON. He was capable of both accessing and using firearms, and intent on so doing.

83. The same capability and threat assessment applies equally and individually to ANTHONY GRAINGER however. Any attempt to portray him as a mere driver of a vehicle would be wholly artificial.

84. The intelligence clearly demonstrates a history of involvement in serious crime, including with TOTTON, and the capability and intent to commit armed robbery with firearms. As ARUNDALE agreed in his evidence to the Inquiry, in response to questions asked on behalf of Q9, the intelligence listed above, excluded or omitted as it was from the intelligence picture, "… in isolation, or in aggregate, point[ed] squarely to a justified conclusion that Anthony Grainger alone, even without reference to Mr Totton, was capable and had the intent of accessing firearms."[20]

[20] Transcript [52/173/16-25] to [52/174/1-2].

85. The unavoidable conclusion is that far from exaggerating the threat, the intelligence picture given in the briefing of 3 March 2012 materially understated the criminal background of the subjects, most particularly ANTHONY GRAINGER.

86. Each would properly have been described as having the capability and intent of using firearms to commit armed robbery. The policing operation would have been planned accordingly, as it was even in ignorance of this additional intelligence.

iii. Events on 3 March 2012 generally

The firearms authorities

87. Given the information available and known to those giving the firearms authorities (the totality of background intelligence, including that heard in closed hearings by the Inquiry; surveillance activity throughout Operation Shire; etc) each firearms authority was correctly granted. Each was objectively justified.

88. The decisions to grant firearms authorities do not appear to be contentious. If this is a misinterpretation of the position of others then further submissions may follow, most probably on behalf of GMP. Q9 was entitled to assume that each firearms authority was justified.

89. Whilst the grant of a firearms authority does not determine the assessment of risk – it is a different threshold than that used to conduct an enforced stop for example, and obviously different from any decision to discharge a firearm – it does pre-suppose that a significant threshold has been crossed in terms of risk. The specifics of the threat are of course a matter for the associated briefing to such firearms officers as are deployed.

The briefing

90. The briefing is transcribed. It needs to be considered as a whole. It was the responsibility of those preparing and presenting it, and it is common ground that AFOs are expected to accept as accurate and reliable the ICI they are given.

91. There is no suggestion in it of specific intelligence existing to suggest the subjects would definitely have a firearm. Whilst potential target premises are identified, including Sainsbury's, there is no false claim that a specific target is known, or that there will definitely be an armed robbery on 3 March 2017.

92. As has been reflected, whatever factual errors in the intelligence picture emerged, the correct ICI was produced. By whatever route, this is not a case where the ultimate capability and intent was exaggerated.

93. The net result was that the subjects of the Operation were intent on committing armed robbery using firearms. Each officer included within 'armed' robbery the possibility of the use of firearms: in the specific context of targeting commercial premises such as banks or Sainsbury's Q9 interpreted it to mean firearms. He was entitled to.

94. In any event it is a distinction without a difference: if the threat assessment includes the possibility of firearms then until a weapon is known not to be a firearm it should be treated as if it is or might be. It is an extension of the principle that as and until a group of subjects both separate and are identified, the threat assessment must follow the most serious threat, i.e. in the immediate case (on the communicated intelligence) TOTTON.

95. As was stated in Q9's Opening at [10], "The occupants were part of, or reasonably believed to be part of or associated with, a more extensive

organised criminal network that was using firearms. Those that engage in such serious and organised criminality cannot be surprised if the threat assessment made by law enforcement agencies in respect of them is that they may carry and use lethal firearms".

The reality of the underlying criminal activity

96. This has been substantially addressed in the preceding paragraphs, and accordingly need not be repeated.

97. The obvious conclusion is that the three subjects were in Culcheth with the intent to commit armed robbery. Following repeated reconnaissance in the preceding five days, including counter-surveillance driving, they were ultimately in a stolen high-powered motor car with false plates; wearing gloves (in TOTTON's case reinforced); balaclavas (TOTTON and TRAVERS) or a black beanie-hat (GRAINGER); waiting for nearly 30 minutes in a location convenient to observe Sainsbury's and also from which to drive straight out of the car park.

98. It appears probable they were awaiting delivery of a firearm: RIMMER had access to a motorbike, and identical reinforced/motorcycling gloves were recovered from his home address.

99. Alternatively, it is observed that there was no adequate search of the wider scene in Culcheth by the IPCC (or others) for secreted firearms. Separating the firearm from those travelling to commit an armed robbery is of course paradigm of sophisticated criminality.

100. Whilst many commercial premises in Culcheth had closed by 1800 – 1900 on Saturday 3 March 2012, not all had. Sainsbury's alone represented a high-potential target after a day's trading.

MASTS as understood by AFOs

101. MASTS was referred to as a 'tactic' in briefings. Properly understood, however, in practical operational terms MASTS was a platform for the deployment of AFOs if that was justified in the context of ongoing surveillance. Whatever language was used to describe it, in practice it was a platform with a number of options, including – as was frequently the case – no operational engagement at all.

102. Q9 was not responsible for the wider operational decision-making in Operation Shire, either generally or on 3 March 2012.

103. For the record, however, he agrees that the decision to deploy AFOs as a MASTS platform/tactic on 3 March 2012 was the correct one. It promoted the possibility of arrest and prosecution, necessary for the maintenance of public confidence, over simple disruption. This was particularly true in the context of Salford, an area notorious for organised crime, where public confidence surely demanded that high-profile offenders were subject to a criminal justice outcome if possible. On any view it was a decision within the discretion of a reasonable decision maker.

iv. The immediate circumstances of the shooting, applying the relevant law

The law as to the use of force by firearms officers

104. The Inquiry is only concerned with applying the criminal law test in relation to the use of lethal force by Q9: *Duggan* [2017] EWCA Civ 142 [91] – [98].

105. As to the criminal law, the law as to the use of force in defence of self or another is settled and accordingly need not be rehearsed for the benefit of the Inquiry.

106. Ordinary principles of law apply to the use of force by police officers, including firearms officers: *Duggan* [30] – [42]; [79].

107. A person's actions are to be judged according to their honest belief, even if mistaken. The reasonableness of that belief is only relevant to the determination of whether it was honestly held.

108. As applied to the actions of firearms officers, two further authorities are relevant.

109. In *Sharman v HM Coroner for Inner North London* [2005] EWCA Civ 967, relating to the death of Harry Stanley, the Court was concerned with the application of the principle that for the purposes of the criminal law use of force in self-defence or defence of another must be negative to the criminal standard of proof before a killing could be held to be unlawful.

110. At [11] and [12] it stated:

> "It will be seen that that rubric is very difficult to apply to a case such as the present where the issue is self defence. Of course the issue is not, as it is at the end of the prosecution case in a criminal trial, whether there is some evidence to support the prosecution's positive case. The issue is rather, whether there is sufficient evidence to suggest that the prosecution will succeed in negativing self defence.
>
> I do not believe that that particular difficulty has ever been confronted in an inquest case, though Mr Owen told us of at least one case where necessity, as opposed to self defence (and the two defences, of course, are not by any means the same) had to be considered by a coroner's jury. Authority binding on this court does require *Galbraith* to be applied, but I would venture to think that it is more helpfully stated, as indeed Leveson J effectively stated it in

the passage that I have just quoted, in the more generalised form that was suggested in an inquest context by Lord Woolf, Master of the Rolls, in ex parte *Palmer* in 1997. He said at page 19 of his judgment that the test that he would apply is:

> "Is this a case where it would be safe for the jury to come to the conclusion that there had been an unlawful killing?"

That, in this case, means that the question is whether it would be safe for the jury to come to the conclusion that the defence of self defence had been disproved beyond reasonable doubt."

111. Further – and this is not contended to arise in the immediate case, since there is no evidence to undermine the honesty of account given by Q9, even if the officer's primary account were to be rejected it does not follow that a finding of unlawful killing would follow:

> "I would respectfully agree with that approach. As the judge said, it is not enough, and simply does not follow, to assume that the availability of a verdict of unlawful killing, meaning in this case a verdict that beyond reasonable doubt the officers had no belief in an imminent threat to them, follows from the rejection as untruthful of the particular account that they gave. It was still necessary for the jury to look at the matter as a whole, and necessary for the coroner, in deciding whether to leave the matter to them, to look at the whole circumstances to see whether there was a realistic chance of it being possible to establish, beyond reasonable doubt, that the officers did not have the belief alleged."

112. In *Bennett v HM Coroner for Inner South London* [2007] EWCA Civ 617 the Court confirmed that the criminal law test in determining fatal shootings by State agents was compliant with Article 2.

113. The approach of the tribunal of fact was rehearsed at [28]:

> "The language used by Leveson J himself when having formulated the questions as quoted in paragraph 13 is also instructive when he says:—
>
> > "I have put the matter in that way in order to formulate the test which must be considered by the coroner in deciding whether to leave the verdict of unlawful killing. It is whether

> there is sufficient evidence upon which the jury could safely come to the conclusion beyond reasonable doubt that the firearm was not discharged in the belief that one of the officers was under imminent threat of being shot with a sawn-off shot gun.""

114. The analysis of the circumstances of Mr Bennett's shooting is also instructive:

> "It seems to me that the coroner was right to take the view that a verdict of unlawful killing could not safely have been left to the jury in this case. There are certain incontrovertible points which to my mind support that conclusion. This incident all took place in a matter of moments -30 seconds at most; there were explanations from the experts on both sides how the entry wounds could be in the back or side even if Mr Bennett was facing officer A when the officer decided to fire; all shots were fired while Mr Bennett had what was honestly thought to be a gun; Mr Bennett had held what was thought to be a gun to the neck of one member of the public; Mr Bennett had given no indication that he was not intending to use what was thought to be a gun; and, if a verdict of unlawful killing was to be brought in, the jury would have to be satisfied beyond reasonable doubt in relation to each shot that officer A did not honestly believe he was under threat or that the officer reacted unreasonably to that honestly held view. To bring in a verdict of unlawful killing would have been perverse, and the reality is that the jury's actual verdict confirms that view."

115. Finally, the approach of the Inquiry should be informed by the analysis of the Divisional Court in *E7 v Sir Christopher Holland (in his capacity as Chairman of the Azelle Rodney Inquiry and others* [2014] EWHC 452 (Admin).

116. In [1] of the judgment Sir Brian Leveson P stated:

> "Focussing on the right to life and the obligations of the State pursuant to Article 2 of the European Convention on Human Rights, the examination must be prepared to consider every perspective. Those perspectives include a full recognition of the enormous challenges facing the police along with the urgency and almost instantaneous decision making required of the highly trained officers involved. It is they who have to become involved pro-actively in the prevention of crime and the protection of society

> while ensuring, to such extent as is humanly possible, that their colleagues, also in harm's way, are similarly protected."

117. Additionally, at [54] he stated:

> "These six shots had been fired less than 1.5 seconds after the Bravo car stopped by the Golf. In our judgment, there is considerable force in the expressed concern that minute dissection of fractions of a second with the benefit of hindsight will discourage an appropriate response, in real time, to threats thereby resulting in potentially increased danger to those involved in (or likely to be affected by) these exceedingly difficult operations. Section 76(4) of the Criminal Justice and Immigration Act 2008 requires a court to determine the genuinely held belief of the individual in question, as to the circumstances when considering whether the degree of force used was reasonable, whether or not the belief in question was mistaken, or (if it was mistaken) whether it was reasonable. The reasonableness or otherwise of a belief is only relevant to the question whether it was genuinely held. This inevitably requires consideration of the dynamic situation and militates against an analysis by fractions of a second."

118. The relevance of these authorities to the immediate circumstances is obvious and need not be laboured in written submissions.

119. Stated shortly, there is no evidence from which the Inquiry could properly conclude that the killing was unlawful.

120. Further, Q9's account of events is truthful and consistent with both the sequence of events that emerges from other eye-witnesses, and also consistent with pathological and forensic evidence.

<u>The sequence of events</u>

121. The Inquiry will necessarily seek to define a sequence of events by reference to the totality of the evidence. As a matter of common sense, and ordinary and professional experience, honest witnesses at a violent and dynamic incident will recall details differently or not at all. The

Inquiry has been provided with Module 5 of the national Police Personal Safety Manual, which reflects the well-documented phenomena of factors such as auditory exclusion; tunnel vision; and perceptional distortion.

122. Taking the evidence as a whole the following sequence of events and associated propositions is contended to be established:

    i. Against a background briefing of capability and intent to commit armed robbery, and with the subjects believed to have access to firearms, operational commanders called State Amber and the strategy was to conduct an enforced stop of the stolen Audi positioned as it was in the corner of the Jackson's Lane car park;

    ii. The training of AFOs was directed at officers deploying dynamically according to rehearsed and tested principles;

    iii. These principles included officers acting immediately to gain control of near and offside windows;

    iv. Following State Amber, Q9 suggested to the X7 in the same Alpha vehicle that he, Q9, would maintain cover on the subject vehicle from his position in the rear offside seat through the windscreen of the subject vehicle until control was achieved by other officers deploying on foot to the near and offside of the subject vehicles;

    v. Whether or not X7 communicated this to others, it was a wholly legitimate tactic by Q9. He had been taught the tactic on a counter-terrorism firearms course, and from 2014 it is standard training;

vi. Even without such training it is an obvious tactic: without it the driver of the vehicle blocking the subject car (here W4 in Alpha) would be wholly unprotected from the subject vehicle until officers deploying on foot had reached the near and offside of the subject vehicles on foot. This lack of control would have permitted the subjects to discharge firearms and/or to seek violently to escape in the vehicle, including ramming the Alpha car;

vii. Officers deploying to the subject vehicle would also have been at risk from the occupants of the subject vehicle as they ran towards it, it being uncontroversial that a round can penetrate through the door or window of a vehicle with lethal effect;

viii. Immediately on the Alpha vehicle stopping Q9 challenged the subjects in the front using his MP5 carbine with its bright white scoping light. He shouted "Armed Police show me your hands";

ix. Both TOTTON (front nearside) and GRAINGER (driver) did as commanded and raised both hands. Each was seen by Q9 to be wearing black gloves. This, and the overall circumstances, was wholly consistent with an imminent armed robbery. Whilst TOTTON denied hearing the command, he accepted seeing the white scoping light. Members of OCGs do not use such scoping lights, whereas AFOs do;

x. GRAINGER then lowered his right hand deliberately and in one movement to (or "towards" – there is no difference) his lap in direct contravention of Q9's command;

xi. Q9 interpreted this as a movement for a firearm. That was not simply an honest interpretation, but a reasonable one;

xii. Whilst not claiming to know the exact location of each of his colleagues, he knew (1) that they were deploying on foot at speed to the near and offside of the subject vehicle, and so were either already at risk of being shot or would be imminently; and (2) that X7 was not yet at the driver's door so as to achieve control of the driver;

xiii. The fact that X7 was not at the driver's door, but would be imminently ('they would be on their approach to the vehicle'), obviously does not mean that X7 was not at risk from GRAINGER at point of discharge;

xiv. The Inquiry will be anxious to guard against a 'second-by-second' approach in any event, applying the observations in *E7 v Sir Christopher Holland (in his capacity as Chairman of the Azelle Rodney Inquiry and others*, above;

xv. Q9 discharged his shot to protect his colleagues. This applies the standard training principle, based on research, that if an officer waits to see a firearm and/or for certain knowledge that another person is in range (rather than in imminent danger) such delay will allow the offender to shoot. Stated shortly, 'action beats reaction';

xvi. A single shot was discharged, indicative of controlled decision-making by Q9, and this shot caused windscreen glass to hit the right side of TOTTON's face and precipitated his immediate departure from the vehicle;

xvii. It is recognised that Q9 shot quickly once GRAINGER deliberately dropped his right hand. This was inevitable: the risk from GRAINGER was real and immediate and delay could have proved fatal;

xviii. Q9 did not use his sighting scope. This is of obvious significance to the "illustration" (reconstruction) conducted by Dr Seaman;

xix. Officers on foot were with TOTTON immediately, demonstrating how close they were to the subject vehicle when Q9 shot;

xx. Q9 did not shoot TOTTON for the reasons he gave in evidence. This was a continuing and controlled reaction by Q9 based on assessing the actual risk;

xxi. X7 challenged GRAINGER after this point and on his command GRAINGER raised his hands briefly towards chest height. Given the pathology this reaction was still possible since the round had caused damage to the lungs rather than the heart and this response to a command was still possible;

xxii. At this point the CSDC was deployed into the subject vehicle into an empty front nearside seat (i.e. the seat vacated by TOTTON;

xxiii. This was followed by GRAINGER lowering his hands. Although not understood at the time by X7 (ignorant of the fact GRAINGER had been shot before his arrival at the

offside front of the subject vehicle) it denotes the point at which GRAINGER became unconscious;

xxiv. At or around this point Q9 moved to exit the Alpha vehicle from the rear nearside door. It follows that J4 probably went across the bonnet of the Alpha vehicle when Q9 was not watching and accordingly they did not see each other;

xxv. Two shotgun rounds were then used to disable tyres on the subject vehicle.

123. The basic sequence of Q9's shot; X7's challenge; CSDC; and shotgun rounds appears to be accepted by all core participants with the exception of the Grainger family (i.e. those represented by Mr Thomas QC and Mr Straw). Their 'alternative narrative', seeking to time Q9's shot as following the deployment of CSDC, is simply unsustainable on the evidence, not least that of TOTTON.

v. <u>The circumstances of Q9's initial account on 3 March 2012, and witness statement on 9 March 2012</u>

124. Although not a criticism of the Inquiry – it would have extended the scope significantly – it has not heard a sufficient range or depth of evidence to make detailed recommendations as to reform of the post incident procedures following qualifying police incidents. The Inquiry is aware that PIPs are a matter of detailed and continuing debate within national policing, with differences of view as between the IPCC and NPCC. No evidence has been received by the Inquiry from these organisations on future detailed arrangements.

125. It is not for Q9 to make representations as to the detail of future arrangements. He can address some features of the process in the immediate case.

126. He gave an initial account on 4 March 2012. He had been on duty some 24 hours when it was handed to the IPCC at 0445 hrs. It is a relatively detailed account that has not been contradicted by his future accounts or other evidence.

127. The PIP on the night was under the direction and control of others. There is no evidence of improper conduct by any party.

128. The IPCC determined which officers would give initial accounts. They did so. All officers had received the warning as to not discussing the incident.

129. If separation of officers had been necessary, it would simply not have been practicable. There were 16 firearms officers alone; plus commanders; plus surveillance officers. Only two lawyers were available to advise; and only two Federation representatives available. The officers had been on duty since c. 430 hrs on 3 March 2012.

130. The process of retrieving weapons was conducted on video under the direction of the IPCC and had to precede any initial account. It was taking 40 minutes per AFO.

131. There were no facilities to separate this number of officers.

132. Any future debate as to the separation of affected officers post-incident should factor in these considerations. Leaving aside whether officers subject to express instruction not to confer should be separated at all – this is not a requirement in any other policing context following a

common event – it will simply not be practicable in many situations. PIPs should be practicable, rather that theoretical.

133. A welfare visit was arranged by the PFOA (Police Firearms Officers Association) for affected AFOs on 8 March 2012. Given the nature of publicity and wider commentary attaching to such incidents, and the timescales involved (5 years from event to Inquiry here, which is not untypical) welfare visits are appropriate. V53 was qualified to give welfare advice and that is all he gave to Q9. There is no evidence of any improper advice having been given at the meeting.

134. The meeting arranged by the PFOA was entirely legitimate and justified.

135. Further, although it did not discuss the evidence, the meeting identified that the AFOs had not yet provided written accounts of the incident. A decision was taken to do this the next day, i.e. 9 March 2012.

136. Such statements were accordingly made on that date. It was the correct decision: left to the IPCC no officer would have been interviewed until 14 March 2012, with the principal witnesses not scheduled for interview until 21 March 2012.[21] The officers were fully entitled to prepare such written statements as they did.

137. It is accepted that the use of the information on the flip-chart would need review in future. This is not because it is wrong in principle: it makes sense, and is in the interests of an investigation having comprehensible accounts for neutral information to be provided as a framework for any subjective account. Equally, (1) it should be made clear in the resulting statements what neutral information was provided and relied on (although the flip-chart was of course provided openly to the IPCC); and (2) the neutral information on the flip-chart should obviously be accurate.

[21] See Bergmanski, IPCC investigator, [50/163/8-17]

III Conclusions

138. As was stated in Opening at [2], and although ANTHONY GRAINGER proved not to be in possession of a firearm, "Q9 believed that he both had access to firearms and a capacity to use them for criminal purposes, and interpreted his actions at the scene accordingly. That the use of lethal force by operational police officers is sometimes both necessary and proportionate to the perceived risk is a matter of fact, however unwelcome".

139. These propositions are maintained. Q9's belief was not only honestly held (the test for unlawful killing), it was objectively reasonable.

140. Q9 - a highly-trained, highly-tested and highly-rated firearms officer and instructor - would not have shot ANTHONY GRAINGER unless he honestly believed it was necessary. He would take the same decision again in the same circumstances. He would act lawfully if he did so.

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12 May 2017 EMMA COLLINS