

1 Wednesday, 17 May 2017
 2 (10.30 am)
 3 THE CHAIRMAN: Yes, Mr Thomas.
 4 MR THOMAS: Sir, I assume that the order is going to remain
 5 the same as we thought.
 6 THE CHAIRMAN: Yes.
 7 MR THOMAS: So the clock starts and I have my 90 minutes.
 8 THE CHAIRMAN: Yes.
 9 Closing submissions by MR THOMAS
 10 MR THOMAS: Good morning, sir.
 11 Sir, just for your note and to save your hand, the
 12 speaking note that I am about to do, there is a copy of
 13 it which we will give to you at an appropriate moment --
 14 THE CHAIRMAN: Thank you.
 15 MR THOMAS: -- if that assists you.
 16 THE CHAIRMAN: It does. Thank you very much.
 17 MR THOMAS: Sir, this speaking note accompanies the family's
 18 submissions which we distributed last Friday and so they
 19 supplement each other.
 20 Anthony's killing was an absolute devastating
 21 situation for his family. His shooting and its
 22 aftermath has literally torn their worlds apart. Human
 23 tragedy is at the heart of this Inquiry and we repeat
 24 what was said in the opening by Mrs Schofield, and
 25 I quote:

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1 "Anthony was a committed family man, he was the most
 2 loving and caring person and was made to be a dad. He
 3 adored his kids. He was a good son, brother and father.
 4 His children have been left without a father who they
 5 were both very close to. I cannot imagine the pain that
 6 they will have had to go through. If Anthony was doing
 7 wrong, he should have been arrested and sent to court.
 8 He did not deserve to be shot. I miss him dearly."
 9 The evidence in this case has revealed serious
 10 failings from top to bottom in the operation that led to
 11 Anthony's death.
 12 Sir, nearly every stage of the operation was
 13 botched. A few examples: (a) there was a failure to
 14 properly test and verify the intelligence, which was the
 15 bedrock of the operation; (b) the AFOs were primed to
 16 shoot by being given a grossly exaggerated assessment of
 17 Anthony's threat; (c) the approach of the two firearm
 18 commanders engaged on 2 and 3 March was slapdash and
 19 cursory; (d) the strategy was inadequate and the
 20 consideration of tactical options was fundamentally
 21 flawed; (e) there should not have been a strike in the
 22 evening of 3 March because it was likely that there
 23 would be no robbery that day; (f) eyes were lost during
 24 a crucial period and the option of disruption was not
 25 properly considered.

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1 As to the MASTS strike itself, again a number of
 2 failings and I list them again: (a) a plan was
 3 formulated at the last minute which was apparently not
 4 communicated to more than half the AFOs who were
 5 expected to perform it; (b) officers failed to clearly
 6 identify themselves as armed police; (c) the window of
 7 Anthony's car was smashed and a CS dispersal canister
 8 thrown in for no good reason and oblivious to the
 9 obvious dangers of doing so, two of the Audi's wheels
 10 were shot out, apparently without any good basis, the
 11 subjects might have been shot if they moved. Yet all of
 12 this made it impossible for them to keep still.
 13 This was more like a kamikaze cavalry than the
 14 restrained and professional approach that should have
 15 been taken.
 16 These flaws did not only put the police and the
 17 subjects at risk but also the wider public in this
 18 relatively busy town centre car park, early on
 19 a Saturday evening. As the policing expert Mr Arundale
 20 put it, this had, "Obvious public safety consequences.
 21 There was a potential for injury to innocent members of
 22 the public".
 23 Sir, there were deeper institutional concerns
 24 revealed by your Inquiry. The procedures relevant to
 25 the creation of accurate AFO briefings were vague and

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1 prone to error. Several officers, sir, were not
 2 competent to perform the roles they did on 3 March. The
 3 firearms training department was in disarray. CSDC was
 4 untested and unapproved. The Greater Manchester Police,
 5 GMP, seemed to be well aware that this chemical weapon
 6 should not have been authorised in those circumstances,
 7 yet used it anyway.
 8 The need to ensure it was properly evaluated was
 9 obvious.
 10 Sir, of all police forces, GMP were aware that one
 11 of their own, PC Ian Terry, was killed in 2008 during
 12 a GMP training exercise when a weapon which contained CS
 13 gas was discharged into a car he was sitting in.
 14 Following that tragedy a senior officer from the
 15 National Policing Improvement Agency, Mr Alder, made
 16 damning criticisms of the use by GMP of the CSDC, saying
 17 that the possibility of another accident is high. Those
 18 concerns appear to have been overlooked. GMP approved
 19 it and, as you heard, sir, during the course of this
 20 Inquiry, particularly in relation to several questions
 21 that you asked, had been using it regularly.
 22 Had this operation been run properly and
 23 competently, it is clear Anthony would not have been
 24 shot. He may have been up to no good, but there was no
 25 reliable basis for thinking he had a gun that evening.

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| <p>1 Still less for thinking he would ever shoot a police 2 officer with one.</p> <p>3 The evidence has also revealed concerted and 4 shocking attempts by GMP at a cover up. Officers going 5 right up the chain of command have attempted to conceal 6 evidence and mislead this investigation. Key documents 7 have been destroyed, accounts and logs embellished, the 8 production of police statements carefully stage managed, 9 evidence has been concocted, redactions have been made 10 for no good reason and thousands of pages of relevant 11 material withheld.</p> <p>12 Taken together, sir, with the sweeping failures in 13 the planning and execution of this operation, the 14 smokescreen, this smokescreen, by GMP, reveals 15 an organisation rotten to its core.</p> <p>16 As to Q9's decision to shoot, the family accept that 17 AFOs put themselves at risk by doing a very important 18 job. We accept that they must make difficult decisions 19 in fast-moving situations, but, sir, Q9 was a specialist 20 who was highly trained in making split-second judgments. 21 He shot a man who was unarmed, and does not claim to 22 have seen Anthony ever holding a weapon. Q9 gave 23 a dishonest account of what led him to shoot Anthony, 24 exaggerating the threat he believed there to have been. 25 He had no basis for thinking that there was any more</p> <p style="text-align: center;">Page 5</p> | <p>1 and again, I say so respectfully, sir, the way you have 2 handled this has been very, very sensitive and we really 3 appreciate that.</p> <p>4 We also thank you, sir, for your efforts in ensuring 5 that Stuart was able to watch these proceedings by way 6 of the video-link, again, sir, thank you for that.</p> <p>7 Being excluded from the closed hearings has 8 inevitably impeded the family's ability to participate 9 in the Inquiry. However, again we have been extremely 10 impressed by your team's approach. Mr Beer, 11 Ms Cartwright and the rest of your team.</p> <p>12 CTI have obviously put a huge amount of work into 13 this Inquiry to do everything they possibly can to 14 satisfy the terms of reference within the restrictions 15 imposed by them by the law. They appear to have 16 conducted a most comprehensive and searching 17 investigation and we thank them for that.</p> <p>18 The evidence points to serious systemic problems 19 within the force, particularly within its firearms and 20 intelligence departments. There is, sir, a pressing 21 need for action to be taken to prevent somebody else 22 being shot.</p> <p>23 Legal background. We submit that you, sir, have 24 a wide power to use whatever words you feel appropriate 25 in your report, providing that it does not determine</p> <p style="text-align: center;">Page 7</p> |
| <p>1 than a possibility that Anthony might have had 2 a firearm.</p> <p>3 When you break it down, sir, and you analyse it, it 4 comes to this. He shot due to a small and ambiguous 5 movement of Anthony's right hand. This could not have 6 founded an honest belief that Anthony was about to pick 7 up a gun and shoot a police officer. Anthony may well 8 have been trying to open his car door.</p> <p>9 The basis Q9 gave to justify the lethal force, that 10 his colleagues would be shot by Anthony through the 11 front doors of the red Audi, was unfounded on Q9's own 12 account. Alternatively, there is evidence that X7 had 13 Anthony covered at the time he was shot and so Q9 had no 14 justification for the shooting. For these, sir, and 15 other reasons, Anthony's killing was not lawful.</p> <p>16 It has now been over five years since Anthony died. 17 The pain of coming to terms with his death, of a beloved 18 son, has been made far worse by the unjustified attempts 19 by GMP to conceal the truth. Reliving these events 20 through the course of the Inquiry has been extremely 21 traumatic.</p> <p>22 Sir, can I say this. The family are extremely 23 grateful to you for the very sensitive way in which you 24 have managed these proceedings. We know at times that 25 it has been difficult for, you know, Anthony's mother,</p> <p style="text-align: center;">Page 6</p> | <p>1 a person's civil or criminal liability. The prohibition 2 in section 2(1) of the Inquiries Act 2005 is a narrow 3 one and there can be no objection to robust findings or 4 to a conclusion of unlawful killing, which has been 5 returned many times in previous inquiries.</p> <p>6 The family respectfully submit that, sir, you ought 7 to examine whether the operation was planned and 8 controlled to minimise to the greatest extent possible 9 the risk to life. This article 2 duty is the core 10 responsibility of firearms commanders and must take 11 precedence over any other imperative. An element of 12 this duty is that officers responsible for producing the 13 information which would be used to brief up the AFOs 14 were bound to exercise the greatest care in evaluating 15 and transmitting this information.</p> <p>16 Let me turn, sir, to the planning and control of the 17 operation. Many of the failures relating to the 18 planning and control of this operation are helpfully 19 summarised at the end of Mr Beer's questions to 20 Mr Arundale. We support all of the conclusions he 21 expresses there, with the following supplementary points 22 or caveats.</p> <p>23 Failure to communicate information accurately. 24 There was a serious failure to obtain and provide the 25 AFOs, and to Q9 in particular, an accurate assessment of</p> <p style="text-align: center;">Page 8</p> |

1 the threat posed by Anthony. The threat he posed was
 2 grossly exaggerated.

3 The need for accurate threat assessments about each
 4 separate subject. Sir, since threat assessments about
 5 each individual subject that is provided to AFOs could
 6 determine whether or not a subject is at risk of being
 7 shot, it should be as accurate as possible. The context
 8 of this operation provides a clear illustration as to
 9 why this should happen. If Q9 had been given
 10 an accurate threat assessment about Anthony, then his
 11 decision to shoot Anthony in the circumstances would
 12 plainly have been unlawful. There was in fact no basis
 13 for thinking Anthony would be armed with or prepared to
 14 use a firearm.

15 The only significant threat that he might have been
 16 was based on an incident some 15 years earlier, was to
 17 use his car to ram a police car, but at the point that
 18 Q9 shot him Anthony's car was boxed in. The front of it
 19 was actually touching the police alpha car. Anthony was
 20 unable to drive forward. There was no police officer
 21 behind the red Audi and the rear was about four to five
 22 feet from a brick wall -- you will remember the
 23 photographs. Sir, I would invite you to refresh your
 24 memory with those photographs at the appropriate time.

25 The possibility that the red Audi might try to

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1 reverse that short distance, then be put into first gear
 2 and then try to ram its way out, plainly would not
 3 justify Q9's decision to use lethal force when he did.
 4 The red Audi had not begun to reverse when Q9 fired.
 5 Moreover the AFOs had been instructed to disable the
 6 vehicle and prevent it being a threat to the officers
 7 using the Hatton shotgun. It is not surprising that Q9
 8 did not attempt to justify shooting by the risk posed by
 9 the red Audi.

10 Thus if Q9 had been given an accurate threat
 11 assessment about Anthony, the shooting would not have
 12 been lawful. There is nothing new or surprising about
 13 the need to give AFOs accurate information about the
 14 threat posed by subjects. National and GMP policy
 15 stresses that this information may determine whether
 16 firearms officers on the ground decide to shoot.
 17 Investigations into previous fatal police shootings such
 18 as Jean Charles de Menezes have highlighted the same
 19 point.

20 It also follows from the principle that a briefing
 21 may affect the AFOs' response, that if the subjects pose
 22 different threats officers should receive individual
 23 separate threat assessments about each of them. That
 24 was essentially accepted by a number of the senior GMP
 25 witnesses in this Inquiry. Indeed, the AFOs were given

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1 separate assessments in this case. Sir, there is
 2 obviously a good reason for that, one subject may have
 3 no history of violence and may always take a non-violent
 4 role in the offending, for example he may be the get
 5 away driver, because he has excellent driving skills but
 6 is weak and has no inclination to violence and may be
 7 a dreadful shot.

8 Take another example. An AFO had been told that the
 9 man in the front passenger seat has a machine gun in his
 10 lap and a history of shooting at police officers.
 11 Meanwhile the driver and the rear passengers were his
 12 daughters who have no history of violence and there is
 13 no suggestion they had weapons. The AFO in these
 14 circumstances would plainly be expected to distinguish
 15 between the threat posed by the man and that by his
 16 daughters. One reason is for the AFO's own protection,
 17 the AFO would want to do so for his or her own
 18 protection.

19 By the same token the AFO would not be justified in
 20 shooting the daughter in the driving seat if she dropped
 21 her hand slightly merely because she sat next to and
 22 regularly associated with her father. I pause there,
 23 sir, because other facts really do illustrate the
 24 principle, but that is the principle that you have been
 25 urged to follow in this case by a number of the officers

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1 in this case. AFOs accept that subject specific threat
 2 assessments may affect how and when they treat the
 3 individual. For example W9 made the obvious point:
 4 "Well, if one has got a warning for say having
 5 a knife in his pocket, I would want to know about it,
 6 wouldn't I?"

7 Q9 said of the information in the briefing:
 8 "That information is what we base our decisions on."
 9 It cannot be said that firearms officers of Q9's
 10 calibre and experience were incapable of bearing in mind
 11 information about the different subjects' threats when
 12 on the ground. He was highly trained to carefully
 13 assess threats in fast-moving situations. His eight
 14 weeks of training each year involved repeated drills and
 15 scenarios aimed to improve his ability to make judgments
 16 about threats. Those scenarios include situations very
 17 similar to that encountered here, a MASTS vehicle strike
 18 in which Q9 had to distinguish between a driver who
 19 posed no threat and from a front seat passenger who was
 20 armed.

21 Of course, if the subject was pointing a gun at Q9
 22 a threat assessment may be irrelevant. But where
 23 a limited and opaque movement such as Anthony's is
 24 concerned, an individual threat assessment is the only
 25 basis upon which a shooting may be justified.

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| <p>1 AFOs are unlikely to retain precise details of 2 briefings in their minds. We accept that, but that is 3 not the point. They are trained to expect to remember 4 a gist of the threat posed by each subject where there 5 are significant differences between them. Sir, that is 6 important because in this case there were significant 7 differences between Totton and the others. 8 An accurate picture of the threat posed by Anthony. 9 Anthony plainly posed a much lower threat than any other 10 subject. DCI Cousen said Anthony's risk was a lot lower 11 than that of Totton, Rimmer and the Corkovics. Anthony 12 had no convictions for violence. He had no convictions 13 for robbery and none for weapon offences. He had 14 a number of convictions but they were all for 15 non-violent offences, largely dishonesty and driving 16 offences, theft and the like. 17 An accurate picture of the threat by Anthony was as 18 follows. He had no convictions for any offence 19 involving violence. There were two significant 20 unsubstantiated allegations of violence, the affray that 21 was ordered to lie on the file, that was ramming the 22 police car back in 1997 when he was 21, and an arrest 23 for a section 18 assault in 2001 and there was 24 insufficient evidence to charge. He was charged for 25 offences of robbery and conspiracy to commit robbery in</p> <p style="text-align: center;">Page 13</p> | <p>1 Anthony, Totton or Rimmer would or may be armed on 2 3 March or 5 March 2012. 3 The only other relevant item of intelligence appears 4 to be item 41 of which we have heard a lot about in the 5 intelligence chronology. That is the only entry in the 6 chronology that names Anthony, the key sentence is this: 7 "David Totton is planning to commit offences of 8 robbery with his close friend Idgy and others including 9 Anthony Grainger and the twin brothers known as Aaron 10 and Bradley." 11 The first thing to say about this is that it says 12 that Anthony and others are planning "offences of 13 robbery", not "armed robbery". 14 Secondly the gist of the closed hearings suggests 15 that the original intelligence upon which this entry was 16 based and which came from SOCA was not reliable. 17 Thirdly, the entry is clearly unreliable on its face 18 for example it says that Totton was planning to commit 19 robbery offences with Idgy and others including Anthony 20 and Aaron and Bradley McLennan, but the McLennan 21 brothers were in prison at the time and so could not 22 commit robberies. 23 Moreover, Operation Shire did not consider Idgy, the 24 other man named in the intelligence, was acting together 25 with them. There was detailed surveillance on Mr Totton</p> <p style="text-align: center;">Page 15</p> |
| <p>1 1995/1996 when he was aged about 19 or 20 but, sir, 2 a Crown Court judge decided there was insufficient 3 evidence to convict him of those offences. There is no 4 evidence that he was involved in robbery since then. 5 There was no reliable suggestion in the intelligence 6 that Anthony would be or may be armed on 3 March 2012. 7 Since the assessment set out above was largely 8 uncontroversial, we do not explain the basis for it 9 here. The evidence for it is set out in our detailed 10 closing submissions which you have, sir. 11 There is one exception, which is the question of 12 whether there was any reliable intelligence that Anthony 13 would be armed. We are limited in the extent to which 14 we can make submissions about the intelligence, having 15 not played a part in the closed hearings. However, it 16 is apparent from what we have seen that there was no 17 reliable intelligence or other information to indicate 18 that Anthony would or may be armed on 3 March 2012. 19 P11 was a person at SOCA responsible for 20 disseminating the intelligence. The intelligence that 21 P11 disseminated on 2 March 2012 was that the three 22 subjects intended to commit a robbery. Not an armed 23 robbery. He repeatedly made clear, including in strong 24 terms, that there was no intelligence within the 25 intelligence he was responsible for disseminating that</p> <p style="text-align: center;">Page 14</p> | <p>1 during the five months or so of Operation Shire. The 2 DSU was deployed on Operation Shire on 74 separate 3 occasions on the operation during that period. GMP had 4 vehicle tracking devices on the vehicles used by the 5 subjects which enabled the police to know exactly where 6 those vehicles were at all times. This wealth of 7 resources did not once produce any suggestion that Idgy, 8 that is Iain Parkinson, had any contact with Mr Totton 9 or Anthony. That further undermined the reliability of 10 item 41. 11 It is therefore surprising that Operation Shire 12 appeared not to have given any credence to item 41. 13 That is indicated from the fact that they made no 14 efforts to try to test and evaluate the intelligence in 15 that entry. A number of steps were suggested by Mr Beer 16 as to what could have been taken to verify it. None of 17 them were taken. 18 Fourthly, item 41 was obtained on 2 February 2012. 19 It was superseded by the more up to date and more 20 specific intelligence disseminated by P11, considered 21 above. P11 was clear that, insofar as 3 or 5 March was 22 concerned, there was no intelligence that Anthony would 23 or may be armed. 24 For those reasons, there was no intelligence to show 25 Anthony would be armed on the evening of 3 March.</p> <p style="text-align: center;">Page 16</p> |

1 What were the AFOs, particularly Q9, told about
 2 Anthony's threat? The briefing on 3 March to Q9 and to
 3 the other AFOs grossly exaggerated the threat posed by
 4 Anthony, the briefing included the following information
 5 at F/1267:
 6 "The subjects [ie Totton, Anthony and Rimmer] are
 7 believed to be engaged in armed robberies in the
 8 north-west region."
 9 There was a similar entry to this one at F/1270,
 10 a page specifically about Anthony which stated:
 11 "Intent: conspiracy to commit armed robbery."
 12 As has been seen above, there was no reliable
 13 intelligence to show that the subjects, and Anthony in
 14 particular, would or may be armed. At most the
 15 intelligence said they would be committing robberies.
 16 The briefing continued:
 17 "There is intelligent to suggest that these subjects
 18 were responsible for a robbery in 2008 in Preston where
 19 they broke into a bank, lay in wait for the staff to
 20 arrive. On their arrival they were held at gunpoint
 21 using a shotgun, handgun, tied up and forced to hand
 22 over keys."
 23 The most serious error here is that there was no
 24 evidence whatsoever that Anthony was involved in that
 25 offence. The indication that Anthony held up staff at

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1 gunpoint was likely to be of real significance to the
 2 assessment by the AFOs as to whether or not he posed
 3 a threat. The question of whether the subjects have
 4 a firearm was described by the AFOs as "Critical".
 5 The briefing to the AFOs on 3 March 2012 continued
 6 at F/1270, that Anthony had:
 7 "Warnings, weapons, previously conspired to commit
 8 robberies with firearms, violence, numerous arrests for
 9 section 18/20 offences. Group 1 offender."
 10 The errors in this passage include that it asserts
 11 as an established fact Anthony had previously conspired
 12 to commit robberies with firearms. The true position is
 13 that Anthony was charged with offences involving
 14 robberies in 1995/1996 but that a judge concluded there
 15 was insufficient evidence to convict him for those
 16 offences. Other than there was no evidence that he was
 17 involved in robbery.
 18 There was nothing to show he had used or had access
 19 to firearms. The fact that a judge essentially
 20 dismissed the charges against Anthony is important.
 21 Because of that, it would be wrong for an AFO to assume
 22 that Anthony committed those offences. There was no
 23 reliable basis to think he had done so.
 24 At times it was suggested that AFOs could treat
 25 intelligence or unsubstantiated allegations as being

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1 true. The error in that approach can be seen by
 2 comparing Anthony's history against that of Q9's. There
 3 have been 12 separate complaints that Q9 has assaulted
 4 someone. Two of the assaults in 1997 included
 5 allegations of racism, appears to proceed to
 6 disciplinary hearings at which Q9 was found not guilty.
 7 Q9 was found guilty of two assaults in 1998 and
 8 fined after formal disciplinary approach.
 9 Three of the complaints of assault have been made
 10 against Q9 in the year or so before 3 March 2012, the
 11 year of the shooting.
 12 Firstly on 15 February 2011:
 13 "The offender was found to have cuts to his back
 14 which required stitches. It was further discovered he
 15 had a ruptured spleen which required removal. He later
 16 alleged officers used excessive force to arrest him by
 17 numerous punches, kicks and knees to his body."
 18 Secondly on 21 February 2011:
 19 "Complaint ... alleged officers struck him over the
 20 head with the butt of a gun, Tasered his back whilst he
 21 was handcuffed and punched and kicked him."
 22 Thirdly, 10 March 2011:
 23 "Complainant alleges that during his arrest he was
 24 assaulted by police which included being hit over the
 25 head with the butt of a gun and being kicked and punched

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1 in his body."
 2 The IPCC decided, having regard to the seriousness
 3 of the case and the public interest to investigate the
 4 three 2011 complaints of assault independently. It
 5 appears that the investigation was outstanding on
 6 3 March 2012. However those allegations, together with
 7 the remaining allegations, were found to be
 8 unsubstantiated. The police did not treat Q9 as guilty
 9 of those offences, they permitted him to continue to
 10 bear firearms and to be deployed on high stakes,
 11 aggressive firearms operations because the allegations
 12 were not proven. It was equally inappropriate to treat
 13 Anthony as guilty of unsubstantiated allegations against
 14 him.
 15 The second reason why, "Warnings for weapons,
 16 previously conspired to commit robberies with firearms"
 17 is misleading is that it indicates that Anthony had
 18 a warning for weapons that related to firearms. That
 19 was wrong.
 20 The only possible basis for weapons warning could
 21 have been the 1997 driving incident, the car being used
 22 as a weapon. There was no evidence that Anthony had
 23 ever possessed or used firearms or any type of weapon
 24 other than the car. It appears that the AFOs, including
 25 Q9, were aware that Anthony was probably sitting in the

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1 driver's seat of the red Audi at the moment of the
 2 strike. Having seen that the VW carrying two of the
 3 subjects was heading towards Boothtown, Mr Granby noted
 4 at 6.25 on 3 March that the AFOs were in their cars,
 5 ready for the off.
 6 At 6.29 pm the surveillance team transmitted over
 7 their channel -- which was being broadcast through
 8 a speaker in the alpha car, so the whole car could
 9 hear -- that Anthony was driving the red Audi as it made
 10 its way towards Culcheth.
 11 DCI Cousen had already formed the view that Anthony
 12 would probably be in the driver's seat. It is unclear
 13 whether that significant piece of information was passed
 14 on to the AFOs, as it should have been. But since the
 15 AFOs were aware from the surveillance observations that
 16 Anthony was in the driver's seat in the Culcheth car
 17 park, any such failure may not be important.
 18 Q9 and GMP submit that the threat assessment in fact
 19 understated the risk posed by Anthony. That submission
 20 we say is unfounded and itself demonstrates a failure to
 21 accurately assess the risk. To pick up on three
 22 examples.
 23 Firstly, by relying on Stuart Grainger's conviction
 24 of Derek Ianson, it conflates Anthony's threat with that
 25 posed by his brother.

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1 Secondly, it assumes Anthony was responsible for
 2 items found at 8 Thanet Close during the operation in
 3 Blythe but there is no evidence that he, rather than
 4 David Totton or others, who may have resided at that
 5 address was in control of those items.
 6 Thirdly, it suggests that Anthony was involved in
 7 the Operation Ascot robberies in 2005/2006, even though
 8 he was eliminated as a suspect for all of those
 9 offences.
 10 The consequences of the errors in the AFOs'
 11 briefing, sir. The errors in the information given to
 12 Q9 about Anthony's threat were very serious ones. As
 13 has been seen above, if Q9 had been given an accurate
 14 picture of Anthony's threat, the shooting would not have
 15 been justified. The red Audi was boxed in and did not
 16 pose a threat which justified Q9's decision to shoot.
 17 Question, sir: who or what was responsible for the
 18 errors in the briefings? It is clear that information
 19 relevant to Anthony's threat that was communicated to
 20 the AFOs on 3 March was seriously wrong. It is less
 21 clear exactly who or what was responsible for those
 22 errors. The family's detailed closing submissions
 23 attempt to analyse some of what went wrong. For the
 24 purposes of this oral statement, we will focus on just
 25 a few of the many concerns raised.

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1 The main problem appears to be the process by which
 2 the information relevant to the subjects' threat was
 3 obtained. Given the importance of this aspect of the
 4 AFOs' briefings, there should have been a clear,
 5 formalised procedure which ensures the threat
 6 assessments for the AFOs were as accurate and as
 7 reliable as possible.
 8 In particular: firstly, (a) a researcher should look
 9 where possible at the relevant and most reliable and up
 10 to date sources of information; (b) a person who fully
 11 understood the underlying sensitive intelligence and
 12 National Intelligence Model should have had input; (c)
 13 all involved should understand the importance of threat
 14 assessment being as accurate as possible and should have
 15 sufficient time to check the information properly; (d)
 16 the threat assessment that goes to the AFOs should
 17 briefly but accurately summarise the substance of
 18 important information, including its reliability; (e)
 19 the research and the person who understands the
 20 underlying intelligence should have scrupulously checked
 21 the briefing before it is delivered.
 22 Further, sir, if the person drafting the threat
 23 assessments in the PowerPoint briefing is different
 24 from, say, the researcher, then there must be a reliable
 25 system for ensuring that the information gets from the

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1 researcher to the drafter accurately.
 2 The researcher should provide all the information in
 3 written form, specifying the grading of the reliability
 4 of that information and providing original sources or
 5 links for the original sources where possible.
 6 The procedure for the creation of, sir, F/1267 to
 7 F/1270 was anything but clear in this case. Even after
 8 weeks of painstaking evidence at this Inquiry, it is
 9 still not clear who created those documents, how they
 10 did so and what information they looked at.
 11 What is clear, sir, in part from the manifest errors
 12 in those pages, is that the exquisite care and checking
 13 that AFOs expected did not occur. However you want to
 14 slice it, sir, there has been system failings in that
 15 regard.
 16 The key question is: who should be responsible for
 17 doing this? One option is that someone from
 18 DCI Cousen's team would do so. The reasons for this
 19 include that DCI Cousen and his team have far more time
 20 available to conduct the necessary research and access
 21 to more resources and information than Mr Granby's team
 22 did. Here, by contrast, the threat assessments appear
 23 to have been produced by a member of the TFU operation
 24 team, someone who had little time available, who
 25 accessed none of the reliable sources of information,

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| <p>1 who did not sit on the risk assessment meeting with 2 DCI Cousen and who received no direct briefing from the 3 Robbery Unit. In the words of Mr Granby himself, the 4 process was "foolhardy", and "did not make any sense". 5 Sir, it was prone to error. 6 DCI Cousen said: 7 "I don't go to a firearms briefing to check the 8 accuracy of what is on that briefing." 9 Given the obvious advantages he had of knowledge, 10 access to the information and subject expertise, he 11 plainly ought to have amended the serious errors in the 12 briefing if he heard them. He would have been aware of 13 the errors whether he sat in on the seven or more 14 briefings when the flawed information was read out or 15 when he read the briefing documents themselves. 16 A subject profile was produced about Anthony by 17 Rachel Griffiths. This contained the section which said 18 Anthony had been charged with armed robbery at a Post 19 Office at which a sawn-off shotgun was used and the 20 charge was ordered to lie on file for Anthony. That was 21 all wrong. Anthony was not charged with that offence. 22 DCI Cousen passed the profile to Mr Granby and Mr Lawler 23 in the knowledge that it may be used to brief the 24 firearms officers as to the threat that Anthony posed. 25 He also relied on the entry about the sawn-off shotgun</p> <p style="text-align: center;">Page 25</p> | <p>1 issue. 2 Thirdly, after DCI Cousen had made this new claim, 3 your team asked GMP to investigate whether DCI Cousen 4 had in fact accessed GMPics between 1 September 2011 and 5 9 March 2012. Contrary to his oral evidence, he had 6 not. 7 Fourthly, on 17 February 2017 at 12.58 pm, 8 DCI Cousen volunteered that he had become concerned that 9 the evidence he had given about accessing GMPics was not 10 correct. It is remarkable that this occurred at exactly 11 the same time that GMP's discovery that DCI Cousen's 12 oral evidence was incorrect was revealed. It is hard to 13 believe, sir, that DCI Cousen's claim that this was 14 merely a coincidence. 15 Fifthly, Cousen could not explain or provide 16 a credible explanation for why he had not become 17 concerned before that his evidence was incorrect. 18 I am moving on to tactics and strategy now. 19 There were a number of failings relating to the 20 tactics and strategy employed in this operation that led 21 to Anthony's shooting. We focus on a handful. 22 MASTS, decisive action improper. Mr Granby should 23 not have declared State Amber on the evening of 3 March. 24 By about 6.00 pm that evening it had become apparent 25 that it was unlikely a robbery would take place that</p> <p style="text-align: center;">Page 27</p> |
| <p>1 during the 1 March risk assessment meeting. He knew the 2 information he provided may be relied on by the AFOs in 3 making decisions whether to shoot. 4 Is it therefore not surprising that DCI Cousen 5 accepted he was well aware of the need for him to check 6 Ms Griffiths's entry about the Prestwich robbery? 7 DCI Cousen said in oral evidence that the step he took 8 in this regard was to access the 1995 Prestwich robbery 9 entry on GMPics. He claimed that having looked at the 10 GMPics records, he was satisfied that the subject 11 profile entry regarding the 1995 Prestwich robbery was 12 correct. 13 Sir, we invite you to find as a fact that Cousen did 14 not check GMPics and intentionally misled this Inquiry 15 by claiming he did check it. We say so for the 16 following reasons. 17 Firstly, DCI Cousen gave clear and unambiguous oral 18 evidence that he in fact accessed the Prestwich 1995 19 entry on GMPics back in 2012 before the shooting. 20 Secondly, the first time DCI Cousen claimed he had 21 accessed the GMPics to check the Prestwich entry was on 22 14 February 2017, during his oral evidence at this 23 Inquiry. This is most surprising since he was plainly 24 aware in his earlier statements that the steps he and 25 his unit took to develop the subject profile was at</p> <p style="text-align: center;">Page 26</p> | <p>1 evening. MASTS decisive action was, in consequence, 2 contrary to the aim of bringing about long prison 3 sentence to the subjects and was contrary to the 4 requirement to minimise the risk to life. The sensitive 5 intelligence was that: 6 "David Totton and Anthony Grainger and another 7 person intended to commit a robbery on 3 March if the 8 opportunity arose and if not to conduct reconnaissance 9 on that day or to commit a robbery on 5 March." 10 DCI Cousen says that he was given intelligence that: 11 "David Totton, Anthony Grainger and Robert Rimmer 12 were going to commit a robbery on 3 March 2012 or if not 13 then on 5 March 2012." 14 Mr Granby and DCI Cousen told him this information. 15 The remainder of this section assumes that the 16 intelligence was reliable. It was of great importance 17 for those planning the operation to decide whether the 18 robbery was likely to happen on the Saturday or the 19 Monday. 20 There are two reasons why a MASTS arrest on the 21 Saturday if the subjects were only on a reconnaissance 22 mission for the Monday would be wrong. 23 Firstly, it would defeat the whole purpose of the 24 operation. The purpose of Operation Shire was to secure 25 long prison sentences against the subjects for the</p> <p style="text-align: center;">Page 28</p> |

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| <p>1 long-term protection of the public. If the MASTS 2 arrests took place when the subjects were merely 3 conducting a recce trip up to Culcheth, it was unlikely 4 that the necessary evidence would be present in the red 5 Audi to secure those sentences.</p> <p>6 Secondly, a MASTS threat of the subjects who were 7 merely conducting reconnaissance would be contrary to 8 an important requirement to minimise the risk to life. 9 MASTS decisive action is a high risk option. Why? 10 Reasons: firstly the subjects may think that they are 11 being attacked by other people or by another gang and 12 would be more likely to react defensively or 13 unpredictably than with compliance. Y19 noted this as 14 a commonly recognised risk. This was of a particular 15 concern with Totton in this case since, as we all know, 16 in 2006 he was the subject of an attempted 17 assassination, contract killing, in the Brass Handles 18 pub.</p> <p>19 Secondly, if the SFOs are told that the subjects 20 would have firearms and were willing to shoot at the 21 police, an unexpected movement could cause the subjects 22 to be shot.</p> <p>23 Thirdly, there are many other factors that can occur 24 during a MASTS strike which can cause unpredictable 25 movements, which could in turn lead to the subject being</p> <p style="text-align: center;">Page 29</p> | <p>1 incident was apparently nearby. There were flats just 2 at the back of the shops just behind the red Audi in and 3 near to Q9's arc of fire. There was a risk that 4 a bullet would have gone through the windows or hit 5 a member of the public outside the buildings.</p> <p>6 There were lower risk options on the evening of 7 3 March which could have achieved the same as the MASTS 8 decisive action if the subjects were conducting 9 a reconnaissance. An example would have been disruption 10 activity, and again, sir, you heard evidence of that 11 being given in this Inquiry.</p> <p>12 From about 6.00 pm on 3 March 2012, on a balance of 13 probabilities it had tipped in favour of anything 14 occurring on the Monday as being the date of the 15 robbery. The Saturday would probably merely be the 16 reconnaissance, again assuming that the intelligence was 17 true. A range of evidence indicates that the command 18 team had formed the view that the target of any robbery 19 was likely to be cash in transit delivery and/or 20 financial premises. All the CIT, cash in transit, 21 deliveries took place in Culcheth by lunchtime on the 22 Saturday, all the financial premises were closed by 23 12.30. This meant that all of what the command team 24 considered were likely targets were closed or gone by 25 lunchtime. Thomas Cook closed at 5.30. By 6.00 pm the</p> <p style="text-align: center;">Page 31</p> |
| <p>1 wrongly shot. Those factors include -- we have heard 2 them many times during the course, but forgive me for 3 repeating them -- a window being smashed, a CS canister 4 exploding within the vehicle, Hatton rounds being fired 5 at the tyres, collision between the subject vehicle and 6 a police car, a subject may faint or, as U9 put it, 7 "With an element of surprise, people can react 8 differently".</p> <p>9 For example, Anthony may have dropped his hand 10 either to get out or turn off the engine, who knows.</p> <p>11 Fourthly, the strike in this case was particularly 12 dangerous. It took place when it was going dark, 13 against a car with tinted rear windows which prevented 14 the AFOs from being able to see completely what was 15 happening inside the car and certainly what the rear 16 passenger was doing. The high risk was not only to the 17 officers and the subjects, it was also to the public. 18 It was likely that members of the public would be in the 19 vicinity of this relatively busy town centre car park on 20 a Saturday evening.</p> <p>21 That was in fact the case. Mr Delaney was in the 22 car park close to the shooting at the time. 23 Jessica Brown, a 15-year old girl, was outside the Post 24 Office opposite with some friends. Alex Sayers, 25 a 14-year old boy, who witnessed the shooting and the</p> <p style="text-align: center;">Page 30</p> | <p>1 only possible remaining targets were the late night 2 opening shops, Sainsbury's, Betfred and the Co-op.</p> <p>3 Thus by 6.00 pm, after the likely targets were 4 closed on gone, the balance of probabilities had swung 5 in favour of the Monday as the date of any robbery. The 6 command team appear to have agreed with this.</p> <p>7 The second reason why by 6.00 pm it was likely that 8 the robbery would have been on the Monday rather than 9 the Saturday concerns the subjects who were expected to 10 commit it. DCI Cousen and Mr Granby understood 11 Mr Rimmer would be one of the three men committing the 12 robbery, yet at about 5.15 pm on the Saturday, they 13 received information that Mr Rimmer would not be going 14 with the other two men to Culcheth that evening. That 15 made it even more likely that the robbery would be on 16 the Monday at opposed to the Saturday.</p> <p>17 It follows, sir, that the MASTS decisive action on 18 the Saturday evening should not have taken place. It 19 was likely that the men would merely be conducting 20 a recce, on the assumption that the intelligence was 21 right.</p> <p>22 Proceeding with the MASTS intervention that evening 23 was wrong.</p> <p>24 Firstly, because it was contrary to the purpose of 25 the operation since it was unlikely that the evidence</p> <p style="text-align: center;">Page 32</p> |

1 would be obtained to lead to long prison sentences for
 2 the subjects.
 3 Secondly, it was contrary to the imperative of
 4 minimising the risk to life since it was probable that
 5 the MASTS intervention would have posed a considerably
 6 higher risk than the other options, that is risk to
 7 life, than the other options which could have achieved
 8 the same ends such as disruption.
 9 The approval and use of the CSDC. A CS dispersal
 10 canister should not have been used by GMP at all, should
 11 not have been authorised for deployment into the red
 12 Audi and should not have in fact been used by X9.
 13 Before a new weapon is used national policy states it
 14 should be tested and approved by ACPO and the Home
 15 Secretary. This involves an important process of
 16 careful evaluation and assessment and for the officers
 17 to be trained in how to use it and what dangers it may
 18 pose. That important process was ignored by Greater
 19 Manchester Police when it adopted the CSDC. They knew
 20 it was necessary but failed to follow it.
 21 The CSDC was adopted by GMP and put to general use
 22 without it having been evaluated or approved by ACPO or
 23 the Home Secretary and without proper training being
 24 developed.
 25 Mr Arundale said it was extremely concerning that

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1 an unknown and unresearched chemical agent was being
 2 used against subjects and that central approval was not
 3 sought. That is:
 4 "Because it doesn't appear we know what it was or
 5 what its effect on human beings were. The Home
 6 Secretary would never approve any chemical weapon system
 7 without a full understanding of the effects of the agent
 8 it contained."
 9 The adoption and use of CSDC by GMP was wholly
 10 inappropriate and should not have been used. Sir, the
 11 failure to go through the careful central process of
 12 evaluating, testing and formulation of a training
 13 programme is why key officers involved on 3 March had
 14 little idea of what the purpose of using CSDC was or the
 15 dangers of doing so.
 16 I just remind you of the many questions that I asked
 17 in relation to that. For example, important witnesses
 18 did not appear to know whether the purpose was to keep
 19 the subjects in the vehicle or get the subjects out of
 20 the vehicle. You would have thought, you know, if you
 21 were going use a weapon like that that is one thing all
 22 using it could agree on.
 23 Similarly, the officer who used it in the case, X9,
 24 did not seem to understand that there should have been
 25 some justification for doing so, in the sense that the

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1 subjects were being actively non-compliant. He had no
 2 good reason for throwing it into the red Audi. He
 3 apparently did it because Anthony was sitting in the
 4 driver's seat.
 5 The reasons why using this chemical weapon in the
 6 circumstances of the case was dangerous, included
 7 discharging such a canister into a subject vehicle is
 8 likely to cause unexpected sudden movements, for example
 9 it may cause the subjects to flinch away from the
 10 breaking window or the explosion, the actual CS itself
 11 would cause the subjects to have difficulty breathing,
 12 it may lead them to reach down to open doors so they
 13 could get out to get air, grab their T-shirt to cover
 14 their faces, it will induce panic, disorientation, that
 15 the subjects ... this is what it is designed to do.
 16 AFOs are looking for subjects, sir, to be still and
 17 compliant with their hands up. One or more of the many
 18 AFOs approaching the car may misinterpret an unexpected
 19 or sudden movement as a threat and as a consequence
 20 shoot the subject. Mr Grainger was shot because he
 21 lowered his hand. He could have been reaching for
 22 a door handle or the window button after the CSDC was
 23 discharged. CSDC fogs the inside of the vehicle
 24 preventing the AFOs from being able to see what the
 25 subjects are doing. Sir, I remind you of that video

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1 clip we saw.
 2 AFOs must wear respirators which impedes their
 3 peripheral vision. Discharging it puts the officers
 4 themselves at higher risk. There are further concerns
 5 about the process in which the CSDC was adopted within
 6 GMP. Mr Arundale had fundamental concerns about the
 7 content and the integrity of the original report that
 8 led to the approval of the CSDC, a further report was
 9 commissioned by GMP to support the weapon's use. X9 was
 10 asked to draft a report, yet he was a newly qualified
 11 AFO. Who had apparently had no operational experience
 12 of CSDC or any training in its use. It is hard to
 13 believe that a process was adopted which almost seems
 14 designed to mislead, particularly so shortly after CSDC
 15 had been involved in the death of PC Ian Terry.
 16 AFOs not clearly identified as police officers. In
 17 most MASTS interventions it is important for officers to
 18 be clearly and readily identified as such at the point
 19 of the strike. This is especially important in this
 20 case since Mr Totton had a particular reason for
 21 thinking that he may have been under attack by another
 22 gang, because of what happened to him previously. There
 23 was a failure to ensure that the subjects were fully
 24 aware that the approaching men were police officers
 25 before the fatal shot. No blue lights were used, which

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1 could have been the clearest signal. You will remember
 2 again in cross-examination with one of the officers,
 3 I forget which, sirens or blues and twos or just the
 4 lights. Sirens might impede sound, but the lights would
 5 clearly show that these were police. No justification,
 6 not one officer has explained to you, sir, why they
 7 couldn't have used their lights. Not one.

8 None of the officers who were within range prior to
 9 the fatal shot had unambiguous police markings, the only
 10 exception were Q9 and X7 who were wearing police caps
 11 and U9 had the lapel badge of his jacket out but with
 12 lasers, bright torches shining into Anthony's eyes in
 13 the near dark and in a few seconds before he was shot
 14 there was no guarantee that they would have been aware
 15 of those small signs.

16 We invite you, sir, to find that no one shouted
 17 "armed police" prior to the fatal shot. The independent
 18 eye witnesses said it was not shouted, as did a number
 19 of the police witnesses. As such Mr Grainger may not
 20 have known that the AFOs were armed police officers, he
 21 may have tried to move to escape or simply because he
 22 didn't realise the mortal danger he would be in.

23 If you are going to shoot somebody, at the very
 24 least, if you have the time, we say there was time here,
 25 is to make them aware of the risk of the danger. That

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1 was not done and again that comes back to, as they
 2 approached, just before they put in the strike, they put
 3 on the blues, everybody knows.

4 There is a real prospect that if the AFOs had been
 5 clearly identifiable, he would have frozen and complied
 6 and would not have moved in a way that led him to be
 7 shot.

8 Post incident concoction of evidence. Steps were
 9 taken by the GMP to destroy or concoct evidence after
 10 this shooting. A few examples out of the many are as
 11 follows. There was an inexplicable destruction of the
 12 key records of relevant personnel involved in the
 13 planning and control of this operation. DCI Cousen met
 14 with the senior investigating officer or the deputy
 15 investigating officer in the Mark Duggan shooting before
 16 completing his own, apparently with the purpose of
 17 tailoring how and what evidence he would give. Cousen
 18 and other senior firearms commanders appear to have
 19 tried to concoct the justification for the firearms
 20 operation after the shooting. I repeat, after the
 21 shooting.

22 For example, after Anthony had been killed Cousen
 23 told Mr Heywood about certain intelligence. Mr Heywood,
 24 an assistant chief constable at the time, then drafted
 25 a log in which this intelligence was the central basis

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1 for the decision to grant the firearms authority.

2 GMP withheld large range of information that was
 3 obviously relevant to this Inquiry. They were brought
 4 to disclose it only after pressure and very late in the
 5 day. Thousands of pages which have been revealed during
 6 the course of this evidence, one example, just one
 7 example amongst many, is a key document showing
 8 Mr Lawler decided that the CSDC should not be approved
 9 and that it was a bad option. GMP concealed this until
 10 Thursday, 11 May 2017. After all the evidence had been
 11 given and the day before closing submissions were due.

12 GMP made improper arrangements regarding the
 13 production of AFOs of their first accounts, which
 14 appears to have been aimed at encouraging the officers
 15 to confer with one another. Those arrangements included
 16 bringing the AFOs together for extended periods and
 17 arranging for a private meeting with V53, the man who
 18 recently shot Mark Duggan, before they completed their
 19 initial accounts. Sir, see the further submissions
 20 I make in the fuller document.

21 The shooting. The law on what questions should be
 22 addressed. We submit, that you, sir, ought to ask
 23 yourself the following questions in respect of the fatal
 24 shooting.

25 At the time he fired, did Q9 believe he needed to use

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1 the force because he or his colleagues were under
 2 imminent threat of being shot by Anthony?

3 Did Q9 have reasonable grounds for such a belief?

4 Was it reasonable to shoot Anthony in the
 5 circumstances, as Q9 honestly and reasonably believed
 6 them to be? If the shooting was not absolutely
 7 necessary, it was not reasonable.

8 Was the shooting lawful or unlawful?

9 The chairman should ask those questions on the civil
 10 standard to begin with but should indicate where
 11 relevant and appropriate if he is sure of the answer.

12 The law to support those submissions is set out in
 13 detail in our detailed closing submissions. For
 14 convenience, what we did we extracted those and put them
 15 in a separate document.

16 THE CHAIRMAN: Yes.

17 MR THOMAS: They are identical, it is just for your ease of
 18 use, sir.

19 THE CHAIRMAN: Thank you.

20 MR THOMAS: I don't intend to repeat that here.

21 We submit that the answers with respect, you may
 22 find to be as follows.

23 Firstly, at the time of the shot, Q9 did not have
 24 an honest belief that he or his colleagues were under
 25 imminent threat of being shot by Anthony.

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| <p>1 Secondly, Q9 did not have any reasonable grounds for 2 such a belief. 3 Thirdly, for the reasons that I have already 4 outlined, the shooting was not absolutely necessary or 5 reasonable in the circumstances as Q9 honestly and 6 reasonably believed them to be. 7 Finally, the shooting was unlawful. 8 The starting point we suggest, and this is 9 an approach that you may wish to consider, is: was 10 Anthony armed? Well we know as a fact Anthony was 11 unarmed. There were no weapons in the red Audi, at 89. 12 Q9 does not claim that he saw Anthony with a gun or 13 indeed anything that Q9 thought was a gun. 14 As Mr Beer put it: 15 "One of the things that may mark this case out is 16 that it is one of those rare cases where a police 17 officer has shot a person who was in fact unarmed and 18 where the officer does not suggest that he had seen 19 a weapon before the firing. Very unusual from certainly 20 the previous cases that me and my learned junior have 21 been in, Rodney, Duggan. 22 The idea that a police officer can shoot someone 23 dead without seeing a weapon is likely to be of acute 24 public concern. We do not suggest that there is any 25 rule preventing officers from firing until they see</p> <p style="text-align: center;">Page 41</p> | <p>1 If it was, that would set the bar for the use of lethal 2 force too low. 3 It is difficult to see how the public will have 4 confidence in a legal system which permits the police to 5 shoot and kill someone with such limited justification. 6 The fact that the belief was not based on reasonable 7 grounds indicates, we say, that it was not honestly held 8 by Q9. 9 It would have been suicidal for Anthony to have 10 picked up a gun when surrounded by a number of highly 11 trained specialist firearms officers if, as Q9 claims, 12 it was made clear to Anthony that the men were armed 13 police. 14 Then that means it is even less likely that Anthony 15 posed an imminent threat. 16 Q9's honesty, if I can turn to that as a separate 17 heading. There are a number of respects in which Q9's 18 evidence about the circumstances he appears to have 19 relied on to justify the shooting was dishonest. 20 Firstly, the key reasons Q9 gave for the shooting 21 were on his own evidence wrong. Firstly, Q9 said the 22 reason he shot was, "I saw the driver lower his hand to 23 the groin area". 24 This was untrue. Q9 could not see Anthony's groin 25 area or anything below his sternum. Since this movement</p> <p style="text-align: center;">Page 43</p> |
| <p>1 a gun but for the sake of public confidence in the 2 state's monopoly on the use of force, the bar must not 3 be set too low. Q9 will need cogent and compelling 4 grounds to show the shooting was justified. 5 The briefing given to Q9 on 3 March 2012 did not 6 show that Anthony in fact had a firearm with him that 7 day. Nor did it show that Anthony was prepared to shoot 8 at police. The briefing indicated that it was possible 9 that the subjects might have a firearm, but it did not 10 go higher than that. Against that context, the movement 11 Q9 saw Anthony make did not give Q9 a reasonable basis 12 for believing Anthony was about to shoot a firearm at 13 the police. It was a small and ambiguous movement, Q9 14 could only see from Anthony's sternum or nipple area 15 upward, nothing below that. This means that the only 16 movement he was able to see was Anthony's hand being 17 lowered out of sight below the level of his sternum. 18 The movement was ambiguous, Anthony may have been 19 reaching to turn off the engine, to open the door, to 20 open a window or to rest his hands off the steering 21 wheel. Those are real possibilities that cannot be 22 discounted. In the context of there being no 23 intelligence that Anthony had in fact a firearm, this 24 small and ambiguous movement was not a reasonable basis 25 for Q9 to believe he was about to pick up and fire a gun.</p> <p style="text-align: center;">Page 42</p> | <p>1 was the basis that Anthony was killed, it was obviously 2 vital for Q9 to describe it accurately. 3 Secondly, in his oral evidence Q9 said he believed 4 that Anthony was about to shoot laterally at the other 5 firearms officers, yet he was forced to accept that the 6 other firearms officers were not in range. They could 7 not be shot laterally at that stage. 8 Thirdly, there were four significant pieces of 9 information which Q9 claimed to have been told, that 10 claim was untrue. 11 First, Q9 claimed that on 3 March the briefing made 12 him sure that firearms would be in the vehicle. The 13 briefing did not provide reasonable grounds for Q9 to be 14 sure that the men had a firearm. It indicated that the 15 men might have a firearm. 16 Secondly, Q9 claimed he was told that in 2008 17 Anthony was involved in the supply of firearms. There 18 was no support from anyone else for that suggestion that 19 he was involved in the supply of firearms. 20 Thirdly, Q9 said Totton was convicted of possession 21 of a shotgun in 1999 with Anthony. Q9 had no basis for 22 that. That was wrong. 23 Fourthly, Q9 said he understood that: 24 "This group of offenders were in some way linked to 25 a robbery at a bank in Bolton where one offender had</p> <p style="text-align: center;">Page 44</p> |

1 opened fire on the attending police patrol with
 2 a shotgun."
 3 There was no evidence that Anthony had any link to
 4 that robbery, this was made clear to Q9 during the
 5 3 March briefing by X7.
 6 Q9's account is inconsistent with the expert
 7 evidence, which is summarised below in more detail. The
 8 experts conclude that since the bullet track through
 9 Anthony was at 45 degrees, left to right, and 10 to
 10 20 degrees down, Anthony was partly turned -- sir, he
 11 was partly turned away from the front window to where
 12 the driver was. On Q9's evidence, Anthony was sitting
 13 back flat in his seat when his arm went down. Q9 said
 14 that Anthony had not twisted his body at all. Q9
 15 accepted his account was inconsistent with the expert
 16 evidence. Q9 said he shot Anthony three to four seconds
 17 after the alpha car stopped and, thereafter, the CS
 18 canister went into the Audi about 10 seconds after that.
 19 It follows that Q9's evidence was that some 13 to 14
 20 seconds after the alpha car stopped, that is when the CS
 21 canister went into the vehicle. That clearly
 22 contradicts the accounts of the other AFOs. None of
 23 them suggest that the time between the alpha car
 24 stopping and the canister going in was anything like as
 25 long as 13 to 14 seconds. For example X9 and X7

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1 indicate that the CS canister was deployed within
 2 a couple of seconds, at most, after the alpha was had
 3 stopped.
 4 Factual dispute. There are additional reasons why
 5 the shooting was not justified which depend on the
 6 resolution of the factual disputes involved in the order
 7 of events as Q9 perceived them. There were essentially
 8 two competing versions of events.
 9 First version of events, there is evidence to show
 10 that X7 was next to Anthony's window and had him covered
 11 well before the fatal shot. X7's account had the
 12 following key features. X7 arrived by Anthony's window,
 13 Anthony put his hands up and looked directly at X7,
 14 moments later X7 saw the canister activate inside the
 15 vehicle. Anthony reacted by flinching slightly to his
 16 right, after that Anthony started to lower his hands
 17 towards his lap, out of sight, Anthony stopped moving.
 18 Anthony's movements set out above must have happened
 19 before Q9 shot him. That is apparent not least from
 20 Q9's own evidence, which was emphatic that after Anthony
 21 was shot he did not move again.
 22 Sir, you will remember, after he shot him, Q9 was
 23 asked: where did you have your eyes? "I had my eyes on
 24 the man, I still thought he was the threat, that is why
 25 I don't see Totton get out of the car".

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1 He continued to focus on Anthony after the shot
 2 because he said he considered Anthony still posed
 3 a threat. He was clear there was no further movement.
 4 For example, in his oral evidence, he said this:
 5 "Question: Did he make any further movement after
 6 slumping back in his seat as far as you could see?
 7 "Answer: No, only his shoulders seemed to drop
 8 slightly."
 9 Q9 was clear that Anthony made no further movement
 10 after he was shot. Anthony did not raise his hands, did
 11 not turn to face X7, did not flinch to his right. It
 12 follows that the movements X7 described must have
 13 happened before the fatal shot. No one else saw
 14 movement from Anthony after the fatal shot.
 15 Q9's evidence supports the above analysis -- sorry,
 16 forgive me. X9's evidence supports the above analysis.
 17 X9 gets out of the bravo car before it stopped. Ran
 18 three metres or so from his car to the red Audi as fast
 19 as he could, that could not have taken more than
 20 a second or two, smashed the window, deployed the CS
 21 canister into the vehicle. As he did so he saw Anthony
 22 raise his hands to chest height as if to capitulate or
 23 surrender. The CS gas instantly fogs the car. Since we
 24 know not least from Q9 that Anthony did not move again
 25 after being shot, what X9 saw, the canister being

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1 deployed, Anthony then raising his hands towards chest
 2 height must have happened before the fatal shot.
 3 There is nothing in the pathology that tells us
 4 whether or not Anthony did in fact move after the fatal
 5 shot. Therefore, sir, this is important and can I just
 6 flag this up, it is in our main submissions but also in
 7 the speaking note, paragraph 127 on the speaking note.
 8 There is nothing in the pathology that tells us whether
 9 or not Anthony did in fact move after the fatal shot, it
 10 is the eyewitness evidence that must determine whether
 11 or not Anthony did move.
 12 G6's first account also indicates that X7 was at
 13 Anthony's window covering him at the time of the fatal
 14 shot. He reached the red Audi as quickly as he could.
 15 X7 was at the red Audi challenging the man sitting in
 16 the driver's seat. X7 clearly had Anthony covered at
 17 the time. Then, quoting G6:
 18 "As I reached the front offside wheel arch of the
 19 Audi, I was right behind X7 and I heard a shot."
 20 His evidence is clear that it was a shot. G6 later
 21 altered this evidence, his new evidence was that this
 22 sound was not a shot but a window smashing.
 23 The new evidence is not credible for a number of
 24 reasons, which include as a specialist firearms officer
 25 who had heard the sound of an MP5 thousands of times, it

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| <p>1 is unlikely to have mistaken an MP5 shot for a window 2 breaking. 3 The expert evidence is also consistent with the 4 conclusion that before the fatal shot Anthony turned to 5 look at X7 and then flinched away from the red Audi's 6 front nearside window being smashed and the CS gas being 7 deployed. The gunshot wound is at 45 degrees to 8 Anthony's midline which indicates he was turned partly 9 to his right, towards where X7 was standing by the 10 window. That is one version of the events. 11 The alternative version of the events, which is Q9's 12 version of events, no firearms officers were near the 13 red Audi. 14 THE CHAIRMAN: Down to your last 10 minutes, Mr Thomas. 15 MR THOMAS: I am nearly there, I think I can do it. 16 THE CHAIRMAN: Yes. 17 MR THOMAS: Q9's evidence was that he saw none of his 18 colleagues close by the red Audi at the time of the 19 fatal shot: 20 "Question: Was anyone close by? 21 "Answer: Not that I saw." 22 W4 supported Q9's account, W4 said that none of the 23 officers were near the red Audi at the time of the fatal 24 shot. At the time of that shot the firearms officers 25 were still in the process of starting to deploy on the</p> <p style="text-align: center;">Page 49</p> | <p>1 Mr Totton's account is different to both those set 2 out above, he indicated that the fatal shot occurred 3 before the alpha car had come to a complete stop. 4 Whether the shooting was lawful, on the first 5 version of events. On the first version of events the 6 shooting was not lawful for one or two additional 7 reasons. If X7 was next to Anthony's window, Q9 would 8 have seen him. He was directly in Q9's -- sorry, X7 was 9 directly in Q9's line of vision, just next to Q9's arc 10 of fire. Q9 was highly trained to pay attention to 11 where others were when they are near or in your line of 12 fire, arc of fire. He was reminded to do so in the 13 briefing. His torch would have provided ideal 14 illumination and W4 accepted that X7 would have been 15 visible. 16 Sir, if Q9 was aware that X7 was next to Anthony, 17 the shooting would not have been justified. Q9 18 essentially accepted that if X7 was there it would not 19 have been necessary for him to shoot Anthony: 20 "If X7 was there, then my job would have been 21 redundant then." 22 Likewise, W4 accepted that there was no need for Q9 23 to shoot Anthony if X7 was covering him by his window. 24 That is not surprising. X7, being there, would have had 25 a much better view than that of Q9 of what Anthony was</p> <p style="text-align: center;">Page 51</p> |
| <p>1 alpha vehicle. 2 Sir, there are a number of factors which undermine 3 the credibility of W4's account. As Mr Beer put to W4 4 during the questioning, there are a number of important 5 matters that W4 either missed out or described wrongly 6 relating to the precise moment before the shots. 7 For example, in W4's written account he says: 8 "I saw Anthony dropping his right hand down towards 9 his lap." 10 In his oral evidence he was forced to admit he 11 couldn't have seen this. He could only see Anthony's 12 sternum upwards, not his lap area. In oral evidence W4 13 said he thought Anthony was reaching for a weapon. This 14 was the very first time W4 had suggested this, it was 15 not mentioned in any of his written accounts. He could 16 give no explanation why if this crucial piece of 17 information was true he failed to mention it earlier. 18 W4's account included evidence that was consistent 19 with that of Q9, yet it was clearly wrong. In 20 particular his suggestion that Anthony dropped his hands 21 towards his lap. It was also notable, sir, that W4 22 appears over time to have adapted his account in a way 23 which fits better with that of Q9. We think and believe 24 there is real concern that his evidence may have been 25 contaminated by what he heard about Q9's account.</p> <p style="text-align: center;">Page 50</p> | <p>1 doing with his hands. He had a gun pointing at Anthony 2 from about a foot or two away and he had Anthony 3 covered. It would not have been necessary for Q9 to 4 have shot Anthony, because X7 would have done so if 5 there was a sufficient and justified threat. 6 Further or alternatively, if the CSDC was discharged 7 prior to the fatal shot, the shooting would not have 8 been justified. Q9 plainly would have seen the CS gas 9 instantly fog inside the vehicle. Q9 understood that 10 the CS gas would incapacitate the subject, X9 explained 11 that his colleagues would have understood that the CSDC 12 would prevent the subject being able to aim or fire 13 a weapon at the police. Thus, as far as Q9 understood 14 it, in the seconds after the CSDC had been discharged, 15 there was no imminent threat from Anthony. 16 Secondly, an apparent explanation of Anthony 17 lowering his hands was in reaction to the CSDC being 18 deployed, whether by flinching from the explosion, or 19 trying to open the door or trying to grab his T-shirt to 20 cover his mouth or otherwise, Q9 did not have reasonable 21 grounds for believing that it was necessary to shoot 22 Anthony because of an imminent threat of Anthony picking 23 up a gun and shooting an officer, since Anthony may well 24 have been reacting to the CSDC. 25 Thirdly, while the CSDC fogged the inside of the</p> <p style="text-align: center;">Page 52</p> |

1 subject car Q9 would not have been able to see anything
 2 that demonstrated that Anthony posed a risk.
 3 Let's look at it now from Q9's version of events and
 4 why we say it is unlawful. Q9 says he fired because he
 5 thought that Anthony would shoot laterally with his gun
 6 out of Q9's sight, either across David Totton or through
 7 the red Audi driver's door. That is Q9 said he fired
 8 the shot because he thought Anthony would shoot, and
 9 I quote, "... laterally across the car, laterally across
 10 the car so either laterally to his left through the
 11 passenger window or upward towards the driver's window".
 12 Q9 did not claim that he shot because Anthony posed
 13 a threat by somehow shooting through the engine of the
 14 red Audi, nor did he shoot because of a risk that
 15 Anthony would lift the gun above the dashboard and aim
 16 it and fire it through the windscreen, nor did he shoot
 17 because of the possibility that Anthony might reverse
 18 the red Audi. He based the decision to shoot squarely
 19 on the risk that Anthony would shoot his colleagues
 20 laterally out of the red Audi's front door.
 21 But, sir, on Q9's own account, none of the officers
 22 were there, none of the officers were at imminent risk
 23 of being shot by Anthony laterally. They were not to
 24 the right, the left or in a location which they might
 25 have been shot. As can be seen above, Q9 saw none of

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1 his colleagues close to the red Audi, likewise W4 said
 2 the AFOs were still in the process of starting to deploy
 3 from the alpha vehicle. So on Q9's own account, he did
 4 not believe there was an imminent threat of one of his
 5 colleagues being shot. By the same token the shooting
 6 was not absolutely necessary, it was not necessary
 7 because there was an alternative option which would have
 8 been to protect his colleagues, Q9 could have paused at
 9 least until his colleagues were visible moving towards
 10 the red Audi's front doors to see if Anthony was in fact
 11 reaching for a gun rather than the door handle.
 12 In consequence, even if Q9's version of events is
 13 accepted, then this provides an additional reason why
 14 the shooting was unlawful.
 15 Nearly there, sir, three pages to go.
 16 Training and competency, there was serious concerns
 17 relating to the training of the officers involved in
 18 this case, including a number of the officers centrally
 19 involved in the incident which were not competent to
 20 perform the roles they did. This has been dealt with
 21 in detail by Mr Arundale and in summary in our closing
 22 submissions, so they are not going to be analysed here,
 23 but there are some general matters of concern I want to
 24 raise about the organisation of GMP's firearms training.
 25 Mr Williams was head of the Firearms Training Unit

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1 and the force's chief firearms instructor on
 2 3 March 2012. He said there were a number of problems
 3 with the Firearms Training Unit when he arrived. He
 4 could find no records of the firearms officers at all,
 5 this caused him significant difficulties in terms of
 6 monitoring the officers' training or knowing whether
 7 they were qualified. He also explained that funding and
 8 staff reductions had been too severe and left the unit
 9 unable to deliver the required volume of training for it
 10 all to be recorded appropriately.
 11 This gives the impression, sir, of a training unit
 12 in disarray and a serious systemic failure. It was
 13 serious because it impacted on the operation that led to
 14 Anthony's shooting. For example, the systemic failures
 15 to communicate training records to responsible firearms
 16 instructors in GMP meant Mr Williams did not get sight
 17 of Z15 or X7's training outcomes before Anthony's
 18 shooting. It was serious because it applied to the
 19 whole of the GMP's Firearm Unit, potentially affecting
 20 all the AFOs within that force and the large range of
 21 firearms operations. That could put the wider public at
 22 risk. It was serious because if we heavily armed the
 23 police officers and asked them to conduct high risk
 24 operations, which are fast paced, it is of great
 25 importance that everything possible is done to ensure

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1 that the officers are properly trained and supported.
 2 Conclusion. The family respectfully invite you,
 3 sir, to identify clearly and in detail the fundamental
 4 failures from start to finish in this operation that led
 5 to this fatal shooting. That is for Anthony's sake,
 6 that is for the sake of Anthony's two little children
 7 and his family, since Anthony would still be alive today
 8 if that operation had been conducted properly.
 9 It is also for sake of others who may find
 10 themselves in similar situations in the future. The
 11 lives of the subjects, the police and the wider public
 12 are at stake in these high risk operations. It is rare
 13 that an independent scrutiny is brought to the secretive
 14 GMP firearms and intelligence units, particularly with
 15 the level of exposure and expertise that this Inquiry
 16 has involved.
 17 Sir, it's an invaluable opportunity to learn how
 18 changes may be brought about to prevent others from
 19 being shot in years to come.
 20 I apologise if I have gone over by a couple of
 21 minutes.
 22 THE CHAIRMAN: You haven't actually.
 23 Thank you, Mr Thomas.
 24 I think it would be appropriate, Mr Weatherby, to
 25 take a short break at this stage for the sake of the

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1 shorthand writer.
 2 MR WEATHERBY: Indeed.
 3 THE CHAIRMAN: That means obviously -- I don't know whether
 4 you are going to use the whole of the 90 minutes?
 5 MR WEATHERBY: I am afraid I may go fairly close to it but
 6 I will split it over lunch.
 7 THE CHAIRMAN: Inevitably there is going to be a break
 8 anyway.
 9 MR WEATHERBY: Yes, indeed. It will not cause a problem to
 10 me.
 11 THE CHAIRMAN: I will say five minutes.
 12 (12.06 pm)
 13 (A short adjournment)
 14 (12.25 pm)
 15 THE CHAIRMAN: Yes, Mr Weatherby.
 16 MR WEATHERBY: Thank you.
 17 Closing submissions by MR WEATHERBY
 18 MR WEATHERBY: Mr Thomas has referred to the facts, the
 19 factual matrix, of this case as being rare or very rare.
 20 As far as our researches have ascertained and with the
 21 possible caveat of the de Menezes case -- which is of
 22 course in wholly different circumstances -- this appears
 23 to be the first case in this jurisdiction where police
 24 officers have deliberately shot dead a person who was
 25 not in possession of a gun or other dangerous weapon and

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1 where there is no suggestion that the shooter saw or
 2 mistook an object for a weapon.
 3 The acute concerns of family and friends and the
 4 wider public whenever there is a fatal police shooting
 5 are obvious.
 6 The acute concerns of family and friends and the
 7 wider public where there is a fatal police shooting in
 8 these circumstances, no weapon, no suggestion a weapon
 9 was mistaken for an innocent other object, we submit
 10 raise particularly disturbing issues.
 11 Can I move straight away to the issue of the fatal
 12 shot. We say, our first submission, really, is that the
 13 justification that has been raised by the police shooter
 14 Q9, and GMP, in essence elides honest or genuine belief
 15 with mere suspicion. We say that is an important point
 16 that the Inquiry ought to keep in mind. There is some
 17 law on this, I don't think it is controversial. We have
 18 referred to it in our written submissions at footnote
 19 eight to paragraph 32 but there is obviously a clear
 20 difference between belief and suspicion.
 21 I am not going to, I hope, be too repetitious with
 22 respect to some of the submissions that Mr Thomas has
 23 made about the lawfulness of the shot in particular.
 24 I do want to highlight a few of the points.
 25 Firstly, the obvious fact already laboured that

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1 there was no gun, no object mistaken for a gun or for
 2 that matter any form of weapon at all.
 3 Secondly, there was no intelligence that there would
 4 be a gun, and according to the NCA, National Crime
 5 Agency, as you have heard, we have been reminded of
 6 already this morning, it is quite apparent from gist
 7 number 1, paragraphs 15 to 18, that they made it crystal
 8 clear to Greater Manchester Police from their material,
 9 the material that they had gathered, that there was no
 10 intelligence supporting the fact that there would be
 11 a gun in the car. There was simply an assumption that
 12 there might, might, be firearms, because of the sort of
 13 criminality that was suspected.
 14 Thirdly, on the evidence, and particularly that of
 15 Q9 himself, the fatal shot was fired almost immediately
 16 the alpha car came to rest, at least within a few
 17 seconds. Was it a genuine belief or an act of
 18 impulsivity?
 19 Fourthly, whatever movement Q9 did or did not see,
 20 whether or not it was right that he remained in alpha,
 21 he was very poorly sighted, he could only see the top
 22 part of the two front seat occupants of the car.
 23 Fifthly, Q9 justifies his action not by fear for
 24 himself but by fear for oncoming AFOs. The point has
 25 already been made and is obvious we say, on the

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1 evidence, not only were there no AFOs around the Audi at
 2 the material moment, but they were not in any line of
 3 sight or nearby. X7 still at or about the passenger
 4 door, W9 around the rear of the alpha car.
 5 Sixthly, it is inherently unlikely that the subject
 6 of a MASTS strike, when blocked in, will effectively
 7 commit suicide by a shootout, when he has a carbine
 8 trained upon him from less than two metres away. Of
 9 course there are cases where that might apply. This is
 10 not on any view of the facts one of them. Of course Q9
 11 rightly points out that he had received intelligence
 12 through the briefing that these were an OCG about to
 13 commit a robbery. He rightly points out that he
 14 couldn't weigh all the factors to a nicety as we can
 15 here. We readily accept all of that.
 16 Ultimately he goes on to say he honestly believed
 17 there was an imminent threat and, rather chillingly we
 18 say, he would do the same again in the same
 19 circumstances. Taking account of the factors I've just
 20 mentioned, which we say indicate that there could not
 21 have been a genuine belief in an imminent lethal threat
 22 as opposed to a general nervousness or suspicion that
 23 the men were armed, is what Q9 is doing an ex post facto
 24 rationalisation, or to borrow a phrase from
 25 Sir Christopher Holland in the Rodney case, and I am

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| <p>1 quoting, "Self-serving but unconscious reconstruction in 2 view of the enormity of taking someone's life". 3 We refer to that in a little more detail from 4 paragraph 158 of our written submissions. 5 Whatever the answer to the legal issue on the 6 correct legal test -- I will deal with that in due 7 course if I may -- the Inquiry will not only have to 8 grapple with honest belief, but necessarily with what 9 was reasonable in the circumstances, because at the very 10 least that is relevant to whether any belief was indeed 11 genuine. Honest belief is not a mantra whose assertion 12 determines the issue of legality. Here we are talking, 13 we are considering the deliberate taking of life by 14 a highly trained specialist police officer, trained not 15 only in the use of guns but in policy and tactics and 16 indeed essential elements of the law. AFOs are trained 17 and reminded that the use of lethal force can only be 18 justified if absolutely necessary. 19 Considering honest belief requires looking carefully 20 at the objective circumstances and in a case such as 21 this, determining whether the fatal shot was discharged 22 because of a genuinely identified imminent threat to 23 life which could only be dealt with by lethal force. 24 Obviously Q9 asserts that his state of mind was 25 influenced by the circumstances, which I have already</p> <p style="text-align: center;">Page 61</p> | <p>1 to be borne in mind regarding his state of mind and 2 whether he was truly acting on a genuine belief or 3 acting impulsively and on suspicion, where it was 4 neither absolutely necessary to shoot or proportionate 5 to do so. 6 Furthermore, we note that Q9's evidence is 7 inconsistent with the scientific opinion that 8 Mr Grainger was turned slightly to the right-hand side, 9 his door. It is inconsistent in some respects even with 10 W4. Whereas we accept he may be unconsciously 11 reconstructing the scenario with the gloss of 12 justification, that would not help in terms of honest 13 belief and we certainly do not accept that it should be 14 assumed that he is telling the truth. 15 Static cover from the car, with respect to policy 16 and training regarding static cover from cars, the 17 Inquiry has necessarily heard quite a bit of evidence. 18 We comment that this has been an area of evidence that 19 Greater Manchester Police itself has been a little 20 reluctant to enter. You will remember, no doubt, that 21 I explored this with a number of witnesses, hopefully in 22 an attempt to make sure that policy and training with 23 regard to officers shooting from cars was absolutely 24 clear. 25 I am not going to go through the detail of that or</p> <p style="text-align: center;">Page 63</p> |
| <p>1 adverted to, a decisive action police operation and what 2 he had been told about them, the subjects, in advance. 3 Important issues in this regard include, firstly, 4 that Q9 alone amongst the 16 deployed AFOs thought that 5 an armed robbery necessarily involved firearms. Please 6 don't take my approach for that as being right, that 7 appears to be accepted by Greater Manchester Police at 8 paragraph 112 of their written submissions. 9 Secondly, with respect to Q9, and his state of mind, 10 it appears that he could bear in mind other information 11 he thought he knew about the subjects which he had not 12 raised or been told about in the briefings. 13 Thirdly, that he could unilaterally at the last 14 moment substantially change the plans set by the OFC, 15 X7, as to the deployment on to the Audi by staying in 16 the alpha. I will deal with that in more detail in 17 a moment if I may but I raise it here because it is 18 important to note in the context of Q9's behaviour and 19 his whole approach. In essence, Q9 was prepared to read 20 more into the briefing regarding the likelihood of 21 firearms being present than any other officer. He 22 thought he knew more or better than those investigating 23 the subjects over many months and he appears to have 24 thought he knew better than X7, the OFC, in terms of how 25 the strike should happen. We say those are all matters</p> <p style="text-align: center;">Page 62</p> | <p>1 the documents, but we set out the relevant references in 2 the written submissions from paragraph 199 onwards. 3 In essence, the Greater Manchester Police standard 4 operating procedures on vehicle strikes, the policy, 5 makes no mention of any tactic or role of cover from 6 cars. Quite the contrary, the recognised Greater 7 Manchester Police policy was that covert police vehicles 8 approach the subjects swiftly and by surprise. They 9 cause as effective a block as the circumstances allow. 10 All AFOs, save for the drivers, then deploy on to the 11 subject car and then the subjects are contained, 12 challenged and extracted. No doubt in reality some of 13 those parts of the process merge one into the other. 14 The policy was put into practice through the 15 training material. Up to early 2010 the training 16 provided a regimented or relatively regimented scheme, 17 where each AFO had specific roles. Apparently this 18 evolved and during 2010 was replaced with a more 19 flexible training package where AFOs were taught to go 20 where needed or follow the bespoke plan of the OFC. The 21 need for greater flexibility may well have been 22 a sensible amendment to the training but it did not of 23 course alter the policy, nor did it import new methods 24 of operation into Greater Manchester Police. 25 Irrespective of whether they were in use elsewhere or</p> <p style="text-align: center;">Page 64</p> |

1 whether some of the AFOs had been trained on them.
 2 Flexibility was to enhance the policy, not to
 3 provide a trump card to anybody who acted outside the
 4 policy with disastrous effects. No one has been able to
 5 articulate what advantage there was in Q9 remaining in
 6 the car.
 7 We underline that not only was the fact that Q9
 8 remained in alpha contrary to Greater Manchester Police
 9 policy and Greater Manchester Police training, as he
 10 himself was to accept under questioning, but it also
 11 firstly interfered with the efficacy of the plan said to
 12 have been communicated by X7 to the other AFOs. His
 13 plan had been for the three deploying alpha AFOs to go
 14 to the driver's side of the Audi. Q9's action or
 15 amendment reduced that of course to two. In reality, we
 16 know that W9 also went contrary to that plan.
 17 Secondly, no one suggests that Q9's amended plan was
 18 communicated to the other AFOs. So there was a danger
 19 that other AFOs would inadvertently go through the arc
 20 of fire, as indeed apparently happened with J4.
 21 Thirdly, according to Q9, it led to a challenge
 22 going in before other AFOs were anywhere near in
 23 position prompting disastrous consequences even on Q9's
 24 account. An innocent movement by Mr Grainger which Q9
 25 misconstrued, resulting in the fatal shot and indeed the

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1 escape from the car of Mr Totton.
 2 The whole point of the policy and training was to
 3 effect a swift, orderly, effective detention of subjects
 4 as safely as was possible and to safeguard life. If
 5 actions provoked either dangerous or innocent reactions
 6 then they also increased the risks to all involved,
 7 public, subjects, officers.
 8 Fourthly, Q9's position gave him an extremely poor
 9 view. From his vantage point he could only see the
 10 driver and front passenger and could not see below the
 11 dashboard. We have not seen any policy or training
 12 material regarding the use of static cover from
 13 elsewhere, for example the Met or any other force, but
 14 we very much doubt that it allows for cover from such
 15 a position. It might be different for a sideways block
 16 on a conventional hard stop where the AFOs may have
 17 a reasonable vantage point into the subject car, but
 18 there is simply no logic to the position that Q9 placed
 19 himself in. We note that for example the static cover
 20 in the Rodney case was side on rather than front on.
 21 We highlight these points because we can then
 22 juxtapose what happened with what might have happened if
 23 the policy and training had been followed. We can
 24 easily test therefore the effect of Q9 remaining in the
 25 car against what would have happened otherwise and we

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1 say that if the policy and training had been followed on
 2 3 March, the three alpha AFOs would have deployed from
 3 the car on to the driver's side. The bravo and charlie
 4 officers would have deployed on to the other. X7 would
 5 have put in the first challenge to Mr Grainger, as
 6 indeed he has told the Inquiry was what he thought was
 7 going to happen.
 8 Unarmed, Mr Grainger was not posing a risk. From
 9 X7's challenged position that would be easily
 10 ascertained as, again, X7 said in evidence. The men
 11 would have been extracted and detained as per policy.
 12 No fatality. In our submission, this is an important
 13 point which should not be lost on the Inquiry.
 14 The relevant test regarding the legality of the
 15 fatal shot. We set out our position fully in the
 16 written document from paragraph 14. Mr Thomas has dealt
 17 with it again this morning. Let me make some further
 18 comments.
 19 The architecture of a public Inquiry is different
 20 from that in adversarial proceedings, it has less
 21 restrictive evidential rules, it is meant to be a search
 22 for the truth and should be able to determine as many
 23 facts as the terms of reference and the law require.
 24 We reiterate that the approach of
 25 Sir Christopher Holland in Rodney is right.

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1 Firstly, amongst all of the other facts the Inquiry
 2 should consider honest belief and whether the state of
 3 the mind of the shooter was reasonable. It should
 4 determine those things to the same standard as all the
 5 other facts, but recognising the greater or lesser
 6 importance of some matters the Inquiry should express
 7 its degree of confidence in its findings on particular
 8 key issues and facts.
 9 We say that this Inquiry can gain some assistance
 10 from the ruling of Sir William Gage in the Baha Mousa
 11 case which we have referred to in the written
 12 submissions. After a very full argument by a stellar
 13 range of distinguished advocates, a decision that was
 14 not subsequently challenged. That case of course
 15 related to a death of a man in detention of British
 16 forces. The clear decision of Sir William Gage was that
 17 at a public Inquiry findings of fact which were criminal
 18 in nature and did not attract a different standard from
 19 any other.
 20 Importantly the judge noted, I will refer to
 21 a couple of paragraph numbers if I may. At paragraph 16
 22 of his judgment referred to in our written submissions,
 23 Sir William Gage noted that it was important to
 24 distinguish a public Inquiry from adversarial, that is
 25 criminal and civil proceedings, and inquests. He made

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| <p>1 it clear that he was drawing a distinction between 2 inquiries and both adversarial and inquest proceedings. 3 I highlight that simply because it is relevant to some 4 of the submissions made on behalf of Q9. 5 At paragraph 21 of his judgment, the judge went on 6 to note that although criminal offences were determined 7 to the higher standard in the criminal courts, they 8 sometimes then went to the civil courts where a balance 9 of probability is applied. In determining 10 responsibility in an Inquiry, he, the judge, would be 11 inappropriately limiting himself if he were to do so 12 only to the higher standard. 13 The conclusion of his ruling at paragraph 28 could 14 not be clearer. The appropriate approach was to find 15 facts to the civil standard and to indicate that he was 16 sure to the higher standard where such was the case. 17 I know that Mr Beer was involved in the Baha Mousa 18 case, so I am sure he will educate us all if I have 19 stated anything there which is wrong. 20 As already stated, whatever test is applied, the 21 Inquiry will have to consider the reasonableness of the 22 shooter's state of mind, whatever that is determined to 23 be. It will have to be considered, whatever the answer 24 to the legal question is, because it would be relevant 25 to whether his asserted honest belief was genuinely</p> <p style="text-align: center;">Page 69</p> | <p>1 There is nothing in the Act, nothing in the secondary 2 legislation and nothing in the case law which restricts 3 the Inquiry in the way asserted, quite the contrary. 4 Mr Grainger's family, partner and the wider public 5 should be told the full findings of the Inquiry on the 6 legality of the fatal shot, there is no logic to the 7 question being restricted to the criminal test or 8 a higher standard of proof. 9 May I just finish on this point by referring to some 10 of the dicta of Lord Scott in the Ashley case, for your 11 reference it is paragraph 24. Lord Scott notes there 12 the obvious point, perhaps, but it is worth making, that 13 an acquittal on a criminal charge on the basis of 14 self-defence does not mean that the defendant did not 15 unlawfully assault the victim. Of course it simply 16 means that the prosecution have failed to prove it to 17 the relevant test: 18 "In the circumstances, it would [says Lord Scott] be 19 a travesty [his word not mine] to describe a situation 20 where there may have been a honest belief but it was not 21 reasonable held to describe that as lawful." 22 The Inquiry doesn't have to do that and we say that 23 the Inquiry following the approach in Rodney will take 24 the right course. 25 Article 2, more generally, further to the legality</p> <p style="text-align: center;">Page 71</p> |
| <p>1 held. 2 The approach in Ashley, as applied by 3 Sir Christopher Holland and supported by the decision 4 that I have referred to in the Mousa case to some 5 extent, is we would say undoubtedly the correct one for 6 an Inquiry. Otherwise, what would the Inquiry need to 7 do? It would start with what Q9 said he actually 8 thought at the time, determine whether that was 9 reasonable in the circumstances, in order to help answer 10 the first question, whether the Inquiry accepted that 11 the belief was honest or genuine at the time. But then 12 not record its finding on objective reasonableness. 13 We say that is not the correct approach and would be 14 a nonsense. Q9's team have introduced the judicial 15 review against the findings of Sir Christopher in the 16 Rodney case. It is noteworthy that whatever else can be 17 gleaned from that short decision, that there was no 18 challenge to his determination of the right process or 19 test. 20 Q9 further relies on Duggan, but in essence we would 21 say that only really clarifies whether the domestic 22 criminal test is compatible with article 2. Although 23 this Inquiry must pay close attention to article 2 -- 24 I will move on to that in a moment if I may -- the 25 compatibility of domestic homicide law is not the point.</p> <p style="text-align: center;">Page 70</p> | <p>1 of the fatal shot, both the terms of reference and 2 article 2 require the Inquiry to look at what happened 3 in the investigation, Operation Shire, the planning, the 4 command of the operation leading up to the death. We 5 set out the principles in the case law at paragraphs 34 6 to 36 in some little detail. We do not believe that 7 this is controversial and therefore we will not address 8 that further in these submissions. If a failing by 9 police officers is material, or may be contributory to 10 the death, then in essence it will be a breach of 11 article 2. 12 Information and intelligence, the Inquiry has heard 13 a lot of evidence regarding the gathering, grading, 14 researching, dissemination of intelligence and 15 information in this case. In preventing and detecting 16 organised crime the Force Robbery Unit had to work out 17 who was up to what and when. The better the 18 intelligence and information coming in, the better the 19 way it could be researched and graded and the more 20 effective would FRU be in preventing offences taking 21 place and locking up criminals. All that is very 22 straightforward. 23 However, the integrity of the processes of 24 gathering, grading, researching and disseminating 25 intelligence and information goes further than that.</p> <p style="text-align: center;">Page 72</p> |

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| <p>1 For our purposes, the body of investigatory material was 2 also the basis upon which armed officers should have 3 been briefed to undertake their duties, including 4 decisive action to detain.</p> <p>5 It is axiomatic and obvious that the less reliable 6 the material provided, the less safe such operations 7 would be for the officers, for the general public and 8 for the subjects themselves. The key priorities 9 therefore should have been to provide robust information 10 which indicated when and where offences were likely to 11 be committed, what the nature of those offences was 12 likely to be, who was going to be involved and what was 13 their MO, what was the overall threat assessment, and, 14 importantly, what was the individual threat assessment.</p> <p>15 Fundamentally, we say it is common sense that the 16 senior investigating officer, Mr Cousen, was responsible 17 for providing sufficient accurate material to allow for 18 an experienced and senior firearms commander, a TFC, to 19 determine with the help of a tactical adviser whether to 20 apply to an even more senior commander, the gold 21 commander, for authority to deploy armed officers in 22 accordance with national and local policy.</p> <p>23 Once that decision was taken, the information and 24 intelligence flow would influence and determine how 25 commanders planned the armed operations. Significant</p> <p style="text-align: center;">Page 73</p> | <p>1 been reminded of it -- that he had been involved in 2 a conspiracy to commit armed robberies. It said that he 3 had numerous arrests for section 18s and 20s. It said 4 that he was a Group 1 offender. We have set out the 5 definition of a "Group 1 offender" at paragraph 101, 6 Mr Grainger did not fit it. He was a man without 7 firearms or violence convictions. Yes, of course there 8 was the ugly offence where he reversed into a police car 9 whilst associates attacked it with a weapon, but that 10 was something like 14 or 15 years before, when he was 11 21.</p> <p>12 That must be taken account of in terms of its 13 weight.</p> <p>14 Yes, there was information on police systems 15 suggesting an involvement with robberies in the 16 mid-1990s but that was even longer ago and, as you have 17 heard, dismissed at court.</p> <p>18 Even less significant material regarding offending 19 in the mid-2000s, a non-charge allegation of assault 20 more than ten years before the fatal operation. 21 Acquitted on drug charges, he had served time for 22 ringing cars.</p> <p>23 That latter conviction and the fact that the DSU 24 surveillance showed he was the driver on previous trips 25 to Culcheth and elsewhere, might, you would be forgiven</p> <p style="text-align: center;">Page 75</p> |
| <p>1 shortcomings in that intelligence and information flow 2 could very well increase risks to armed officers, the 3 public and subjects.</p> <p>4 At the point of briefing armed firearms officers the 5 TFC, as we have heard, would be formally responsible for 6 the information underpinning these briefings. It is 7 common sense, we say, that the SIO would be in the best 8 position practically to collaborate with the TFC over 9 this process, in particular not simply keeping the 10 real-time intelligence flowing to the commander to keep 11 the real-time decisions appropriate but also in checking 12 the information that was going into the briefing.</p> <p>13 It is quite apparent -- now accepted in part by 14 Greater Manchester Police in their written subs -- that 15 there were significant failures in this process. 16 However, GMP seek to say that regrettable though they 17 were such failures objectively made no difference and in 18 fact the threat assessment on Mr Grainger was 19 underplayed rather than exaggerated. As with 20 Mr Thomas's submissions, we beg to disagree.</p> <p>21 Mr Grainger was plainly a man with a history, but 22 the threat assessment briefed to the AFOs which you have 23 already been referred to this morning at F/1270 gave, we 24 submit, a very misleading picture indeed. It said -- 25 I will deal with it briefly because you have already</p> <p style="text-align: center;">Page 74</p> | <p>1 for thinking, have given Operation Shire a hint of the 2 real picture of Mr Grainger.</p> <p>3 We would say a fair threat assessment of Mr Grainger 4 would have included the following.</p> <p>5 Firstly, that he had no convictions for violence or 6 firearms, aged 36. There was some historical police 7 information dating back to the mid-1990s which suggested 8 he might have been involved in robberies but that 9 charges were dismissed by the judge at court. He 10 associated with Mr Totton, a man who had a greater 11 criminal antecedents history. He ran a scrapyard where 12 he apparently dealt with stolen cars, amongst other 13 things.</p> <p>14 His most serious relevant proven offending was the 15 incident in 1997, and he had been, as I have mentioned, 16 the driver on recent trips to Culcheth.</p> <p>17 We would say that a briefing along those lines would 18 have set out a fairer picture or a fair picture of 19 Mr Grainger for officers who were going out armed making 20 life and death decisions.</p> <p>21 I will just finish this point if I may.</p> <p>22 THE CHAIRMAN: Certainly, yes. Whenever it suits you.</p> <p>23 MR WEATHERBY: Indeed.</p> <p>24 The summary on the PowerPoint at F/1270 prevents 25 a straightforward picture on any view of a violent man</p> <p style="text-align: center;">Page 76</p> |

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| <p>1 familiar with firearms and we say importantly of 2 a similar threat level to the other two associates that 3 there are threat assessments for. A fair assessment, 4 something along the lines that I have just adverted to, 5 would suggest that he would perhaps be the driver on any 6 criminal enterprise. That is, we would say, pretty 7 obvious.</p> <p>8 Mr Beer was correct in his descriptions of a grossly 9 erroneous intelligence picture. That police and Q9 are 10 manifestly wrong, we would say, in asserting that the 11 intelligence position was underplayed in that briefing. 12 The exaggeration of a threat assessment relating to 13 Mr Grainger may well have made little difference to the 14 deployment of the firearms team but that of course is 15 only half of the picture.</p> <p>16 Mr Lawler was to agree that the corporate or group 17 picture is most important to the deployment but the 18 individual assessments may well be vital to the AFOs 19 once they are deployed. Of course that is a critical 20 element of the briefing. They need to have the best 21 information as to where any potential risk lies. You 22 may think that this is of particular importance with the 23 driver being such a readily identifiable position. All 24 of the AFOs should have been confident that Mr Grainger 25 was the person in the driving seat from a competent</p> <p style="text-align: center;">Page 77</p> | <p>1 MR WEATHERBY: Thank you.</p> <p>2 Can I move on to the commanders. In our submission, 3 the generality of the evidence indicates a severe 4 cultural problem within Greater Manchester Police.</p> <p>5 The evidence that you have heard about the command 6 of these various operations in particular has shown 7 an almost casual disregard for rules, some national and 8 some local, by those commanders. The commanders either 9 did not properly consider the matters that they should 10 or they failed to properly record information and 11 decisions. We submit, on occasion, both. A submission 12 bolstered by the findings that you have had from 13 Mr Arundale, particularly with respect to Messrs Sweeney 14 and Granby.</p> <p>15 It is clear, just to cherry pick an example, that 16 a phone call of about six minutes was wholly 17 insufficient for consideration of any firearms authority 18 which was not absolutely urgent. Mr Sweeney.</p> <p>19 The logs of Mr Heywood and Mr Lawler, and no doubt 20 others, at least were partially constructed after the 21 fact and without any indication that they had been. 22 Various documents have been destroyed, including by 23 senior officers who frankly ought to have known better. 24 Including Mr Lawler, the head of the Firearms Unit. 25 Mr Lawler who could not properly account for that fact.</p> <p style="text-align: center;">Page 79</p> |
| <p>1 briefing but also, as you have been reminded this 2 morning, from the surveillance feed that was coming 3 through to the cars after 18.30.</p> <p>4 If the assessment regarding Mr Grainger had been 5 more appropriate, would a reasonable AFO have thought it 6 likely that any firearm threat in the front of the Audi 7 would come from the person in the driving seat? We 8 submit definitively not.</p> <p>9 The Inquiry has heard a catalogue of intelligence 10 failures, failures to record, to grade, to pass on 11 gradings and reliability, to check facts and records. 12 In evidence Mr Arundale agreed that there were a high 13 number of significant errors in relation to the handling 14 and dissemination of intelligence leading up to the 15 3 March briefing, Day 53, page 120. We would 16 respectfully agree.</p> <p>17 In our submission, these significant failings are 18 likely to have made a material difference to the 19 eventual outcome for the reasons stated.</p> <p>20 That would be a convenient moment.</p> <p>21 THE CHAIRMAN: Certainly.</p> <p>22 We will resume at 2.10.</p> <p>23 (1.05 pm)</p> <p>24 (The Luncheon Adjournment)</p> <p>25 (2.15 pm)</p> <p style="text-align: center;">Page 78</p> | <p>1 Mr Granby had not involved a tactical adviser, at 2 least initially. We have dealt with the detail of this 3 in written submissions and no doubt the evidence will be 4 readily recalled.</p> <p>5 Greater Manchester Police for their part accept some 6 of these failures but, again, with the caveat that they 7 don't accept that they would have made any difference to 8 the outcome. We don't share that view and we urge the 9 Inquiry to cast a very skeptical eye over that.</p> <p>10 Given the relatively recent failures of GMP in 11 respect of the PC Terry case that was referred to by 12 Mr Thomas earlier, one would have hoped, perhaps 13 expected, that GMP would have had commanders in place 14 who would have shown leadership, who would have ticked 15 every box, crossed every T, dotted every I, who would 16 have been sticklers for everyone involved with firearms 17 operations to stick by the rules and we would have hoped 18 that institutionally Greater Manchester Police would be 19 bending over backwards to learn from every incident and 20 every shortcut. Regrettably not.</p> <p>21 If some of the senior commanders had spent longer 22 considering the material and applications before them 23 and documenting that process and their decisions, then 24 of course there might well still have been a deployment 25 but there would also have been more testing of the</p> <p style="text-align: center;">Page 80</p> |

1 intelligence, a greater call for drilling into it to
 2 make sure it was correct and that it was accurately
 3 reflected in the briefings, which of course we say it
 4 wasn't. The commanders would have considered more
 5 options, more parameters, more contingencies. For
 6 example, Mr Sweeney might have required that the
 7 tactical plan was to prevent the subjects reaching
 8 Culcheth on 3 March, as had the plan the night before.
 9 Mr Granby might well have considered with X7 where any
 10 strike that would have been appropriate might have best
 11 occurred and to properly consider exactly when tipping
 12 points might be met rather than the vague notion
 13 recorded, "Depending on all the circumstances".
 14 He might also have put in place CROPS officers at
 15 Culcheth, if it was deemed appropriate that the Audi
 16 should be allowed to travel there. The whole issue of
 17 disruption contingencies could have been considered more
 18 carefully and relevant assets, officers and vehicles
 19 brought forward or be in a position more readily to do
 20 so.
 21 Briefings. I have already spoken at some detail
 22 about the briefings, so I will only touch on them
 23 briefly again. It is clear that the purpose of the
 24 briefings was to properly inform the AFOs of their tasks
 25 for the day. Including details of the intelligence,

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1 including as it evolved, what it was expected that might
 2 happen, what the relevant risks might be. We note that
 3 there must be a balance between fully informing officers
 4 and overloading them with information, but what is
 5 imperative is that matters which are designed to put
 6 them in a position to make life and death decisions must
 7 be fair and accurate. Information must be correct. It
 8 should present an overall fair assessment and it should
 9 contain sufficient grading on reliability so that it
 10 does not lead to over- or under-reliance.
 11 In this case, as we have already spoken, already
 12 considered, the information contained significant
 13 errors. There were repeated errors between briefings.
 14 There was a lack of clarity on the reliability or the
 15 provenance of information and generalisations that were
 16 just not correct. Overall they presented
 17 a misrepresentation of the true picture.
 18 Whereas the TFC was responsible for the propriety
 19 and fairness of briefings, it is common sense that
 20 Mr Cousen should have been directly involved in that
 21 process. Indeed, the Inquiry may want to ponder
 22 carefully the fact that he was present at the briefings,
 23 particularly on 3 March, yet failed to correct the
 24 position that was presented to the AFOs.
 25 Moving on to the day itself, the clear difference

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1 between the deployment on 1/2 March and that on 3 March
 2 is that the former was primarily based on an assumption
 3 of a break in and lie in wait robbery, and the latter
 4 appears largely based upon an assumption that it would
 5 be a cash in transit robbery. As it happens, both
 6 erroneous assumptions.
 7 In the former case the subject car would have
 8 travelled to Culcheth in the middle of the night, in the
 9 latter during the morning. In the former the plan was
 10 to stop the vehicle before it reached Culcheth and in
 11 the latter it appears that there was no plan one way or
 12 the other where to stop the car. The point we make is
 13 obvious. At the dead of night, there will be less
 14 people about, yet it was deemed more appropriate, safer,
 15 to stop the car outside the village if possible. On
 16 a Saturday morning when there would be many people about
 17 in a busy village centre it was either deemed
 18 appropriate to let the car through, as indeed happened
 19 in the evening with children and other members of the
 20 public in the vicinity, or more likely, we say, there
 21 was simply no proper consideration of this by the
 22 commanders and in particular Mr Granby.
 23 It is clear in our submission that once cash in
 24 transit deliveries and pick ups had finished for the
 25 day, about noon, that either any robbery was not going

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1 to be committed on the 3rd or that the target was
 2 something other than a cash delivery or pick up, so much
 3 could not be controversial. This is emphasised by the
 4 reference to "running out of targets" in the SFC log.
 5 Rightly or wrongly the operation was allowed to run.
 6 What should have followed in our submission was a frank
 7 reassessment that the probability of a robbery, the
 8 probability of a robbery happening that day, had in fact
 9 receded. The assumption that a robbery on a cash in
 10 transit was imminent had been shown to be wrong. There
 11 was nothing as far as we are concerned that we know from
 12 the open material or the gists to suggest any other
 13 specific target. The consideration of Sainsbury's seems
 14 to have been based purely on the previous PowerPoint; it
 15 was near where previous trips to Culcheth had taken
 16 place in recent days and it was a premises which was
 17 likely to have substantial cash.
 18 However, this was plainly speculative to the extent
 19 that the police had not even by then ascertained the
 20 security measures in place. In our submission that was
 21 instructive. A common sense presumption would be that
 22 a large supermarket chain would have robust security
 23 measures and its cash office would be very difficult to
 24 rob. The evidence adduced through Sergeant Hurst rather
 25 confirms and emphasises that point. We would say,

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1 without going to the detail of that material, that
 2 without inside knowledge and the presence of particular
 3 staff such a robbery would have been virtually
 4 impossible.

5 What does this go to? Well, in our submission it
 6 indicates that there needed to be a clear
 7 reconsideration of the operation when any cash in
 8 transit risk had concluded. In terms of the evidential
 9 tipping points, the SIO and the commanders needed to
 10 consider whether arrests should be made on the basis
 11 that the car was moving towards Culcheth, and thereby
 12 there might be sufficient evidence within the vehicle to
 13 bolster a conspiracy prosecution. In which case arrests
 14 could be made at Boothtown or en route before the risks
 15 associated with a strike in Culcheth materialised. Or
 16 commanders needed to consider whether they would let the
 17 operation run as it may simply be another trip for
 18 a purpose not entirely known, as had occurred on
 19 previous occasions.

20 The flexibility with which the operation was run
 21 after noon really amounted in our submission to the
 22 absence of proper consideration and a proper plan. In
 23 the event, why did the strike occur at around 19.10,
 24 rather than 18.29 in Boothtown? Or shortly thereafter
 25 when en route? Or immediately it parked up in Culcheth?

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1 What was the additional element that was added in the
 2 40 plus minutes the operation was allowed to run?

3 This absence of a coherent plan is demonstrated by
 4 the lack of any documented consideration to the change
 5 of tipping points between the 1st and the 3rd and
 6 a consequent change of plan as to whether the Audi was
 7 to be allowed to enter Culcheth. It is further
 8 illustrated we say by the lack of any consideration
 9 apparently by Mr Granby or by X7 as to where decisive
 10 action intervention arrests might take place.

11 As noted, the fact that nothing seems to have added
 12 to the picture in the 40 plus minutes between the Audi
 13 leaving Boothtown and the strike itself, what does that
 14 tell us? At 18.45, the position of the car was known.
 15 A strike was, on the evidence that we have heard, at
 16 least likely. There seems to have been no consideration
 17 by the OFC or anyone else as to any sort of strike plan
 18 from this stage until Amber was called and that
 19 collapsing timeframe that we have heard about.

20 Such plan that X7 formulated was on his own account
 21 at the very last moment as alpha approached the car
 22 park. We have already noted that the plan communicated
 23 that alpha officers were deployed to the driver's side,
 24 the others to the other side, was not followed.
 25 Q9's change to the plan not communicated.

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1 In short, we say that the plan ought to have been
 2 formulated earlier, at least in outline. Significant
 3 changes to it should have been considered and
 4 communicated. Otherwise AFOs should have deployed and
 5 acted in accordance with GMP policy and training.
 6 Flexibility, an encouragement to find work should
 7 enhance operational effectiveness. Here these concepts
 8 have been asserted to justify a wholesale departure from
 9 planning, from policy, from training and, as asserted
 10 earlier, merely increased the risks and indeed led to
 11 the fatality.

12 I move on to training failures. GMP accept some of
 13 the training issues raised against them but once again
 14 seek to minimise and assert that they did not in fact
 15 make a difference to this operation. Once again, we
 16 disagree.

17 The reality is that most of the key players here
 18 should not have been in role on the fatal 3 March
 19 deployment.

20 Let me start with Mr Granby, the TFC. We accept of
 21 course that he was formally accredited to be in post but
 22 formal accreditation is to miss the point. It is
 23 a minimum but not a sufficient basis for his deployment,
 24 we would say. Mr Granby had failed on a PSNI course and
 25 he had received highly relevant feedback, which GMP

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1 simply failed to consider prior to 3 March.

2 There have been various explanations as to why this
 3 should not have made any difference, he was experienced,
 4 the PSNI course did not affect accreditation, it dealt
 5 with multi-agency specialist operations. All of that
 6 might well have been true but the fact is that GMP
 7 corporately knew that course assessors had found him to
 8 be indecisive when under pressure. Mr Arundale has
 9 unequivocally opined that the feedback was relevant to
 10 his role on 3 March and he has done so since Mr Granby
 11 gave evidence.

12 The Inquiry might like to ponder for example whether
 13 Mr Granby displayed indecision at various points, most
 14 obviously during the 40 plus minutes that I have just
 15 adverted to when the Audi was allowed to travel and park
 16 up in Culcheth, whether his indecision led to a panic
 17 reaction at about 7.05 when visual re-engagement with
 18 the Audi appears to have been the trigger, the only real
 19 trigger, for Amber being called at that stage.

20 In our submission, fortified by the opinion of
 21 Mr Arundale, the course failures might not have properly
 22 led to Mr Granby being removed from TFC roles but they
 23 manifestly ought to have led to a proper review before
 24 he was next assigned to that role and therefore, as at
 25 3 March, he should not have been TFC.

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| <p>1 GMP have accepted various criticisms of both 2 tactical advisers on 3 March, particularly with respect 3 to record keeping. 4 The simple reality is that Y19, the adviser of 5 course in place at the time of the strike, was not 6 competent to advise on decisive action issues. 7 In our submission, GMP and Mr Granby in particular 8 appear not to have taken the advisers' involvement 9 seriously. It was bad enough that Mr Granby failed to 10 engage with an adviser at all on the evening of 2 March, 11 but actually having an adviser on the afternoon and 12 evening of 3 March who was not competent to advise him 13 was arguably worse. He plainly should not have been in 14 role. A competent adviser might well have raised all 15 manner of issues with Mr Granby as the day progressed, 16 regarding the diminishing targets, regarding where and 17 how decisive action might occur, regarding contingencies 18 including disruption. Critically he or she may have 19 provided a dialogue with the commanders. 20 GMP accept that X7 had not properly completed 21 refresher training in November 2011. Whereas this is 22 plainly significant, we say his failures on the Met 23 training were more so. As with Mr Granby, it may have 24 been the case that failures on the Met course might not 25 have affected his deployment, ultimately, as an OFC.</p> <p style="text-align: center;">Page 89</p> | <p>1 the way in which the fatal operation happened. 2 An appropriately decisive TFC may have discussed the 3 possibility of a strike, as I have already discussed, 4 earlier in the operation. He may have discussed with 5 the OFC the possibility of where the strike might have 6 occurred at the meeting of subjects at Boothtown or 7 thereafter, in order to put such a plan, such 8 a contingency, in place. 9 Such a TFC would have been keen to consider the 10 threat attendant on letting the subject vehicle get to 11 Culcheth at all and the attendant difficulties in any 12 decisive action there considering the points we have 13 already made. 14 As I say, a competent adviser might have created the 15 necessary dialogue concerning the lack of knowledge 16 about firearms and targets during the afternoon of 17 3 March, which would have led on we say to greater 18 consideration of other matters, rather than decisive 19 action. 20 He or she might have prompted discussion and 21 consideration as to what should happen if eyes were 22 lost, as they subsequently were. 23 Finally, in respect of the strike, I would like just 24 to touch on the issue of special munitions. We note for 25 the avoidance of doubt that the evidence suggests in our</p> <p style="text-align: center;">Page 91</p> |
| <p>1 Again, once GMP corporately knew that feedback was 2 asserting that he had become overloaded when under 3 pressure for example, there should have been no question 4 in our submission of him having an operational command 5 role before those issues were properly reviewed and 6 properly resolved. In our submission, that is simple 7 common sense. 8 GMP now accept that Z15 should not have been on the 9 deployment post his failures on the Met course, which of 10 course involved serious safety issues. Yet he was and 11 yet he discharged the shotgun. 12 Issues with X9 have also arisen but his position is 13 different because of course there should have been no 14 question of the use of CSDC for obvious reasons. 15 With respect to these training issues, we have made 16 the following points. Mr Granby, Y19, X7 and Z15, 17 should not have been in their respective roles on 18 3 March. X9 should not have been deployed with CSDC 19 irrespective of his competency or otherwise. 20 Secondly, the fact that GMP knew about the various 21 failures indicates that they had no functioning review 22 system whereby known problems were assessed quickly to 23 see whether officers, including command officers, should 24 remain operational, at least pending proper review. 25 Thirdly, some of the failures probably impacted on</p> <p style="text-align: center;">Page 90</p> | <p>1 submission that the fatal shot was fired prior to either 2 the discharge of the Hatton rounds or the use of the 3 CSDC and therefore did not directly contribute to the 4 death. However, we do say that the use of these devices 5 in the circumstances indicate firstly that GMP 6 commanders appear to have been too quick to deploy 7 special munitions and the documents in this case 8 illustrate a failure to properly consider the reasons to 9 deploy them. Again, the conclusion of Mr Arundale. 10 Secondly, the evidence would tend to indicate that 11 once authorised GMP officers, or at least some of them, 12 operated under a presumption that they would be used. 13 For example, we note the 3 March briefing appears to 14 presume as much. Also, X9 and Z15 do not seem to have 15 had coherent reasons to use Hatton rounds and CSDC on 16 this occasion, yet they did so. 17 Indeed, thirdly, Mr Arundale's opinion was that the 18 actual use of both special munitions was not merited on 19 3 March. 20 Fourthly, the fact that CSDC was clearly not 21 an approved device is indicative we say of 22 a lackadaisical approach by GMP to regulation. The 23 denial that CSDC was unapproved during the Fahy 24 prosecution simply should not have occurred. In these 25 proceedings GMP we submit have approached the subject as</p> <p style="text-align: center;">Page 92</p> |

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| <p>1 if it was some purely technical error and indeed 2 everybody in the firearms community knew about it anyway 3 so what does it matter? 4 If the use of CSDC in the first place illustrates, 5 as we say, their attitude and approach as of 2012. 6 Their attitude on being caught out tells a further 7 story, one of institutional arrogance and a failure to 8 learn lessons. 9 Fifthly on this issue of special munitions, 10 something which Mr Thomas touched upon but I want to 11 mention in a little more detail because it has only just 12 come to light. It has only been disclosed since the 13 close of evidence, something like six days ago and it is 14 the notes that Mr Thomas referred to. 15 It is a discussion in December 2016, so only a few 16 months ago between Mr Lawler, heads of firearms in GMP 17 on 3 March and therefore an important position and 18 obviously TFC on the earlier deployment, so well 19 acquainted with this case one might have thought and 20 a GMP officer who, we will be corrected if we are wrong, 21 we assume from Operation Idris and therefore also with 22 a clear knowledge of the case, a Mr Mackenzie, and it 23 was mainly about the use of CSDC and this case. I will 24 just give the page references, if I may, which may be of 25 use, because it has been disclosed since the close of</p> <p style="text-align: center;">Page 93</p> | <p>1 would have quite liked to have put that to Mr Lawler, 2 particularly with respect to his role as the head of 3 firearms. 4 We would also like to ask him why he said one thing 5 to a police officer in December 2016 and apparently 6 something quite different to this Inquiry. We say that 7 is important not only to the issue of special munitions 8 but also to the credibility of some of the police 9 evidence this Inquiry has heard. 10 Moving on, using that as a link to my next point, 11 moving on to candour, admissions and disclosure, that is 12 very late disclosure. 13 This is a case where the IPCC made a report which 14 strongly criticised just about all aspects of the 15 policing operation. Criticisms of intelligence 16 handling, various breaches of article 2 raised, the 17 question of the legality of the fatal shot raised. This 18 is also a case where the CPS have pursued a criminal 19 prosecution against GMP, with multiple allegations and 20 this is a case where expert evidence has made a number 21 of quite damning conclusions regarding what GMP officers 22 and commanders have done. 23 What is striking in our submission is that although 24 GMP have been latterly compelled to make some 25 admissions, they have striven at every juncture to</p> <p style="text-align: center;">Page 95</p> |
| <p>1 evidence, we are not clear as to whether the Inquiry has 2 been able to ponder this. It starts at Y/2238. At 3 Y/2240, Mr Lawler is noted as saying that he recalled 4 his role in a deployment in this case but that he had 5 not authorised CSDC on it. 6 He went on to say, next page, and I am quoting here: 7 "Using CSDC is a bad option as it makes people get 8 out of the car, I'm skeptical of using, hence why on 9 actual job surprised CS was done." 10 He has signed this note made by Mr Mackenzie to say 11 that it is accurate. 12 At least two things flow from that. 13 Firstly, that CSDC was authorised on 2 March when 14 Mr Lawler was the TFC, and he was involved in that. In 15 evidence, he did not suggest that CS was a bad option. 16 The reference to that is Day 30, page 24. Indeed you 17 may remember the passage between Mr Beer and Mr Lawler, 18 Mr Beer putting to Mr Lawler an email where it appeared 19 that he, rather than what should have happened, the SFC, 20 Mr Heywood, had authorised the special munitions, 21 including the CSDC. 22 If disclosure of this material had been made at the 23 right time, and bearing in mind it is Operation Idris 24 material as far as we are aware and therefore we are not 25 sure why it was not disclosed at the right time. We</p> <p style="text-align: center;">Page 94</p> | <p>1 minimise and to deny that any identified failure was or 2 might be material to the death of Mr Grainger. 3 Furthermore, they have continued to exaggerate the 4 threat from Mr Grainger, they have offloaded 5 responsibility on to others, criticised the NCA, 6 Cheshire Police, suggested some of Mr Arundale's 7 opinions were not simply misplaced and wrong but lofty 8 and based on his inferior experience of MASTS 9 operations. We say frankly that this offloading is 10 repeated in the closing written submissions that have 11 been submitted so far. 12 Furthermore, we assert that there have been many 13 glaring disclosure problems and not least the one that 14 I have just mentioned. 15 That is the position corporately or institutionally. 16 Individually, of course, Mr Cousen was caught out, 17 we would say, asserting that he had looked at key 18 documents prior to the fatal operation justifying his 19 actions when manifestly he hadn't. 20 Mr Heywood was caused to apologise to the Inquiry 21 for evidence he had given about the contemporaneity of 22 his logs, a not insubstantial issue. 23 Mr Lawler owned up to the same record keeping 24 issues. He accepted he had destroyed records, something 25 he had never done in any case of any substance</p> <p style="text-align: center;">Page 96</p> |

1 previously.

2 There is said to be an unresolved dispute regarding

3 what intelligence was and was not passed between NCA and

4 GMP. Partly, complicated by the fact that, apparently,

5 some NCA records have been destroyed or are missing and

6 that other officers involved in the interaction between

7 the NCA and the GMP have apparently not kept proper

8 records.

9 GMP is a public authority. It is under a legal duty

10 to come clean about its activities and in particular it

11 is under a legal duty to explain a death caused by one

12 of its officers, and enhanced duty in circumstances

13 where much of the evidence is within its exclusive

14 knowledge.

15 Let me start with exclusive knowledge, if I may.

16 Evidence adduced mainly through Mr Lawler highlighted

17 that GMP firearms operations generally, and this one in

18 particular, are as free from audio visual recording as

19 it is possible to be. That is no accident; it is

20 apparently by design.

21 Mr Lawler was to say that there was a fear of

22 material getting into open source. Hence the avoidance

23 of recording. He accepted that none of the four TFU

24 vehicles had dashcams or any other form of recording

25 device. There was no dedicated video officer, there

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1 were no supporting surveillance officers, DSU or CROPS,

2 deployed to record the strike for evidential or other

3 purposes, for example training. None of the officers

4 involved had uniform, helmet or gun cameras, none of the

5 vehicles contained IDR or other data recorders which

6 will provide speed and locations at accurate times.

7 None contained audio devices which would assist with

8 what orders were given, what discussions there were or

9 when Amber and Red were called, the times when shots

10 were fired and what if any shouting occurred. None of

11 the surveillance or firearms radio channels were

12 recorded, in contradistinction to many other police

13 systems and times recorded in logs remained questionable

14 because some were completed after the fact. There is

15 little evidence of a GMP policy or culture of confirming

16 accurate watches or clocks, in particular with respect

17 to this operation.

18 In short, the operation which culminated in

19 Mr Grainger's death was an AV free zone, the fear of

20 recordings getting into open source has inhibited the

21 investigations, it has inhibited this Inquiry even to

22 the extent that it has proved impossible to time the

23 fatal shot more accurately than within perhaps a three-

24 or four-minute period.

25 Once the fatal shooting had occurred, of course,

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1 post-incident procedures came into play. In closing

2 submissions, GMP simply offload responsibility for

3 post-incident investigatory failures on to the IPCC. We

4 do not doubt that the IPCC may have done some things

5 less well than they might, maybe they should have done

6 better, but in our submission it is simply disingenuous

7 to suggest that the IPCC are responsible for all of the

8 post-incident failures.

9 Before I address the issue of first accounts,

10 meetings and flip charts, I just want to digress

11 slightly to the issue of searches. It has been

12 suggested that GMP were in receipt of information after

13 the shooting that there were weapons stashed either in

14 a bin or other vehicle somewhere nearby. Indeed GMP

15 asserted much the same in the defence statement in the

16 Fahy prosecution. We have not seen any such material.

17 GMP and Q9 in closing written submissions suggest

18 insufficient searches were conducted and Q9 adverts to

19 the fact that apparently Mr Rimmer had access to

20 a motorbike. However, although the scene was handed

21 over to Cheshire shortly after the fatal operation, it

22 is simply a matter of common sense that this did not

23 inhibit Operation Shire and Mr Cousen in particular from

24 requesting that appropriate searches take place. Indeed

25 it is a matter of record that he did request such

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1 searches as he thought appropriate and that these were

2 carried out. I will just give a couple of references,

3 if I may. It is a train of documents in bundle G1 from

4 page 2051. There is also a statement from Cheshire

5 officer, which we don't have but is referred to in the

6 unused schedule, at D/672.

7 In an operation that had been running for many

8 months and was so surveillance heavy, there is

9 absolutely no evidence that we are aware of of a second

10 car or indeed the involvement of a motorbike at any

11 juncture. DSU evidence was that there was no

12 opportunity for the occupants to have alighted the car

13 before eyes were lost at 18.52 which means that the

14 subjects had neither stashed weapons nor recovered any.

15 There is no evidence in the several months of the

16 operation linking firearms to any of the three subjects.

17 No hint of firearms was found on post-incident searches

18 of premises connected to them.

19 The reliance on anonymous uncorroborated

20 post-incident hearsay is of course irrelevant to any

21 considerations made by commanders or decisions or

22 actions by AFOs for very obvious reasons.

23 It is being raised now in our submission to avoid

24 responsibility. We submit that the Inquiry should

25 approach the matter in this way. There is no evidence

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| <p>1 that any weapons were present in the vicinity of the 2 Audi or for use in any criminal offence on 3 March. 3 Indeed, the circumstantial evidence points away from 4 that possibility, not to underline the fact that there 5 were no weapons of any description found in the car. 6 The alleged shortcomings in searches and the issue 7 of a post-incident tip off apparently you may think 8 tells us a little more about the approach of GMP than it 9 does help us in other regards. 10 First accounts, in our submission there is 11 absolutely no good reason why 13 of the firearms 12 officers and the senior commanders and Mr Cousen failed 13 to make or provide first accounts on the night of the 14 incident. Individually, police officers are required by 15 normal procedures to make a note of any significant 16 incident as soon as is practicable and in particular 17 whilst on any significant operation. 18 Several witnesses confirmed this obvious fact. 19 The manual makes specific reference to the 20 production of initial accounts at paragraph 7.96 in the 21 policy and procedure bundle at page 384. We have 22 referred to that so many times I am certainly not going 23 to tax the Inquiry's patience by reading it out once 24 more. It is crystal clear that there ought to have been 25 initial accounts, we say, from all of those officers.</p> <p style="text-align: center;">Page 101</p> | <p>1 GMP had a clear responsibility to ensure that the 2 integrity of the post-incident process was as robust as 3 possible. That would remain so even if some 4 responsibility could be passed to the IPCC. Try as the 5 Inquiry has, the full reasons why neither senior 6 commander, the SIO or the 13 of the AFOs, try as the 7 Inquiry has to find the reasons why initial accounts 8 were not produced by any of these officers, or why the 9 post-incident manager did not insist on this, or seize 10 plainly relevant exhibits such as command and tactical 11 advice logs has not emerged with clarity. 12 What is for sure in our submission is that it was 13 not right, it did not comply with the manual, it did not 14 comply with GMP policy, it did not comply with the law 15 and it casts a shadow over the GMP witnesses from the 16 outset and goes to their reliability. 17 We completely accept that full interviews and 18 witness statements, stage 4 under the policy, are not to 19 be undertaken straight away, but there are clear and 20 obvious problems where 13 eyewitnesses do not make any 21 account at all for six days. Initial recollections fade 22 and there is the inevitable contamination, sometimes 23 innocent, sometimes not. 24 In this case, there is the added complication of the 25 meeting on 8 March, no notes, no recording, we don't</p> <p style="text-align: center;">Page 103</p> |
| <p>1 Why were there not? 2 Whereas the AFOs involved were involved in the 3 immediate post-incident scene for a limited period of 4 time, they also took part in post-incident briefings but 5 only, we are told, regarding procedure. They also took 6 part in a formal procedure to surrender their firearms 7 and of course they are entitled to take legal advice and 8 see welfare, but the fact remains that they were on duty 9 for a further 11 hours after the shooting. Most of that 10 time in each case would have been sitting around 11 waiting. Any suggestion that they did not have 12 opportunity to record a simple initial account as 13 required should in our submission be roundly rejected. 14 Furthermore, the whole point of the PIP procedures 15 is to make sure that a full and proper investigation 16 gets off to the right start in the golden hours. When 17 forensic samples, when exhibits should be seized and 18 when witness testimony is protected. All of this, we 19 say is a well worn path. 20 This PIP did not simply pass over control to the 21 IPCC, it involved a Greater Manchester Police 22 post-incident manager, somebody trained in these 23 procedures. There were various senior officers involved 24 both on the night and in succeeding days, including the 25 Professional Standards Branch.</p> <p style="text-align: center;">Page 102</p> | <p>1 doubt that welfare was an issue that the PFOA, the 2 Police Firearms Officers' Association, dealt with at 3 that meeting, but the PFOA is plainly also an advocacy 4 organisation. 5 Prior to that meeting, the Police Federation had 6 indicated that it had no objection to the AFOs being 7 interviewed by the IPCC. 8 Post that meeting, Mr Brennan of the Professional 9 Standards Branch was informing the IPCC that the AFOs 10 had collectively decided not to do that and provide 11 written statements only. 12 Why had the position changed? Why was it that the 13 Professional Standards Branch were apparently involved? 14 Objectively what was happening. Only three initial 15 accounts given on the night, there were no other initial 16 accounts with which to compare them. Five days later, 17 no doubt a period that would naturally be a lot of 18 contact between the officers, both on duty and 19 personally, and no doubt there was a lot in the media. 20 How was it that the makers of those accounts were in 21 an unrecorded meeting with their confederates and with 22 the police officer, V53, who was involved in the Duggan 23 case. 24 The next day, statement writing meetings set up with 25 a flip chart. What was happening, in our submission,</p> <p style="text-align: center;">Page 104</p> |

1 was clearly an attempt to control the narrative, to
 2 minimise discrepancy between officers. The collective
 3 refusal to be interviewed meant that officers could not
 4 be probed at that stage, that important stage, by the
 5 independent investigators.

6 Why might all of the officers have decided that they
 7 didn't want that? In our submission, the reason is
 8 obvious. It would be particularly obvious to police
 9 officers who would well understand the utility of
 10 interviews. Interviews might lead to discrepancies
 11 between their accounts. Because they were anxious that
 12 there were not any such discrepancies, they collectively
 13 refused.

14 The refusal to be interviewed issue has now been
 15 addressed to some extent by regulations that we have
 16 referred to in our written submissions but we have also
 17 noted that PFOA website has published advice from the
 18 Police Federation that although attendance at such
 19 interviews is now mandatory, answering questions is not.
 20 Whether or not that advice is correct, it tells us
 21 something in our submission about the involvement of the
 22 PFOA and its advocacy role.

23 An absence of initial accounts, a failure to seize
 24 key logs, a six-day delay in the making of any accounts,
 25 unrecorded collective meetings between the police

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1 eyewitnesses and the collective refusal of interviews
 2 all affects the reliability of police evidence. It also
 3 tells us something regarding the culture within GMP.
 4 Senior officers, particularly the post-incident manager,
 5 and those who were in the professional services branch
 6 ought to have ensured not only welfare and legal advice
 7 was provided, but also that the integrity of the
 8 evidence, the exhibits, the witness testimony was
 9 preserved and beyond reproach. They completely failed
 10 so to do and still today there is a refusal to accept
 11 anything was wrong, and in the alternative it was all
 12 the fault of the IPCC.

13 Further to those matters relating to the police
 14 witnesses and the exhibits, we then have disclosure
 15 failure. In the course of these proceedings GMP have
 16 been forced to concede their failures in this respect,
 17 the failure to disclose highly relevant material and
 18 apologise for it. We have included the letters of
 19 15 March within our appendices at P2, but no doubt you
 20 will remember those letters well. Failure to disclose
 21 such highly relevant material such as the training
 22 failures that we have already adverted to, reams of
 23 emails, telephone data, the excuses this time included
 24 the fact of other investigations. One would have hoped
 25 that GMP, cognisant of its duty of candour as a public

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1 authority, might have assumed a proactive role in these
 2 matters. Operation Idris as we know was set up to deal
 3 with post-incident matters. How complicated was it for
 4 those officers to ensure that all relevant material had
 5 been gathered, all relevant email accounts considered,
 6 all relevant telephone data gathered, seized, compiled,
 7 all relevant policies discovered and to rigorously check
 8 training records and authorisations.

9 Did Idris not keep clear records of what had been
 10 gathered, seized and disclosed? Or was it that Idris
 11 was really pre-occupied with institutional defence? Has
 12 the dismal failure of disclosure in this case been some
 13 mere accident or is it indicative of a culture of denial
 14 and a culture of institutional defensiveness? We say
 15 the answer to that is clear.

16 We say it is trite to say, but it is important so we
 17 say it anyway, that defensiveness by public authorities
 18 is a key problem in the process of learning from errors
 19 or wrongdoing.

20 Before I finish, let me just round up the following
 21 points. We recognise that policing serious crime
 22 involves difficult judgments and sometimes risky
 23 tactics, that is not the police's fault. That is why
 24 planning and command are subject to clear guidance and
 25 there are requirements of accuracy and checking and

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1 documentation and briefing which must be rigorously
 2 followed in our submission.

3 It is obvious that shoddy briefing, erroneous
 4 intelligence and information, the lack of audit trails
 5 in documentation generally are going to lead to tragedy
 6 if these failures relate to armed deployments.

7 It is obvious that only formally competent
 8 commanders, advisers and AFOs are deployed. That means
 9 they must be properly accredited, they must be
 10 occupationally and operationally competent, they must be
 11 up to date with their training and refreshers but in
 12 addition there must be a rigorous process to review
 13 individuals where issues arise which might compromise
 14 their involvement beyond those formal competencies and
 15 accreditation. That has not happened as illustrated by
 16 this case.

17 In terms of policy and training on MASTS strikes, we
 18 have no difficulty in understanding the greater
 19 flexibility to enhance it as a tactic, but the problem
 20 here was not so much flexibility but the replacement of
 21 policy and training with a completely laissez faire
 22 approach. That must be wrong and as identified in this
 23 case, and as I went through earlier, if the policy and
 24 training had been generally followed, it is difficult to
 25 see how this tragedy that did occur would have happened.

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| <p>1 In terms of investigation, everyone from the IPCC to 2 the CPS and this Inquiry has been inhibited by the lack 3 of video, audio, vehicle data and communications 4 recording and, as I say, that is not an accident. There 5 seems to be a cloak of secrecy around these operations. 6 In this case, the lack of such evidence makes it so much 7 more difficult to understand who did what and when. 8 The Inquiry will have no problem obviously with the 9 concept of covert operations but we advance that there 10 has to be a sensible balance. Police systems regularly 11 have to retain highly confidential and sensitive 12 material. Is there a real issue with dashcams, uniform 13 cams, AV more generally, the recording of communications 14 as happens now commonly across perhaps most other 15 policing areas. 16 We say this not least because such things may well 17 prove officers have acted impeccably and disprove 18 malicious allegations in many cases but in any case 19 transparency is a driver for good practice and 20 facilitates learning. The fact that firearms operations 21 in GMP appear to be AV free zones by design is simply 22 likely to diminish public confidence in such operations 23 and to decrease the chances of regulation, oversight and 24 supervision of them. 25 In short, there will be more mistakes, as a result</p> <p style="text-align: center;">Page 109</p> | <p>1 Those are our submissions. 2 THE CHAIRMAN: Thank you, Mr Weatherby. 3 We will take a short break at this point. 4 On my list, Mr Davies, you are down as next but 5 I don't know whether you have agreed with that with 6 Ms Whyte or you want to go in a different order or what. 7 MR DAVIES: I think we were assuming the usual order. 8 THE CHAIRMAN: Yes, which would be -- 9 MR DAVIES: Yes, me next. 10 THE CHAIRMAN: Five minutes, please. 11 (3.14 pm) 12 (A short adjournment) 13 (3.26 pm) 14 THE CHAIRMAN: Yes, Mr Davies. 15 Closing submissions by MR DAVIES 16 MR DAVIES: Sir, criminals who commit armed robberies do not 17 just steal money through the use of violence. They 18 destroy lives. They destroy the lives of the member of 19 the public or members of the public in the target 20 premises. Not only through the threat of violence but, 21 as the papers and the intelligence in this case clearly 22 demonstrates, through the use of at times completely 23 gratuitous violence in order to achieve their 24 objectives. 25 Where firearms are used, as distinct from other</p> <p style="text-align: center;">Page 111</p> |
| <p>1 more errors and more perhaps wrongdoing. 2 Finally, can we say this. In the Rodney case 3 Sir Christopher Holland anxiously considered whether 4 there should be any general direction that firearms 5 officers must not fire unless a firearm is sighted. 6 Ultimately he decided, sensibly, that there should not 7 be such hard and fast direction or rule. 8 However, this case again raises the same problem, 9 but even more starkly, given that there was no firearm. 10 The fact that no firearm is seen or other object 11 mistaken for a firearm is not and should not be 12 determinative of legality. However, it should be 13 considered to be strong evidence that lethal force is 14 not absolutely necessary or could it be genuinely 15 believed to be so unless there is some other compelling 16 evidence of an imminent lethal threat. 17 There is plainly, in our submission, no such other 18 evidence in this case. 19 In short, the use of lethal force on these facts is 20 so starkly unreasonable that you can discount the 21 genuineness of any belief that is asserted, either Q9 22 after the fact is not telling us the truth or he is 23 confabulating, he is reconstructing from a self-serving 24 position because of the enormity of the effect of his 25 actions.</p> <p style="text-align: center;">Page 110</p> | <p>1 weapons, of course the risks associated with the 2 offending are even more acute. Regardless of who the 3 authors of the particular armed robberies were, the 4 intelligence you have considered in relation to your 5 Inquiry demonstrates these high levels of violence, 6 members of the public being tied up, threatened with 7 axes, firearms repeatedly being discharged at police 8 officers. 9 It seems a high proportion of the armed robberies 10 referred to in the intelligence in relation to this 11 Inquiry do not in the end result in the identification 12 of the perpetrators. Even when those responsible are 13 identified, prosecution appears to be a relatively 14 unusual outcome from police investigations. Nothing in 15 any of that is revolutionary, pretty much everything is 16 self-evident but it must be kept at the front of the 17 Inquiry's mind, we say, when you step back and consider 18 what Greater Manchester Police were seeking to achieve 19 through Operation Shire. 20 You have heard that Salford in particular had 21 an extraordinary number objectively of organised crime 22 groups, some 70. Although to some extent it may be 23 thought that armed robbery was an offence of the 1970s 24 that went out with back episodes of the Sweeney, not so. 25 Not on the evidence you have heard. To listen to some</p> <p style="text-align: center;">Page 112</p> |

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| <p>1 of the submissions that have preceded me, where the 2 language has been of disruption as some kind of answer 3 to that type of offending, we don't agree. What was 4 required for public confidence for this type of 5 offending, most specifically to maintain public 6 confidence in Salford in Greater Manchester, which was 7 notorious at a national level for this type of 8 offending, was police intervention directed at 9 producing, whenever possible, a criminal justice 10 outcome.</p> <p>11 Disruption as a strategy can too often drift into 12 displacement, simply moving the target premises from one 13 place to another, from one member of the public to 14 another wholly unsuspecting member of the public.</p> <p>15 It is not a strategy, that is to say disruption, 16 that maintains public confidence. It is not a strategy 17 that demonstrates to the public that those responsible 18 for this and those who build and live off their 19 reputations in local communities for this type of 20 offending -- they appear to make no secret of it -- they 21 must be accountable through the criminal justice system 22 wherever possible. That is why a criminal justice 23 approach was so evidently justified as part of 24 Operation Shire.</p> <p>25 Of course the police operations must be planned</p> <p style="text-align: center;">Page 113</p> | <p>1 have read it and insofar as helpful will read it again. 2 It is available to anyone who has any inclination to 3 read it, as with other written closing statements, under 4 the "Hearings" section of your website already.</p> <p>5 I will be taking a potted guide through it, taking 6 as read everything else. It is also not intended on 7 Q9's behalf to address every assertion, still less every 8 false assertion, that has arisen in preceding 9 submissions. You are the fact finder, we are not, there 10 would not be time either to identify those points or to 11 address them all, so we seek to make a positive case 12 rather than simply answering someone else's assertions.</p> <p>13 In our opening statement we made core points and in 14 summary we say the evidence, taken as a whole, not only 15 demonstrates that Q9 is a capable, competent, 16 professional officer operating in a calm manner under 17 pressure in this dynamic situation, such that only one 18 round was discharged. What he has said from the 19 beginning in his initial account on the night, 20 a substantial and detailed account prepared over two 21 hours, with no sleep after nearly 24 hours on duty, his 22 account integrated to those of others, including Totton 23 for these purposes, but as well the pathological and 24 forensic evidence that he was not to know in giving that 25 initial account, has fully corroborated his version of</p> <p style="text-align: center;">Page 115</p> |
| <p>1 according to article 2 principles. Of course they must 2 be planned according to a systematic, forensic and 3 objective approach to the underlying intelligence. It 4 is self-evident that briefings to firearms officers 5 should be accurate and based on up-to-date intelligence, 6 they do and as a matter of procedure are entitled to 7 rely on those briefings to be accurate and to reflect 8 a process of filtering of intelligence such as what they 9 get is accurate. There may well come a point in 10 a particular deployment, even if directed at a criminal 11 justice outcome, by which I mean arrest and prosecution 12 and on conviction, imprisonment, there may come a point 13 where public safety demands the strategy of arrest is 14 altered to one of disruption. But that is a matter of 15 dynamic operational policing, not overall approach.</p> <p>16 We ask you, when you are considering, as you will, 17 the real volume of evidence you have heard in this case, 18 really to reflect in your findings that the overall 19 policing purpose here was not only justified, but 20 clearly so in the context of public confidence in 21 Salford in 2012.</p> <p>22 What is the purpose of this closing statement? 23 Well, it is not intended simply to rehearse and repeat 24 everything that has been reflected in writing in the 25 closing statement already. For our part we accept you</p> <p style="text-align: center;">Page 114</p> | <p>1 events. He acted lawfully. He acted lawfully justified 2 on his belief at the time, a belief that was the product 3 of briefings, his attendance in Stoke, the briefing on 4 3 March itself and the overall circumstances on 3 March 5 in that car park, which on any rational analysis are 6 only consistent with armed robbery. The alternatives 7 are demonstrably absurd, some of the reasons for which 8 I will come to in due course.</p> <p>9 Mr Weatherby, and to a lesser extent Mr Thomas, 10 address you on the basis of public authorities' duty of 11 candour. Who can argue with the basic proposition, but 12 it is striking from their extensive written submissions, 13 Mr Thomas's and Mr Straw's some 524 paragraphs, those on 14 behalf of Mr Weatherby, Ms Murphy and Mr Murphy, 15 extending to some 272 paragraphs, excluding appendices, 16 there is no candid admission, no reflection of this duty 17 of candour there as to the actual purpose of Mr Grainger 18 and others in Stoke on 25 and 26 January 2012. There is 19 no recognition by way of a clear statement as to what 20 their real purpose was on 3 March in Culcheth.</p> <p>21 There is no rational alternative to the theory we 22 have put forward that they were there to commit 23 commercial scale armed robbery of a sophisticated kind. 24 If there was a rational alternative to be advanced, you 25 would have heard it in those 700 plus paragraphs and</p> <p style="text-align: center;">Page 116</p> |

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| <p>1 today's oral submissions. Silence.</p> <p>2 We contend on behalf of Q9 that as a matter of fact</p> <p>3 his belief that the subjects were intent on committing</p> <p>4 armed robbery and had the capability to access and use</p> <p>5 firearms was objectively reasonable and it remains</p> <p>6 accurate. It is contended, we say, beyond any</p> <p>7 reasonable argument that the subjects, including</p> <p>8 Mr Grainger, were planning to commit armed robberies</p> <p>9 with firearms, initially targeting G4S cash in transit</p> <p>10 vehicles in Stoke and then, reflecting an acute</p> <p>11 sensitivity to police surveillance, switching targets to</p> <p>12 commercial premises in Culcheth. We invite you for</p> <p>13 a whole series of reasons, not least public</p> <p>14 understanding of the factual context in which the police</p> <p>15 operation occurred, to reflect the half of the equation</p> <p>16 here, that it is not simply some recognised errors in</p> <p>17 the police operations and not simply necessary findings</p> <p>18 of fact as to the lawfulness of the use of force but to</p> <p>19 reach findings of fact and express them, because you</p> <p>20 have evidence the criminal jury did not have as to what</p> <p>21 was really going on. It is a point of significant</p> <p>22 public interest.</p> <p>23 Paragraph 11 of our closing submissions, sir, is</p> <p>24 a short analysis of, we say, the effect of the judgment</p> <p>25 in Duggan [2017] EWCA Civ 142 given on 29 March of this</p> <p style="text-align: center;">Page 117</p> | <p>1 standard, albeit the full standard in terms of cogency</p> <p>2 of evidence increasing for the more serious the</p> <p>3 allegation you are finding proved.</p> <p>4 Sir, if paragraphs are needed, it is within tab 4,</p> <p>5 sub tab 5. It is paragraph 93 of the judgment of the</p> <p>6 President of the Queen's Bench division and it makes the</p> <p>7 point that, middle of the paragraph, in the context of</p> <p>8 an inquest:</p> <p>9 "As that account shows it has never been the</p> <p>10 function of an inquest to concern itself with civil</p> <p>11 liability for a death (section 2 of the 2005 Act makes</p> <p>12 the same point)."</p> <p>13 It goes on:</p> <p>14 "... and the conclusion of unlawful killing has</p> <p>15 always been understood to have been linked to crime and</p> <p>16 amounted to a statement that the jury believe that the</p> <p>17 deceased was probably not the victim of a homicide."</p> <p>18 At 95 the judgment continues, having referred to the</p> <p>19 civil case of Ashley, which after all was a claim for</p> <p>20 damages against the police where different principles</p> <p>21 applied, it makes the point that the article 2</p> <p>22 obligation, the procedural obligations of article 2 are</p> <p>23 imposed on the state. It sets out Lord Scott's analysis</p> <p>24 in Ashley:</p> <p>25 "The civil law of tort on the other hand is</p> <p style="text-align: center;">Page 119</p> |
| <p>1 year, reflecting as it does the 2016 judgment, most</p> <p>2 particularly in Da Silva. There may be slightly less</p> <p>3 between the core participants on this point than first</p> <p>4 appears.</p> <p>5 We say the effect of Duggan is that if you are to</p> <p>6 approach this according to a determination of unlawful</p> <p>7 killing, a particular finding in law, then the finding</p> <p>8 of unlawful killing needs to be approached under Duggan,</p> <p>9 applying the criminal law test to the criminal law</p> <p>10 standard.</p> <p>11 It is obvious that in setting out reasoning under</p> <p>12 that test to the determination of whether the killing</p> <p>13 was unlawful or lawful, applying the criminal law test,</p> <p>14 that you will necessarily have to reach and make some</p> <p>15 objective findings of fact as to reasonableness.</p> <p>16 We say that you are not required to approach the</p> <p>17 matter separately in terms of the Ashley civil law test,</p> <p>18 that is not something you should go on to do. Equally,</p> <p>19 applying Baha Mousa and outside those two categories,</p> <p>20 Baha Mousa of course is simply a decision of another</p> <p>21 Inquiry chairman, albeit a distinguished High Court</p> <p>22 judge sitting as such having heard, as has been pointed</p> <p>23 out, submissions from an impressive galaxy of counsel.</p> <p>24 Other findings in relation to this Inquiry we would not</p> <p>25 argue can be approached under this simple civil</p> <p style="text-align: center;">Page 118</p> | <p>1 concerned with disputes between citizens or persons or</p> <p>2 bodies in the exercise of private rather than public</p> <p>3 functions."</p> <p>4 Then this:</p> <p>5 "As was made clear in Da Silva [a 2016 authority so</p> <p>6 postdating Baha Mousa by some six years] the procedural</p> <p>7 requirements of article 2 are concerned with the</p> <p>8 public's confidence in the state's monopoly on the use</p> <p>9 of force and that where appropriate the official</p> <p>10 investigation must lead to the punishing of those</p> <p>11 responsible for the unjustified use of force."</p> <p>12 It sets out Nachova v Bulgaria:</p> <p>13 "Those requirements are consistent with the</p> <p>14 standards and consequential penalties imposed by the</p> <p>15 criminal law rather than those imposed to resolve</p> <p>16 private disputes."</p> <p>17 Paragraphs 96, 97 and 98 merit reading as well.</p> <p>18 Sir, our contention is that the particular finding</p> <p>19 of unlawful killing whether in a criminal jurisdiction</p> <p>20 or the coronial jurisdiction or here, where you are</p> <p>21 discharging the article 2 obligation, it cannot mean</p> <p>22 different things in different jurisdictions. The</p> <p>23 article 2 obligation is clearly defined under Duggan to</p> <p>24 refer to the finding as to the lawfulness of the state's</p> <p>25 monopoly use of force and, per 93:</p> <p style="text-align: center;">Page 120</p> |

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| <p>1 "The conclusion of unlawful killing has always been 2 understood to have been linked to crime and amounted to 3 a statement that the jury [the Inquiry] believe the 4 deceased was probably not the victim of a homicide." 5 This Inquiry was not set up to reformulate what 6 a determination of unlawful killing means for article 2 7 purposes. It was not set up to say that your 8 determination of unlawful killing, as a finding, 9 understood in law as such, should mean something 10 different and be determined accordingly to a different 11 standard of proof than crime or inquest -- 12 THE CHAIRMAN: There are two elements to this, aren't there? 13 There is the test and there is the standard. They don't 14 necessarily go together. 15 MR DAVIES: We say shortly that they do. I don't know what 16 submission counsel to the Inquiry will make, but we say 17 that it would be unprincipled in fact for there to be 18 a different standard of proof, bearing in mind the 19 greater detail of law on self-defence that follows as to 20 negating self-defence, as you are familiar -- I need 21 not rehearse all that. It has to mean the same thing in 22 each jurisdiction, otherwise public understanding of the 23 finding will be lost and its effect in terms of public 24 understanding will also be lost. 25 I emphasise, it doesn't stop you reaching objective</p> <p style="text-align: center;">Page 121</p> | <p>1 regardless of previous intelligence or antecedents, 2 reasonably are expected to require firearms as distinct 3 from some lesser form of weapon. That is a reasonable 4 conclusion, if those facts are established. 5 You heard evidence from -- the same proposition 6 I observe applies to reconnaissance in Culcheth. Of 7 course the police did not have the competing explanation 8 about Mr Fenton during surveillance, that goes without 9 saying but as a matter of fact, that explanation about 10 Fenton is false. The only other explanation on the menu 11 is that these subjects, including Mr Grainger, were 12 planning armed robbery of commercial premises. 13 That being the case, it is a reasonable conclusion 14 for any officer with that knowledge to infer that they 15 either would or may have firearms, and they would have 16 to be treated if it was a possibility of the firearm as 17 having them. 18 Sir, in relation to Stoke, 25 and 26 January 2012, 19 you have not even been presented with a competing 20 interpretation of events on behalf of those representing 21 the family, or those representing Ms Hadfield-Grainger. 22 Of course they are not required to, I accept, but it is 23 interesting that there is no attempt to present as 24 credible the account given by Mr Totton and others, both 25 at trial and before you. That this was a trip directed</p> <p style="text-align: center;">Page 123</p> |
| <p>1 findings of fact along the road outside that particular 2 species of finding but it is specific and it should mean 3 the same thing in every context. 4 That is the article 2 obligation, that finding to 5 that standard discharges the article 2 obligation in 6 terms of the state's monopoly use of force. I can 7 develop more on that if there are further submissions on 8 it but I hope that's already a somewhat representative 9 rehearsal of our position. 10 Sir, we have sought to identify and address five 11 defined issues. 12 The first of which starts at paragraph 14 of our 13 written document. It is for the record the purpose and 14 intent of Messrs Totton, Anthony Grainger, Robert Rimmer 15 and Joseph Travers as disclosed by Operation Shire. 16 I have already said that we contend for the reasons 17 we have set out in writing that these are relevant 18 findings. Not only for the public understanding of the 19 conduct of the subjects of this operation, but because 20 if you find as a fact that their conduct was wholly 21 consistent with planning and conducting reconnaissance, 22 for sophisticated robberies of the G4S cash in transit 23 vans, that fact was known to Q9. 24 That level of criminality promotes a conclusion, and 25 a reasonable one, that robberies in that category,</p> <p style="text-align: center;">Page 122</p> | <p>1 at effectively a burglary of the Citroen forecourt and 2 showroom in the same vicinity as the G4S pound and the 3 area where G4S cash in transit vehicles were 4 circulating. 5 You are presented with a straightforward binary 6 choice. Were the subjects engaged, as is contended on 7 behalf of Q9, in planning a sophisticated robbery of G4S 8 cash in transit vehicles in the vicinity of the G4S 9 depot in Stoke? Such an armed robbery necessarily 10 involving the use of firearms. Or were they simply 11 intent on stealing three Citroen motor cars to match up 12 with documentation for equivalent cars supposedly held 13 by Mr Grainger, but of course never produced at trial or 14 subsequently? 15 To this binary choice there is contended to be only 16 one rational answer. We have set out a summary of the 17 reasoning in our document. I pick out bits of it. The 18 degree of sophistication associated with the activity, 19 stolen high powered cars driven by different routes to 20 and from Stoke, the use of jerrycans to avoid detection 21 at petrol stations, leaving mobile telephones in 22 Manchester, the uses of changes of clothing and other 23 anti-surveillance techniques, dumping clothing after the 24 visit. It doesn't need me to state the obvious that 25 this is all illustrative of high level organised crime</p> <p style="text-align: center;">Page 124</p> |

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| <p>1 rather than simply stealing Citroen motor cars. 2 Totton was wholly unable -- was completely 3 reluctant, to address these points in evidence. There 4 was no plan to steal Citroens. No one is even arguing 5 that it is credible. 6 As to Culcheth, much the same points. A binary 7 question. Were the subjects in Culcheth on five nights 8 out of six leading up to 3 March 2012, were these 9 subjects, each of whom was a resident of Manchester, 10 close friends, variously living, in Totton and Rimmer's 11 case, at Mr Grainger's address, 8 Thanet Close, friends 12 since childhood, were they in Culcheth, a market town in 13 Cheshire some distance drive away, five out of six 14 nights in a row in order to commit armed robbery at 15 commercial premises including potentially Sainsbury's at 16 closing time on a Saturday? Or were these visits 17 directed at finding a man, supposedly called Fenton, who 18 owed Grainger a variable sum of money in relation to the 19 sale of a car or cars? 20 To this binary choice, there is again contended to 21 be only one rational answer. No one appears to be 22 contending otherwise. I needn't even develop a summary 23 of reasons why the story about Fenton is and remains 24 completely implausible. 25 The evidence clearly justifies a finding that the</p> <p style="text-align: center;">Page 125</p> | <p>1 there had been such an armed robbery in Preston in 2008 2 of a significant nature. 3 The inclusion of intelligence of that quality in 4 a briefing is to say to firearms officers, when the word 5 "Armed robbery" is used here, this is the quality of 6 offending that is being described. 7 That is even without reference to the level of 8 sophistication one sees in Stoke. 9 Jumping, sir, to paragraph 79 of these submissions, 10 you will recall that in addition, intelligence emerged 11 from the questioning on Q9's behalf of Totton that his 12 childhood friendship with the Graingers was just that, 13 they were close friends, he was continuing to visit 14 Stuart Grainger in prison. He was obviously associated 15 with the Corkovic family. 16 Individually or collectively, we say, in relation to 17 Totton, there can be no argument that he was correctly 18 assessed as being a high end member of an organised 19 criminal group who was a career criminal, and any 20 assessment other than that he had the capability and 21 intent to use firearms would have been wholly false and 22 dangerous. 23 The overall risk assessment for the group, and you 24 will recall Mr Arundale's evidence that that is the 25 starting point for how you treat each member of the</p> <p style="text-align: center;">Page 127</p> |
| <p>1 subjects, Grainger, Totton, Rimmer, Travers, close 2 friends and criminal associates over time as they were, 3 were planning commercial scale armed robbery using 4 firearms and the intelligence picture you have as 5 a whole demonstrates that it was not the first time they 6 had done so. 7 We say all of that is wholly uncontroversial. 8 The second issue is as to the content and effect of 9 operational briefings given to Q9 as part of 10 Operation Shire, including the material omissions from 11 those briefings. To this extent we really do rely on 12 the written document we have put in rather than 13 rehearsing it, you have had it several times in evidence 14 during the hearing. 15 There were inaccuracies in the briefing given on 16 3 March to Q9. But from Q9's perspective, putting to 17 one side how it happened, what adjective is used to 18 describe the effects and quality of those errors, for 19 the purpose of these closing submissions the point is 20 this. It is a theme of questioning, it is a theme of 21 closing statements on behalf of others that the effect 22 of the briefing was, to a reasonably minded AFO such as 23 Q9, to say that each of the subjects of the briefing, 24 had the capability and intent of using firearms to 25 commit armed robbery and intelligence suggested that</p> <p style="text-align: center;">Page 126</p> | <p>1 group, until they separate and are identifiable on 2 a differentiated basis demonstrates without serious 3 argument that he was capable of both accessing and using 4 firearms. 5 We say the same applies to Anthony Grainger. 6 A clear history of involvement in serious crime, 7 including with Totton. In terms of the elements of the 8 intelligence that were not included, Operation Vulture, 9 dangerous driving, the Bolton bank robbery, 10 Stuart Grainger's murder offence, the Brass Handles 11 shooting, Operation Ascot, Operation Blythe, of which Q9 12 had a role because he was the firearms officer planning 13 the searches and there was a firearms element to those 14 searches, exactly the same we say applies to 15 Anthony Grainger in isolation. 16 The unavoidable conclusion we say is that far from 17 exaggerating the threat, the briefing given in terms of 18 intelligence on 3 March materially understated it, most 19 particularly in relation to Anthony Grainger. 20 It is not simply our assertion but the opinion of 21 Mr Arundale. 22 There is absolutely no comparison, no legitimate 23 forensic purpose in Mr Thomas and Mr Straw listing 24 complaints unsubstantiated against Q9 following 25 evidence, never raised with him, that were investigated</p> <p style="text-align: center;">Page 128</p> |

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| <p>1 and not substantiated and those are the stock in trade 2 of any officer performing territorial support group 3 style work. 4 The purpose of them doing it is too obvious to state 5 but it has no legitimate forensic justification 6 whatsoever. 7 Sir, I jump to the reality of the underlying 8 criminal activity and I am turning to events on 3 March 9 generally, the third issue. 10 I needn't rehearse this but you know that the 11 reality of their overall conduct and clothing and so on, 12 waiting in the corner of that car park is wholly 13 consistent with targeting Sainsbury's. An interesting 14 comment when questioned by counsel to the Inquiry from 15 Totton was somehow he knew there was a back entrance to 16 Sainsbury's. How did he know that? 17 We also observe and support the fact at paragraph 98 18 that they were probably awaiting delivery of a firearm, 19 as it turns out. You will recall that Totton had, he 20 called them, motorbike gloves but reinforced black 21 gloves. Rimmer, on his account at trial, had access to 22 a motorbike, he was wearing apparently or had in that 23 motorbike jacket, in his hall when it was searched, 24 a motorbike jacket with identical reinforced gloves to 25 Totton that appeared brand new.</p> <p style="text-align: center;">Page 129</p> | <p>1 once", "instant", "relating to the existing at the 2 present time". It is a subtly different form of 3 language as between those adjectives. 4 The test in the authorities is imminence, about to 5 happen. The application of that to the test you must 6 apply is equally obvious. 7 Sir, at paragraphs 116 and 117, we rehearse, again 8 familiar to you now, the observations of the president, 9 Sir Brian Leveson, in E7's judicial review of the 10 finding of Sir Christopher Holland of the Azelle Rodney 11 Inquiry. He, as you know, says in paragraph 1 that: 12 "Perspectives include a full recognition of the 13 enormous challenges facing the police, along with the 14 urgency and almost instantaneous decision making 15 required of the highly trained officers involved." 16 At the end of paragraph 54, having observed that 17 there is a risk, echoed as it happens subsequently by 18 senior police leaders nationally: 19 "... there is considerable force in the expressed 20 concern that minute dissection of fractions of seconds 21 with the benefit of hindsight will discourage 22 an appropriate response in real-time to threats, thereby 23 resulting in increased danger to those involved or 24 likely to be affected by these exceedingly difficult 25 operations. This inevitably requires consideration of</p> <p style="text-align: center;">Page 131</p> |
| <p>1 Also in that jacket, bundle I, page 412, two 2 balaclavas. It is all consistent with the case we 3 advance. Even excluding reference, and there is no 4 reason why you should, to the subsequently received 5 intelligence. 6 This is what was happening; the Fenton based account 7 is ridiculous. 8 Sir, I then move to item 4, the immediate 9 circumstances of the shooting, applying the relevant 10 law. I am not going to insult your intelligence by 11 attempting any summary of the law as to self-defence, 12 I have rehearsed the more specific authorities of 13 Sharman [2005] EWCA Civ 967 following the death of 14 Harry Stanley, and I have referred as well at 15 paragraph 112 to Bennett [2007] EWCA Civ 617. 16 Those authorities remain good law. You will note 17 from the language of those authorities that the threat 18 in question has to be imminent. "Imminent" has 19 a different meaning to "immediate", "imminent" means 20 "About to happen", "impending", "at hand", "close", 21 "near", "approaching", "fast approaching", "on the way", 22 "about to happen". 23 That is the word used in these authorities. 24 "Immediate" by contrast, which is not used as the 25 test, has a broad meaning of "occurring or done at</p> <p style="text-align: center;">Page 130</p> | <p>1 the dynamic situation and militates against an analysis 2 by fractions of a second." 3 The argument against Q9 is that although he does not 4 claim to know exactly where approaching officers were, 5 how could he? He was focusing on Mr Grainger and 6 Mr Totton. He knew as a fact, as he repeatedly said, 7 that they were deploying at maximum speed from their 8 vehicles. The threat was imminent and the threat was 9 from someone he reasonably perceived to have a firearm 10 and to have reached for it with the intent to use it. 11 It is totally artificial to argue that somehow he 12 should have reasoned how self destructive that would be 13 for the driver. Maybe it would have been but the fact 14 is that people do it. You have to assume they might do 15 it, whatever the odds. 16 Paragraph 122, we set out in a whole series of Roman 17 numerals what we contend is the clear sequence of events 18 produced by the totality of the evidence. 19 The only core participant who says there is 20 "an alternative narrative", seeking to time Q9's shot as 21 following the deployment of CSDC, is the family. 22 There is no credible competing version of this 23 sequence. I could spend three hours demonstrating it, 24 but I don't. 25 Our core point, if I can just pick out one point</p> <p style="text-align: center;">Page 132</p> |

1 from this, is not only was it completely justified for
 2 Q9 to suggest the position he did in controlling the
 3 front occupants of that vehicle as he did, it is said to
 4 be foolhardy. It would be foolhardy not to, and it
 5 reflected his counter terrorism training but it has of
 6 course from 2014 become standard training. Because if
 7 that cover is not in place, and deploying officers are
 8 not yet by the side of the vehicle, there is an obvious
 9 vulnerability for the equivalent person in the alpha car
 10 to the driver. There is an obvious vulnerability for
 11 approaching officers from the driver or other occupants
 12 of the vehicle if they are not covered as Q9 covered
 13 them from his vehicle.

14 That much at least must be straightforward.

15 It is also clear, we say, from Totton, his recorded
 16 call to Mr Schofield, from prison, the whole analysis of
 17 that which you will remember, that he would have put his
 18 hands up and absolutely centrally, Roman numeral X,
 19 Mr Thomas has sought to contend that Mr Grainger's hand
 20 movement with his right hand was, "Small and ambiguous,
 21 limited and opaque".

22 The only evidence you have to describe that
 23 movement, the only evidence, comes from Q9 and W4. Q9
 24 repeatedly, from the beginning, uncontradicted by any
 25 witness, because Mr Totton does not contradict it, the

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1 uncontradicted evidence was there was a sudden and
 2 deliberate movement of the right hand towards the groin
 3 or to the groin by Mr Grainger -- who had not been
 4 identified as Mr Grainger -- from the point in time
 5 where he had responded to a police command to put his
 6 hands up, there was a bright scoping light pointing at
 7 him and there was no reason whatsoever for him to cease
 8 to obey commands than on a reasonable interpretation to
 9 reach for a weapon. The threat to approaching officers
 10 was imminent.

11 As to X7's account, in his initial account you will
 12 recall he said he heard a noise which he took to be
 13 either a collision or the sound of a firearm. Well, of
 14 course there was no collision, so it must have been
 15 a firearm. I could say more, sir, but we say the
 16 sequence is completely clear.

17 Let me jump to the final point, had Q9 delayed, had
 18 he delayed shooting, simply to ensure that a colleague
 19 whose presence was imminent had actually put themselves
 20 in the line of fire, he would have been rightly
 21 criticised if that officer had been shot. His focus
 22 properly was on the driver and Mr Totton. The other
 23 officers' arrivals were imminent, he cannot say exactly
 24 where they were, he can say that X7 had not got to the
 25 window to achieve control. That does not mean, of

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1 course, and this was never suggested to X7 by me, that
 2 does not mean that X7 was not at risk as he approached
 3 the vehicle and before control over Grainger was
 4 achieved. They are different points.

5 Let me turn finally to part 5 of our submissions,
 6 which are the circumstances of Q9's initial account, his
 7 witness statement of 9 March, and of course his
 8 interview. It is absolutely no criticism of the Inquiry
 9 that we say that you should be cautious about seeking to
 10 express findings or recommendations of a general nature
 11 as to post-incident procedures, most particularly the
 12 continuing and vexed question of separation and
 13 conferral. These are matters that have and continue to
 14 receive high level scrutiny, both from the IPCC on the
 15 one hand and the National Police Chief's Council,
 16 amongst others, on the other. This Inquiry, rightly,
 17 has not appeared to regard as within scope the
 18 contemplation of producing conclusive recommendations on
 19 resolving those matters.

20 We do however make some observations about the
 21 process in the immediate case. Q9 was, as you know from
 22 the evidence, effectively separated off early in terms
 23 of other officers at the scene and received, as other
 24 officers received, a warning, a reminder that they
 25 should not confer as to their evidence as the

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1 post-incident procedure developed.

2 He gave an initial account between something like
 3 2.00 am and 4.45 am on 4 March. It is relatively
 4 detailed, it has not been materially or contradicted at
 5 all by future accounts or other evidence and of course
 6 the PIP, the post-incident procedure, was in any event
 7 under the control of others than Q9 on the night.

8 Mr Donaghy in the end nominated which officers would
 9 be required to give initial accounts and he says with
 10 hindsight he may have nominated a couple of others, fair
 11 enough, a fair recognition.

12 As to the IPCC's recently stated public position,
 13 that officers should be separated, given the article 2
 14 considerations that we all recognise, this particular
 15 Inquiry demonstrates that that is all very well in
 16 theory but is unlikely to be deliverable in practice.

17 As you know, there were 16 firearms officers alone
 18 from those deployed on the night, plus commanders, plus
 19 a number of surveillance officers. In reality, there
 20 were only two federation instructed lawyers available to
 21 advise these officers. There were only two federation
 22 representatives available. This was after all the early
 23 hours of a Sunday morning, which would not be atypical.
 24 Weapons had to be removed from officers in a controlled
 25 and video recorded manner, for perfectly good reason,

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1 but it took 40 minutes per AFO.
 2 There were physically no facilities, even for
 3 a force of the scale of GMP, to separate this number of
 4 officers.
 5 In terms of the IPCC's resources. You are aware
 6 that Mr Orr, superintending by telephone, had to hand
 7 over control of the scene through lack of IPCC staff to
 8 Cheshire Police. Mr Donaghy arrived there, but the only
 9 other member of IPCC staff to assist him was Ms Bates,
 10 who left at about 3.00 in the morning.
 11 This is the reality of it. It is all very well
 12 demanding separation, but even if it were appropriate in
 13 principle, which we contend it is not, it would not have
 14 been practicable for a number of different reasons on
 15 the night, and anything you say about it we respectfully
 16 contend should take this into account. You are aware,
 17 because we have served the document on you previously,
 18 that in response to the IPCC's public position,
 19 DCC Simon Chesterman on 21 February, he being the
 20 National Police Chief's Council's spokesman in relation
 21 to firearms incident, the lead for armed policing, said:
 22 "The police service welcomes robust scrutiny from
 23 the IPCC but we do not believe that it is proportionate
 24 and necessary to routinely separate officers. Instead
 25 the unit can be kept together but supervised as a whole

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1 to prevent collusion, with the IPCC observing this
 2 process to verify its integrity. A solution supported
 3 in the Court of Appeal."
 4 It is an immense responsibility to train and serve
 5 as a firearms officer, physically and mentally demanding
 6 whilst putting yourself in harm's way to protect the
 7 public. It is important that officers do not feel they
 8 are immediately under suspicion and keeping officers
 9 together as an unit is important for their mental
 10 wellbeing after a traumatic incident.
 11 On behalf of Q9, I cannot speak for other officers,
 12 we endorse Mr Chesterman's approach.
 13 The welfare visit by the PFOA has been criticised.
 14 It was, of course, just that, and you have a statement
 15 from Mr Williams as to its purpose and effect. You will
 16 be aware, as is evident from Q9's evidence, that it is
 17 wholly predictable that regardless of the merits, if
 18 there is a police-related shooting, it will generate, as
 19 this incident did, controversy from the beginning and
 20 much unfair criticism and indeed threats towards the
 21 officer responsible for doing it.
 22 In the immediate case, you ordered appropriate and
 23 proportionate measures to protect his identity, given
 24 the nature of the threat to him because of his role in
 25 this incident.

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1 Q9 properly received welfare advice as to his
 2 family -- that was the evidence -- from V53, an officer
 3 who had been through, and was going through the same
 4 process of public criticism, Inquiry and so on, that
 5 impacts their families.
 6 The effect of the PFOA's intervention was not to
 7 alter the content of statements, it was to bring it
 8 forward from what would have been interviews starting on
 9 14 March. Left to the IPCC the first interview would
 10 have been 11 days after the incident. Those with the
 11 crucial core officers, the principal officers, 19 days
 12 afterwards.
 13 How can it be said that the PFOA intervention was
 14 negative?
 15 There was nothing to stop interviews by the IPCC
 16 after that, and nothing did stop it. Q9's initial
 17 account was followed by his witness statement, that was
 18 addressing events only on the day. It was not
 19 addressing, was not asked to address, his previous
 20 knowledge of Anthony Grainger. He was only asked about
 21 his background knowledge in interview and that is why it
 22 is raised there for the first time.
 23 We accept paragraph 137, that if flip charts and
 24 neutral information are to be used as part of a process
 25 of giving statements by any officer, it should be

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1 completely transparent and the information should be
 2 accurate and neutral. That is a learning point and we
 3 recognise it.
 4 We also recognise that there is an apparent close
 5 correspondence between Q9's witness statement as to the
 6 intelligence and the original briefing. He does not
 7 remember having seen the briefing before he gave his
 8 statement. You may say, well, I think he did, looking
 9 at how close they are. We don't know. Nothing in that
 10 begins to undermine the overall integrity of his
 11 account. A calm witness under pressure, a calm witness
 12 at the scene.
 13 He is and remains a highly trained, highly tested
 14 and highly rated firearms officer and instructor. He
 15 would not have shot Anthony Grainger unless he honestly
 16 believed it was necessary. He would take the same
 17 decision again in the same circumstances and, sir, he
 18 would act lawfully if he did so. But this Inquiry will
 19 identify no doubt many points where certain procedural
 20 matters and substantive matters could have been done
 21 better, we agree with that and don't seek to get into
 22 that territory.
 23 On his briefing, on what he observed and on what he
 24 knew of these subjects, both from Stoke and otherwise,
 25 he was fully justified in interpreting a sudden and

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| <p>1 deliberate movement of the right hand to the groin, in 2 the context of a man who had otherwise surrendered to 3 a police command to keep his hands up and presented with 4 a weapon with a torch on it, he was fully entitled and 5 acted lawfully to protect his colleagues from 6 an imminent threat to being shot laterally by the 7 driver. 8 We would invite you to find as follows. 9 THE CHAIRMAN: Thank you, Mr Davies. 10 10.30 tomorrow morning. 11 (4.25 pm) 12 (The Inquiry adjourned until 10.30 am the following day) 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 141</p> | |
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