JUDICIARY OF
ENGLAND AND WALES

HIS HONOUR JUDGE TEAGUE QC

Queen Elizabeth II Law Courts,
Derby Square,
Liverpool L2 1XA

Lord Chancellor and Secretary of State,
Rt. Hon. Michael Gove MP,
Ministry of Justice,
102 Petty France,
London SW1H 9AJ

20 November 2015

Dear Secretary of State,

Re: Inquest touching the death of Anthony Grainger

1. On 6 May 2015, the Lord Chief Justice nominated me under the terms of paragraph 3 of Schedule 10 to the *Coroners and Justice Act 2009* to conduct the investigation and inquest into the death of Anthony Grainger, who was fatally shot by an armed officer of Greater Manchester Police on 3 March 2012.

2. Mr Grainger's death arose out of a police investigation (Operation Shire) into alleged serious offending by a Salford-based organised crime group. The investigation began in October 2011 and was conducted by officers of the force robbery unit. Its original subjects included members of the Corkovic family and David Totton. In January 2012, Anthony Grainger was added as a subject of the inquiry and came under police surveillance. Authorised firearms officers were deployed in support of such surveillance on a number of occasions. The last of those deployments took place on 3 March 2012, when a decision was taken to arrest Mr Grainger and two male associates as they sat in a stolen Audi car on a public car park in Culcheth, Cheshire. It was during the arrest phase of the operation that one of the armed officers (known for present purposes as 'Q9') killed Mr Grainger with a single shot to the chest.

3. Although there is evidence to suggest that the investigating team had believed the occupants of the Audi to be on the point of committing an armed robbery, no firearm or other weapon was recovered from the scene

or elsewhere[1]. The surviving occupants of the stolen Audi, together with a third male, were subsequently tried and acquitted at the Crown Court in Manchester on an allegation of conspiracy to rob arising out of the events of 3 March 2012.

4. By reason of the admitted involvement of State agents in the events leading to Mr Grainger's death, article 2 of the European Convention on Human Rights requires that there be an effective public investigation into the circumstances in which he died[2]. Such investigation must be "broad enough to permit the investigating authorities to take into consideration not only the actions of the State agents who directly used lethal force but also all the surrounding circumstances, including such matters as the planning and control of the operations in question"[3].

5. No full criminal proceedings have taken place in respect of Mr Grainger's death, nor is any criminal prosecution pending. Although the Chief Constable (at the time Sir Peter Fahy) was indicted for alleged offences contrary to the *Health and Safety at Work Act 1974* in connection with Operation Shire, no trial took place because the Crown offered no evidence against him after the trial Judge (Davis J) held that there could not be a fair trial without the disclosure of material subject to a public interest immunity claim. In the absence of other proceedings, therefore, the current inquest constitutes the sole means by which the state can discharge its procedural obligation under article 2.

6. From its inception, Operation Shire was intelligence-led. In addition to the force's own intelligence resources, the investigating team enjoyed access to sensitive information provided by the former Serious Organised Crime Agency (now the National Crime Agency). The decisions to deploy authorised firearms officers and make arrests, and the information provided to officers in briefings, were based upon the investigating team's appraisal of the overall intelligence picture presented by a large number of fragments of information collected and pieced together throughout the lifetime of Operation Shire. Those decisions and briefings, together with the intelligence underlying them, are matters of central importance to any investigation of the circumstances surrounding Mr Grainger's death. The present inquest, therefore, cannot avoid thoroughly reviewing them if it is to comply with the article 2 procedural obligation. It was for that reason that, in July this year, I drafted and circulated a document[4] ('the scope document') in which I defined the ambit of the present inquest as including the following matters:

    (i) the objectives and planning of the operation;
    (ii) the information available to those who planned the operation, and the accuracy, reliability, interpretation, evaluation, transmission and dissemination of such information;

[1] The present matter differs in that respect from the Mark Duggan case, where an illicit firearm was recovered.
[2] *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182.
[3] *R (Ali Zaki Mousa and others) v Secretary of State for Defence (No 2)* [2013] EWHC 1412 (Admin), §147, citing *Al Skeini and others v United Kingdom* (App No 55721/07), §163.
[4] See Annexe 1.

(iii) *the decisions to deploy armed police officers and to make arrests, and the criteria applied in reaching those decisions;*

(iv) *the command and control of the operation, its implementation, the actions of officers during the arrest phase, and the circumstances in which the officer who fired the fatal shot came to discharge his weapon.*

7. A large volume of relevant material has been disclosed to me by a number of agencies, including Greater Manchester Police, Cheshire Constabulary, the National Crime Agency and the Independent Police Complaints Commission. Such material (subject to any statutory prohibition or application for non-disclosure) falls to be disclosed to other properly interested persons. Last month, the National Crime Agency and Greater Manchester Police applied to me to withhold certain material from disclosure on grounds of public interest immunity ('PII'). In response to the applications, I received written submissions from a number of properly interested persons, including Q9 and members of Mr Grainger's family. At a pre-inquest review hearing held on 7 October 2015, having reviewed the relevant material with Counsel to the inquest, Miss Sophie Cartwright, I heard *ex parte* oral submissions from the applicants.

8. After careful consideration, I concluded that none of the material upon which I had been asked to rule could be disclosed without risking serious damage to certain identified aspects of the public interest, and, further, that there would be no adequate means of guarding against such risk within the inquest process. Accordingly, on 30 October 2015, I issued an open ruling[5] and two closed rulings[6] in which I upheld the PII claims. In the absence of any mechanism for closed inquest hearings, the practical effect of my PII rulings is to exclude from evidence the entirety of the material to which they relate. Accordingly, I expressed a provisional view that without access to such material, the inquest would be unable to discharge its function and, further, that only a public inquiry would be adequate to the task of carrying out a full, fair and fearless investigation into the death of Anthony Grainger.

9. On 12 November 2015, I held a further pre-inquest review at which I invited properly interested persons to make submissions regarding the broader implications of my PII rulings. At that hearing, the Independent Police Complaints Commission applied to withhold certain material from disclosure on grounds of public interest immunity. Having received written and oral submissions on behalf of that agency, I upheld the PII claim on grounds set out in a further open ruling[7] supplemented by a separate closed ruling[8].

10. I understand that that there is no challenge to my PII rulings. Further, all properly interested persons have expressed agreement with my view that

[5] See Annexe 2.
[6] Arrangements are in place to enable the Secretary of State to have access to the closed rulings.
[7] See Annexe 3.
[8] Arrangements are in place to enable the Secretary of State to have access to the closed ruling.

this matter will have to proceed as a public inquiry if the State's procedural obligation under article 2 is to be fulfilled.

11. By section 7(2)(b)(i) of the *Coroners and Justice Act 2009*, the current inquest must be held with a jury. There is no provision for a jury to sit in closed session. The *Coroners Inquests Rules 2013*[9] do not permit the general public to be excluded except in the interests of national security. Even then, all properly interested persons are entitled to remain present. Consequently, there exists no procedural mechanism which would allow any of the material which I have held to be subject to public interest immunity to be considered by an inquest jury. At the same time, without access to that material, the jury will have no way of adequately investigating the matters set out in paragraphs (i) to (iv) of the scope document, and will accordingly be unable to ascertain the circumstances in which Anthony Grainger came by his death.

12. Having reviewed the overall position in the light of submissions advanced before me at the pre-inquest review on 12 November, I am now firmly of the view that an inquest, since it cannot incorporate detailed consideration of the material to which I have referred, will inevitably be deficient in its examination of the relevant issues, and risks producing incomplete and flawed conclusions.

13. By contrast, a public inquiry would enjoy the advantage of enhanced procedural mechanisms[10] that should enable the relevant intelligence to be considered while still permitting a sufficient element of open scrutiny to satisfy the investigative obligation under article 2. By section 1(1)(a) of the *Inquiries Act 2005*, a Minister may cause an inquiry to be held in relation to a case where it appears to him that "particular events have caused, or are capable of causing, public concern". The circumstances surrounding Anthony Grainger's death have already attracted extensive national and local news media coverage, and a public inquiry should serve to assuage any public anxiety generated by the events in question. Further, the Chairman of an inquiry having access to all relevant evidence could draw and publicly state conclusions based on closed material without revealing any of the material itself[11].

14. For the foregoing reasons, I am of the view that a jury will be unable to fulfil the legislative purpose of the inquest, namely to ascertain how and in what circumstances Anthony Grainger came by his death[12]. I respectfully invite the Government to cause a public inquiry to be held pursuant to section 1(1) of the *Inquiries Act 2005*.

15. As you are aware, one of the minimum requirements of an investigation of the present kind is that it be reasonably prompt[13]. The fourth anniversary

[9] Rule 11(4).
[10] *Inquiries Act 2005*, sections 19 and 20.
[11] See *R (Litvinenko) v Secretary of State for the Home Department* [2014] EWHC 194 (Admin), §67.
[12] *Coroners and Justice Act 2009*, sections 5(1) and (2).
[13] *R (D) v Secretary of State for the Home Department* [2006] EWCA Civ 143, §13, citing *Jordan v United Kingdom* (App No 24746/94).

of Mr Grainger's death is now little more than three months away. I therefore request that a decision be made as a matter of urgency. The inquest hearing is currently expected to begin on 2 May 2016, with an estimated duration of 12 weeks. Subject to the necessary action being taken promptly, it may be possible to maintain the same date for a public inquiry. In the interests of maintaining continuity and avoiding unnecessary duplication of effort, and in the hope of thereby minimising any additional cost to the public purse, Counsel representing Q9 and members of Anthony Grainger's family have suggested that there would be significant practical advantages in appointing me as Chairman of any inquiry and Miss Cartwright as Counsel. I understand that proposal to have the support of all other interested persons. I confirm that I would be willing, if asked, to act in that capacity, and I strongly recommend that Miss Cartwright, who is content to receive instructions, should continue to be retained as Counsel.

16. With the active co-operation of the relevant agencies, Miss Cartwright and I have already undertaken a considerable amount of preparatory work. Prior to my appointment as Coroner in May this year, the only document that had been released to properly interested persons was a redacted version of the report of the Independent Police Complaints Commission. Since then, we have considered and circulated a substantial volume of material, and we anticipate that we will be able to disclose further documentation to interested persons before the end of this year. We have between us considered most (if not all) of the contentious material, and I have issued a series of rulings in relation to public interest immunity. I have also communicated my views on relevance to the National Crime Agency, which is currently undertaking a 'gisting' exercise on the basis of those indications.

17. Exercising, as I do, the same functions in relation to the present matter as a senior coroner[14], I have a discretionary power to suspend the inquest[15]. I do not consider that it would be appropriate for me to do so now. The interests of justice, including in particular the need to avoid unnecessary delay, require me to maintain the momentum of my present investigation for the time being. Should the Government decide to order a public inquiry, however, I propose to suspend the inquest at that stage, thereby obviating any need to invoke paragraph 3 of Schedule 1 to the *Coroners and Justice Act 2009*[16], and preserving the option (if appropriate) of appointing me as Chairman of the inquiry.

18. I have directed that a further review hearing will take place on 17 December 2015. If you anticipate that the Government will not be in a position to communicate a decision to me by that date, I should be grateful if you would kindly let me know in advance of the hearing. Miss Cartwright and I would be happy to attend on you if you would like further clarification of any of the matters covered by this letter.

[14] *Coroners and Justice Act 2009*, Schedule 10, paragraph 4.
[15] *Ibid*., Schedule 1, paragraph 5.
[16] See the commentary in *Public Inquiries*, by Jason Beer QC, at §2.166.

19. Finally, I should explain that I have thought it appropriate to address this letter to you as the Minister responsible for the judicial system and for my own appointment as Coroner in this matter. Further, it is my understanding that it was your predecessor, Mr Clarke, who ordered the Azelle Rodney inquiry, which arose out of an inquest giving rise to issues of a similar nature. At the same time, however, the National Crime Agency has represented to me that the decision whether to order a public inquiry is properly one for the Home Office, as the department of State responsible for police operations. I am, therefore, copying this letter to the Secretary of State for the Home Department, whose officials have asked to be kept informed of progress in the matter. I am also copying the letter to the Lord Chief Justice, who nominated me for appointment as Coroner, and the Chief Coroner, as well as to the Presiding Judges of the Northern Circuit and the Recorder of Liverpool.

Yours sincerely,

His Honour Judge Teague QC

cc. Secretary of State for the Home Department
Lord Chief Justice
Chief Coroner
Presiding Judges, Northern Circuit
Recorder of Liverpool