

The Azelle Rodney Inquiry

The Report of The Azelle Rodney Inquiry

Sir Christopher Holland (Chairman)

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Letter to the Lord Chancellor

Dear Lord Chancellor,

In June 2010 I was appointed by your predecessor to ascertain in what circumstances Azelle Rodney lost his life on the 30th April 2005, to make any resultant recommendations – and to do all such having held a public inquiry. I am pleased to report that I have now found the material facts and that I have made resultant recommendations, as respectively set out in this, my Report – and that I have done so having held a public inquiry.

In June 2010 this result seemed speculative in the extreme given the then unresolved problems that had prevented the holding of an inquest. The fact that during the intervening period these problems have been resolved (the so-called ‘Pragmatic Solution’) reflects several pieces of good fortune and much prolonged, hard, skilled work. One such piece of good fortune was the appointment of Ashley Underwood QC as Counsel to the Inquiry and Judi Kemish as Solicitor and Junior Counsel. Fresh from similar roles for the Robert Hamill Inquiry, they brought to this Inquiry experience, skill and sustained dedication. Without their respective contributions, there could not have been a Pragmatic Solution. Similarly inherited from the earlier Inquiry and similarly contributing to this Inquiry were two paralegals: Nick Scott and Nigel Fleeman. Respectively masters of the computer screen, they undertook prolonged tedious tasks without complaint and with widely acknowledged success.

Again, I have been fortunate in the allotment of an administrative support team: Michael Collins as a benign ‘can do’ Secretary (who could and did), supported by Fola Shodeinde, Tim Collins and Rebekah Nahai, together ably supplying all required assistance.

A yet further piece of good fortune has been the cheerful harmony prevailing between all the foregoing, notwithstanding the recurring stresses: it has been a pleasure to have them as supportive colleagues.

I turn to the hard work that has been such a feature of the last three years. I must emphasise the difficulties encountered and systematically overcome in preparing 2005 evidential material (particularly documentary) for public presentation in 2012. In this task, my Inquiry team has frequently drawn my attention to the committed co-operation of the legal teams for the core participants, particularly in this context, those of HMRC and MPS.

This leaves my own role: accepting sole responsibility for the contents of this Report, herewith delivered in fulfilment of the statutory obligation.

Yours sincerely,



Sir Christopher Holland

Section 1: This Inquiry

- 1.1 At about 7.40pm on Saturday 30th April 2005, a Volkswagen Golf motor car was proceeding along Hale Lane, Mill Hill, London, NW7 towards the mini roundabout at the junction with Selvage Lane. The driver was Wesley Lovell; the front seat passenger was Frank Graham; and the rear seat passenger was Azelle Rodney. There was credible intelligence to the effect that they were on their way to commit an armed robbery. At a point just before the roundabout, and with a view to making arrests, officers from the specialist Metropolitan Police Service ('MPS') firearms unit, CO19, manoeuvred three unmarked vehicles so as to stop and detain the Golf. From one such vehicle an officer opened fire so as to hit and kill Azelle Rodney.
- 1.2 The Independent Police Complaints Commission ('IPCC') had been operational since April 2004, then with a remit to investigate complaints made about the police and 'conduct matters' arising from an indication that a person serving with the police might have committed a criminal offence. On the 3rd May the IPCC accordingly took over responsibility for the investigation, opting to conduct this itself (see Police Reform Act 2002, Schedule 3, paras 15 and 19). As from the 6th May the IPCC had five complaints about the police arising out of this incident, all as raised on behalf of the family of the deceased by a solicitor, Mr Daniel Machover of Hickman and Rose.
- 1.3 On the 9th December 2005 the IPCC produced its Report. This recorded an extensive investigation; it discussed and rejected the respective complaints; it did not recommend any prosecutions; and it did not make any finding of significant fault on the part of the MPS and its officers. However, it did make five operational recommendations, see Section 25.
- 1.4 The Report was sent to the Crown Prosecution Service ('CPS'). On the 4th July 2006, following prolonged consideration, it communicated by way of a letter addressed to the IPCC (with a copy to the family of the deceased) its decision not to prosecute the officer who shot the deceased (consistently identified for the purposes of anonymity as E7) for murder or for manslaughter by gross negligence, and its decision not to prosecute the MPS for manslaughter by gross negligence. The reasoning of the CPS is explained and the letter sets out much factual material culled from the hitherto unpublished IPCC Report, thus giving the family its first intimation of the circumstances said to have given rise to the shooting.
- 1.5 For legal reasons which it is inappropriate for me to address, it proved to be impossible to hold the usual inquest into the death. Article 2 of the European Convention on Human Rights required an independent investigation into this death, as did common sense and public concern. In the result, the Lord Chancellor established this as a public inquiry on the 10th June 2010, with as terms of reference: "To ascertain by inquiring how, where and in what circumstances Azelle Rodney came by his death on 30th April 2005 and then to make any such recommendations as may seem appropriate." In the event, after a period of intensive preparatory work, a public hearing of evidence began on the 3rd September 2012, and continued to the 13th November, with closing

submissions on the 17th December. It was that preparatory work which made it possible to circumvent the problems that had prevented an inquest and to adduce in public all material evidence. In this regard potential problems were helpfully obviated by the provision of an undertaking by the Attorney General in the following terms:

“This is an undertaking in respect of any person who provides evidence to the Inquiry relating to the matter within its terms of reference. “Evidence” includes oral evidence, any written statement made by that person preparatory to giving evidence to the Inquiry or during the course of his or her testimony to the Inquiry, and any document or information produced to the Inquiry solely by that person.

No evidence a person may give before the Inquiry, nor any evidence as defined above, will be used in evidence against that person in any criminal proceedings, save that this undertaking does not apply to:

- (a) A prosecution where the person is charged with having given false evidence in the course of this Inquiry or having conspired with or procured others to do so, or
- (b) Proceedings where the person is charged with any offence under Section 35 of the Inquiries Act 2005 or having conspired with or procured others to commit such an offence.

It is further undertaken that in any criminal proceedings brought against any person who provides evidence, as defined above, to the Inquiry, no reliance will be placed on evidence which is obtained during an investigation as a result of the provision by that person of evidence to the Inquiry. This undertaking does not preclude the use of information and/or evidence identified independently of the evidence provided by that person to the Inquiry.”

Inquiries Act 2005

- 1.6 This Inquiry was set up pursuant to the Inquiries Act 2005 with me as its Chairman and without any other panel members. Three sections merit citation:
 - 1.6.1 By Section 1, “A Minister may cause an inquiry to be held under this Act in relation to a case where it appears to him that (a) particular events have caused, or are capable of causing, public concern, or (b) there is public concern that particular events may have occurred.” It is plain that the circumstances surrounding Azelle Rodney’s death have caused public concern, and I have no doubt that the purpose of establishing this Inquiry was to address that concern.
 - 1.6.2 Section 2 of the 2005 Act reads as follows: “(1) An inquiry panel is not to rule on, and has no power to determine, any person’s civil or criminal liability. (2) But an inquiry panel is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines or

recommendations that it makes.” That is at once a restrictive and a permissive provision. I am not given the task of determining civil or criminal liability, but neither am I inhibited from making findings which amount to the constituents of civil wrongs or criminal acts.

- 1.6.3 By Section 24 of the Act, “(1) The chairman of an inquiry must deliver a report to the Minister setting out— (a) the facts determined by the inquiry panel; (b) the recommendations of the panel (where the terms of reference required it to make recommendations). The report may also contain anything else that the panel considers to be relevant to the terms of reference (including any recommendations the panel sees fit to make despite not being required to do so by the terms of reference).” This is plainly cast in wide terms.

Article 2

- 1.7 Article 2 of the European Convention on Human Rights provides as follows:

1. “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - (a) In defence of any person from unlawful violence;
 - (b) In order to effect a lawful arrest or to prevent escape of a person lawfully detained;
 - (c) In action lawfully taken for the purpose of quelling a riot or insurrection.”

- 1.8 Within the scope given by the 2005 Act, I have to satisfy the investigative duty demanded by Article 2. The precise meaning of that investigative duty under Article 2 is the subject of considerable authority. However, it has been summarised by Counsel to the Inquiry in a form which I accept and adopt:

“The Inquiry must carefully scrutinise whether the force used was strictly proportionate to the aim of protecting persons against unlawful violence – i.e. was no more than absolutely necessary; and whether the operation was planned and controlled so as to minimise, to the greatest extent possible, recourse to lethal force. The purposes of the investigation are to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the life of others.”

- 1.9 In order to satisfy the obligation under Article 2, my conclusions must be based on thorough, objective and impartial analysis of all relevant elements, and I must apply a standard comparable to the “no more than absolutely necessary” standard required by Article 2.2 of the Convention.
- 1.10 In a recent decision, the Grand Chamber considered the analogous obligation to investigate in the context of Article 3. It spoke of the victim’s “right to the truth regarding the relevant circumstances of the case.”
- 1.11 It is well settled that an Article 2 investigation must address the principal issues arising from the available evidence. So far as Azelle Rodney’s death is concerned, those issues were the subject of agreement. They are as follows:
- Issue 1: What information was available to the planners by the time of the shooting?
 - Issue 2: What was actually known and how reliable was it?
 - Issue 3: What were the standards to be applied to Operation Tayport?
 - Issue 4: What was the planning that developed between 28th and 30th April?
 - Issue 5: Was the strategic approach apt to minimise to the greatest extent possible the risk to life?
 - Issue 6: Was the tactical approach similarly apt?
 - Issue 7: Was the plan (that is, the strategy and tactics as set by 8.00am on 30th April 2005) implemented so as to minimise to the greatest extent possible the risk to life?
 - Issue 8: Was the hard stop conducted with only necessary force?
 - Issue 9: The post-shooting procedures.
- 1.12 As to these issues my task is twofold: to find the facts and to make judgments upon them. Given the essential nature of an inquiry, I see my task as inquisitorial and unfettered by any fixed burden or standard of proof. That said, when making a finding that does not reflect common ground, I will record the degree of confidence behind the finding. Particular issues have been raised as to my approach to findings made with respect to the conduct of E7: I deal with these when I come to that part of the evidence.

Generally

- 1.13 My terms of reference and Article 2 require me to focus on Azelle Rodney’s death and whether it could have been avoided. In the course of forming views about the evidence on the agreed issues, I may conclude that something could have been done better.

I may be clear that it would, or conversely would not, have affected the outcome. Or I may not be able to say what its effect would have been. The question arises how I should treat such conclusions.

- 1.14 The breadth of my terms of reference, read with the Lord Chancellor's statement and with the Article 2 jurisprudence, shows that I have the power to set out findings on the evidence I have heard, whether or not those findings are material to causation as strictly defined. I believe I should exercise that power by being as candid as possible about my findings and the reasons for them. That is conducive to allaying public concern. If I reach a conclusion that something could have been done differently and that it had some potential to make a difference in a life-or-death situation, then it may lead to a useful lesson being learned. If I am clear that it would have made a difference in Azelle Rodney's case then I should obviously say so. Equally, if I am clear that it would have made no difference, or I cannot be clear either way on causation, then I should also make that plain.
- 1.15 I have heard from a large number of witnesses and have read a considerable number of documents. Helpfully, all the evidence has been summarised by reference to the agreed issues in the written closing arguments. Each core participant has had the opportunity of adding to the summaries, and each has had the opportunity of making submissions in writing on every issue and on the evidential bases upon which I should act. The resulting document is 439 pages long and I have had extremely careful regard to it. It informs everything that follows in this Report and it enables me to keep this Report relatively succinct. Anyone interested in seeing what evidence and arguments underpin my conclusions on the various issues is able to do that by looking at the Written Closings, which are available on the Azelle Rodney Inquiry website, at: <http://azellerodneyinquiry.independent.gov.uk>. Appendix 3 features a list of the witnesses.
- 1.16 In the event, potential problems that could have arisen during the taking of evidence were obviated by the helpful provision of the undertaking by the Attorney General in consultation with the Director of Public Prosecutions. The terms are set out at 1.5 above.
- 1.17 Finally, as to this, my Report, I have found it convenient to focus first upon fact finding, that is, per my terms of reference, ascertaining how, where and in what circumstances Azelle Rodney died. This I do in the ensuing Sections 2 to 20 inclusive. Thereafter, second, I subject the facts so found to commentary leading to the making of recommendations. I emphasise: this division reflects my convenience and hopefully contributes to ease of reading. It does not profess to be clear cut so as wholly to exclude comment from Sections 2 to 20, and fact finding from Sections 21 to 26. Further, I bear in mind that fact finding and comment arguably come together under the same umbrella: an Article 2 investigation serving to satisfy the issues as set out in 1.11.
- 1.18 The citation of police ranks and of various organisations is as set out in Appendix 4, Glossary of Terms.

Section 2: Azelle Rodney

- 2.1 The deceased was born on the 22nd April 1981; he was thus 24 when he died. He was the eldest son of Susan Alexander; his father was Roland Rodney. As a London schoolboy he was keen on sport and sufficiently skilled so as to contemplate a career in sports education. Unhappily, when he was 15 he sustained a serious hip injury; this ended sporting activities, it impaired his employment prospects and it left him with a limp. Into the resultant void came criminal activities, associates and convictions. As to the latter, there were three recorded in and between January 1998 and September 2002. All are long since 'spent' (see Rehabilitation of Offenders Act 1974) – suffice it to note that none resulted in a custodial sentence.
- 2.2 Criminal activities did not stop with the last conviction. The inference is overwhelming that he became a mid-level career criminal (there is no evidence of any legitimate employment), adept at avoiding identification and arrest. Indeed, one of the concerns now raised on behalf of his family is as to whether he should not have been arrested by the MPS on or before the 30th April, thereby to preserve him from participation in the ill-fated venture. This line of argument invokes two matters of evidence. The first such arises from his apparent association with a major criminal and is set out below in para 7.7. The second such may similarly arise from this association, but in any event is serious enough. On the 4th July 2004 there was an incident at an address in Ealing in the course of which two persons received serious stab wounds in circumstances suggestive of wounding with intent. The matter was the subject of investigation by the local CID, and by November the deceased had been identified as the principal suspect and his arrest was sought. Thereafter a relatively desultory pursuit is apparent from the documentation put before me: effectively conducted by just one detective and hampered by the lack of a current address. That said, as of April 2005 he was still sought for this offence.
- 2.3 To conclude this résumé, the deceased had a girlfriend who in April 2005 was heavily pregnant by him. He had no permanent address and stayed with this girlfriend at her parent's address.

Section 3: Essential Chronology

- 3.1 Before I turn to my findings of fact and any commentary on those findings, it may be helpful for me to set out a very brief chronology of the events I am considering. In the course of doing that, I will mention some of the issues which will arise out of that which was designated 'Operation Tayport'.
- 3.2 In 2004 and 2005 Her Majesty's Customs and Excise ('HMCE') was investigating an organised criminal group of Colombian drug smugglers. In the course of its intelligence gathering, it learned that another organised criminal group, connected to a man known as 'the Principal' for the purposes of this Inquiry, was proposing to conduct an armed robbery against the Colombian group. HMCE was not fitted to act on that information and passed it to the MPS for the purposes of thwarting the robbery. Both HMCE and the MPS independently had information to suggest that Azelle Rodney was an associate of the Principal. Neither identified him as one of the prospective robbers. The first and second issues call for me to consider what information could and should have been made available for the purposes to the planners of the police operation.
- 3.3 The MPS was first contacted on 5th April 2005, but it was only on 28th April 2005 that intelligence suggested that the robbery was imminent. During the course of 30th April 2005 Azelle Rodney was under surveillance. He met up with two associates, Mr Lovell and Mr Graham and, having spent some time in Harlesden, the men drove to Hale Lane in Mill Hill. Just as their Golf was nearing a roundabout it was stopped by police cars containing armed officers. As I have said, one of the officers, in the car that stopped on the offside of the Golf, fired eight shots at Azelle Rodney, and he died as a result.
- 3.4 Wesley Lovell and Frank Graham were arrested. They subsequently pleaded guilty to possession of the firearms found in the Golf and received custodial sentences.
- 3.5 I shall need to consider every element of the planning and implementation of the operation which culminated in that shooting. I shall also have to consider whether the officer who fired the shots, for the purposes of this Inquiry known as 'E7', used no more force than was absolutely necessary.

Section 4: MPS Units

- 4.1 By way of preface to the following section of this Report, it is convenient now to identify those MPS Units that participated in Operation Tayport, as well as the prominent personnel. All such will be considered subsequently at greater depth. Thus, for present:
- 4.1.1 SCD7, that is, Specialist Crime Directorate 7. This Unit had (so I was told in evidence) “...operational responsibility for serious, and organised crime detection and disruption, mainly drugs, guns, contracts to kill and kidnaps.” In the event, it provided:
- 4.1.1.1 The Gold Commander, that is (citing the manual in force as at April 2005, MPS Use of Firearms Standard Operating Procedures (‘the MPS SOPs’), para 6.16), “the officer in overall strategic command (who) has responsibility and accountability for the operation.” It was Temporary DSupt Peter South who undertook this role for Operation Tayport.
- 4.1.1.2 The Silver Commander, that is, op. cit, para 6.17, the person “responsible for developing and coordinating the tactical plan in order to achieve the strategic intention of the Gold Commander within any tactical parameters set.” A Detective Inspector (anonymised for the purposes of the Inquiry as ‘Silver’) had this role, combining it with that of Senior Investigating Officer. He was assisted by DS (and now DI) Christopher Heerey.
- 4.1.1.3 Various additional junior officers who, as directed by Silver, assisted with surveillance and undertook other tasks. None such had to be anonymised.
- 4.1.2 SCD11. This unit specialises in covert surveillance of suspects, providing that service as requested for MPS operations (if resources allowed), doing so by way of teams of twelve (or thereabouts) in number. On the 29th April one such team was provided, to be joined later in the day by a second team. On the 30th April only one team was available but its personnel were supplemented by some SCD7 officers, and the Detective Sergeant in charge was able to have the assistance of aerial surveillance. For Operation Tayport seven of the surveillance officers were armed for self protection; for this Inquiry all have been anonymised as successive ‘A’ numbers.
- 4.1.3 CO19. This unit provided the MPS with ‘armed response and resolution capability’. This included advising on and participating in authorised, pre-planned armed operations, one such arising out of Operation Tayport. As to this, initial advice was provided by CI John Terry as a CO19 Tactical Advisor, whilst participation came by way of a team of 14 Specialist Firearm Officers

(SFOs), all as armed and trained. In charge of this team was a Sergeant who acted as Bronze Commander. Per the cited manual, para 6.16, he was “responsible for the implementation of the Silver Commander’s plan within (his) geographical and functional area of responsibility.” To protect their Article 8 rights, all the members of this team were anonymised for the Inquiry by successive ‘E’ numbers. The officer who fired the fatal shots, E7, was screened from public view whilst giving evidence. By way of postscript, this unit had for long been SO19, only changing to CO19 shortly before this incident.

Section 5: Gold, Silver, Bronze

The Gold Commander

- 5.1 The Association of Chief Police Officers Manual ('ACPO Manual') Chapter 3, para 6.2, provided that once the decision has been made to issue firearms, the Gold Commander will be responsible for considering what strategy should be adopted and what tactical parameters need to be set (if any).
- 5.2 The MPS SOPs, para 6.16 regard the Gold Commander as "the officer in overall strategic command (who) has responsibility and accountability for the operation." Further, the MPS SOPs state that for the Gold Commander the overall obligation is to combine resources towards managing and resolving an incident.
- 5.3 The MPS SOPs set out in more detail the role of the Gold Commander. It is in line with the ACPO model. Gold:
 - 5.3.1 Is the officer in overall strategic command and has responsibility and accountability for the operation;
 - 5.3.2 Is required to resource the operation;
 - 5.3.3 Chairs meetings of the strategic co-ordinating group when they are held in the event of a multi-agency/multi-discipline response to an incident;
 - 5.3.4 Is required to set, review, and update the strategy – which may include some tactical parameters;
 - 5.3.5 Should be in a position to maintain an effective strategic command of the operation;
 - 5.3.6 Is required to consult with partners involved (such as Independent Advisory Groups) when determining strategy;
 - 5.3.7 Should maintain a strategic overview and should not become drawn into tactical level decisions;
 - 5.3.8 Should remain available to the Silver Commander if required;
 - 5.3.9 Should ensure that the strategy for the operation/incident is documented in a decision log order to provide a clear audit trail, including any changes to that strategy; and
 - 5.3.10 Is responsible for ensuring the resilience of the command structure and the effectiveness of the Silver Commander.

- 5.4 Supt Peter South, the Gold Commander, told me that his role included: setting, reviewing and updating operational strategy; resourcing the operation; being available as a 'sounding board' for Silver; ensuring the strategy was documented; approving Silver's tactical plan; and not being drawn into tactical level decisions. It was his job to set the strategy, which was continually reviewed, i.e. if there was a problem, the strategy was the plan to deal with that problem. A Gold Commander would understand what the raw tactics were, but he would not be involved in changing those tactics, unless he had made a decision that the tactics were wrong, and that was usually done a lot earlier on in the process. I accept that his evidence reflected what was expected within the MPS.
- 5.5 The MPS SOPs, para 1.2 provided that when tactics are to be employed on an authorised operation, which is to be an armed intervention, the authority must be given by a substantive (or temporary) Superintendent or above. In granting this authority the Superintendent must consider:
- 5.5.1 The necessity of carrying out the operation at or near to the location intended, rather than elsewhere;
 - 5.5.2 Whether armed interception is the most appropriate way of dealing with the specific information available;
 - 5.5.3 Public safety issues, such as numbers of persons likely to be in the vicinity, time of day, and so on; and
 - 5.5.4 Adequate contingency plans regarding officer safety issues.
- A community impact assessment must be carried out detailing contingency planning for the possible adverse impact of the operation on the community.
- 5.6 The MPS SOPs additionally imposed upon the Gold Commander the responsibility for ensuring that a firearms operation concluded with a debriefing in terms that are set out and discussed in a subsequent section of this Report at para 20.16.

The Silver Commander

- 5.7 The ACPO Manual and the MPS SOPs set out job descriptions of the Silver Commander which were identical except that the MPS SOPs add in the bracketed words in para 5.7.4. Silver:
- 5.7.1 Must make a full and detailed assessment of the information available and consult a tactical adviser;
 - 5.7.2 Is responsible for developing and coordinating the tactical plan in order to achieve the strategic intention of the Gold Commander within any tactical parameters set;
 - 5.7.3 Is responsible for ensuring that officers/staff are fully briefed;

- 5.7.4 Should be so located as to be able to maintain effective tactical command of the operation (depending on the nature of the operation this may be at a remote location having due regard for tactical advice and risk assessment);
 - 5.7.5 Should ensure that all decisions are documented in the MPS Armed Operation Record (Form 3605) in order to provide a clear audit trail;
 - 5.7.6 Provides the pivotal link in the command chain between Bronze Commanders and the Gold Commander. This ensures all other Commanders are kept apprised of continuing developments;
 - 5.7.7 Must constantly monitor the need for firearms (that is, the information can change at any time);
 - 5.7.8 Has the responsibility to review, update and communicate changes in the tactical plan to Bronze Commanders and, where appropriate, the Gold Commander; and
 - 5.7.9 Must hold a full and thorough debrief on conclusion of appropriate incidents.
- 5.8 The MPS SOPs added that the Silver Commander needed a suitable support structure to support the tactical command of the operation. In most cases this will be a Command Post, which may be static or mobile as circumstances dictate.
- 5.9 In the event, the Silver Commander ('Silver') also undertook the Senior Investigating Officer ('SIO') role in Operation Tayport. He explained to me his understanding of the SIO role. It was to investigate the intelligence received, progress all lines of enquiries, prevent the planned robbery from taking place and reduce the risk.

The Bronze Commander

- 5.10 The MPS SOPs state that the Bronze Commander organises the available resources to carry out the tactical plan. This matches the ACPO command structure. The MPS SOPs provide that Bronze Commanders:
- 5.10.1 Should have knowledge and clear understanding of the Silver Commander's tactical plan and their role within it, ensuring that staff are appropriately briefed;
 - 5.10.2 Is responsible for the implementation of the Silver Commander's tactical plan within their geographical or functional area of responsibility;
 - 5.10.3 Keeps the Silver Commander updated on current developments including any variation in agreed tactics within their geographical or functional area of responsibility;
 - 5.10.4 Should be so located as to be able to maintain effective tactical command of their area of responsibility;

- 5.10.5 Should be available to those under their command. However, they should allow them sufficient independence to carry out their specific role, in accordance with the strategy and tactical plan; and
- 5.10.6 Should record decisions taken to ensure a clear audit trail exists.

The Tactical Adviser

- 5.11 From an early stage of Operation Tayport, a Senior Tactical Adviser provided Silver with tactical options and advice. Initially it was CI John Terry. E1 'double hatted' from 29th April as Bronze Commander and the 'on the ground' Tactical Adviser. In April 2005 this form of 'double hatting' was not unusual in the MPS; subsequently such roles have been separated.

Section 6: CO19

- 6.1 I was introduced to CO19 by way of a notably comprehensive statement provided to the Inquiry by DSupt Mark Welton. I am grateful to him. From his statement I learn the following. In 2005 MPS officers with firearms capabilities broadly fell into three categories, together constituting CO19:
- 6.1.1 Armed Response Vehicles (ARV) officers. Wearing uniforms, they were deployed in marked police vehicles to carry out patrols with a view to responding to spontaneous situations. Each patrol covered a specific area, with its size reflecting the anticipated potential for trouble.
 - 6.1.2 Tactical Support Teams (TSTs). These consisted of officers with aspirations for greater firearm involvement, recruited from ARV personnel. They operated in plain clothes and covert vehicles, executing authorised operations.
 - 6.1.3 Specialist Firearms Officers (SFOs), operating covertly (until ‘the point of intervention’) by way of teams: Grey, Black, Green and so on. Each team consisted of Constables, headed by a Sergeant who had been trained to undertake the Bronze Commander role. All SFOs were volunteers who had initially been approved for training by way of a rigorous five day assessment procedure. Once approved, they followed a prolonged training programme (currently, 19 weeks). Physical fitness had to be demonstrated; and, every six weeks, there was a five day refresher training course. Yet further, all SFOs receive enhanced ballistic first aid training.
- 6.2 Given the potentially stressful nature of the duties of a SFO, welfare has to be a concern. Thus, following involvement in a shooting incident, a prescribed Post Incident Procedure is undertaken as managed by a trained Post Incident Manager. Again, since 1992, there has been in place a Police Shooting Support Programme (PSSP) conducted by trained firearms instructors. Per DSupt Welton: “PSSP is needed to assist valuable, experienced officers in returning to operational duties. It is also in place to identify officers suffering from the stress of trauma following a shooting to give them the appropriate help and identify the potential for any catastrophic repercussions before they occur.”
- 6.3 In 2005 the MPS command structure overseeing all CO19 activities involved an Assistant Commissioner; his or her Deputy; a Commander Firearms; a Chief Superintendent; 2 Superintendents; 6 Chief Inspectors and 25 to 30 Inspectors.
- 6.4 DSupt Welton provided me with a table for the period 2005-2011. It highlights a surprisingly high number of activities involving the deployment of firearms officers, the shots fired in the course of such and the resultant fatalities. He contends: “CO19 carry out the vast majority of the pre-planned crime firearms operations and it is very rare that shots are fired where people are injured or fatally wounded. There are numerous examples where firearms, drugs and cash have been recovered with arrests of

organised and in some cases extremely violent individuals being made, this without having to resort to fatal force. There are also numerous examples where hostages have been freed as a result of dynamic entries carried out by CO19.” His table is appended herewith.

Year	Number of Pre-planned Armed Operations	Number of Incidents	Total Number of Shots Fired	Number of Resultant Fatalities	Deceased
2005	938	4	13	2	Azelle Rodney; Jean Charles de Menezes
2006	697	3	4	1	Robert Haines
2007	844	2	23	3	Terry Nichols; Mark Nunes; Andrew Markland
2008	943	2	18	2	Mark Saunders; Andrew Hammond
2009	806	4	6	0	
2010	782	1	1	0	
2011	732	1	3	1	Mark Duggan

6.5 A task regularly performed by CO19 is entitled Mobile Armed Support To Surveillance (‘MASTS’) – plainly, CO19’s contribution to Operation Tayport. This Armed Support included the stopping of suspect vehicles which had been the subject of surveillance. Before me, this was routinely referred to as a ‘hard stop’ and I have adopted this description for this Report. Model conduct predicates the command vehicle being positioned away from the surveillance activity so as not to compromise it. The operation proceeds in stages:

State Green: When the evidential threshold for arrest has yet to be reached.

State Amber: Declared by the Silver Commander when the evidential threshold is reached, justifying interception or intervention. This serves to pass control to the Bronze Commander.

State Red: Declared by the Bronze Commander when his team are so positioned as to be able to intercept at the next available safe opportunity. This serves to pass control to the leading vehicle.

Section 7: Operation Tayport – Intelligence

- 7.1 On the 4th and 5th April 2005, sensitive intelligence intimated to HMCE imminent criminal activity on the part of a number of men connected with the man known as the Principal, collectively referred to by HMCE as Organised Crime Group 2 (designated OCG2). Colombian Drug Traffickers (designated OCG1) were to be robbed at gunpoint of their holding of drugs. For this purpose, so the intelligence suggested, OCG2 had access to an automatic weapon.
- 7.2 In the event, OCG2 did not then proceed with this venture, but the supporting intelligence served to contribute to the appreciation of subsequently-received intelligence.
- 7.3 By 28th April HMCE had become Her Majesty's Revenue and Customs ('HMRC'). Intelligence fuelling Operation Tayport came principally from HMRC and from covert surveillance. I consider each contribution in turn, starting with that provided by HMRC. The HMRC intelligence officers directly concerned are known as S1 and S2 for my purposes. There were two MPS officers working in the same building as S1 and S2, and I refer to them as S3 and S4.
- 7.4 On the 28th April 2005 and following upon the intelligence obtained earlier that month, HMRC had information intimating revival of OCG2's criminal enterprise so that it now presented as an imminent threat. Given a potential for the use of firearms, a 'threat to life' situation was in prospect. S4 and S3 successively apprised MPS of this update. Further, because the anticipated operation was likely to be fast moving and reactive to recent intelligence, direct communication was instituted between the Silver Commander and S1, S2, S3 and S4 so as to be maintained from time to time between about 10.30pm on the 28th April and the late afternoon of the 30th April. It was at this stage that the potential response of the MPS was entitled 'Operation Tayport'.
- 7.5 On the 28th and 29th April 2005, HMRC passed intelligence that can be summarised as follows. The Principal and OCG2 were intent upon seizing a quantity of cocaine from certain Colombians with premises in the Edgware area, that is, from OCG1. The robbery was imminent; the robbers would be armed; and the group had access to 'machine guns'. One of the associates of the Principal proved to be Azelle Rodney. HMRC did not then know him by name and as such could not pass it to the MPS. One name that was known to HMRC and thus passed on to the MPS as an apparent associate was Wesley Lovell.
- 7.6 In about April 2004 HMRC had a database record connecting 'Associate 2' with the date of birth, 22nd April (year unknown). On the 13th August 2004 a separate database record was made connecting 'Associate 2' with a person called 'Azell'. As at April 2005, this intelligence failed to surface so as to be communicated to the MPS. Indeed, it only came to light when S1 and S2 researched the records preparatory to making statements for this Inquiry. I was assured that HMRC systems have since been improved, making it less likely that this could happen again.

- 7.7 The MPS itself had intelligence about men who were associated with the Principal. For the purposes of Operation Tayport it sifted that intelligence; and one of the men who it considered to be an associate of the Principal and who might be involved in the drugs robbery was identified as Azelle Rodney. Although the databases available to the MPS also contained the information that Azelle Rodney was wanted for a serious criminal offence (see para 2.2), that was not known to those involved in Operation Tayport. Only one researcher was available to the operation, and she was also answerable to a large number of other detectives. For the purposes of this Inquiry she has been given the cipher S5.
- 7.8 That researcher gave evidence to me that there were three reasons why she did not carry out investigations into Azelle Rodney so as to discover that he was wanted for a serious criminal offence. They were that she was not asked to carry them out; that she did not have time to carry them out; and that she was the only research officer. I received evidence that checks into associates were regarded as being of limited value and the MPS would only conduct them once an associate was positively identified as a subject likely to take part in the offence. I accept that evidence.

Section 8: Operation Tayport – Surveillance

Resources

- 8.1 Directed surveillance for the purposes of Operation Tayport commenced on the 29th April with the deployment of a team from SCD11, and the separate deployment of SCD7 officers. Later that day a second SCD11 team became involved. On the 30th April – the day upon which I focus for the purposes of this Report – Silver was allotted just one SCD11 team, supplemented by the continuing separate deployment of SCD7 officers.
- 8.2 On the 30th, the SCD11 team consisted of 14 officers led by A1, a Detective Sergeant. For their necessarily covert operations they were in plain clothes and utilised unmarked vehicles. From these they could on occasion deploy on foot. As authorised by Gold, seven were armed for self protection. They were in radio communication with each other by way of a dedicated channel to which Silver and the CO19 officers had constant access. A loggist, A5, maintained a running log of sightings as reported over the radio. Two officers, A4 and A12, were respectively equipped with a video camera to record evidentially significant sightings.
- 8.3 An additional aid to surveillance was in place on the 30th. In the course of the late afternoon and early evening, A1 had the services of covert aerial surveillance. By way of a separate radio channel privy to him alone this could provide him with a commentary as to sightings. This surveillance was video recorded for later viewing – the product was not contemporaneously available to him in his vehicle. There is no record of what was communicated to A1 by this means (it was outwith the scope of A5's log). Further, the fact of this aerial surveillance was unknown to, respectively, Silver and E1.
- 8.4 One SCD7 team consisted of DCs Frett, Lloyd and Davis. They were in plain clothes and used an unmarked van. They too had a video camera for evidentially significant sightings. They maintained their own log; they could communicate with Silver by way of the SCD11 channel. If arrests were to be made in the course of the day, this was their task.

Briefings

- 8.5 On the 30th April there was a briefing of the SCD11 team by Silver. This was at 7.00am; the venue was Albany Street Police Station. The briefing was not audio recorded (it was not then the practice to do so) and there is no contemporaneous note of the content. It is likely, however, that there was an exposition of Operation Tayport, its origins and aims, and an identification of Wesley Lovell as one believed to be an associate of the Principal. Each officer was provided with a briefing pack prepared by S5. None such has

survived and the full content is a matter for speculation. That said, it undoubtedly contained copy 'mug shot' photographs, up to 15 in number, depicting the Principal and his associates, one such being Azelle Rodney. The fact that he was then liable to immediate arrest on suspicion of wounding with intent (arising out of the July 2004 incident) was unknown to all concerned with Operation Tayport and accordingly did not feature in any briefing. It was a matter for individual choice as to what to do with a briefing pack; some officers kept it for the duration of the day; some did not.

- 8.6 There were separate briefings for the CO19 team (as described in para 10.7 below); there does not appear to have been any formal briefing specific to Operation Tayport for the SCD7 officers. DC Frett recollected that instructions were received by phone.

Deployment

- 8.7 The SCD7 three-man team conducted surveillance by way of observations from a building in the vicinity of the Guinness Trust Buildings, Fulham Palace Road, SW6 – that is, in the immediate vicinity of a flat believed to be occupied by Lovell. The SCD11 team was mobile and was following the suspects. I interpose: as will have been apparent from the briefing, whilst intelligence suggested that associates of the Principal were about to engage in an armed robbery in Edgware with Colombian drug dealers as victims, then unknown were these associates (save for Wesley Lovell), the weapons, the Colombians and the locus within Edgware.
- 8.8 As the day wore on, SCD11 officers followed their now potential suspects to Harlesden. When the Golf left there on its last journey, they followed in unmarked cars, being eventually overtaken so as to bring CO19 vehicles between them and the Golf. Another vehicle in the effective convoy was an unmarked van containing DCs Frett and Lloyd from the SCD7 team.

Product

- 8.9 In taking the evidence as to this, I had the benefit of reading the logs, of hearing from the SCD11 and the SCD7 officers, and of viewing the video recordings made on the ground and from the air. The early 30th April product, I can summarise.
- 8.10 Intelligence having focused surveillance in the Fulham area, by mid-afternoon, observations (outside a café in Greyhound Road and in the vicinity of Lovell's flat in the Guinness Trust Buildings, Fulham Palace Road) had served to mark the deceased as a suspected associate of the Principal and to furnish a description of his clothing, such including a three-quarter length coat. Two vehicles associated with the suspects had been reported, one such being the Golf, HV52 UWX. On the rear seat were to be seen the fluorescent safety vest and the yellow bag that remained there to be found after the shooting. From the vicinity of the Guinness Trust buildings came reports of the carrying of a blue rucksack containing something heavy – this had come from Lovell's flat and it ended up in the Golf. The Golf, having previously been driven about the

Fulham area by the deceased (at one point picking up the man later identified as Graham), left Fulham to proceed to Harlesden, parking in the High Street at about 5.20pm.

8.11 From this time onwards there was close, continuous surveillance of persons now perceived as suspects. With the Golf parked in Harlesden High Street (see Point A on Fig 1, p. 135), the occupants went to stand outside 'Faisals' (a barber shop), a venue associated by intelligence with the Principal. There Azelle Rodney, Graham and the Principal were simultaneously video recorded from separate vantage points by, respectively, A4 and A12. Extracts from these recordings were shown in the course of evidence. Graham is seen using a mobile phone (query, in the light of subsequent events, in order to obtain another weapon?). The deceased has on the three-quarter length coat – open at the front and at that stage plainly not worn to cover a weapon. Some passers-by are to be seen. I interpose: these recordings were made for future evidential purposes. They were not available to be shown to Silver. For present purposes, they simply serve to show what could have been reported orally by the SCD11 officers over the surveillance channel.

8.12 There was simultaneous aerial surveillance, evidenced by way of a video recording. At this stage, I have to interpose at some length. The MPS consistently and strongly expressed concern as to preserving the secrecy that it attached to the form of aerial surveillance in use on the 30th April and to the technology behind it – Cmdr Osborne gave evidence before me to that effect. That concern precluded any reference to the fact of aerial surveillance in the IPCC Report of December 2005. In June 2012 the MPS made an application to me pursuant to Section 19 Inquiries Act 2005, effectively to exclude evidence as to aerial surveillance and its product, citing Public Interest. Concurrent and subsequent events obviated the need for me to rule upon this original application. The full history of these events is tortuous: I record the ultimate evidential position as follows.

8.12.1 A short extract from the original recording, showing from a distance and at an oblique angle the early stages of the hard stop, was shown in open session.

8.12.2 A short compilation of extracts from the period 5.34pm to 7.08pm was shown in closed session (but with Ms Alexander present). Features of its content were subsequently described in open session.

8.12.3 All the foregoing was subject to directions made by me on the 28th August 2012 to counter the concerns of the MPS; one such direction being: "No questions are to be asked about the technical aspects or the provenance of the video."

I add: these directions were fully observed.

8.13 I cite the 5.34pm-7.08pm extract as evidence of what could have been communicated orally to A1 and then passed on by him to Silver. Crucially, depicted at about 7.00pm is an incident in Wendover Road (which adjoins Harlesden High Street – see Point C on Fig 1, p. 135): the deceased and Graham when on foot meet an oncoming unknown man wearing a white shirt. As he passes them, a Waitrose bag is handed to Graham. He

and the deceased return to the parked Golf. At 7.04pm this bag is put into the rear offside – it is of course a bag containing a weapon as foreshadowed by intelligence; yet as later became apparent, this was the deactivated Colt, not an automatic weapon. Having been joined by Lovell, all three then get into the car. It reverses so as to be able to move out without hitting the adjoining parked car and at 7.08pm it starts upon the journey that ends in Hale Lane.

Section 9: Operation Tayport – Gold and Silver

Gold

- 9.1 As at April 2005 Mr Peter South was an experienced police officer, having joined the MPS in 1977. His rank was that of Temporary Superintendent and he served in SCD7. As a Gold Commander he was relatively inexperienced, having completed the necessary training in November 2004 – that said, by April he was regularly engaged in the role. He had had long experience as a Silver Commander.
- 9.2 He first became involved in Operation Tayport on the 5th April. As the then on-call Superintendent, he had responded to the intelligence by authorising Directed Surveillance of the Principal and of any identified associates at various addresses.
- 9.3 His renewed involvement came during the evening of the 28th April when, as the on-call SCD7 Superintendent, he was informed by telephone of HMRC's fears of a renewed OCG2 threat, as previously identified on the 4th and 5th April. This served to appoint or confirm him as Gold Commander of Operation Tayport. He spoke by phone to Silver, who was to be the Silver Commander, briefing him and authorising the issue of firearms as from the following morning. At 10.50pm he made a record of his decisions and strategy:

“Urgent authority is sought by DI Silver following a briefing from....intelligence source regarding the intention of a group of males controlled by an individual named Principal, who intend to rob at gunpoint unknown Colombian drug dealers of a quantity of Class A drugs. The group will be in possession of firearms. There is recent intelligence which supports their possession and intentions. The issue of firearms is the most appropriate means of dealing. My authority extends to SCD11 officers being armed for their own protection. CO19 officers are authorised to carry firearms in order for them to protect themselves and others, and extends to the carriage of firearms in order to intercept/arrest/enter premises. Special munitions are authorised in order to prevent the escape of suspects or enter premises. All armed officers are to be reminded of their obligations under Section 3 of the Criminal Law Act 1967 and the guidelines on the deployment, carriage and use of firearms. The strategy for this deployment is that the preservation of life is paramount. The strategy is based on current intelligence and advice and is; to react to the available....intelligence in order to be best placed to intervene/disrupt the intended robbery. This will encompass: identify persons intent on the robbery, the victims of the robbery, the venue of the robbery. Once these aspects have been identified, options are to intercept a vehicle or group of individuals intent on the robbery by CO19 intervention. If venue is identified, assess entry methods and disruption tactics (search and arrest) to prevent the robbery being viable. If neither can be, identify the intention of the intended robbers prior to the offence. Constant liaison will be achieved between Gold/Silver and the Tac advisor.”

- 9.4 His perception of his role as Gold Commander was “...that I was the officer in overall command of the operation, with responsibility and accountability for it. The role included: setting, reviewing and updating the operational strategy; resourcing the operation; being available as a ‘sounding board’ for Silver; ensuring that strategy for the incident [was] documented in order to provide a clear audit trail of decisions and any changes to strategy; approving Silver’s tactical plan and ensuring that it [met] the strategic intention for the incident; maintaining objectivity and not becoming drawn into tactical level decisions; [and] ensuring resilience of the command structure and the effectiveness of Silver.”
- 9.5 His activities on the 29th April need only be shortly summarised. He opened a Decision Log; he authorised directed surveillance on various addresses including that believed to be occupied by Lovell at Guinness Trust Buildings, Fulham Palace Road, SW6; and from time to time he conferred by phone with Silver. At 9.00pm he gave repeat authorisation for the following day.
- 9.6 On the 30th April at 7.00am, he spoke by phone with Silver. It was agreed that the strategy remained constant and that there was as yet insufficient evidence to justify the arrest of Lovell as the only associate of the Principal then identified; surveillance should however be focused on him. A Decision Log was opened with the last entry made at 6.20pm in these terms: “Update from DI Silver re current intelligence and surveillance. Intel suggests suspects are gathering with intent to rob Colombian drug dealers. The use of machine guns is likely. Believed to be seeking access to firearms. CO19 consulted and tactics agreed with Silver. Venue still unknown – victims still not id’d. Tactics agreed with Silver: monitor intelligence to the point where it is confirmed that firearms are present [and] intent continues to rob the victim; then with CO19 Tac advice deploy disruption tactics or intervention of armed suspect(s). No evidence available to arrest safely – alternative options to be considered on intel/surveillance dictates.”
- 9.7 In the immediate aftermath of the eventual shooting, Silver spoke to him by phone. He went to the scene arriving at about 10.00pm. He had no further role that night.

Silver

- 9.8 As at April 2005, Silver had been in the MPS for 30 years – and for 26 of those years, a detective officer. He was then a Detective Inspector, having been promoted to that rank in April 2004. He was serving with SCD7, leading a Project Team that investigated serious crime groups with a view to disrupting crime before it took place. In August 2004 he had received training so as to qualify him to command MPS armed operations, that is, to be a Firearms Silver Commander.
- 9.9 His involvement in Operation Tayport came by way of a telephone call in the late afternoon of the 28th April. Supt South, as his prospective Gold Commander, apprised him of the HMRC intelligence warning of an imminent armed robbery. He, Silver, was to be the Senior Investigating Officer and the Silver Commander. He set about making arrangements for the following day, establishing direct communication with S1 and S3

at HMRC; and securing the services of an SCD11 surveillance team together with a CO19 firearms team.

- 9.10 As to having the dual roles, Senior Investigating Officer and Firearms Silver Commander, he subsequently offered an explanation:

“As the Senior Investigating Officer, I had responsibility to investigate the intelligence received, progress all lines of enquiries, prevent the planned robbery from taking place and reduce the risk to police, public, victims and suspects. I was also charged with acting as Silver Firearms Commander in the operation which gave me operational responsibility to manage all the armed MPS resources. The authority to deploy armed units had been given by the Gold Commander and overall strategy had been agreed by him. As the Firearms Silver Commander, I had responsibility for implementing the tactical plan and achieving Gold’s strategy using the MPS resources at my disposal.”

- 9.11 Silver’s eventual conduct as SIO and Silver Commander appears in the ensuing sections, particularly Section 12.

Section 10: Operation Tayport – CO19

10.1 CO19’s involvement commenced on the 29th April. Its Grey Team, headed by E1, a Sergeant, was on call until 10.00pm. At 7.00am on the 30th the team reassembled, with six of its members replaced for operational reasons. There was a briefing by E1 with directions as to deployment, following which weapons and ammunition were drawn from the armoury.

10.2 As to the weapons, a wide range was initially drawn from the armoury, hopefully as might be needed for whatever eventually materialised as the team’s task. For present purposes, I focus on those available for what proved to be the task, a hard stop. Thus:

10.2.1 A Glock self loading pistol: every officer had one, inter alia, for self protection;

10.2.2 A Heckler and Koch G36C Carbine, a short-barrelled semi-automatic carbine, chambered for the powerful 5.56 rifle round. These were allocated to the respective front seat passengers, E3, E7, E9 and E13, any one of whom might be required to provide static cover; and

10.2.3 A Hatton Gun, a short stocked shotgun used to blow out tyres (or to break locks). These were allocated to the respective rear seat passengers, E4, E8, E11 and E12.

10.3 I turn to the deployment:

Alpha – an Audi	Driver E5
	Front E3
	Rear E4
Bravo – a Vauxhall Omega	Driver E6
	Front E7
	Rear E8
Charlie – a Lexus	Driver E10
	Front E9
	Rear E11
Delta – a Toyota	Driver E14
	Front E13
	Rear E12

Control – People Carrier

Driver E2

Passengers

E1

Silver

DS Heerey

- 10.4 Each car had a radio giving access to the surveillance channel and to a CO19 ‘chit chat’ channel. All officers were required to have available a Police baseball cap, to be worn upon deploying from the vehicles for a hard stop.
- 10.5 Finally, each car had a siren and a portable blue light that could be put manually in position on the dashboard or the car roof.
- 10.6 This deployment, in conjunction with the briefing, raised concerns for E7 as the prospective front seat occupant of Bravo. If it came to a three car hard stop of a suspect’s car, this would involve the Alpha car cutting in front of the target vehicle so as to stop it, the Charlie car driving to its rear so as to prevent escape by reversing, and the Bravo car coming alongside so as to complete a ‘boxing’ manoeuvre. Upon their respective vehicles coming to a halt, the officers would deploy on foot so as to approach, dominate and arrest the suspects – whilst between vehicles, these officers would be vulnerable. Conscious of all this, the experienced E7 anticipated a potential requirement for ‘static cover’ from his Bravo seat, that is, covering the suspects with his G36 carbine so as to obtain interim domination whilst his fellow officers were between vehicles. This requirement would bring him alongside and a few feet away from persons said, by way of intelligence, to possess an automatic weapon. There was a concern for his own safety and he reacted with an unsuccessful attempt to place a ballistic shield between his seat and the front nearside door, and by subsequently resolving to wear a ballistic helmet. This concern was shared with E8 and, possibly, E6.
- 10.7 8.00-8.10am. Albany Street Police Station. The team was briefed by Silver. Having given an update based on intelligence, he said per E1 “that interception of the armed suspects remained the most preferable tactical option, but only where that did not place the public or officers in unacceptable danger.” Silver further reiterated the standard firearms warning: “...if firearms were discharged it was the responsibility of the individual officer to justify why that level of force was necessary and proportionate.”
- 9.45am. Fulham Police Station. The team was based here awaiting developments. Silver and DS Heerey were with them for most of the day, and in the event they had access to SCD11’s radio channel. As to further developments, see Section 12.

Section 11: Operation Tayport – Threat and Risk Assessments

- 11.1 Issues 5 and 6 (see para 1.11) raise with respect to Operation Tayport’s strategy and tactics whether such were “apt to minimise to the greatest extent possible the risk to life.” These issues are followed by Issue 7, “Was the plan (that is the strategy and tactics as set by 8.00am on the 30th April 2005) implemented so as to minimise to the greatest extent possible the risk to life?.” All such requires me to investigate the making of threat and risk assessments for Operation Tayport and the extent to which any such impacted upon strategy, tactics and implementation. In this section I find the material facts; in Section 24 starting at para 24.35 comes necessarily extensive comment. Firstly, I deal with the history.
- 11.2 On the 28th April Silver’s Tactical Adviser, CI Terry, identified the primary option as to “Control the subjects using an SCD11 surveillance team (armed for self-protection) with a ‘bolt on’ covert CO19 Specialist Firearms Team. Arrest by way of armed interception when there is sufficiency of evidence prior to committing the robbery having regard to the safety of all concerned.”
- 11.3 Late on 29th April 2005, Mr South, having been appointed as Gold Commander, signed a Firearms Authority for 30th April. In it he said: “I have discussed the strategy with DI Silver which is: the preservation of life is paramount. The intelligence is to be dynamically assessed, surveillance will be deployed to confirm that intelligence with an objective to identify the potential suspects. They will be surveilled in order to identify the moment when they are armed/intend to commit the robbery then an armed interception will be generated. The strategy is to prevent the u/k victims being robbed at gunpoint by the suspects as I fear that there may be serious injury caused during and as part of the robbery. Armed deployment is the most appropriate means of dealing with this offence. There are many u/k elements, victims/suspects/location, therefore constant review will be made by Silver and Tac advisor and the appropriate location of the disruption to be identified balancing the needs of the public, victim, police and suspects.”
- 11.4 Silver kept a log. At 12.25pm on 29th April 2005 he recorded: “Intelligence has indicated that males will commit the robbery... with a machine gun. These persons as yet unknown will travel from the Fulham area. In order to ensure the safety of the public and officers and minimise the threat/risk to life, the vehicle used by these subjects will become the focus of the operation. The intention is to stop on route, seize the firearms and thereby disrupt the planned robbery. ECHR considerations paramount.” At 15.00 hours that day he recorded that “the priority is to intercept the vehicle containing the... machine guns in order to disrupt their intentions and reduce the risk to police and public.”

- 11.5 Tactical briefings given to the SFOs by E1 on 29th and 30th April 2005 were not recorded. It is clear that they warned of the need to react flexibly to events during the operation. However, from the totality of the evidence on the point, I think it reasonable to infer that at least by the morning of 30th April, E1 recognised the possibility of a mobile vehicle interception by three cars, in which interception the front seat passenger of the car alongside the suspect would provide static cover, hence E7's concerns.
- 11.6 A formal risk assessment was prepared by DC Osborne, but was rejected by Silver. Subsequently, DS Heerey prepared two risk assessments for the operation. That officer acted as the Deputy SIO in Operation Tayport.
- 11.7 DC Osborne's assessment was on a standard form devised for surveillance operations. In the box for 'physical risks' he adverted to risks to personnel deployed on surveillance duties, but acknowledged a threat to the public from violence erupting between various criminal elements. However, he hoped that the situation would be "managed appropriately should it arise." He evaluated the chance of physical risks occurring as "moderate." He mentioned two precautions. They were that officers would be in possession of protective equipment and would be briefed about it; and that "the risk is further lowered because all officers deployed will be fully trained and briefed as to their specific tasks/roles on any deployment."
- 11.8 DS Heerey's replacement for that rejected assessment was on the same standard form. It too focused on the surveillance component of the operation. He also regarded physical risks as moderate, though he made no reference to risks to, as opposed to risks from, the suspects. In relation to them he noted that "intelligence indicates that they are prepared to use extreme violence and carry firearms." DS Heerey considered that if injuries did occur they had the potential to be serious but that "the use of trained staff with the relevant resources will greatly reduce these risks."
- 11.9 DS Heerey created a further assessment from a template relating to firearms operations. That recognised a number of risks to police and public arising out of the operation, though none specific to the suspects. The precautions which he set out in relation to minimising those risks were generalised, such as "armed officers given verbatim guidelines re use of reasonable force" and "proper deployment considered in order to prevent risk of injury through crossfire."
- 11.10 No other risk assessments specific to Operation Tayport were made. However, in September 1999 a generic risk assessment for Armed Intervention had been prepared. From time to time this was reviewed and reissued. I was shown that which had been issued on the 14th January 2005 and was current in April 2005. Its content (whether known to the E Officers, or not) commands attention. By way of successive boxes, hazards arising from armed intervention are clearly marked. With respect to each such hazard, severity, likelihood and overall risk are respectively numerically evaluated. Potential control measures are then set out and there follows a numerical evaluation of a revised risk reflecting implementation of these measures.

- 11.11 The control measures so described, many in the event pertinent to Operation Tayport, include (my numbering):
1. "All officers involved to be briefed prior to commencement of operation.
 2. Silver Command must be qualified and competent to command operation.
 3. Silver Command must be involved in all stages of the planning and preparation.
 4. CO19 qualified Firearms Tactical Advisers to be appointed and to be involved in planning and preparation.
 5. Officers employed on operation must be competent and qualified to perform their role and responsibilities.
 6. Location of any armed stop to be subject to a Dynamic Risk Assessment at the time.
 7. Vehicle/subject stopping tactics to be subject of prior training. Deploying officers take into account areas of responsibility and arcs of fire i.e. 'blue on blue' or injuring members of the public.
 8. Ramming of a subject vehicle is not a tactical option.
 9. All officers to be clearly identifiable as armed police.
 10. Supervisors to monitor hours worked and provide rest periods as appropriate.
 11. Risk assessment to be carried out at the planning stage of routes... to likely interception point. If due to the spontaneity of the operation a dynamic risk assessment to be carried out, this assessment should take into account the general condition and layout of the land.
 12. All officers to be debriefed after operation."
- 11.12 This history is completed by citing that which took place in the Cumberland House car park from 6.00pm onwards on the 30th April: an informal, E1 led 'dynamic' assessment of the threat posed by the assumed presence of an automatic weapon in the Golf, and of the risk to his officers in the likely event of a three car hard stop, see para 12.3. Further, there was discussion at about this time between E1 and Silver touching upon the risks perceived to be inherent in making arrests in Harlesden (again see para 12.3) and the risks perceived to arise if the arrests were left to arrival in Edgware (para 12.4).
- 11.13 I summarise. The only formal risk assessments prepared for Operation Tayport were those identified in paras 11.6 to 11.9. Two such were directed at the surveillance operation; the other was directed in general non-specific terms at firearms operations. There were no formal threat and risk assessments specifically directed at the arrests of the suspects, whether in Harlesden or in the context of a hard stop, that embraced police, public, suspects and victims. It necessarily follows that there was no input from

any formal assessments into strategy, tactics or implementation, nor indeed was there from E1's dynamic assessment.

- 11.14 Having heard from Gold, Silver and E1, I am satisfied that a partial explanation for the foregoing was the perceived status and role of CO19. Once it was engaged to participate in Operation Tayport, Gold and Silver (SCD7 officers) regarded CO19's role as separate, specialist and subject to its own perceptions of threat and risk. In particular, with E1's explicit or tacit assurance, Silver left the hard stop as the implementation of his tactics entirely to CO19 without any assessment of threat or risk, and in entire reliance on the skill, training and courage of its officers. Turning to CO19, no use was made of the potentially valuable generic risk assessment – the only assessment came with the 6.00pm briefing with its sole focus being on the conduct of the hard stop so as to counter the possibility of automatic weapon fire at the officers. That focus was not shared with Silver, E1 tacitly agreeing that all this solely impacted on implementation by his officers.

Section 12: Operation Tayport – Implementation

- 12.1 I can fairly consider implementation of Gold’s strategy and Silver’s planning as from about 5.20pm on the 30th April. The Golf is now parked on Harlesden High Street. It is believed – correctly as it turns out – that a firearm has been put in it as observed in Fulham. Azelle Rodney and Frank Graham, having come to it, are now standing nearby with the Principal and are the subject of video recording.
- 12.2 By way of response, the CO19 vehicles and the Control Vehicle are moved from Fulham Police Station to the car park at Cumberland House, that is, to a point about half a mile away – see Point B on Fig 1, p. 135.
- 12.3 6.00pm. Silver by way of his statement:

“After a review with E1, I considered but discounted intervention in Harlesden. The reasons for this were that the suspects were on foot in a busy public place. The number of surveillance officers and firearms officers at my disposal did not allow me to exercise sufficient control over the number of targets to make any form of intervention safely... E1 and I concluded that to attempt to detain the men was too dangerous and the risk to the public in the immediate area was very high. My proposal was that... once the vehicle moved off, the surveillance team were to control its movements until the CO19 firearms team could stop it in safe controlled circumstances and then detain the occupants.”

6.00-6.30pm. E1 successively briefed the crews of the four CO19 cars, seeking to keep a low profile. As to this:

“I told all the teams that it was believed that the subjects had possession of automatic weapons and were seeking access to another firearm. Moreover, we thought that the suspects actually intended to use these weapons in the course of the robbery. Accordingly, because of the possible presence of machine guns and/or firearms and the commitment of the suspects to use them, I considered we were now dealing with a threat that was greater than what we would normally deal with, and I instructed the team that any interception of this vehicle would have to be dealt with robustly. I wanted to ensure that the team fully appreciated the risks that we now faced in dealing with any interception of these suspects.

We discussed static interception, both at Harlesden and at the robbery location. It was agreed that a static intervention in Harlesden with a lot of pedestrian traffic in the area was not a viable option, nor was a static interception viable when the subjects got out of the car in order to carry out the robbery, because the suspects would be carrying weapons, and in a heightened state of readiness to carry out the robbery. This would be a very dangerous tactic to employ, for officers, members of the public, the suspects and the victims.”

In the result, a three car hard stop, as already described, was deemed to be the best tactical option, with E7 providing static cover.

“Consideration was also given to the possible number of suspects in one vehicle and the possibility of two vehicles being involved. In the event of the latter scenario, Alpha and Bravo would ideally take the lead car and Charlie and Delta the other vehicle.”

- 12.4 c 7.00pm. Silver: “E1 and I discussed mobile intervention of the Golf and we agreed that this should take place before it reached its destination. There was a heightened risk in allowing the suspects to reach that area – to the public, the CO19 team and to the Colombians. In relation to CO19, a static interception when the suspects alighted from the Golf in what might be a busy area presented an unacceptable risk, given that it was likely that the suspects would actually be carrying weapons and about to carry out a robbery; and that they would be in a heightened sense of readiness when the interception would occur.”
- 12.5 7.00-7.04pm. All as anticipated by Intelligence and as observed by Surveillance, the Waitrose bag containing a further firearm is received by way of a handover in Wendover Road (see Point C on Fig 1, p. 135) and put in the Golf. At 7.08pm the Golf with the suspects and their firearms sets off from Harlesden High Street with consequences discussed in succeeding sections.
- 12.6 As foreshadowed, Silver’s ultimate plan by way of implementation was to allow the Golf to leave Harlesden, followed by the SCD11 and SCD7 vehicles; to infiltrate the resultant convoy with the CO19 vehicles and his own control vehicle; to declare ‘State Amber’ so as to call for the CO19 vehicles to get into position behind the Golf; and for E1 to declare ‘State Red’ when successful CO19 manoeuvring was achieved, thereby passing control to the Alpha car, leaving it up to its crew to initiate a hard stop.

Section 13: The Golf

- 13.1 At 7.08pm this vehicle, HV52 UWX, left Harlesden driven by Lovell with Graham as front seat passenger and Azelle Rodney in the rear. Having regard to the route subsequently taken, I infer that they were going to some address in Edgware. As to why, there is a dispute between Lovell's current contention and the sustained intelligence to the effect that a robbery of OCG1 was in contemplation. I need only note that in any event the contents of the Golf made for serious and potentially dangerous illegality.
- 13.2 What then of the contents of the Golf? The initial focus is upon firearms, utilising the uncontested evidence of the meticulous expert, Mr Anthony Miller. Three such were subsequently found:
- 13.2.1 An American Colt '1911' 0.45 inch ACP Calibre self-loading pistol. This had been deactivated and bore marks indicating that it had been approved as such in 2002 by the Birmingham Proof House. However, examination disclosed subsequent steps taken with a view to reactivation, albeit that they had stopped short of making it possible to fire the gun. Further, when examined at the scene by Mr Miller, it was not ready to fire a shot: it was not cocked, it was fitted with an unloaded magazine and there was no round in the chamber. Associated with this firearm was a Waitrose bag found in the footwell behind the driver's seat. It was in this bag that (as I infer) this gun was received and put in the car (see para 8.13) and found within it were three live 0.45 inch cartridges that would have been suitable for this gun had it been fully reactivated. This gun was photographed as seen by Mr Miller, lying on the rear seat adjacent to the Waitrose bag and protruding from under the yellow bag, originally noted in Fulham by the SCD7 team. There is an issue raised on behalf of the family as to whether this gun had been so positioned by Azelle Rodney, or whether in the immediate aftermath of the shooting an unknown police officer had extracted it from the Waitrose bag and placed it on the back seat so as to aid justification for the shooting. I rule on this issue in para 20.15.
- 13.2.2 A Russian Baikal 'IZH – 79' self-loading pistol. Originally manufactured for the discharge of blank and tear gas cartridges, this had been modified successfully so as to fire 9 millimetre cartridges. It was found wrapped in a scarf in the blue rucksack that had been noted in the course of surveillance by the SCD7 team (para 8.10), and which had been placed in the footwell behind the front passenger seat. As to its state upon being removed from the scarf, it was not cocked, the safety catch was on and, whereas it was fitted with a magazine containing four live 9 millimetre cartridges, there was no cartridge in the chamber.
- 13.2.3 A small double barrelled 'fob' gun. Originally manufactured for the discharge of blank and tear gas cartridges, this had been modified so as to successfully

fire 0.25 inch cartridges. It was found wrapped in a sock in the same blue rucksack. It was cocked, its safety catch was off and each barrel was loaded with a live cartridge.

- 13.3 Other significant items then in the rear of the Golf were a pair of handcuffs (in the blue rucksack); a mobile phone (rear seat); a fluorescent safety vest; and the yellow plastic bag (both rear seat, both as noted in Fulham).
- 13.4 Post incident findings indicated that for the journey all the occupants were wearing seat belts and the radio was playing.
- 13.5 I interpose: I have not appended either of the photographs (taken respectively by E12 and Mr Flain) that show the Colt as initially seen by Mr Miller. Each depicts the barrel protruding from under the yellow bag. Before being extricated the deceased was lying on this bag rendering it heavily bloodstained, visibly so. Publication of either photograph would cause needless distress.

Section 14: Harlesden to Hale Lane

- 14.1 I turn to the journey from Harlesden to Hale Lane.
- 14.2 I reiterate that at 7.08pm the Golf, with Graham in the front passenger seat and Azelle Rodney in the rear, was driven by Lovell out of its parking space in the High Street (Point A on Fig 1, p. 135). Intelligence predicted a journey to an unknown address in Edgware; the route was speculative. With respect to the conduct of Operation Tayport, the state was then 'Green'.
- 14.3 In the event, the Golf proceeded along the A404 for a short distance before turning right into Scrubs Lane. It was being followed by SCD11 in their unmarked cars and it was the subject of aerial surveillance.
- 14.4 At about 7.11pm the Golf passed Cumberland House (Point B on Fig 1, p. 135). In the car park were the CO19 cars and the control vehicle (people carrier), all unmarked. These vehicles then left so as to infiltrate into the convoy behind the Golf.
- 14.5 The subsequent route was circuitous (see Fig 2, p. 136). It included the A406 North Circular. It was when the convoy was on this road that at 7.28pm Silver radioed 'State Amber', tactically committing to a hard stop, and passing control from himself to E1 as Bronze Commander.
- 14.6 It is common ground that the nature of the roads subsequently followed by the Golf offered no realistic opportunity for a hard stop until it turned into Hale Lane, at which point E1 committed his team, as and when feasible, by radioing 'State Red' – thereby passing control to the Alpha car, by then in position immediately behind the Golf. I should add that it is also common ground that between Harlesden and the A406, the only stretch of road potentially lending itself to a hard stop in terms of configuration and road safety was Scrubs Lane in the vicinity of Cumberland House, a locus with none of the disadvantages encountered in Hale Lane.
- 14.7 With 'State Red' declared, as the Golf proceeded along Hale Lane it was followed by the four CO19 vehicles, successively Alpha, Bravo, Charlie and Delta, in turn followed by the control vehicle, all now ahead of the SCD11 vehicles, thanks to successful infiltration.
- 14.8 From a point about halfway along Hale Lane, E12, the rear seat passenger in Delta, started to operate a camera in video mode so as to record that which could be seen through the windscreen together with ambient sounds. The recording continued until E12 himself deployed as an effective reserve Hatton gunner, and included the initial stages of the hard stop as viewed from the rear, together with what could be heard in Delta from its radio and occupants. It has proved to be invaluable for this Inquiry. The camera was E12's personal possession; this form of use was novel and entirely on his own initiative, hoping to produce an aid to training.

Section 15: Hale Lane

- 15.1 Hale Lane (the A5100) is a fairly wide, single carriageway, residential road. It runs in a north westerly direction from Mill Hill Broadway to the mini roundabout at the junction with two relatively busy roads, Deans Lane and Selvage Lane. When proceeding towards this roundabout there is on the left at a point shortly before it, a public house, the Railway Tavern. A post-incident photograph (Fig 4, p. 138) serves to show the approach to these premises and the roundabout. A still from E12's video (Fig 5, p. 139) shows graphically their proximity to the hard stop.
- 15.2 This still clearly depicts the traffic then using the roundabout; and both still and photograph show the Harvester, another public house, this time situated on the immediate further side of the roundabout.
- 15.3 The entire locus is depicted in Fig 3, p. 137. Immediately beyond is Edgware.
- 15.4 At 7.43pm on the 30th April 2005, both public houses were open and busy. The weather was notably mild and it was the Saturday night of a Bank Holiday weekend. At the Railway Tavern some customers were sitting and standing outside so as to be depicted on a further still from E12's video (Fig 6, p. 139). Pedestrians were using the pavement. As to the Harvester, family groups, including children, were sitting outside so as to face across the roundabout towards the Railway Tavern.
- 15.5 It was with the Golf slowing down for the roundabout that E3 radioed from Alpha "Attack, Attack" and the hard stop began.

Section 16: The Hard Stop

Locus

- 16.1 'State Red' passed initiative and control to the Alpha car, by now immediately behind the Golf – effectively to E3. The decision was to conduct the hard stop at the approach to the mini roundabout and, as it transpired, alongside the Railway Tavern. That decision was signalled over the radio: "Attack, Attack."
- 16.2 Why this locus? The essential answer is that, as I find, since the CO19 pursuit had started, this was the first place at which the Golf could be expected to slow down with the configuration of the road sufficiently wide and clear to allow for the hard stop manoeuvre. In the Alpha car, concentration was wholly directed at 'target' Golf and the practicality of the manoeuvre. No one in the Alpha Car had good prior knowledge of the area and its adverse features – no one appreciated the proximity of the Railway Tavern and its customers. With the focus upon the upcoming hazards, vision was 'tunnel'.
- 16.3 Although no one made much of the point in evidence, I am conscious that when E3 initiated the hard stop, he had been on duty for over 12 hours. I advert to this feature in my commentary at para 24.25. Perhaps more pertinent to choice of locus, conscious or subconscious, was the fact that unless stopped, the Golf would immediately enter Edgware. From here on, the suspects could be readying themselves for confrontation and hence use of their weapons.
- 16.4 I draw attention to the stills from E12's video, Figs 5 and 6, p. 139. Both show the hard stop in its early stages before E12 himself deployed. Readily visible are Railway Tavern customers, sitting and standing in the immediate vicinity. Both stills feature Charlie; Fig 5, p. 139, further features Bravo. The brake lights of both vehicles are still illuminated.

Vehicle Movement

- 16.5 With E12's video and the incident data recorders as installed in the CO19 cars jointly to hand, Mr Hague's expertise has produced a precise, uncontroversial time line with the following successive stages:
1. The Golf slows to the roundabout;
 2. Alpha overtakes the Golf at 44 mph, swerves in front of it and brakes. Bravo starts to overtake so as to stop alongside the halted Golf but is confronted by a Mercedes car leaving the roundabout and has to swerve sharply to its nearside;
 3. 47.2 seconds: Alpha halts in front of the Golf; Bravo comes to a halt having swerved so as to impact the Golf's rear offside door;

4. 48.3: Bravo starts to move forward so as appropriately to align with the Golf and thereby to enable E7 to provide static cover;
5. 49.5: Charlie collides with the rear of the Golf, shunting it forward;
6. 50.2: The shunted Golf hits Alpha;
7. 51.5: Bravo halts having again impacted the Golf, this time to the front offside; and
8. 51.56: E7 opens fire. For subsequent timings, see para 19.19. Bravo's brake lights are still on.

As to the resultant significance of the foregoing in terms of the respective positions of the Golf and Bravo, I cite the following:

16.5.1 Photographs taken in the course of an attempted reconstruction:

- (a) Fig 8, p. 141 (P512) – Showing the respective positions as at Stage 3;
- (b) Fig 9, p. 142 (P513) – The available view into the Golf from the front passenger seat, again at Stage 3;
- (c) Fig 10, p. 143 (P542) and Fig 11, p. 144 (P521A) – Views from that seat consistent with those available immediately preceding Stage 7; and
- (d) Fig 12, p. 145 (P409) – The view into the Golf as at Stage 7.

16.5.2 Fig 7, p. 140 – A computer produced representation of the respective positions of all vehicles as at Stage 7.

Personnel Deployment

16.6 Alpha Car

E3: "I was in the front passenger seat. As soon as we stopped I put on my "Hi-Vis" cap and got out of the car with my G36. The Golf was about a car's length behind us and was moving slowly forward and slightly towards the offside of our vehicle. I was very concerned that the Golf was trying to get away and I did not want a moving gunfight with people with automatic weapons. I therefore aimed my G36 at the driver and moved my selector to 'fire'. At this point, I was the only officer who had deployed. I was aware of somebody in the rear of the Golf, but I could not see what this person was doing. I may have shouted "Armed Police", but do not remember doing so.

At this moment, the Golf connected with the rear of Alpha and came to a halt. The front passenger had his hands in plain view and looked scared. I instinctively did not think that he was a threat. However, the passenger in the rear nearside seat was looking to his right and then he seemed to lean down to his right out of my view. I

decided that this man (the rear seat passenger) was the most dangerous of the three as he was no longer in sight and I had no idea whether or not he was preparing an automatic weapon. I therefore moved towards the rear nearside door of the Golf shouting, "Show me your hands, show me your hands." This was for two reasons: to maintain control of the front seat passenger; and also to get a response from the rear seat passenger. However, as I approached, I could not see the man in the rear of the car and there was no indication that he would comply with my orders. Whilst I was aware of other officers deploying on the far side of the vehicle, my concentration was focused on the occupants of the Golf. I could hear shouting but don't know what was being said.

As I drew level with the rear door of the Golf, the glass exploded outwards hitting me in the face and chest. I flinched backwards thinking I was coming under fire, and moved slightly towards the boot. I swung back up and took aim preparing to engage the threat. I was extremely scared. I could hear the sound of shots but I believe that it was the sound from the discharge of a Hatton gun. I could hear shouting but have no idea where it was coming from or what was said."

He was subsequently engaged in the efforts to resuscitate Azelle Rodney. I interpose: E3 is here recounting eye witness recollection of sudden, violent events and no surprise (nor any criticism) arises from the following comment as based on other evidence. Thus there is no apparent recollection of the shunting of the Golf that must have occurred between "moving slowly forward" and "connected with rear of Alpha." Further, the apparent gap between "seemed to lean down to his right out of my view" (so, as I add, not to be seen again) and himself being hit by glass may be elided in that all such reflected the shooting. That said, E3 was an impressive, plainly honest witness; his role was central to the hard stop, and his account merited full citation.

E4: As and when the Golf halted upon hitting Alpha, he fired a Hatton round into the front nearside tyre. He heard the firing, thought that it emanated from the suspects and "fearing that the driver would use the vehicle as a weapon, I jumped over the front of the Golf and discharged a Hatton round into the front offside tyre, deflating it."

E5: After halting Alpha, he assisted in the arrest of Lovell.

Bravo Car

E6: After halting Bravo, he assisted in the arrest of Lovell.

E7: See Section 19. Following the shooting, he deployed on foot and smashed the tailgate window. He then reversed Bravo to enable Lovell to be brought from the driver's seat.

E8: When the firing started, he too thought that a suspect was responsible. Realising that he had not been shot, he deflated the rear offside tyre with a Hatton round.

Charlie Car

E9: After deploying, he was engaged in effecting the arrest of Graham. He supported E10 as to apparent reversing of the Golf.

E10: As driver, he rammed the Golf because, as he says, he believed that it was reversing.

E11: When deploying, he heard the firing and, seeing E3 flinch and E8 look down at his chest, he thought that it emanated from inside the Golf. He aided E3. He too supported E10 as to the Golf reversing.

Delta Car

E12: Did not use his Hatton gun. Assisted arrest of Lovell.

E13: Supported E3. Thought under fire.

E14: Thought under fire. Supported the arrest of Graham.

Control Vehicle

This was stopped to the rear of Charlie. E1 left it to go towards the Golf up the nearside pavement: this served to make the safety of the Railway Tavern customers his immediate concern (see para 18.6). Again, Silver's first focus after leaving the control vehicle was to placate the customers, this time those inside. It was to this vehicle that E7 was brought (see para 20.5.2).

SCD7

In the convoy following the Golf was an unmarked SCD7 van that had featured in the Fulham surveillance. DC Lloyd was driving; DC Frett was a passenger. Upon completion of the hard stop, the van was driven out of the SCD11 convoy and up to the locus. DC Frett went to the Golf. He found that by then Azelle Rodney was leaning out of the nearside (both rear doors were open), restrained by his seat belt. This he undid, allowing for removal to the roadway and the attempted resuscitation. As he did so, he saw (so he claims) the Colt gun in the position as seen in the photographs subsequently taken. Later, having acquired the key that had been removed from Azelle Rodney's pocket, he was one of the officers who entered and searched Lovell's Guinness Trust flat, finding there substantial evidence of drug dealing.

Suspects

- 16.7 This evidence was supplemented by that of Lovell and Graham. They responsibly came to give evidence before me. As to its impact, I am cautious: I did not receive "the whole truth and nothing but the truth." However, I did receive descriptions of a hard stop from the suspects' viewpoint which was truthful and helpful. As to this, what emerged by way of respective recollections was:

- 16.7.1 Just how sudden and unexpected was the hard stop;
- 16.7.2 The uncertainty as to who was confronting them;
- 16.7.3 The Golf being shunted forward (presumably by Charlie) so as to jerk the occupants; and
- 16.7.4 The level of aggression, verbal and physical, supported by brandished weapons, particularly the Hatton guns.

I add: Lovell denied any attempt to reverse the Golf.

- 16.8 I interpose at this point: I am entirely satisfied that the Golf never reversed. Apart from the evidence of E10, as supported by E8 and E9; all the remaining evidence, lay and expert, rules out any such surprising development.

Remaining Findings

- 16.9 The evidence put before me established the following:
 - 16.9.1 On deploying, E5 and E6 failed to put on their police caps so as to identify themselves as police officers – so much is apparent from E12’s video;
 - 16.9.2 E7 claims to have put on a police ballistic helmet. Close perusal of a still from E12’s video serves to question this contention. On my findings as to the timing of the shooting, it matters not whether this helmet was worn – Azelle Rodney would have had no opportunity to see and react to it. In these circumstances I am content to leave matters as spoken to by E7;
 - 16.9.3 After the shooting, warnings were shouted by E5 and E6 at Lovell and Graham (as they both say). None was shouted at Azelle Rodney by E7. E3 did shout at him but he was already dead;
 - 16.9.4 The police vehicles were equipped with sirens and portable blue lights. None such were used;
 - 16.9.5 When subjected to the hard stop, all three suspects were still wearing seat belts. The car radio was playing;
 - 16.9.6 For the purposes of attempted resuscitation, Azelle Rodney was extricated from the Golf and laid on the adjacent roadway; and
 - 16.9.7 Everything that the CO19 officers could do by way of attempted resuscitation was done.

Final Position

- 16.10 In the course of subsequent investigations, there was prepared a scale overview of the final position (that is, after Bravo was reversed). This I append as Fig 13, p. 146.

Section 17: E12's Video – the Audio Recording

- 17.1 As the Delta car progressed up Hale Lane, E12, then in the rear, started his camera, recording the view through the windscreen with as an accompanying soundtrack what could be heard in the car whether from its occupants or from the radio.
- 17.2 A great deal of effort and expertise has been expended on efforts to fashion from the recording a definitive transcript, initially for the IPCC, and latterly for this Inquiry. A useful chart sets out in tabular form the contributions of five experts so as to reveal the overall thrust of the Hale Lane radio traffic and the variations inevitably arising from the quality of the recording.
- 17.3 I have given all these contributions full consideration only to find that the essential product as common to all is no more than that which must accompany the urgent, adrenalin-promoted conduct of a potentially risky hard stop. Nothing, in my view, is now gained from detailed analysis, save the following:
- 17.3.1 E7's shooting: This, as delivered in two tranches, is clearly audible, even to the lay ear;
- 17.3.2 Overlaying the sounds of this shooting is a voice: "Sweet as, sweet as." Following the showing of the video in the course of Mr Underwood's opening speech, there was a perception reported in the media that this reflected a callous, gloating commentary on the shooting. I am entirely satisfied that any such inference is ill-founded. The speech is so intermingled with the shooting that it is plainly not a commentary on its results – which in any event were at that stage unknown to anyone other than E7. Then E12 now claims the voice as his own, commenting on the positioning of the Delta car by E14. I am quite satisfied that he is right; and
- 17.3.3 Some three seconds after the shooting, there is speech. As a layman, I am quite unable to discern what is said and the experts are not of one mind. However, the content of this speech is potentially important, and the evidence merits careful consideration by way of the ensuing paragraphs.
- 17.4 This latter part of the recording has been considered by four experts. All encountered difficulties. In summary, their contributions are:
- Anna Bartle: "Right at the back hurry up... behind police, please."
- Christopher Mills: "...right at the back yep... can you tell the DI."
- Paul Groninger: "...the guy at the back held up a gun."
- Allen Hirson: "...still behind the police..."

- 17.5 Contributions have been made by several police officers. First, A1 claims the voice as his own, addressing those of his SCD11 team who were behind him in the convoy in terms: “At the back hold up traffic from behind please.” In confirmation, he points to a response that is clear even to my lay ear: “Three zero”, A10’s acknowledgement of that instruction. For his part, A10 supports A1 in this regard. Further, this construction is reconcilable with that discerned by Anna Bartle and Allen Hirson.
- 17.6 The recording has been heard by other officers. Two such volunteer the following:
- DS Tizard: “The boy at the back held up a gun. Can you tell the DI please.”
- DC Carr: “The guy at the back held up a gun. Can you tell the DI please.”
- 17.7 For his part, E7 denies saying anything over the radio. E1 denies having heard anything as set out in the preceding paragraph, as do the other CO19 officers.
- 17.8 Fact finding is obviously difficult. In the event, I am satisfied on balance of probability that the recording does feature an exchange between A1 and A10, in its turn contributing to Anna Bartle’s analysis. For the rest, I discern a possibility (but no higher than that) that there was a concurrent contribution by E7, as the only person in a position to see whether Azelle Rodney held up a gun and to be concerned to notify the DI, Silver, contributing to that which was discerned by the other two experts and the two police officers. As it seems to me, once the probability has been identified and found as such, anything arising as an apparent concurrent overlay can claim no more than the ‘possibility’ status I accord to it.

Section 18: Local Impact

- 18.1 I reiterate that the 30th April was the Saturday of a Bank Holiday weekend. The early evening weather was fine – and mild enough to encourage people (including families) to eat and drink outside the respective licensed premises. At the Railway Tavern some customers were standing on the adjoining pavement (as can be seen on E12’s video); and some were sitting at the Tavern’s tables. Other persons were in the same vicinity as pedestrians using this pavement. The local impact of the ‘hard stop’, as conducted beside them, without warning and ultimately involving gunfire, had to be significant.
- 18.2 This impact had its strongest expression in the evidence of Leon Gittens. He had gone to the Railway Tavern with his partner and his two sons, respectively aged 13 and 4. For some reason, there came a stage at which the two boys were on the further side of Hale Lane and he wished to join them. It was then that Alpha (that is, the Audi) overtook the Golf and by braking, forced it to a halt. He could not then cross the road; he found himself beside the rear nearside passenger door of the Golf. What he then saw traumatised him: he was ill at the scene; the spectacle continued to trouble him – and when in the course of giving evidence he was shown a subsequent photograph of the scene with a view to pinpointing his position, he became visibly distressed.
- 18.3 This impact adversely affected his evidence. In various respects, it was demonstrably erroneous so as to invite caution for fact finding purposes, see para 19.36. However, in the context of local impact, I do attach weight to an exchange in the course of his oral evidence. I was concerned to establish his own position in relation to the Golf, and thus to the shooting: “If you looked directly ahead, what was in front of you?” Answer: “The Golf rear window. Azelle Rodney’s position was right in front of me.”
- 18.4 I infer on balance of probability that the shot that nearly hit E3 must have passed close to Mr Gittens – mercifully he does not seem to have been aware of this.
- 18.5 Other eye witnesses gave evidence – I am grateful to them. Two such were in relatively advantageous viewing positions. Angel Calkin, then aged 14, was with a friend walking down Hale Lane past the Railway Tavern to her home in Hawkins Close, that is, the turning to the right immediately after the public house. She noted the approach of the Golf and saw its occupants. So soon as she reached Hawkins Close she heard the crash that was the ‘hard stop’ and looked back. Not far away, a little further down Hale Lane was a builder, Gary Arpino. Hearing the crash he too had a view towards the roundabout. What featured in both recollections were the activities of the Hatton gunners. The impression given to these witnesses and to other onlookers, necessarily ignorant of the purpose of these activities, had to be of apparently irresponsible aggression and vandalism. Mr Arpino reacted by taking photographs of the scene – as it happened, at the stage at which the police were attempting to control the area. In evidence he emphasised that this was a normally busy locus: two public houses, busy roads and a kebab shop.

- 18.6 As to the customers then outside the Railway Tavern (who can be seen on E12's video), E1, having exited from the people carrier, "...immediately focused on the pub which was on my left and saw a group of people sitting outside. No one was dealing with these people so I went to do it. As I did this, I heard a succession of shots ring out from the vicinity of the Golf and I instinctively believed that police may have been fired on. This was based on the rapid and quick succession of shots which I instinctively thought had come from automatic weapons in the suspects' possession. At this point, I was running along the footway towards the nearside of the Golf, near to the entrance to the Railway Tavern. Armed officers were covering the Golf and shouting 'armed police'. I saw the group of people diving for cover under the pub table. I shouted 'Police, get inside the pub, now! I grabbed one and pushed him towards the pub door.'
- 18.7 As to those customers then inside the Railway Tavern, they were urged to lie on the floor and to keep away from the windows. At the Harvester pub, the customers then sitting outside were made to go into the building. At both establishments, the police stopped the sale of alcohol and detained all customers for some two hours – those at the Railway Tavern were individually 'photographed' with a video camera before they were allowed to leave.

Section 19: E7 and the Shooting

The Law

- 19.1 Coming now to the heart of this Inquiry and as forewarned in para 1.12, I have first to establish the apposite legal framework. As to this, I start by reminding myself that my Article 2 obligations require me to find facts, and on the basis of such to address the concerns spelled out in para 1.8 by way of comment leading to conclusions; for example as to whether the force used against Azelle Rodney was lawful.
- 19.2 As to fact findings, I am conducting an inquiry; my approach is inquisitorial. Thus, I am not concerned – as would be the case in adversarial litigation – with burden and standard of proof. I must simply find the facts as directly established by, or to be inferred from, the evidence put before me. However, conscious of the serious importance of some findings, I will indicate the degree of confidence with which they are made and I will exercise particular care when making them.
- 19.3 As to Article 2 concerns and particularly the absolute necessity of the force used, I start by reminding myself of the domestic law. Thus:

Criminal Law Act 1967 Section 3(1): “A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.”

Criminal Justice and Immigration Act 2008, Section 76(1): “This section applies where in proceedings for an offence –

(a) An issue arises as to whether a person charged with the offence (‘D’) is entitled to rely on a defence within subsection 2, and

(b) The question arises whether the degrees of force used by D against a person (‘V’) was reasonable in the circumstances.

(2) The defences are –

(a) The common law defence of self-defence...

(3) The question whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the circumstances as D believed them to be, and subsections (4) to (8) also apply in connection with deciding that question.

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

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

(b) If it is determined that D did genuinely hold it, D is entitled to rely on it for the purposes of subsection (3), whether or not –

(i) It was mistaken, or

(ii) (If it was mistaken), the mistake was a reasonable one to have made.

(5) [Omitted as irrelevant]

(6) The degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances.

(7) In deciding the question mentioned in subsection (3), the following considerations are to be taken into account (so far as relevant in the circumstances of the case) –

(a) That a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and

(b) That evidence of a person having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.

(8) Subsection (7) is not to be read as preventing other matters from being taken into account where they are relevant to deciding the question mentioned in subsection (3).

(9) This section is intended to clarify the operation of the existing defences mentioned in subsection (2).

(10) In this section –

(a) ‘Legitimate purpose’ means –

(i) The purpose of self defence under the common law; or

(ii) The prevention of crime or assisting in the lawful arrest of persons...

(b) References to self defence include acting in defence of another person; and

(c) References to the degree of force used are to the type and amount of force used.”

19.4 I interpose: having considered its terms, I am satisfied that Section 76 was based upon the criminal law as at April 2005.

19.5 Turning from the criminal law to the civil law, the relationship between the two jurisdictions was addressed by the House of Lords in *Ashley v. Chief Constable of Sussex Police* (2008), AC 962, resulting in a headnote in these terms:

“That, although a Defendant was entitled to be acquitted of a charge of assault, manslaughter or murder if he had acted in the honest but mistaken belief that he had been under threat of imminent attack, since the function of the civil law was to provide a framework which held the balance between the conflicting rights and interests of different people, such a belief was not sufficient to establish self-defence as a defence to a tortious claim for assault and battery if that belief had not been reasonably held.”

19.6 How then should I exercise my Article 2 functions? Should I apply a domestic law approach at all? If so, should it be the Section 76 approach, essentially subjective as to the belief necessary to found self defence? Or should my approach be that identified in *Ashley*, with belief being a mixed subjective and objective concept?

19.7 In *Andronicou and Constantinou v Cyprus* (1997), ECHR 80, the Grand Chamber of the ECtHR held, at para 192:

“The Court notes in this respect that the use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and the lives of others (see the *McCann and Others* judgment cited above, pp. 58–59, § 200).

...The officers were entitled to open fire for this purpose and to take all measures which they honestly and reasonably believed were necessary to eliminate any risk either to the young woman’s life or to their own lives.”

19.8 Whilst I acknowledge that had there been an inquest into Azelle Rodney’s death, a jury considering a verdict of unlawful killing would have been directed in accordance with principles as now set out in Section 76, I cannot regard those principles as appropriate for my Inquiry. The context is not one of a potential conviction with a view to punishment with all the safeguards then appropriate; it is of a simple but full fact finding Inquiry with no attendant sanctions – the European law is better reflected domestically for my purposes in *Ashley*.

19.9 In the overall result, I hold that I have to address three issues:

19.9.1 Did E7 have an honest belief that Azelle Rodney posed a threat to himself, or to other police officers?

- 19.9.2 If 'yes', was the threat such that it was then reasonably necessary for him to shoot at Azelle Rodney?
- 19.9.3 If 'yes', was E7's actual shooting a reasonable response, proportionate to the threat?
- 19.10 With the agreement of all core participants, I circulated amongst them an initial draft of this Report. It identified these three questions. In response, there were extensive comments as to them and their application. In the result, I have considered afresh whether these are indeed the three issues that I have to address; I am satisfied that they are. How then to deal with these issues? As to the first, I shall in this section find all the material facts, such including E7's state of mind: did he have an honest belief that Azelle Rodney posed a threat to himself or to other police officers? In the subsequent Section 21, there will be analysis of and comment upon the facts leading to resolution of the remaining two issues. As to the second issue, my concerns will be as to whether E7's belief was reasonably held, and as to whether opening fire was a proportionate response to a reasonably held belief. Finally, as to the third issue, I will consider whether the extent of the firing constituted a proportionate response. For completeness I shall test my conclusions against Section 76. If my conclusions would have differed if this had dictated the issues, I shall say so.
- 19.11 I turn then to fact finding, starting with the unchallenged expert evidence bearing upon the death and its circumstances, thereby seeking to establish a basic factual matrix. Thereafter I will review the other evidence, principally such provided by E7. As to reaching conclusions, I shall further have regard to the final submissions of the core participants and to their responses to my initial draft Report.

Pathology

- 19.12 There were two post mortems. The first, by Dr Kenneth Shorrocks, was conducted on behalf of the Coroner; the second, by Professor Jack Crane, was conducted on behalf of the family of the deceased. Comparison of the respective reports reveals no material issues. In the event, I received evidence from Professor Crane, Dr Shorrocks being indisposed. Professor Crane's qualifications as an expert are outstanding. A Consultant Forensic Pathologist for almost 30 years, he is a Professor of Forensic Medicine at Queen's University, Belfast and State Pathologist for Northern Ireland. With a practice in that formerly troubled area, his experience in fatal shootings has to be unrivalled.
- 19.13 He identified the following injuries as material:
- (a) Right upper arm. A ragged, roughly circular bullet hole, 18mm in diameter. This overlaid and was associated with a fracture of the upper one third of the right humerus;
 - (b) Back. An oval bullet wound centred about 3cms to the right of the midline of the spine at about the level of the scapula. The bullet had penetrated downwards and to the left damaging the right lung and the left kidney;

- (c) Right ear:
 - (i) An entrance bullet wound 4cms behind the outer opening of the ear;
 - (ii) A similar wound just below the outer opening and extending on to part of the lobule. These wounds were associated with damage to the neck structures and the blood supply to the spine;
- (d) Top of skull. Two separate lacerations, each reflecting a bullet wound, both bullets penetrating the brain so as to reach the basal part of the skull; and
- (e) Right side of chest. A possible bullet wound that was superficial, not involving penetration.

19.14 Professor Crane offered the following commentary. First, as to wound (a), “It would have been extremely painful but would not have posed a risk to life.” Then, as to wound (b), “That wound or the internal injuries associated with that bullet wound, would not have caused immediate death.” However, “...bleeding from the lung in particular and also from the kidney would have posed a risk to life had he not received medical attention at some stage.” Further, as to the four wounds contributing to (c) and (d), any one would have been fatal in itself.

19.15 As to an order of infliction consistent with his findings he said, “...Mr Rodney... initially sitting up... sustained the wound to his right arm... then his body was starting to go towards the right, possibly slightly twisted. He sustains the wound to the right side of his back which... was not as steeply angled as the others. As... he starts to collapse or fall backwards, the wounds to the right side of his face are sustained. Eventually the top of his head is presented to the shooter and those final two wounds were sustained.” An inference from the foregoing that he would support is to the effect that, had the shooting ceased following the shot to the arm, the deceased would have certainly lived; had it ceased following the shot to the back, that is, the probable next shot, he would have lived, assuming prompt medical attention. From then on every shot that struck him was potentially fatal.

Mr Miller’s Evidence

19.16 One visitor to the locus, and an excellent witness, was the Forensic Scientist specialising in firearms, Mr Anthony Miller. It was he who examined and reported on the firearms recovered (in his presence) from the Golf (see para 13.2), and whilst at the scene, he began his investigation of probable trajectories by inserting rods into the bullet holes to be found in the offside rear door. These trajectories he reconsidered (when the Golf had been moved to a suitable location) in light of that which he had learned through his attendance at the post mortem. His advice included the following:

- 19.16.1 E7’s G36C Heckler and Koch Rifle: This fires single shots repetitively but not automatically. On testing, the trigger pull was unexceptional, allowing firing at

0.21 second per shot, six shots in 1.3 seconds (for present significance see below). On further testing he found it to be highly accurate.

19.16.2 Firing and Trajectories: He is satisfied that eight rounds were fired (he recovered all the spent cartridge cases), all striking the rear offside door or window. Six rounds hit Azelle Rodney so as to penetrate; all remained in the body. One such (to the right arm, wound (a)) had a horizontal trajectory; the remaining rounds penetrated by way of downward trajectories. He infers that upon receiving wound (a), Azelle Rodney twisted so as to be hit in the back (wound (b)), and fell towards the offside, receiving wounds (c) in the process. He was eventually positioned with the top of his head directed towards the offside so as to receive wounds (d). Mr Miller noted from E12's video that the shooting was in two tranches, one long, one short. It is his opinion that the first tranche consisted of six rounds, leaving two rounds for the second tranche and, self-evidently, wounds (d). Of the six round first tranche, four are accounted for by bodily penetration. As to the remaining rounds, one did not penetrate the rear offside door (he found the round within it); and one penetrated the rear nearside window so as to shower glass on E3 and then disappear (it was not found). It is not clear as to what inflicted wound (e) – it could be that it resulted from a 'nicking' by this non recovered latter round. I detect no conflict between these views and those of Professor Crane.

Blood Staining

19.17 Another Forensic Scientist, Ms Bridget March, an expert in the interpretation of bloodstain patterns, examined the interior of the Golf. Her opinion so far as is presently material can be stated shortly: her findings were consistent with that which, as set out above, was postulated by Mr Miller.

The Shooting

19.18 E12's video audibly sets the scene: an effective burst of fire, a short pause, then final shots.

19.19 Expert analysis based on this video and the incident data recorders provides confirmatory precision. Following on from the hard stop analysis that concluded with the final halting of Bravo (as to which see para 16.5):

51.50	Bravo halts so as to align E7 with the rear offside window of the Golf (my Stage 7)
51.56	Shot 1
51.78	Shot 2

52.02	Shot 3
52.24	Shot 4
52.46	Shot 5
52.67	Shot 6
53.39	Shot 7
53.60	Shot 8

- 19.20 In summary, the first six shots were fired in 1.11 seconds. Then after a 0.72 second pause, the remaining two shots were fired.

E7

- 19.21 E7 joined the MPS in 1975; he retired in 2008. From 1983 (save for the period October 1995 – January 1997) he had various firearms related roles and, from 1997, he was a Specialist Firearms Officer with CO19. His police career has had its ups and downs. In 1978 he was commended for bravery when participating in the unarmed arrest of an armed man. In the course of the 1980s, as a police officer on duty, he shot four men, killing two (with subsequent Coroner’s jury verdicts of lawful killing) and wounding two (with subsequent convictions of both wounded men, leading to a commendation by the trial judge). On the other side of the coin, there were incidents in 2000 and 2004. In 2000 he was arrested in the course of an off-duty drink related episode. No prosecution ensued, but he did receive a written warning contending that his words and behaviour had “caused harassment, alarm and distress in others.” In 2004 an IPCC report into a police shooting incident involving another officer included criticism of E7’s conduct – unjustly, as he still believes.
- 19.22 Throughout his involvement with firearms, he has undergone numerous training courses, consistently meeting standards. He too has regularly given firearms instruction. Unquestionably, as at April 2005 he was a well-trained, very experienced SFO, and a respected member of CO19’s Grey Team. As such, he was subject to a six week cycle: five weeks on operational duties, one week on refresher training.
- 19.23 On the 29th April he was on standby for an armed intervention role, parading at 7.00am and concluding duty at 10.00pm. On the 30th, having paraded at 7.00am and with a briefing that drew attention to the potential for the suspects being armed with an automatic weapon, he anticipated the task of providing static cover for a three car stop from the front seat of Bravo. In para 10.6 I have already recorded his unsuccessful attempt at introducing a ballistic shield and his subsequent decision to wear a ballistic helmet. In evidence he was asked why he had been concerned: “Because I was the person that was going to be right next to someone with a sub-machine gun.” This situation was new to him and he developed his concerns: “The type of weaponry I had

in mind, based on previous experience dealing with these types of criminals and this type of situation was that we would be talking about a fairly compact weapon that could fire in excess of 1000 rounds a minute, that is 18 rounds a second. And the reality is that these people would be untrained and actually, in a bizarre way, an untrained person with a high capacity, high repetition sub-machine gun is more dangerous than a trained person.” It remains to add that in the course of his career, he had provided similar static cover on, perhaps, 10 to 15 occasions: he had never had to fire a shot; the holding of his carbine in the aim secured dominance, a situation underlined by Fig 14, p. 147, the product of a reconstruction exercise.

His Accounts

- 19.24 As to what happened, E7 has given various accounts. I take these in chronological order. First then is that which is said by some to be discerned from E12’s video: “The boy in the back held up a gun. Can you tell the DI please.” I interpose to acknowledge that I can only attribute this to him as a possibility, see para 17.8.
- 19.25 Post shooting whilst still at the scene, see para 20.5.2 for evidence.
- 19.26 At about 1.00am on the 1st May, his account as then noted is: “As a result of intelligence and the behaviour and movement of the rear seat passenger, I believed that he was about to open fire with a fully automatic weapon. I opened fire on the suspect.”
- 19.27 On the 2nd May, he made a full witness statement under caution:

“Alpha overtook the Golf followed by our vehicle. Immediately prior to this, I heard E4 say that we would take the vehicle before the roundabout and E3 say, ‘Attack, attack, attack’, over the radio. I saw Alpha swerve in front of the Golf. I put on my ballistic helmet and shouldered my G36. I was looking at an angle through the rear window of the Golf and I was positioned to its rear offside. My attention was drawn to the rear seat passenger. I could see his head. He appeared to be looking round. We moved forward and I found myself alongside the rear offside window of the Golf. I saw the rear seat passenger apparently leaning forward in his seat holding the front passenger seat. He turned his head away from me and appeared to look over his left shoulder towards the back of the vehicle. Suddenly, he turned his head in the opposite direction over his right shoulder. Suddenly, he ducked down and I was looking at the top of his head. He appeared to be reaching down onto the passenger seat or floorwell. I feared that he was reaching for a weapon. I held my fire, waiting to see what he would do next. Suddenly, his head popped up and he appeared to look through the front windscreen. His shoulders were hunched. Everything about his shoulders and body language led me to believe that he had picked up a firearm and was preparing to shoot a fully automatic firearm but I still couldn’t see a weapon. I was aware that my colleagues were deploying on foot from their vehicles. I believed that I couldn’t delay my decision to fire any longer. We had been told that he had access to fully automatic weapons and I felt that my colleagues were in immediate danger. I opened fire through the closed [offside]

rear window of the Golf and the window shattered. I could see no effect from my rounds on the subject. The remaining glass in the window was obscuring my vision and I moved slightly and saw the suspect's head and shoulders upright in the vehicle. I fired several more shots and he appeared to pitch forward and out of my view across the rear seat. I immediately left the vehicle. I still didn't know if I had hit him so I moved to the rear of the vehicle and attempted to cover through the rear windscreen but I was looking into the interior from an angle. The upholstery was dark and the subject was wearing dark clothing. I smashed the rear window with the muzzle to give myself a better vision as the light was reflecting off of the glass. E3 had now opened the rear nearside door and was leaning over the suspect."

19.28 For this Inquiry, he provided a Rule 9 statement:

"I have set out in my statement on page 3 [p96] lines 15-33 what I saw during the course of the Enforced Vehicle Stop and in the period leading up to the shooting of Mr Rodney. I would add that this was written two days after the incident and was my best attempt to recollect what happened when the incident took place. From when I first saw Mr Rodney to firing my last shot and seeing Mr Rodney appear to pitch forward covered an extremely short space of time. In the period prior to the shooting, because of the information I had received about the nature of the intended crime and the sort of weaponry the suspects had possession of, I believed we would be dealing with highly dangerous individuals who had possession of fully automatic weaponry. When I first saw Mr Rodney he seemed to be leaning forward in his seat holding the front passenger seat and I could see his hands at the time. He appeared to look around him and then ducked down and from then on I did not see Mr Rodney's hands. I shot Mr Rodney because I believed he had picked up and was preparing to shoot a fully automatic firearm. I felt that my colleagues were in danger and that I could not delay a decision to fire any longer. I fired the number of rounds that I did for a number of reasons:

(a) I believed the man in the rear of the vehicle to be in possession of a fully automatic weapon that could possibly fire at a rate of a thousand rounds a minute and I believed he was about to fire at my colleagues.

(b) At the point at which we perceive an imminent threat to life, we are trained to shoot to neutralise the threat. My intention was to take action to neutralise the threat as I perceived it to be. I was aware from my training that the best way to neutralise the threat is to aim at the central body mass, being the upper torso, as this is most likely to achieve rapid incapacitation as this is where the body's major organs are.

(c) I aimed at the central mass of what I could see which was his upper torso and head. My point of aim was therefore around about his shoulder area. I was aware (from training and from the ACPO Manual) that shots fired in a real live situation in the heat of the moment are unlikely to be as accurate as in a training exercise and I could not see initially if any of my shots actually hit the suspect.

(d) I was aware that firing from my vehicle into the other vehicle meant that my shots could have been deflected by the vehicle bodywork or glass. I was concerned that my initial shots could have broken up on contact with the vehicle as I saw nothing to show that my shots had had any effect on the suspect.

(e) I paused between firing the initial shots and the final shots. My recollection is that our vehicle had not fully come to rest at the point I decided I had to fire and after firing the initial shots my vision had become obscured by the remaining window glass. I then pushed myself back in my seat and saw that the suspect's head and shoulders were still upright in the vehicle. Believing him to still pose a threat to my colleagues I fired several more shots and ceased firing as soon as he pitched forward.

(f) I fired no more shots than I felt were absolutely necessary. I stopped firing as soon as I was sure that the threat had been neutralised.

I cannot assist as to the precise location of individual team members when I fired but I was aware that they were deploying on foot from their vehicles. I do know that none of them was behind the suspect in relation to where I was, as I was very aware of ensuring that my backdrop was clear. I can only assume that they did not fire when I did because they were engaged in deploying from the vehicles. To the best of my recollection I was the only one who was static in the vehicle and concentrating on Mr Rodney's movement. At the time I believed that I had no alternative but to fire. There was no other way in the split second that I had to make up my mind, to prevent him firing a fully automatic weapon and killing or seriously injuring a number of my colleagues. If Mr Rodney had put his hands in the air (in view) or I had been able to see his hands at all times and if he had not ducked down and appeared to reach down into the passenger floor well and then come up adopting a position that suggested to me that he had picked up a firearm and was preparing to use it, I would not have fired. Even if I could not have seen his hands, if he had sat still and not moved I would not have fired. I shot Mr Rodney because I believed he was in possession of a fully automatic weapon and was about to fire it. Had I known that Mr Rodney was in possession of a pistol and not a submachine gun I would still have opened fire if I believed the Mr Rodney was about to fire at me or colleagues. Regardless of the weapon I believed Mr Rodney to have, I would have fired as many rounds as it took to satisfy me that he was no longer a threat."

19.29 By way of evidence before me, I discerned a different account. Whereas he had initially contended that there was but one occasion on which he was able to look directly into the rear of the Golf through its offside window, he was now contending that there were two such occasions. The first arose out of Bravo's initial approach to the Golf, and was long enough to enable E7 to see, through the rear offside window, various movements by Azelle Rodney. The Golf was then shunted forward by Charlie, and he was only able to see Azelle Rodney through the tailgate window. However, Bravo was driven forward to keep its position on the offside of the Golf (now stationary against Alpha), and there came a second occasion on which he had a view into the Golf through its offside window.

19.30 In its useful final submission, the family helpfully and fairly summarised its understanding of the effect of E7's oral evidence:

"He came alongside the rear offside window of the Golf. He saw Azelle Rodney look over his right shoulder... Azelle then ducked down... The cars were still moving. The Golf went ahead of the Omega. Very quickly, through the rear windscreen of the Golf E7 saw Azelle Rodney... spring back up again... E7 shouldered his weapon and made it ready. The Omega then came alongside the Golf again and E7 opened fire."

By way of the final submission made on his behalf, this summary as to his oral account of events appears to be broadly accepted:

"E7 was able to see him for approximately 10 seconds from the time the Audi commenced its overtaking manoeuvre until the shots were fired. This included the initial stop and the moving forward of both the Golf and the Vauxhall. It is accepted that there would have been a very brief period during which E7 would not have seen Mr Rodney but this would only have been for a second or so."

19.31 Fairness demands the additional citation of the following, all as given in oral evidence. First, as to his perception of the risk: "I have dealt with operations involving fully automatic weapons before, but it had been a weapons buy or a meet where weapons were going to be exchanged. It wasn't as if they were actually perhaps loaded and prepared and cocked and ready for use en route to commit a robbery."

19.32 Turning to the decision to shoot:

"He ducked down across the seat so effectively he was lying across the backseat with his head towards me. The next thing I know, he was sitting in an upright position. His shoulders were hunched, he was leaning forward. I couldn't see his hands. I was absolutely convinced at that point that the only explanation I could think of for him ducking down and coming up so quickly again was that he had obtained a weapon... Obviously the intelligence that we had was that this was a fully automatic weapon. Everything about his body language, his posture, everything indicated to me that he had picked up a weapon and was preparing to fire... I felt that if I waited to see a firearm, then that may well be too late... I knew that if he had the weapon I suspected he had, in half a second he could have nine rounds in the air... I felt that it was absolutely necessary that I fired then and there to protect my colleagues... I believe that he had a gun in his hand when I shot him. That is my belief. I still believe that to this day."

19.33 As to the firing:

"I [am] fairly certain that I fired something in the region of five or six rounds initially and I could see no effect on Azelle Rodney at all. He still appeared to be in an upright position in the back of the vehicle."

As to the second tranche:

“I had seen no visual effect, nothing that convinced me that any of my rounds had struck at this point and I fired what I would describe as several more rounds... he pitched towards me and out of my view below the rim of the door.”

19.34 As to the conduct of the deceased:

“He could have raised his hands in which case I almost certainly wouldn’t have fired. He could have sat still in which case I almost certainly wouldn’t have fired. If he had ducked down and stayed down, I would not have fired... But it was the way that he sprung back up again: I could see absolutely no reason for it and I still can’t... I am absolutely convinced to this day that he had picked up a weapon.”

19.35 In the course of oral evidence, he was invited to comment upon the photographs taken in the course of reconstructions with a view to depicting what might have been visible at successive stages of the hard stop as from the front passenger seat of the Bravo, such including photographs appended to this Report as Figs 8, 9, 10 and 11, pp. 141-144. In general terms, he recognised the results as constituting fair, if inevitably imperfect, attempts at replication. The exchange with Mr Underwood QC based on Fig 10, p. 143, merits verbatim citation:

“Q. P542. As we get closer. Again, we have a person in the back, sitting towards the nearside there. It is really very difficult to see --

A. It is really difficult, sir, but he is static and movement catches the human eye, you know. You can sit quietly in a room in a corner in a darkened room and you won’t be seen, but if you move, that’s what catches your eye. And I could see Azelle Rodney moving in the backseat of the vehicle.

Q. I want you to be very careful about this, please. Are you saying that the movements you have described about him looking left and right and ducking down, and so on, partly seen while you were in this sort of position or are they all seen when you were alongside?

A. No, sir. I think it was a combination of both.

Q. Your evidence is that as you were approaching the Golf, either on the first or the second approach, you see him moving, looking left, right and ducking down et cetera or part of that. Is that fair?

A. That is correct. I believe that when I saw him looking left and right, I was -- it would have been from the -- from almost a similar position to what we are looking at now. But when I saw him ducking down, I may have seen

him commence that movement from this or a similar position, but I distinctly remember being alongside him and looking at the top of his head, because I remember thinking just how close he was.

Q. This is before anybody gets out of the police car, isn't it? Because what we are looking at here is the Golf still in motion before it runs into the back of the Alpha car.

A. I don't -- I don't know whether anyone had started deploying or was out of the Alpha car before -- before it was struck, sir.

Q. You don't know whether anybody was out by the time you saw those early movements, is that fair?

A. I think it is fair to say, yes, sir."

Eye Witnesses

- 19.36 Two other witnesses saw something of what happened in the rear of the Golf. The first such was E3 and I have cited his account in para 16.6; the second such was Leon Gittens whom I have introduced in Section 18. In evaluating their respective evidence, I have reminded myself that each is recollecting sudden exposure to that which was unexpected and traumatic – a situation notoriously subject to honest unreliability. Both E3 and Mr Gittens were plainly honest and striving to help, but, in matters of detail, shown to be in error by reference to the expert evidence. It follows that I have to be cautious before putting any weight on this eye witness evidence. That said, it is right for me to give some more consideration to the evidence of Mr Gittens, there being a contention that what he recollected seeing is consistent with E7's initial account.
- 19.37 As an eye witness, Mr Gittens provided the police with an immediate statement – arguably whilst still traumatised. Describing the situation as at the approach of the officers to the Golf, he said: "...the male in the back of the VW Golf was the most animated of the three occupants. His head was turning – looking forwards and backwards and he seemed to be constantly adjusting his position to get a better view of something and seemed to shrink away... His movements could be described as 'ants in your pants'. He was shouting. His mouth was moving but I couldn't hear what he was saying as the VW Golf's windows were up... The rear occupant's hands were below the door line of the Golf, but from the movement of his shoulders he appeared to be using his hands to push himself up or along the rear seat." Having then described his realisation that there was shooting, he continued: "As the officers moved towards the car, following his agitated movements... he made a ducking movement. I couldn't see why he did this, as no one had fired. There was a crack and the rear offside window smashed, immediately followed by the tailgate window smashing. The rear occupant

made an unusual and unnatural movement at this point. He hit his head on the roof of the car. It was like a reflex movement, like he'd sat on a pin. I remember thinking, 'Ooh, that's going to hurt'. He came back down and as the glass shattered I could see him. His face was forward, towards the front of the car and I could see the top of his head. I could see holes in his head."

- 19.38 In the course of his oral evidence, Mr Underwood QC examined the contention that Azelle Rodney had ducked down prior to any shooting. Mr Gittens responded that the "ducking down" and the shooting had been simultaneous: "...the crack happened and then he ducked down and then came back up, hit the top of the car and then came back down and then came to rest on the window. It was all one movement." He was asked whether this movement could have been caused by movement of the Golf consequent upon being rammed, responding that it was caused "by him being shot."

Fact Finding

- 19.39 I find the essential facts as follows, being satisfied that I should accept and rely upon the expert evidence as deployed in paras 16.5, 19.12 *et seq*, 19.16 and 19.19. Thus,
- 19.39.1 E7's first opportunity to see Azelle Rodney had to be limited to what could be seen through the tailgate window. Bravo's inadvertent impact with the Golf's rear offside door prevented vision through the window of that door, leaving the situation as illustrated by Figs 8 and 9, pp. 141-142.
- 19.39.2 During Stages 4 to 6 inclusive, E7 had no better viewpoint.
- 19.39.3 Then at Stage 7, the relative positions of Golf and Bravo (now impacting the front offside door) serve to give E7 his first view of Azelle Rodney through the rear offside window. He responds by aiming and (after 0.06 seconds), firing. There was no observation of Azelle Rodney other than that utilised for aiming. In the event, the first shot penetrated and remained in the rear offside door, probably because his aim had been adversely affected at this stage by E8's deployment from the rear (a contention advanced by E7 in the course of oral evidence). E6 is still depressing the brake pedal.
- 19.39.4 In the same tranche are shots 2 to 6 inclusive, the whole fired in 1.11 seconds with the consequences as analysed by Professor Crane and Mr Miller.
- 19.39.5 After a pause of 0.72 of a second, shots 7 and 8 are fired in quick succession (8 .21 seconds after 7), again with the consequences as described by Professor Crane and Mr Miller.
- 19.39.6 No shot was fired 'blindly': all were expertly aimed – see in particular, shots 2, 5, 6, 7 and 8.

- 19.40 Save for the probability identified in 19.39.3, I find the foregoing facts as if sure and satisfied.
- 19.41 Before committing myself to this fact finding, I gave very careful attention to the accounts given by E7. Did any such impact upon that which otherwise flowed from the expert opinions so as to contradict or modify? Despite full deployment and careful consideration of his case (with submissions by Ms Leek QC), the answer has to be ‘No’. As to this, E7’s essential contention has to be that as a preliminary to firing he had a sufficiently prolonged view of Azelle Rodney to be able to discern behaviour suggestive of an immediate armed response, whether that view reflected one sustained sighting through the Golf’s rear offside window, or a number of shorter sightings, principally or wholly through the tailgate window. I am fairly reminded of the effect upon the present potential for accurate recollection of involvement in a sudden, traumatic episode (see para 19.36), of the delay and of the inevitable pressure to offer reconciliation with the experts’ findings. While some or all of these factors may serve to explain the fashioning and presentation of E7’s evidence (and to evoke a certain amount of sympathy), they do not add to his accounts the weight needed to challenge or modify the otherwise overwhelming weight of the expert analysis. Essentially, his accounts cannot be reconciled with the expert evidence with its effect summarised in para 19.39, and thus have to be rejected as a basis for this fact finding.
- 19.42 I turn to the eye witness evidence: did any such impact upon that which otherwise flowed from the expert opinions so as to contradict or modify? A point that can be made (albeit with diffidence) is that E7’s early contention that Azelle Rodney was seen to “duck down” has echoes in E3’s initial account (“he seemed to lean down to his right out of my view”) and in Mr Gittens’s initial account (“he made a ducking movement”). Do they offer crucial support, with an inference that at some stage E7 must have had the sustained view of Azelle Rodney as originally claimed? Again, I have to answer ‘No’. I refer to E7’s initial account: the “ducking down” was followed by upward movement into a posture suggestive of armed response – it was that which prompted firing. Neither eye witness saw anything following “ducking down” other than shooting, and Mr Gittens expressly associated “ducking down” and all that appeared to follow with the shooting, as all one movement. For the rest, these eye witnesses offer nothing in contradiction with the expert case.
- 19.43 Two further findings of fact can now be added to the foregoing. As to the first, I add to the expert analysis already cited, the nature and respective positions of the firearms in the Golf (Section 13) and (with much proper caution) the evidence of Mr Gittens. I find with confidence that Azelle Rodney never evinced by conduct or posture any potential for armed response. As to this:
- 19.43.1 I have rejected the only evidence of such conduct or posture – the evidence of E7.
- 19.43.2 The only available firearm with which to found such a response was the Colt. This was deactivated but, more importantly, the position in which it was subsequently found was inconsistent with it ever having been in his hand.

- 19.43.3 On E7's account, he was visible to Azelle Rodney during the time that he had him under observation. On that premise, what Azelle Rodney would have seen is as depicted in Fig 14, p. 147: self-evidently an armed response would have been suicidal – hence the lack of any history of firing from static cover positions.
- 19.43.4 Mr Gittens never saw anything remotely suggestive of an armed response – granted that caution has to be exercised in this regard, his description plainly includes that which must have occurred, Azelle Rodney reacting to being shot in the arm, and cannot be readily dismissed.
- 19.44 As to the second further finding, although I reject E7's accounts for the reasons given, I do not find that he was deliberately lying to me. I am conscious of the trauma of this experience and of the prolonged subsequent, stressful history. It would not surprise me if all such affected his present perceptions and promoted self serving but unconscious reconstruction – so that he could honestly protest to me that he still believes that Azelle Rodney was about to make an armed response. That said, I have to reiterate, whatever E7's present state of belief, I cannot accept that such prevailed when he fired. He could not have seen and thus did not see anything suggestive of an imminent armed response by Azelle Rodney.

Honest Belief

- 19.45 I am now in a position to find as a fact the answer to the first issue: did E7 have an honest belief that Azelle Rodney posed a threat to himself or to other police officers? My answer is 'Yes' having regard to the following:
- 19.45.1 As to the foundation of the belief, fundamental was the receipt of repetitive, insistent intelligence to the effect that there was a 'machine gun', that is, an automatic weapon, in the Golf. As to the resultant perceived threat, his experience as an SFO gave him an insight into the potential firepower of such a weapon and the danger it posed if in the unskilled, criminal hands of the members of this OCG. He was particularly concerned as to the threat to himself as the police officer immediately exposed to any such weapon.
- 19.45.2 As to the manifestation of the belief, I invoke his experimentation with a ballistic shield, the wearing of a ballistic helmet and the inception of firing so soon as he could take aim at Azelle Rodney – irrational absent this honest belief.
- 19.46 In summary, I conclude from the evidence as reviewed, that E7 honestly believed that there was an automatic weapon in the Golf; that the rear seat passenger had access to this weapon; but not that the passenger had picked the weapon up and was about to use it. A threat was thus posed to himself and to the other officers. As to this threat, he responded by way of an immediate burst of fire seemingly as a pre-emptive measure. Justification would come by way of the subsequent finding of an unfired automatic weapon. It was with this mindset that the actual conduct and movement of Azelle

Rodney, E3 and Mr Gittens had no significance to him: the focus was on the presumed weapon and ensuring that it was not used. If he spoke subsequently of the suspect having a gun (as is a possibility, see para 17.8) it was while of this mindset. My concern by way of Issue 2 is as to whether his response was reasonably necessary, as to which see para 21.2.

19.47 For sake of completeness, I should record that I have not acceded to the family's submission that inferences should be drawn against E7 by reason of his failure when under caution to respond to questions posed by the IPCC.

19.48 As to the remaining issues, see Section 21.

Section 20: Subsequent to the Hard Stop

Introduction

- 20.1 The principal issues as recorded in para 1.11 conclude with “Issue 9: The post-shooting procedures.” It is to these that I now turn, starting with the essential facts.

In Attendance

- 20.2 One outstanding feature of the post incident scene, commented on by several witnesses (“It was chaotic”) was the number of attending MPS and other personnel. The list included the following:

20.2.1 Specialist Crime Directorate

Cmdr David Armond

20.2.2 SCD7

DSupt Barry Phillips

Temporary Supt Peter South (Gold)

Silver

20.2.3 CO19

CI (now Supt) Martin Rush

Insp Nicola Cross

20.2.4 Directorate of Professional Standards (‘DPS’)

DCI Tony Evans

DI David MacDonald-Payne

DS John Kennedy

DC John Finch

20.2.5 Barnet Borough

Insp Mark Cunningham

Sgts Alasdair Campbell, William Matley and Stephen Berry

20.2.6 London Ambulance Service

Sarah Gilbert – Emergency Medical Technician

Andrew Hichisson – Paramedic

Brian Regan – Fast Response Unit

20.2.7 Civilian Personnel

Malcolm Nott – Crime Scene Manager

Stephen Flain – Photographer

Samantha Wickers – Area Press Officer

Nicholas Hoare – Scene examiner

20.2.8 Experts

Dr Kenneth Shorrock – Pathologist

Anthony Miller – Forensic Scientist

20.2.9 Independent Police Complaints Commission (IPCC)

Simon Cousins

Rob Gentles

Clare Brookes

Who Did What

20.3 It has not proved easy to determine respective responsibilities and their execution. In the event, I have discerned the following, striving for a chronological order, so far as is practicable.

20.3.1 SCD7: In the immediate aftermath of the hard stop and the shooting, Silver was, of course, the Senior MPS Officer then present: “I took measures to secure the scene, preserve evidence and identify witnesses. I remained at the scene of the fatality assuming responsibility for its management until relieved by [DPS].” He was heavily involved together with E1 in providing ad hoc oral briefings in person or by mobile phone. On leaving the scene at about 10.30pm he, together with Gold (who had arrived at about 10.00pm) went at the request of DPS to Lemn Street Police Station to be present for the Post Incident Procedure (see below). A further attendee from SCD7 was DSupt

Barry Phillips. As on-call duty officer he had been aware of Operation Tayport, from time to time receiving updates by phone from Silver. In its immediate aftermath he was alerted by phone and attended at about 8.15pm. His principal concern “was the welfare and the interests of SCD7 officers involved in the operation.” His subsequent memory of ensuing events is impaired: “The scene was very chaotic. There were a lot of people and police officers around, a lot of chatter and phone calls being made and there was a large flow of information between those present. It is simply not possible for me now to recall precisely who told me what and when.”

- 20.3.2 CO19: Insp Nicky Cross was the CO19 Armed Response Vehicle (‘ARV’) duty officer. She was in uniform and on mobile patrol, call sign TJ1. At 7.45pm she was notified by phone of this serious incident and went immediately to the scene, arriving at about 8.00pm. “As the CO19 duty officer my primary role at the scene was to assist the SFO officers involved in the operation, especially [E7] to get back to Leman Street as quickly as possible. It was also standard practice that, following a fatal shooting, the SFO team leader should, as far as possible, communicate and liaise with a firearms officer and not with a local duty officer... The vehicles [the SFOs] had been using in the operation could not for obvious reasons, be driven back to Leman Street, so I therefore arranged for several ARV cars in the area to attend the scene. By 8.30pm the SFOs had left.” She liaised with Insp Cunningham (see below) and at about 8.55pm she was joined by a senior CO19 officer, CI Rush, who had been alerted to the situation by way of a phone call from E1. His essential concern was also the welfare of CO19 officers – he found that this had been dealt with by Insp Cross.
- 20.3.3 Barnet Borough: This MPS unit supplied the scene with uniformed officers headed by Inspector Cunningham. He arrived shortly after 8.00pm. By way of his Decision Log (maintained with exemplary entries by a loggist, Sgt Campbell) his own perception of his then role is explicit: “I intend to take command of this incident... Responsibility [for] the scene rests with [Barnet] in line with MPS policy re ownership of crime scenes in order that Gold/S/B chain of command can be initiated.” In the event, he deployed his officers so as to obtain control of the public houses and the roads. His log records some sixteen completed tasks. At 9.55pm he handed over ‘primacy of investigation’ to the Directorate of Professional Standards, but continued to remain at the scene for some time.
- 20.3.4 Directorate of Professional Standards (‘DPS’): There was early involvement of this unit. At 8.11pm DI MacDonald-Payne was notified of the incident and by phone obtained a preliminary briefing from Silver. It was in the course of this conversation that the latter raised his concern about the deceased’s body. At 9.55pm he had arrived and took over ‘primacy’ from Insp Cunningham. At 10.15pm the Senior DPS officer, DCI Evans, arrived to take over from him. Mr Evans in evidence explained his perception of the DPS role: “Our remit was to deal with any police shootings, whether fatal or otherwise, any deaths in police custody and deaths following police collisions. That was our sole remit,

and the investigation of corruption... the purpose of my investigation, particularly this investigation, was to establish the truth; to provide evidence for Her Majesty's Coroner's inquest; to provide support and assistance for the family of Azelle and also support to make sure the welfare of the officers was looked after." Again in his evidence, he explained his contemporaneous approach to one aspect of the situation: "...I realise that this is an investigation that could be overtaken by the IPCC. I am not going to wait for them to tell me what to do. I am going to do it now. I am going to do it thoroughly, professionally, even though I may know that they may take it over in the future. I am going to do everything I possibly can now before they come in and deal with it." This approach is well evidenced by a comprehensive Decision Log which serves to show widespread concerns (principally that of identifying the deceased in the face of extraordinarily obstructive behaviour on the part of Graham and Lovell) and a determination to 'play it by the book'. The activities of the DPS were not just at the scene – there was simultaneous attendance at Lemn Street. Returning to the relationship with the IPCC, their Senior Investigator, Simon Cousins, having arrived at the scene at 11.37pm, Mr Evans told me "...I had a conversation with him and informed him that any decisions I made, although my decisions, I would run them by him at the time so that he was aware of them and if he had any comment to make on them, he could give input to that decision, whether he thought it was right, whether he thought it was wrong or whether he wanted to do anything differently." In the event there was no conflict; the DPS formally handed over their investigation to the IPCC on Tuesday, 3rd May. It remains to add that, conscious of his forensic inexperience, Mr Evans arranged for the attendance of a Crime Scene Manager, Malcolm Nott. A DPS Officer, DC Finch, acted as Exhibits Officer assisted by a civilian Scene Examiner, Nicholas Hoare.

- 20.3.5 Independent Police Complaints Commission ('IPCC'): Presently there is little to add to the foregoing. A 'workbook' chronicling involvement up to and including the post mortem was maintained, initially by Clare Brooks and then by Rob Gentles. At the instigation of the IPCC the scene was attended by the pathologist, Dr Kenneth Shorrock and the firearms expert, Mr Anthony Miller. Generally there was increasing involvement preparatory to the eventual assumption of responsibility for the investigation which came on the 3rd May.
- 20.3.6 Civilian Personnel: Presently I need only note the involvement of Malcolm Nott as Crime Scene Manager. He was attached to the MPS Specialist Crime Directorate. "My main duties involve coordination of forensic services and assisting with the formulation of a forensic strategy at major crime scenes." Contacted at 11.30pm at the investigation of the DPS, he arrived at 12.45am. Thereafter, he was engaged at the scene until about 2.00pm, maintaining a full and informative log, liaising throughout with DCI Evans and Simon Cousins.
- 20.3.7 SCD11: Immediately following the hard stop, A1 instructed his team to establish a crime scene cordon across Hale Lane to the rear of the incident. At 8.35pm having spoken to Silver, he instructed his team to proceed in their

respective vehicles to Lemman Street. There was a full debrief of A5's surveillance log – that is, cross-checking as to who was responsible for which reported sighting.

CO19 – Lemman Street

- 20.4 Following the arrival of the CO19 Officers at Lemman Street, the Post Incident Procedure was followed with CI Stephen Costello as Post Incident Manager. Amongst those present were Gold, Silver, DPS Officers, Police Federation representatives and a legal adviser. For present purposes it is not necessary to trace the conduct of this procedure; suffice it to record that each officer made an initial note as to his earlier conduct. The team went off duty at 3.30am, next returning on Monday 2nd May to make individual full written statements.

Justification for the Shooting

- 20.5 This is a vexed topic and fact finding calls for a careful chronology.
- 20.5.1 On the radio, immediately after the shots are fired, as a possibility: "The boy (or guy) in the back held up a gun. Can you tell the DI please." If spoken, then inferentially by E7.
- 20.5.2 At the scene:
- E1: "I was then made aware of E7 and his location. He was stood by the pub doorway. I then told him to get into the control vehicle... I then went over to the control vehicle and spoke with E7. I asked him if he was OK and then asked him what had happened. He told me that he had fired at the male suspect believing that he was going for a gun. I then returned to the Golf and shouted if any body had seen a gun. E4 directed me to the rear offside of the vehicle and pointed to the rear seat. I looked in and saw what I believe to be a black self loading pistol lying on the rear seat."
- Silver: "...I spoke with E7. He told me that he had seen the rear seat passenger move in a manner that he believed placed the lives of his colleagues and himself in immediate danger. As a result he took the necessary action to protect his colleagues and himself. E7 was very quiet and I asked if he was OK. He said that he was."
- 20.5.3 A12's video camera, hitherto used to record surveillance observations, was put into operation and placed on a low wall, positioned so as to record any evidential intermeddling. In the event, it recorded one end of a mobile phone conversation initiated at about 8.05pm. It is now effective common ground that the recorded voice is that of E1 appropriately reporting events to the

CO19 duty Inspector, Insp Nicky Cross. The material part of the recording has been again analysed by independent experts to the following effect:

Allen Hirson: “And one of my officers has fired shots... as if some rear passenger holding a gun and that’s where we get to... So basically he has been shot in situ in the vehicle... first aid.”

Paul Groninger: “...One of my officers fired shots as he’s seen the rear passenger probably with a gun about to retrieve it... So basically he’s been shot in situ in the vehicle... first aid.”

For his part, E1 says that he does not remember saying ‘holding a gun’ and if he did say that it was not what he meant. What he probably said was that the rear passenger was going for a gun. For her part, Insp Cross took a note but this has since been lost.

- 20.5.4 From about 8.00pm, there were together at the scene Insp Nicky Cross and Insp Cunningham. At about 8.55pm Insp Cross was joined by CI Rush. All this is a prelude to the following. With a perception that he had ‘primacy’, Insp Cunningham sought an account of events leading to the situation before him, doing so as someone wholly ignorant of armed intervention techniques. A record was made on his behalf by his loggist (Sgt Campbell) that was included in his log as completed at 4.00am. It records, said Insp Cunningham, what he was told:

“Today info: 3 people in Silver Golf doing drugs rip off. TAC ADV: vehicle interception called by control. Vehicle stopped by SCD(7) officers o/s Railway Tav. P.H., Hale Lane, NW7 about 19.43 hrs. Hatton Rounds are fired into Golf Tyres. Suspects challenged. 2 in front one R/Nearside. R/N/S passenger is seen by police to have a gun in his hand. Challenged again. Officer discharged 5 rounds to suspect’s head. 1st aid administered. LAS called. LPE @ 19.53 by LAS C807 briefed by Insp Nicky Cross TJ1, C/I Martin Rush.”

I interpose:

LAS – London Ambulance Service

LPE – Life Pronounced Extinct

I find that this record accurately reflects briefing by the two CO19 officers whilst still at the scene (query, save as to attributing the shooting to SCD7?). In its turn, I take it to reflect what E1 had told them both – perhaps supplemented by surmise as to what must have been a prelude to a lawful shooting by a CO19 officer. Neither Insp Cross nor CI Rush has now any recollection of the briefing that founded this note. Insp Cross seemingly did make her own note of what she was told by E1, but this has since been lost. Mr Rush says that his assumption was that the shooting had been pre-emptive and it was as such that he defended it to me.

- 20.5.5 10.27pm. The Area Press Officer, Sam Wickers, having obtained express permission from Cmdr Armond, prepared an 'if asked' Press Release beginning "At approx 20:00 on Saturday 30th April 2005 a vehicle containing three men was stopped in Hale Lane, Edgware in a pre-planned operation by the Specialist Crime Directorate and CO19. A man in the back seat of the car was seen to be in possession of a firearm. He was shot by an officer...." It is no longer apparent as to who had briefed her; what is common ground is that she read this over to Cmdr Armond, who cleared it for release. He now says that he took this to reflect 'constructive possession' of a firearm. This release was emailed to the Press Association. An article stating that 'the man was holding a firearm' was circulated to media outlets.
- 20.5.6 10.57pm. DCI Evans secured removal from the Press Release of the line 'a man in the back seat was seen to be in possession of a firearm' until the officers had been debriefed.
- 20.5.7 c. 1.00am. E7, then at Leman Street, makes his first note as to what had happened: "As a result of intelligence and the behaviour and movements of the rear seat passenger, I believed that he was about to open fire with a fully automatic weapon. I opened fire on the suspect."
- 20.5.8 2.30am. Having arrived at the scene, Mr Anthony Miller is briefed. His contemporaneous note is no longer available, but he now produces a note made the following day as a copy for his own records. It specifies meeting Mr Malcolm Nott, Dr Shorrocks, DCI Evans, DI MacDonald-Payne, John Finch and Messrs Cousins and Gentles (IPCC). The text reads: "AEM was told that victim had been in the rear of a car being followed by 4 police cars. A 'hard stop' was carried out. A gun was being brandished by the man in the rear of the car (described as a 'fully automatic weapon') and so the police officer in the front passenger seat of the police car parallel to the victim's car fired his gun through his wound-down window into the rear offside door/window of the victim's car." Mr Miller has now no recollection as to who it was that so briefed him.
- 20.5.9 Monday, 2nd May. By way of his written statement E7 gives his full account, as set out in para 19.23, such not including any contention that the deceased was seen to be holding a gun.

The Ambulance Service

- 20.6 At 7.45pm, by way of a 999 call, a London Ambulance Service ambulance, call sign 807, was summoned to the scene. It was driven by Sarah Gilbert, Emergency Medical Technician, with Alan Hichisson, Paramedic, as passenger. Arriving promptly, it was let through the already present cordon so as to stop behind the CO19 cars. The deceased was then lying in the road; CO19 officers were trying to resuscitate him. Ms Gilbert saw that he was dead and halted their efforts. Having briefed a colleague, Brian Regan, who had arrived in a Fast Response Unit Car, she became conscious of the people (including

children) still outside the Harvester and accordingly had the deceased covered with a blanket obtained from the ambulance. It was whilst moving between the body and the ambulance that her attention was drawn to the ringing of a mobile phone then lying on the back seat of the Golf. She looked in the nearside of the car with a view to switching the phone off – she did not notice any Colt gun on the back seat as depicted in the photographs taken by E12 and Mr Flain.

- 20.7 Subsequently, the ambulance personnel were detained in their vehicles for some three hours, without receiving an explanation. Eventually their duty Station Officer protested and they were allowed to leave – albeit that their vehicles were detained. Whilst at the scene they had covered the body with a cut up body bag to protect it from a developing drizzle. With commendable candour, DCI Evans took responsibility for detaining the ambulance and the Fast Response vehicle:

“At the time I arrived there was an ambulance. I decided that it should be left in situ, at the scene, until the arrival of the Crime Scene Manager. My thought process on that is: in the past, we have had incidents where vehicles have driven through a scene and taken forensic evidence away with them i.e. a bullet carrying in a tyre, so that has compromised my forensic scene. It was a judgment call whether I... tied up a London ambulance, a valuable resource for that period of time or compromised the scene... that was my decision and that was my thought process.”

- 20.8 In the event both vehicles were released during the following day, neither having any forensic significance.

The Deceased

- 20.9 Having been shot when in the Golf, the deceased was extricated, laid on the adjacent roadway and subjected to sustained efforts at resuscitation as administered by CO19 officers. At 7.53pm (a time recorded in Insp Cunningham’s log) Sarah Gilbert advises cessation as he was dead. The body remained at the same spot until 12.40pm the following day, when it was collected by undertakers summoned by the Crime Scene Manager and taken to Finchley Public Mortuary for the post mortem examination, conducted by Dr Shorrocks from 1.20pm onwards.
- 20.10 Whilst lying in the roadway, the body received some attention at irregular intervals.
- 20.10.1 A blanket provided by the ambulance was initially placed over it. Subsequently when there was light rain a body bag from this same source was cut open and laid over it.
- 20.10.2 The key to Lovell’s Guinness Trust flat was removed from Azelle Rodney’s pocket – enabling SCD7 officers subsequently to enter the premises.
- 20.10.3 At 11.56pm a registered medical practitioner confirmed that life was extinct.
- 20.10.4 The fingerprints were taken with a view to identification.

- 20.10.5 The hands were swabbed for firearms residue.
- 20.10.6 The pathologist, Dr Shorrock, having been called to the scene, had a preliminary view but did not examine Azelle Rodney's body.
- 20.10.7 Azelle Rodney's body was made an exhibit, JF42, and photographed.
- 20.11 Whilst in this position, there was a considerable deposit of blood on the roadway. After the removal of the body, MPS requested street cleaning by Barnet Council. Their employees initially failed to remove all the blood so that it remained visible to the deceased's family when they first visited the scene. The employees had to return to complete the task.
- 20.12 At an early stage there was concern as to whether the body should be left on the roadway. Should it not be taken away to the mortuary, or at least lodged in the ambulance? Silver raised the matter when briefing by phone DI MacDonald-Payne, giving as reasons for removal the onset of rain, the large amount of blood being deposited on the road surface and, "I just felt that we had to do something to provide some sort of dignity to Mr Rodney, laying in that position." Permission to remove the body was then refused, pending a decision from the DPS superior, DCI Evans. In the event, there is no evidence that removal was ever considered prior to the final carriage to the mortuary.

The Colt Gun

- 20.13 In para 13.2 I flagged up an issue raised on behalf of the family: had this Colt gun been 'planted' in the position in which it was subsequently photographed (by E12 and then Mr Flain)? The suggestion is that at an early stage after the shooting, an unknown police officer, seeking to bolster justification for it, had extracted the gun from the Waitrose bag (see, again, para 13.2) and had put it on the back seat to serve as a weapon that the deceased had been holding.
- 20.14 This suggestion is founded on several pieces of evidence. First, when Sarah Gilbert (see para 20.6) went to the back seat in response to the ringing of a mobile phone, she did not notice the gun. Second, on subsequent examination no fingerprints were found on the gun. Third, further examination disclosed an arguably unexpected pattern of blood staining: small areas on the outside and heavy staining along one side of the magazine then in the gun.
- 20.15 As fact finder, I have given careful attention to the points raised. In the result, I am entirely satisfied that there was no such 'planting'. Thus:
- 20.15.1 First, there is the position of the gun as allegedly planted: projecting from under the yellow bag that in turn had been under the deceased's body. Self-evidently this position adds no weight to any contention that the deceased had been holding the gun when shot so as to drop it – the only inference to be drawn from the gun's position is that he was not holding it;

- 20.15.2 Second, the gun was seen in this allegedly 'planted' position before there was any opportunity for 'planting'. DC Frett (significantly of SCD7, not CO19) saw it whilst seeking to free the deceased from his seat belt preparatory to efforts at resuscitation; and
- 20.15.3 Third, the Forensic expert on the interpretation of bloodstain patterns, Bridget March, has considered the evidence as to the distribution of blood in relation to this gun to conclude "the staining on the magazine could have resulted from heavy pooled blood running into the gun from the seat or items on it as it lay on the rear seat. In my opinion the blood staining on the gun does not assist in addressing whether it was on the back seat before Azelle Rodney was shot, or placed there afterwards."

Debriefing

- 20.16 As at the 30th April 2005, there were in force SOPs entitled 'The Metropolitan Police Service – Police Use of Firearms'. These procedures were set out by way of a long, detailed document that had been updated as recently as the 2nd April. So far as presently material it provided:

"Para 6.21 Debrief of firearms operations. In all cases armed operations will be concluded with a debriefing. The debriefing process is important to the development of future strategies and tactics. The objective in firearms operations is primarily to identify long term firearms issues. To ensure firearms matters are focused upon, such debriefs should be held separately from any evidential or welfare debrief that may be conducted.

Authorised operations. All authorised operations will be debriefed at their conclusion. The timing of the debrief and the location at which it is to be held should be an integral part of the initial operational planning process...

Para 6.22 Content and timing of debrief. The extent of the debrief and the necessity for written records to be made will be a matter for the Gold Commander having considered the circumstances of the operation. However, in the following instance formally structured debriefs must be held and fully documented: ... all incidents where shots are fired whether by police or other persons and all operations that have obvious future implications for officer safety. The debrief should be structured to examine future needs and structured to at least cover the following subjects:

- Service firearms policy issues;
- Strategic and tactical decision making within the operation;
- The roles performed by officers to implement those tactics;
- Equipment; and
- The need to obtain ideas for improvement in future operations.

As the objective is to identify longer term issues, it will not normally be necessary to conduct any such debrief immediately after the operation but it should be held at an early opportunity. It is the responsibility of the Gold Commander to ensure the debrief takes place and that all relevant personnel or their representatives attend.”

- 20.17 A further debriefing obligation was imposed on the Silver Commander – see my para 5.7.9.
- 20.18 In the event, there was no debrief conducted by the MPS into this armed operation. As to this, Supt South, as Gold Commander, did not initiate any debrief as envisaged in the MPS SOPs. His explanation to me is fairly reflected in these passages from his evidence: “There have been a number of reviews... it is in the circumstances quite a difficult decision around speaking to people who were involved and I didn’t want for it to appear that I was influencing or encouraging officers to change any evidence or any perspective that they had in relation to that, so I thought the safest thing was not to be involved in it as there were numerous areas that were reviewing the whole situation. And ultimately today is part of that review structure and an understanding around it. In the main, debriefs are there to deal with short-term issues where mistakes have been made in various aspects of it, where they can be identified immediately.” It was his view that there had been no mistakes made resulting in short-term issues. It was his further view that the “areas that were reviewing the whole situation” were principally the DPS and the IPCC.
- 20.19 Turning to the subsequent history, the IPCC, having taken over conduct of the investigation from the DPS on the 3rd May, did not have the debrief issue drawn to its attention. The December 2005 Report had to address matters of conduct and complaint – such was its then statutory remit – and understandably made no attempt by way of investigation and findings to conduct and report as for a debrief. Finally, in the period since December 2005 there has been no MPS debrief – hence, Mr South’s suggestion that this Inquiry was in effect contributing to such.
- 20.20 By way of preface to subsequent comment on this topic, further material needs to be cited. The Manual of Guidance on Police Use of Firearms published by the Association of Chief Police Officers (ACPO), February 2005 revision, specifies, chapter 4, para 9:
- “9.1 All operations involving the deployment of AFOs, other than routine protection and convoy duties, should be the subject of a report and analysis, and larger or protracted operations should include arrangements for a specific de-briefing session. The aim is to identify any aspect of the command structure, tactics or equipment used which demonstrates good practice or caused a problem, from which learning should result.
- 9.2 The ACPO Working Group on the Police Use of Firearms has a continuing interest on behalf of all forces in lessons learned from operations.”
- 20.21 Cmdr Mark Streater, the officer now in charge of MPS firearms policy and procedure (but who was not serving with the MPS in 2005), gave evidence, effectively in support of Supt South. He referred to the ACPO Manual as cited at 20.20, and submitted that its terms were not mandatory and, on that premise, “...would not have prevented the

senior officer from making a considered command decision not to debrief in order to facilitate an already ongoing independent investigation. The purpose of such a decision by a senior officer in such circumstances would be to ensure that there was no compromise to the open and transparent investigation. I understand that... he did not conduct a debrief after the fatal shooting of Mr Rodney. I understand that, given that he did not consider that there were any critical safety issues that needed to be reviewed in a debrief, he believed that the Post Incident Procedure and IPCC investigation which had commenced should take precedence. On behalf of the MPS, I do not regard this as remotely surprising.”

20.22 Cmdr Streater did not address the obviously mandatory terms of the then SOP (see 20.16), but further contended on behalf of the MPS that whilst any criminal proceedings arising out of a firearms incident were in prospect, no meaningful debrief could take place without a potential compromise of compliance with the criminal law, principally the Police and Criminal Evidence Act 1984. Again, he contended that if there were ‘critical safety issues’, these would be identified and addressed by the IPCC – and he cited examples. Developing the theme that Supt South effectively anticipated current procedure, he drew my attention first to the ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers, 2011. This offers ‘Criteria for Post Incident Investigation’ in the following terms:

“Post incident investigations will be commenced in all situations where there has been a discharge of a weapon by police (including those involving a conventional firearm or less lethal weapon) whether intentional or unintentional which has, or may have:

- Resulted in death or serious injury;
- Revealed failings in command;
- Caused danger to officers or the public;

Cases, which result in death or serious injury, will be subject to mandatory referral to the IPCC, or other independent investigative authority. Cases, which have revealed failings in command, or caused danger to the public, or where it is in the public interest, should be referred to the independent investigative authority, as a voluntary referral. If the above criteria are not met, the force should consider the proportionate application of these procedures where appropriate.

Where firearms and less lethal weapons have been discharged by police officers, it is in the interests of the public, the Police Service and everyone involved in the incident, that subsequent procedures should be open and transparent, and that the integrity of all action can be demonstrated. The post incident process will involve an investigation, which may be conducted by the force professional standards department, or an independent investigative authority, such as the Independent Police Complaints Commission. Investigations may also be undertaken by the Heath [sic] and Safety Executive.”

20.23 The MPS responded to this manual in June 2012 with updated SOPs. Cmdr Streater drew my attention to Chapter 9, 'Intentional Discharges of Firearms by Police'; in response to sight of a draft of this Report, the MPS then disclosed Chapter 7, 'Armed Deployments'. I cite from both as follows.

20.24 Chapter 7, having pointed out that special circumstances applied when a police operation was subject to investigation, continued:

“7.106 Once an armed deployment has been concluded, a full debrief should be considered to identify opportunities for operational and organisational learning. Large or protracted operations should include arrangements for a specific debriefing session so that any aspect of the command structure, tactics or equipment used which demonstrated good practice or caused a problem, can be identified and lessons learned and shared. Debriefs should be documented. The responsibility for ensuring that effective processes exist to capture operational learning rests with the senior leadership of each Operational Command Unit.

7.107 In practice when AFOs are deployed to an incident, most operational learning will come from the debrief that occurs at the end of the operation. For this reason, all operations involving such deployment must be followed by a structured debrief with the officers involved...

7.109 There are a range of issues to be addressed in a debrief process and not all will be required in every situation, each has a different but equally important, purpose. These are:

- Operational and tactical
- Organisational
- Evidential.

7.110 Where any operational or organisational debrief is being considered, the purpose and format should be discussed and agreed with any investigating body that has become involved...”

20.25 Chapter 9 proceeds on the premise that an Intentional Discharge necessarily means an IPCC investigation and reiterates from the ACPO Manual: “Only in exceptional circumstances should debriefing take place when the criteria for post incident investigation have been met... and should only be with the agreement of any investigating authority which is involved.” It then continues: “Exceptional circumstances may include the need to address safety critical matters without which the safety of officers or the public may be endangered.” There follows:

“9.132 Except as described above, operational debrief will not take place before the conclusion of the investigation and any subsequent judicial process. Given that the opportunity to conduct a debrief may occur years after the initial incident, following investigations by other bodies or judicial proceedings, the value of conducting a debrief against the risks of doing so should be carefully considered.”

20.26 Finally, I had evidence from Deborah Glass as Deputy Chair of the IPCC and Commissioner with oversight over the MPS and the City of London Police. Crucially:

“The IPCC considers that as a matter of generality debriefing is a positive and useful activity that ensures that there is shared learning from any operation. Indeed the IPCC itself conducts its own debriefs after an investigation has been concluded so that organisationally we can learn from what has happened. However, our primary concern is to ensure the integrity of our investigation and therefore the organisation is firmly of the view that in cases where the IPCC has been called to investigate, debriefings should only take place after first accounts have been taken from potential witnesses.”

She added:

“If the IPCC was asked after accounts had been taken from the relevant officers whether a debriefing could take place then it may well be that we would agree... inevitably such decisions would be fact sensitive and depend on the particular circumstances of the case. However, the IPCC would be more likely to agree that a debriefing may take place if the accounts had been secured and if the debriefing was recorded, preferably both audio and visually recorded. That recording would necessarily have to be provided to the IPCC... While an IPCC investigation may well make recommendations for learning and improvement, this does not mean that the police should automatically take a passive role until such time as any external recommendations are made.”

She confirmed that at no time had the MPS made any approach to the IPCC regarding debriefing Operation Tayport.

Section 21: E7 and the Shooting – Commentary

21.1 I remind the reader of the three issues for my resolution:

- (a) Did E7 have an honest belief that Azelle Rodney posed a threat to himself, or to other police officers?
- (b) If 'Yes', was the threat such that it was then reasonably necessary for him to shoot at Azelle Rodney?
- (c) If 'Yes', was E7's actual shooting a reasonable response, proportionate to the threat?

21.2 Issue (a) is a question of fact: by way of para 19.45 I have found as a fact the answer 'Yes', thus raising issue (b) for my resolution, this time as a mixed question of fact and objective judgment. As to that resolution, it must bear upon that which I have found as a fact: firing at Azelle Rodney 0.06 second after the Bravo car came to a stop, that is, firing oblivious of the actual conduct of the suspect, there being no time to see and consider such. I acknowledge that circumstances may confront an SFO that render it reasonably necessary to shoot at a suspect effectively so soon as he comes into sight: typically if the suspect is actually attacking him or another officer. In the event, such were not the prevailing circumstances: Azelle Rodney was not engaged in any attack justifying shooting at sight. Shooting at him could only be justified as a reasonably necessary response to the threat on the basis of observed actual conduct indicative of imminent armed response, heedless of the normally effective deterrent of visible static cover. There was no such observed actual conduct: E7's observations were inconclusive until Bravo came alongside the Golf – and then only as sufficed for an aim. Had there been observation of actual conduct, none such would in fact have been suggestive of an imminent armed response – such not being contemplated. In support of the foregoing, I cite E7's initial account which is arguably premised on the basis of observed, actual conduct as serving to provide the justification for shooting.

21.3 Issue (c) does not now arise as such.

21.4 So far I have ruled on the basis of my findings as to fact and my identification of the issues as applicable to this Inquiry. However, given the importance of all this to E7, I think it right to give consideration to a scenario potentially more favourable to him: acceptance by me of so much of his accounts as served to claim to have seen Azelle Rodney through the Golf's rear offside window for a period considerably in excess of 0.06 seconds and in any event sufficient to discern the movement and posture prior to opening fire as is described. I further think it right to give to this factual alternative consideration as guided by the criminal law with its safeguards, using Section 76(1) (see para 19.3) as a convenient source. With the benefit of the foregoing would my conclusions be more favourable to E7?

21.5 I am encouraged to take this course given the fact of alternative views as to justification for the shooting. Thus, by way of its December 2005 Report, the IPCC recited and accepted E7's account as given in his May 2005 statement (see para 19.27), concluding:

“The account given by E7... is consistent and is supported by the evidence of other witnesses and the available forensic and video evidence. I believe that given the level of perceived threat E7 acted properly and in accordance with his training. E7 fired the number of rounds he did as he believed that the threat was still present and he continued to fire until he was satisfied his colleagues were no longer at risk. His action was within the powers accorded to him by Section 3 of the Criminal Law Act 1967, Section 117 of the Police and Criminal Evidence Act 1984 and common law.”

That conclusion was adopted by the CPS for the 2006 decision not to initiate prosecutions.

21.6 I interpose: the contrast between my conclusions on justification for the shooting and those of the IPCC (as adopted by the CPS) is unfortunate. I did not think it my business to look into how it arose; I content myself with assuming that a major contribution came from the nature of the evidence as acquired by this in-depth Inquiry. That said, it is to be clearly acknowledged in fairness to E7 that in 2005 and 2006 his conduct was not faulted.

21.7 I start this alternative consideration with a reminder as to the criminal law, repeating (without apology) from para 19.3:

Criminal Law Act 1967 Section 3(1): “A person may use such force as is reasonable in the circumstances in the prevention of crime...”

Criminal Justice and Immigration Act, Section 76:

“(3) The question whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the circumstances as D believed them to be...

(6) The degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances.

(7) In deciding the question mentioned in subsection (3), the following considerations are to be taken into account (so far as relevant in the circumstances of the case) –

(a) That a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and

(b) That evidence of a person having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes

strong evidence that only reasonable action was taken by that person for that purpose.”

I comment: with a starting point that is objective (“reasonable in the circumstances”), Section 76 imposes a subjective gloss, subject to the clearly objective check mandated by Section 76(6).

- 21.8 I turn to the alternative factual scenario as accepted by the IPCC which I take to be fully and fairly set out in E7’s initial written statement (para 19.24). There then for the purposes of Section 3(1) and Section 76(3) are “the circumstances as D believed them to be”: was the force used in response reasonable in the circumstances, or was it disproportionate to such? In answering this question, I have to bear in mind Section 76(7): in the heat of the moment E7 might not have been able “to weigh to a nicety the exact measure of any necessary action” and weight should be given to that which he “honestly and instinctively thought was necessary.”
- 21.9 When this Report, then in draft, was disclosed to the core participants, the MPS helpfully drew my attention to the ACPO guidance based on the above: “When an authorised firearms officer (AFO) decides to discharge a firearm, the number and sequencing of rounds of fire will depend on the circumstances as they exist at the time. Officers must constantly assess the threat posed by the subject and the continuance of that threat.”
- 21.10 In answering the question posed in para 21.8, I have the advantage, probably quite exceptionally, of the shot by shot analysis advanced by the timings, and by the respective opinions of Professor Crane and Mr Miller. In response, my views are as follows.
- (a) Why shoot? The substitution of the alternative factual scenario for my findings as to fact plainly impacts upon this initial concern. E7 can invoke 76(3) and 76(7) and, as a jurymen, I cannot, as I think, rule that on his account opening fire was a disproportionate response. That said, there remains a concern. Why did the situation differ from those hitherto experienced by him and his fellow officers: the visible threat of a G36 held ‘in the aim’ serving to achieve dominance so as to obviate the need to fire?
 - (b) First shot. It is reasonable to postulate that it was this shot that was fired low so as not to penetrate the rear offside window but to lodge in the door. (see para 19.16.2). Indeed, this was the surmise of E7, speculating that movement of Bravo consequent upon E8’s deployment served to explain the result. As to impact upon ‘neutralising’ the threat, it did not hit Azelle Rodney – that said, it did underline the threat implicit in E7’s G36 as held in the aim.
 - (c) Second shot. (0.22 seconds later.) Well aimed, as taught, at ‘the central body mass’, this is on target so as to hit the right upper arm of a man sitting upright, facing forward with his hands down. Whatever the earlier perception of threat, it is plainly now ‘neutralised’ and shooting should be at an end.

- (d) Third and fourth shots. (Successively 0.24 and 0.22 of a second later.) Aimed towards the back of a disabled man then twisting downwards – one shot going into the back and downwards; the other probably penetrating the rear nearside window in close proximity to E3. Justification escapes me, not least because E3 self-evidently no longer needs static cover.
- (e) Fifth and sixth shots. (Successively 0.22 and 0.21 of a second later.) Two shots accurately aimed at the vicinity of the right ear – in military terms ‘a double tap’. These could only result in a fatality and did so. I find that E7 saw Azelle Rodney collapsing before he fired these shots, and I do not accept his account that he fired these shots because he saw Azelle Rodney upright and apparently not affected by the earlier shots. No justification proportionate to the essential objective of deterring Azelle Rodney from raising a weapon occurs to me.
- (f) Seventh and eighth shots. (Successively 0.72 and 0.21 of a second later.) Again, well aimed ‘double tap’ shots into the vertex of a dead or dying man – and then after the first and only pause. Obviously, there is no justification.

- 21.11 This analysis has consequences in terms of life and death. As was forcefully pointed out on behalf of the family, had shooting ended before or after two shots, Azelle Rodney would have lived; had it ended after the next two shots he would have lived, assuming prompt medical attention. With the next two shots he dies; with the last two shots, death is confirmed. The less justified the shooting becomes, the more lethal it proves to be.
- 21.12 In making this analysis, I have striven to give appropriate weight to Section 76(3) and (7). Up to and including shot 2, the circumstances as E7 believed them to be with the added subjective gloss stipulated by Section 76(7) can fairly be invoked in reasonable justification – thereafter, in my view, it cannot. The evidence bearing upon the remaining shots raises nothing consistent with E7 weighing the measure of necessary action and doing what he honestly and instinctively thought was necessary. Up to and including shot 6, he fired an effective burst as such without concern for interim effect; as to shots 7 and 8, which did follow a short pause, he could not have thought that such were necessary.
- 21.13 I summarise the resultant overall position as follows. First, on the basis of my findings as to fact and my analysis of the issues for address by this Inquiry, I have to find that there was no lawful justification for shooting Azelle Rodney so as to kill him. Thus, granted that E7 had an honest belief that Azelle Rodney posed a threat to himself or to other officers, this threat was then not such as to make it reasonably necessary to shoot at him. Second, on the alternative factual basis of E7’s description of the movements and posture of Azelle Rodney as seen through the Golf’s rear offside window and on the alternative legal basis provided by the criminal law, I similarly have to find that there was no lawful justification for shooting so as to kill. As to opening fire on Azelle Rodney on this alternative premise, although I have some difficulty in accepting that this was reasonable for the prevention of crime in the perceived circumstances, I have to recognise and give weight to the subjective considerations embodied in Section 76(3) and (7). That said, I am wholly satisfied that firing so as to

kill him (shots 5, 6, 7 and 8) was disproportionate and therefore unreasonable (Section 76(6)) and unlawful. There was little justification for shots 2, 3 and 4 and no justification for the ensuing shots.

Addendum

- 21.14 On behalf of the family, Mr Thomas raised, as a possible issue for my consideration, E7's then suitability for service as an SFO given various aspects of his preceding career. I ruled that I could not then justify prolonging the Inquiry so as to raise and investigate a potentially complex issue, but that I would bear the point in mind in the light of my eventual fact finding. In the event, I remain firmly of the view that the public interest does not justify the cost and time necessarily involved in investigating and ruling upon any such issue. E1 was content to have E7 as a member of his team and there the matter must rest.

Section 22: Metropolitan Police Officers

- 22.1 Conduct of this Inquiry has necessarily involved prolonged exposure to Metropolitan Police officers – no less than 48 have given evidence to me. That exposure has left me as a member of the public, with much to promote a positive impression. I have to mind mature persons, often notably long serving (with medal ribbons in confirmation), loyal to their service, loyal to each other, on duty for surprisingly long hours without complaint, and seemingly sustained by dedication to countering or detecting serious crime. Bravery features in the impression. The deaths of the Manchester officers served to give me a timely mid-Inquiry reminder of the potential hazards of police service – and, as I write, I have immediately to mind E3’s advance from the Alpha car towards the Golf with its contents as he reasonably believed them to be: three potentially violent criminals armed with an automatic weapon. And, incidentally, doing so initially without benefit of static cover, given Bravo’s delayed deployment alongside the Golf.
- 22.2 There has been an inevitable focus on CO19 and its officers. The need in the public interest for a trained, disciplined, specialised firearms unit, willing and able to use their weapons within the limits allowed by law, has been amply demonstrated. CO19’s operations (surprisingly numerous) are often demanding and potentially stressful, with its officers sustained by mutual loyalty, trust and support, as supplemented by pastoral care exemplified by the Post Incident Management Procedure. Team schedules provide for regular training weeks. The ethos is that of an elite.
- 22.3 There are corollaries to the foregoing. There have been frequent hints in the course of the Inquiry of a unit which by its nature is not readily susceptible to review and criticism, whether generated internally or externally, and however constructive and well-meaning. As to scope for internally generated review, I infer that those in command are acutely conscious of the tasks posed for SFOs and of that which an SFO may feel constrained to do when under pressure and threat. How does one tell an SFO that on subsequent consideration, he has not been justified in shooting someone – particularly, if with fatal consequences? This understandable mindset militates, as I suspect, against debriefing, more particularly, if there has been a fatality – and in favour of leaving all post incident consequences to the IPCC. As to the scope for externally generated review (other than by the IPCC), this comes up against the same mindset, enhanced by the notion of an elite unit ready to teach, rather than to be taught. All the foregoing, in the event, serves to contribute to commentary and recommendations to be found in the next section of this Report.

Section 23: Metropolitan Police Service

Introduction

- 23.1 On the 30th April 2005 an MPS officer, in the course of his duties, shot and killed Azelle Rodney. I take it to be self-evident that for the MPS (as for any Police Service) this was, whatever the circumstances, a matter of regret: a shooting too many. A Police Service is not in being to shoot people but to keep the Queen's Peace. True, in the modern world, that peacekeeping requires the formation and maintenance of a dedicated, trained firearms unit, but with the paradoxical hope that it can in the event achieve its ends by techniques up to, but not including, pulling the trigger. The evidence of Mr Gracey that the Police Service of Northern Ireland had not shot anybody in the course of a planned operation during his period of command amounted to a proud boast, not a confession. How then had this shooting come about? How to avoid any repetition? Were lessons to be learned so as to improve operational efficiency? Such were issues that the public would expect the MPS to address – as a Service. As to what has happened, I turn next.

The Service – Its Stance

- 23.2 On Tuesday, 3rd May 2005 the IPCC took over conduct of the investigation into this incident. In December 2005 it produced its Report. This raised no serious criticisms. But it did venture five recommendations, seemingly for consideration by the MPS; as to which, see Section 25. These raised, successively, the recording of briefings; the videoing of firearms operations; the taping of radio communications; the release of press statements; and the need for “regular reviews of tactics and methods used by Firearms Teams.” This Report served as my initial introduction to Operation Tayport, providing much useful material, including an independent assessment by DCC Edwards of the Sussex Police. What however surprised me was that apart from a modest response to this expert's assessment by Supt Manns, the MPS as a Service had made no apparent contribution to the material obtained and considered by the IPCC.
- 23.3 The concern thus raised was voiced on my behalf by a letter from the Solicitor to the Inquiry to the MPS Directorate of Legal Services of the 29th June 2011:

“Representation

Sir Christopher Holland has asked to me to raise with Jason Beer QC and yourself (as those who are currently representing the Metropolitan Police) the following concern.

To date, your conduct has included the drafting and redrafting of the statements of various present and former Metropolitan Police officers, effectively as representing

such. The Chairman takes no point thus far – indeed he is very grateful for the resultant contribution to a pragmatic resolution of serious problems that so far have dogged this Inquiry.

It is when looking ahead, that he has a concern. Come the hearing, will the Metropolitan Police have a representation as a Service that has a potential for independence from the interests of these individual officers, or of any of them? Or will the prospective representation be effectively of the latter? From the Chairman's point of view, as someone charged with making recommendations, it is of real importance that the representation of the Metropolitan Police should be such as to allow for submissions reflecting the considered views of the Service whether or not such coincide with submissions supportive of the conduct of individual officers.

Thus, let it be supposed that the conduct of say, E1 were subject to criticism, would the anticipated representation be simply directed at deflecting such – or could there be a stance independent of him if the apparent interests and public responsibilities of the Service should dictate?

I would welcome your views on this matter at your earliest convenience.”

A reply came, dated 25th August 2011:

“Re: Azelle Rodney Inquiry – representation

I write in response to your letter dated 29th June 2011 in which the Chairman, whilst expressing his gratitude for the contribution made by those representing the Metropolitan Police Service ('MPS') to date, refers to his concern as to whether the fact that the MPS and some individual officers are jointly represented will, at the hearing of the Inquiry, prevent the former from making submissions reflecting the considered view of the MPS as an organisation (in circumstances where such submissions might not be supportive of the conduct of individual officers).

I apologise for the delay in providing this response but the issues raised required careful consideration, and, as I will explain later, the process of obtaining instructions from my clients, especially in the circumstances of this Inquiry, does take some time.

By way of reassurance to the Chairman, I can confirm that the MPS, as an organisation, is committed to assisting the Inquiry in considering all the material and circumstances surrounding the death of Azelle Rodney. This commitment has been explained to the principal officers involved in the operation, who have all confirmed that they are content to be jointly represented with the MPS on this basis; that is to say on the basis that the representation is aimed at helping the Inquiry fulfil its terms of reference.

It is naturally difficult to address now what position would be taken, hypothetically, to criticisms that are yet to be identified (and indeed which may never be made). On the evidence that is now available (in particular the reports from the IPCC and

Joe Edwards, neither of which contain criticisms of individual officers) the MPS is presently satisfied that joint representation is appropriate and consistent with the goal of assisting the Inquiry.

The MPS has a great deal of experience in being represented in Inquiries and Inquests in circumstances which require an approach which simultaneously reflects the corporate MPS perspective, and the interests of individual officers, and is well used to judging when separate representation is required. It is for this reason that it has been agreed with the officers referred to above that the issue of joint representation will be kept under review; both in terms of procedural matters and substantive matters which the Inquiry may need to address. For the avoidance of doubt it has been made clear to these officers that under this review process they, as well as the MPS, are entitled to raise any concerns as to the appropriateness of continuing joint representation in light of any procedural or evidential developments in the Inquiry. Conferences dedicated to this issue were carried out at an early stage of the Inquiry and continue to be carried out.

In relation to the example provided in the penultimate para of your letter, clearly the issue of the appropriateness of joint representation might well need to be reviewed if the MPS' corporate position materially differed to that which an individual officer wished to adopt in response to, for example, criticism of him or her. Indeed, as indicated above, it has been made clear to the principal officers that the appropriateness of joint representation is to be kept under constant review and that they are free to raise at any time any issue they have in relationship to continuing being represented with MPS (in particular in light of the corporate stance the MPS intends to adopt in relation to any particular issue).

Lastly, in light of the Chairman's concerns in relation to the issue of representation, the MPS are in the process of obtaining up to date confirmation from all the police officers currently being jointly represented with the MPS that they are content for this to continue. Given the number of officers this task will take some time but, as soon as it is completed, we will notify the Inquiry in writing of the outcome."

- 23.4 Courteous though this reply was, it was not reassuring, having seemingly missed my point. Had the latter been taken, it would not have been a question of seeking confirmation from the police officers respectively involved that he or she was content to be represented by the MPS; rather it would have been a question of seeking confirmation from the Commissioner that he was content to have no participation separate from the officers. That said, I decided not to press the matter further, but to await developments at the hearing.
- 23.5 In the event, much was as foreshadowed by this letter. Thus, as to reliance upon the IPCC Report, it transpired that with the investigation handed over to the IPCC, the Service had not held any debriefing, nor had it conducted any other form of internal inquiry. All that was hitherto known by the Service, as a Service, came from the IPCC Report. In these circumstances, representation on behalf of the MPS proved to be, in substance, representation on behalf of the involved officers. With dogged assiduity, Ms Studd QC and her team defended the conduct of each officer (save for the separately

represented E7) against any criticism, specific or inferred, leaving for speculation the stance of the Service as the body ultimately responsible and with duties of care to officers and to the public.

23.6 I interpose to expand upon my concerns. In the course of this Inquiry the MPS have provided considerable assistance, expending much time and effort. In the cited letter of the 29th June 2011, tribute is paid to the assistance forthcoming from Mr Fairbrother of its legal department: that assistance continued in an unstinting fashion. Again, individual senior officers have contributed helpful and disinterested factual evidence as to matters of specific interest – in this context, I have already paid deserved tribute to the work of DSupt Welton. So far, so good, but that leaves the concerns. The MPS was the Service directly and vicariously responsible for Operation Tayport, both operationally and in terms of duties of care as owed to its officers and to the public (such including the suspects). It was the Service that was similarly responsible for subsequent, interim like operations. It will be the Service similarly responsible for future like operations. Does it not have a contribution to make to this Inquiry over and above representing the involved officers with commendable loyalty, a contribution that could and should bear upon any recommendations? Granted that initial sole reliance upon the IPCC investigation had an inhibiting effect, there were just two witnesses who in the event seemingly spoke for the Service, and then to limited effect: Cmdr Osborne (as to a no longer material Public Interest Immunity point) and Cmdr Streater (as to the current approach to debriefing – typically, in the context of defending the conduct of an involved officer). All this influences the recommendations I now come to.

23.7 In this context, I draw attention to paras 25.8 and 25.9.

Recommendations

23.8 I am concerned with two distinct matters: first, post Operation Tayport debriefing; and second, the prospect for, and the conduct of debriefing in the event of any subsequent shooting by an MPS officer such as invites IPCC investigation. I deal with each in turn.

23.9 As to the first matter, I accept that after eight years a debriefing, that is, the obtaining from all involved officers their respective accounts and comments, is now impractical. What is not impractical and indeed is essential in the interests of public confidence, and of the MPS as a Service, is a full review appraising all aspects of Operation Tayport. Any notion that this might now be foregone by reason of the delay, further or alternatively, by reason of a perceived absence of critical safety issues, is totally unacceptable. Obviously the delay has made investigation of some aspects difficult, but, as I discovered, not impossible, given the efforts at fact finding promoted by this Inquiry. Indeed, with respect to some aspects, post 2005 developments will have served to simplify the task. As to critical safety issues, such are and (with respect to Mr South and Cmdr Streater) always were self-evident. Twelve men set out to implement Mr South's strategy by arresting three men without bloodshed. In the event, two men were arrested, a third was killed and two other men were nearly shot. Overall, however belatedly, the Service has to take on board and react to its conduct of

Operation Tayport: operational matters that cannot be left to the IPCC and to this Inquiry.

23.10 Thus, I recommend that, as soon as is reasonably practicable, the MPS undertake a full, thorough review of all aspects of Operation Tayport. As to the execution of this recommendation, I propose the following:

23.10.1 The review be conducted by a senior officer as appointed by the Commissioner. I put emphasis on seniority. He or she must have no inhibitions about critical examination of the conduct of, respectively, SCD7, SCD11, and CO19. I interpose: in the course of the Inquiry I came to infer a possible reluctance spelled out in the preceding section to subject the elite CO19 to external, potentially critical perusal, which reluctance encouraged the transfer of investigative responsibility to the IPCC. Any such inference may have been ill founded, but I maintain my proposal.

23.10.2 As to the scope of the review, admirable guidance is given, successively, by the citations set out in 20.16 and 20.24. Further, whilst the full agenda has to be a matter for the reviewing officer, I do invite specific consideration of the topics listed by way of Section 24. Each such topic emerged in the course of the Inquiry and is the subject of my lay comment; what is now required is assessment by a police officer.

23.10.3 As to fact finding, the reviewing officer will no doubt make use of the IPCC Report, this Report and the Rule 9 statements and other material in the possession of the MPS Directorate of Legal Services.

23.10.4 I cannot emphasise too strongly: the object of the exercise is to serve the interests of the Service and thus the public – it is no longer a question of focussing on, and defending involved police officers; it is time to move on, hopefully with constructive conclusions.

23.10.5 I would propose that the resultant report is made to the Commissioner for such further distribution as he may direct. I readily acknowledge that its operational content may preclude open publication, but I do propose the following. Ms Alexander has expressed the laudable hope that some good may come out of her son's death. As and when a full review is concluded, it would be desirable (and good public relations) to communicate that fact to her with such assurance as to resultant efficacy as can be given.

23.11 Turning from the past to the future, in the event of a shooting by an MPS officer and particularly such as results in death or serious injury, the immediate concerns will include:

23.11.1 An investigation into the conduct of the involved MPS officers to be made independently of the police by the IPCC; and

23.11.2 An investigation into the conduct of the relevant MPS operation with a view to covering the concerns successively set out in paras 20.16 and 20.24.

- 23.12 Before me, much served to elevate the first concern as potentially competing with the second – and in the event, the more important. This was explicitly the position adopted by Cmdr Streater, loyal to the Service’s concern to counter criticism – in this instance, of the failure to debrief. In terms, he accorded “paramount importance” to the IPCC investigation. This, he said, must be open and transparent; and the involved officers must not be encouraged through a debriefing process, to confer, with the risk that evidence would be manufactured or manipulated. Debriefing, if it was to take place at all, had to await the conclusion of the IPCC investigation and any resultant prosecution. What then of any apparent critical safety issues? The identification of such and of any urgent recommendations could properly be left to the IPCC.
- 23.13 In support of this sense of priorities, Cmdr Streater was able to point to the citations featured in paras 20.22 and 20.25.
- 23.14 An important contribution to this topic comes from the Rule 9 statement of the Deputy Chair of the IPCC, Deborah Glass (summarised in para 20.26). As to Operation Tayport, she can discern no reason why there should not have been a full debrief (a process that has the support of the IPCC) after the Report was completed, that is, in or after December 2005. As to whether there could have been an earlier debrief, she points out that such was not sought by the MPS. As to the relationship between the two post incident concerns, that is as between the IPCC investigation and an MPS debriefing, her views merit citation in full:

“As I indicated at the outset, in general terms, both in 2005 and today, the IPCC would not want anything to happen that could lead to the compromising of the integrity of its investigation. This means a range of things in practice. For example, an early CCTV trawl would be carried out in the locale of an incident to ensure that any relevant footage was not lost or destroyed. Such evidence is often the only independent evidence of what went on in relation to a particular incident.

It would also follow that the IPCC would want the integrity of the officers’ accounts to be maintained and that any circumstances giving rise to discussion or conferring, such as a debrief, risk undermining the integrity of those accounts. Once accounts have been secured, in statement form or potentially following a criminal or misconduct interview, it is less obvious how the integrity of the investigation would be interfered with.

If the IPCC was asked after accounts had been taken from the relevant officers whether a debriefing could take place then it may well be that we would agree. I say ‘may well’ because inevitably such decisions would be fact sensitive and depend on the particular circumstances of the case. However, the IPCC would be more likely to agree that a debriefing may take place if the accounts had been secured and if the debriefing was recorded, preferably both audio and visually recorded. That recording would necessarily have to be provided to the IPCC.

The IPCC would expect to be consulted if the Gold Commander or other senior officer wished to conduct a debrief. As I have said, the IPCC’s response may well vary from case to case as the circumstances will differ. By way of very recent

example, following a non-fatal police shooting, the Post Incident Manager contacted the IPCC about a month after the shooting to ask if there were any objections to a debriefing taking place. Given that written accounts had been obtained and considered by the IPCC investigators, the view was taken that, as long as the debrief was recorded, there were no objections to it taking place.

The IPCC would also of course expect that any information pertinent to the IPCC's investigation is disclosed. The notes made at a debriefing and any other recording of the debriefing would fall into this category as the IPCC would expect the police force to comply with the requirements of the Criminal Procedure and Investigations Act 1996 and associated Code of Practice should it be served with a third party disclosure notice for the purposes of any criminal proceedings arising out of an IPCC investigation."

Her statement concludes:

"In conclusion, the IPCC has always maintained the view that police forces are not prevented from identifying their own learning whilst an independent investigation is being carried out and would disagree that the IPCC itself places constraints on the ability of police forces to conduct debriefs. On the contrary, it would hope that forces are keen to identify improvement themselves and actively encourages this when circumstances warrant it. The IPCC's view is that there is no reason why a police force cannot of its own volition, whether as a result of a debrief or other review, identify possible improvements in safety or practice and procedure. While an IPCC investigation may well make recommendations for learning and improvement, this does not mean that the police should automatically take a passive role until such time as any external recommendations arise."

23.15 On the evidence put before me, I hold as follows. First, a strong case can be made out in the public interest for giving precedence not to the IPCC investigation (important as it is) but to the MPS debriefing. Take the essential features of the culmination of Operation Tayport as succinctly summarised as "critical safety issues" by Mr Underwood QC when questioning Cmdr Streater: "...a hard stop takes place outside a pub, outside which people are sitting. Eight shots are fired, one of which passes through the car and is never found. A policeman gets showered with glass because he gets in an arc of fire. Civilians are standing nearby. There are children." All such points to and demands early consideration by the responsible body with a view to addressing potential life and death issues. That body is not the IPCC, it is the MPS. Operation Tayport was its operation; the involved officers were its officers; the duties of care were its duties; the ability to investigate and improve operational techniques was its ability. The IPCC and this Inquiry tick none of these boxes; both are independent of the MPS and its officers; views are expressed by laymen and not by policemen. Not surprisingly, Mr Underwood's critical safety issues were not addressed by the IPCC (and that is no criticism); they were first raised in this Inquiry; and resolution has yet to come by way of the process that is the subject of my first recommendation.

23.16 This case as to pre-eminence graphically emerges from contrasting the Chapter 7 citation (para 20.24) with the Chapter 9 citation (20.25). As viewed by the public and by

the Service, which promises more early benefit: the constructive, comprehensive Chapter 7 approach? Or the 'this year, next year, sometimes, never' Chapter 9 approach? All this, when the more serious incidents as assessed by the public and by the Service are likely to command the Chapter 9 approach, given mandatory IPCC involvement.

- 23.17 So much for a plainly tenable argument. In the event, I think it politic to avoid unnecessary controversy and simply opine that these two concerns, IPCC investigation and MPS debriefing, have at least equal weight in terms of public interest, being complementary to each other – and it behoves the IPCC and the MPS to pursue their respective concerns, in liaison and with determination.
- 23.18 Turning to that liaison, it seems self-evident that a necessary preliminary to both the IPCC investigation and the MPS debriefing is the provision of first statements by the involved officers – as is contended by Ms Glass. However, I cannot be supportive of the measures suggested for the subsequent conduct of debriefing: recording, disclosure to the IPCC and compliance with the requirements of the Criminal Procedure and Investigations Act 1996 and the associated Codes of Practice. My concerns are as follows. First, the IPCC investigation is not here seeking to be complementary to an MPS debriefing. It is postulating pre-eminence for the IPCC investigation and seeking to control conduct of the MPS debriefing to that end. Second, what has been overlooked is the nature of the product of an effective debriefing: material bearing upon operational conduct and technique and, prima facie, confidential in the public interest. Why and on what terms should it be delivered up by the MPS, without a PII court ruling? Third, how to have an effective debriefing unless conducted in private, with the contributing officers encouraged to be candid? Let it be supposed that in September or October 2005, the MPS was as a matter of urgency debriefing with a view to confronting the critical safety issues arising out of static cover and arcs of fire (as, arguably, it should have been doing): how and under what conditions could the E officers confidently give their candid views to the debriefing officer? Fourth, and finally, assume an early, determined confidential debriefing, producing as a record a report for limited circulation within the MPS but otherwise confidential, how can this in any way impinge upon the IPCC investigation and the public perception of its efficacy – is it not truly complementary?
- 23.19 I come to a recommendation: my second. At an early date there should be liaison between the IPCC, the MPS and ACPO (and, more significantly, lawyers acting for each) with a view to establishing a protocol for the future conduct in the event of a shooting by a police officer of an early debriefing as an obligation equal and complementary to any IPCC investigation. I agree that there are apparent problems, but given a will to resolve them so as to give debriefing the immediacy and importance that is plainly in the public interest, I refuse to believe that such a protocol cannot be established. I respectfully suggest that the key could be the confidentiality in the public interest of the product, and thus of the input; but the real impetus would come from abandonment of Cmdr Streater's deference to, and reliance upon the IPCC, with substitution of a desire on the part of the MPS to be master in its own house, so as to meet the obligations personal to it in a Chapter 7 fashion.

- 23.20 My next and third recommendation follows. It is that in the event of a shooting by an MPS officer that results in death or serious injury, the Commissioner should thereupon appoint a senior officer to conduct a full, operational debriefing. Several points arise:
- 23.20.1 As before, it is essential that the Officer has sufficient seniority so as not to be inhibited from critical appraisal of involved units, such probably including CO19. Further, such seniority will meet the point well made to me by DCI Evans: the drafting of the 2005 Procedures put the conduct of the debrief in the hands of the relevant Gold Commander, thereby effectively precluding appraisal of Gold's strategy and conduct.
- 23.20.2 I urge an appointment immediately following the incident: it is important to signal to the Service, and to the public, commitment and intent. Why not release news of the appointment to the Press?
- 23.20.3 The Appointee should liaise from the outset with the IPCC, hopefully having the benefit of a helpful protocol as I have recommended.
- 23.20.4 The debriefing must be the subject of a full and presumably confidential report to the Commissioner who can then take steps to have recommended remedial measures put in hand. As to scope and conduct, I must leave this to the Officer's discretion, albeit drawing attention to the scope, helpfully spelled out in the citation at 20.24.

Section 24: Topics for Further Consideration

Introduction

- 24.1 The topics are those identified in the course of the Inquiry as of significance. I offer comment as to each, doing so as a member of the public privileged to have heard all the evidence, and to have received the submissions of the core participants. What is now required is that which I recommend: appraisal of the policing aspects by a senior MPS officer. These topics serve to provide a basic agenda that can be supplemented by other points that catch a police officer's eye, having missed mine. I add this: the eight year delay must have its impact upon appraisal, but, as I venture to suggest, establishing with respect to any one topic that things would be different in 2013 serves its purpose – it confirms that thought has been given to that which was of concern in 2005.

Intelligence

- 24.2 The major point of concern has to be the oft repeated but erroneous contention that the weapons possessed by the suspects included a 'machine gun' or some other automatic weapon. I have limited my consideration to that evidence which was heard in public. In the event, this evidence went a long way to meet and counter any public concerns. Thus, as seen in the witness box, those persons who had been charged with analysing and disseminating the intelligence proved to be persons of real calibre, who plainly did their respective best to give good information. I found the two HMRC officers, S1 and S2, and the two 'embedded' MPS officers, S3 and S4, to be all memorably impressive.
- 24.3 Two other lesser matters merit initial mention. First, passing intelligence direct to Silver and DS Heerey seems to have been amply justified in the public interest. Second, there is HMRC's failure to pass on to the MPS the fact that, in their then internal system, there was a conjectured connection between Associate 2 and one 'Azell' with the 22nd April as his birthday (see para 7.6). Obviously this was unfortunate, but I had the assurance that, with interim improvement to the HMRC system, it was not likely to recur. In any event, I took due note of the fact that the belated finding of this entry on the HMRC system came about through the assiduous attempt to ensure that this Inquiry was provided with all material evidence.
- 24.4 Third, then there is the principal concern: the impact of the erroneous contention as to the suspects' weaponry. At one level, nothing untoward resulted. The intelligence demanded the early arrest of the suspects and the seizure of their weapons: as it happened, that was in any event justified by the weapons that they did have. At another level, much mischief resulted. The reiterated contention that the suspects had an automatic weapon substantially heightened E officer tensions, as ultimately

reflected in the conduct of E7. For my part, I cannot fault the MPS for acting upon this seemingly well-founded intelligence. They had to do so in the public interest, and much professional experience of criminal courts has persuaded me that information which, despite best endeavours, proves to be false is an unhappy but inevitable hazard of policing. As to the level of the resultant tension I do have comment, which I save for 'Threat and Risk Assessment'.

- 24.5 So much for my contribution on this topic; what is needed is re-appraisal (which may or may not reach similar conclusions) by a police officer.

Briefing

- 24.6 Two points arise. First, there is no record of any of the briefings given in connection with Operation Tayport on the 29th and 30th April. There are two aspects to the making of a record: audio or video taping and the retention of a sample briefing pack. As to the first aspect, I note that this was the subject of the first recommendation made by the IPCC in the December 2005 Report; and that that recommendation was taken up by the July 2005 Review Group that was set up in the aftermath of the shooting of De Menezes. In the overall result, such taping (audio or video) is, so I am told, now standard procedure. I have nothing to add. As to the second aspect, there was no clarity in the evidence put before me as to the content of the briefing packs as apparently prepared by the MPS intelligence officer, S5, and distributed on the 29th and 30th. However, I readily acknowledge that the lack of a definitive sample pack may have arisen simply because of the post-incident delay – however, if it is feasible to keep a sample briefing pack as complementing the audio or videotape, this sounds advantageous.
- 24.7 The second point concerns that which undoubtedly was not in any briefing pack, but which arguably should have been included: the fact that Azelle Rodney was liable to arrest on reasonable suspicion of responsibility for a serious wounding. Should it have been included? If 'Yes', is there an explanation for the omission? Could such an omission arise in 2013? All this is pre-eminently for a senior MPS officer who will no doubt read, with greater understanding than I could bring to bear, the 83 page record (query, a computer based log) seemingly emanating from Ealing Borough – it is this material that seems to have been separate from whatever source S5 turned to. I should add that if this liability to arrest should have featured in the briefing pack, then the ultimate significance of its absence remains open to debate. Granted that his liability to arrest as an individual would have been, as it were, 'on the table', I can conceive of a reluctance to act upon it, if separating him damaged the prospects for arresting Lovell and Graham and, even more importantly, seizing the weapons. Still, the omission raises matters for appraisal.

Surveillance

- 24.8 I draw attention to three aspects. First, there is the matter of resources. In para 8.1, I record the fact that two SCD11 teams having been allotted to Operation Tayport on the 29th April, only one was allotted for the 30th, notwithstanding Silver's request. In the event, I did not inquire into the resource allocation that prevailed on the 30th: after 7½ years the full facts were likely to be elusive and at their heart was presumably a value judgment, balancing Operation Tayport needs against those of some other concurrent operation – a judgment that I could not now fairly challenge. The point however, does remain one for the recommended appraisal by a police officer; and I draw attention to Silver's contention that at 6.00pm on the 30th his options were adversely affected by lack of surveillance officers, see para 12.3.
- 24.9 Second, a contention raised on behalf of Ms Alexander was to the effect that whilst the deceased was in Harlesden, SCD11 could and should have arrested him. I do not accept this contention. Granted that, to its credit, SCD11 had marked him as a suspect (albeit without identifying him), with a video recording of him in Harlesden High Street in confirmation, I cannot discern a resultant imperative for an SCD11 arrest. This unit had a wholly covert role: any arrest would have been by SCD7, with or without CO19's involvement, and in any event as required by Silver. Further, as already pointed out, an arrest of Azelle Rodney as an individual was not necessarily in the overall public interest.
- 24.10 Third, there is the vexed topic of aerial surveillance. I write 'vexed' because of the recurring problems encountered by this Inquiry in meeting or circumventing the concerns of the MPS as to preserving the secrecy of the underlying technology, see para 8.12. However, the matter for concern is clearly apparent: the allocation of this asset to a Detective Sergeant, A1, effectively for his personal use, with a seeming embargo on communicating that fact to the Detective Inspector, Silver. The latter, when he belatedly learned of the foregoing (well after the 30th April) was concerned, understandably so. On behalf of the public I too am concerned, not least because it seems self-evident that direction of and information from this asset could have been of real value to him. No doubt it was, or could have been an asset to A1, but he was not the Silver Commander. It is obvious that the allocation and use of this asset should be for appraisal by the MPS – could this situation still arise?

CO19

- 24.11 In the course of the Inquiry, I had of necessity to give close attention to CO19 and its conduct on the 30th April 2005. As already recorded (Section 22), I found much to endorse and admire. I did however discern matters that, as I think, call for comment and, in due course, appraisal by way of the recommended review. I take these in turn.
- 24.12 The Shooting. E7 has consistently sought to defend his shooting as reflecting a lawfully justified response to a perceived threat. No criticism of this stance has been forthcoming from other CO19 officers – the thrust (as adopted by the IPCC) being that

E7 could not be faulted for firing, in the heat of the moment, a subjectively justified package, terminating only with the threat appearing 'neutralised'. As to my views, I refer to Section 19 for the facts and Section 21 for the analysis, leading to the following comment. It must be rare that a shooting incident is so thoroughly and authoritatively subjected to expert analysis: is there not a strong case for utilising this material for future CO19 training courses as throwing considerable light on the practical application of the ACPO guidance, more particularly in the context of static cover? Up to now, the approach of CO19 has been, as I think, understandably coloured by peer loyalty. When in the future this becomes academic, is there not much to learn under this and other heads?

- 24.13 The Tactics. E7 inferentially raised two concerns as to CO19 tactics and training. The first such, as raised by him earlier on the 30th April, was as to the threat to him and the resultant risk arising through providing static cover when alongside and close to a car believed to contain criminals with an automatic weapon. This served to question the three car hard stop tactic that dictated this siting of static cover. His second concern was as to the arc of fire available to him when providing static cover: was this not in place so as to be penetrated by E3, thus resulting in the near 'blue on blue' incident?
- 24.14 For the benefit of the Inquiry, these concerns were taken up by the expert in this field, Mr Mawhinney. He suggested a two car stop as utilised, seemingly to good effect, by the Police Service of Northern Ireland. This tactic envisaged static cover not from the now differently positioned Bravo car but from the Alpha car, directed at the suspect driver and front seat passenger, with a defined arc of fire to be sustained until the plainly visible fellow officers were in a position to enforce dominance. As to the response, it seemed that a two car stop was part of CO19's tactical armoury: I was told that if the suspects had been in two cars then all four CO19 cars would have responded with simultaneous two car stops. In the event, should the Hale Lane stop have been two car and not three car? The MPS press me to answer 'No' but I refuse to rise to the bait. First, the point is academic: as discussed in para 11.13, the concerns of E officers never prompted the threat and risk assessments that might have resulted in such a tactical switch. Second, I regard the issue as under the heading 'policing' – that is, not one for me as a member of the public. However, it is in this latter capacity that I express the hope that the recommended review will refer this tactical issue to consideration and trial on CO19's training ground, preferably with a suitably thanked Mr Mawhinney in attendance. I express the further hope that the MPS forthwith abandon the contention that pervaded cross-examination: a professed contrast between circumstances in Belfast and those in London that somehow militated against Mr Mawhinney's suggestions. Not only was this unattractive, sounding patronising, but it drew attention to Northern Ireland's firearms operations and their commendable results. The essential point is as to what is the best tactic for CO19 to adopt in the interests of all concerned, and external comment and input to that end may hitherto have been in short supply, and is in any event now to be welcomed.
- 24.15 The training ground can further encompass consideration of another suggestion by Mr Mawhinney: what was entitled a 'vehicle check point' but is better described as a 'vehicle stop point'. This was a tactic of which he had much seemingly successful experience: on the basis of intelligence anticipating the route of the suspects' car and

putting SFOs beside the road at a suitable place to emerge so as to stop it as an oncoming vehicle. For some reason I was invited to reject this suggestion, the submission being bolstered by citation of law. Having pointed out (correctly, as I respectfully think) that by virtue of Section 47(4) Firearms Act 1968, CO19 officers, having reasonable cause to think that there was a firearm in the Golf, were entitled to stop and search it, the MPS then submitted that this power was subject to Section 4 Police and Criminal Evidence Act 1984 so that CO19 could only lawfully execute Mr Mawhinney's tactic if in uniform and with the written authorisation of an officer of the rank of Superintendent or above. Common sense rejects this proposition (which would seemingly encompass a hard stop) and perusal of Section 4 serves to show that what calls for the wearing of a uniform and a Superintendent's authorisation is, per Section 4(2), "...the exercise in a locality of the power conferred by Section 163 of the Road Traffic Act 1988 in such a way as to stop during the period for which its exercise in that way in that locality continues all vehicles or vehicles selected by any criterion." All such is a world away from seeking to stop and search the Golf, having reasonable cause to think that there was a firearm in it, whether by pursuing it or by getting ahead of it. What concerns me more is why this legal point was ever raised, seemingly to achieve rejection out of hand of that which, following training ground testing, could be as useful a tool here as in Northern Ireland.

- 24.16 As to E7's second concern, his arc of fire and its apparent penetration by E3, as a layman I have to leave this to the recommended review and to the training ground. Suffice for me to record that I found difficulty in understanding the whole concept. As to this, I appreciate that the contention is that for a certain period of time the provider of static cover can, as it were, claim dominance within defined physical limits, and that it is contended that E3 trespassed prematurely within those limits. However, if as appears to be the case, it is normal for the provider of static cover not to shoot, when and how does he signal an intention to do so, thus claiming arc of fire rights? Again, if E3 was at the Golf and about to dominate the rear seat passenger, had not static cover and its arc of fire expired? Yet again, how can you have an arc of fire if, as was the case, there was an onlooker, Mr Gittens, in it?
- 24.17 Before departing from CO19's tactics, the evidence raised the following:
- 24.17.1 The failure of certain officers to don police caps before deploying (see E12's video);
 - 24.17.2 Shouting at the suspects that was haphazard in distribution (e.g. none from E7) and content; and
 - 24.17.3 The failure to switch on sirens and to display blue lights.
- 24.18 I detected less controversy over these matters. It had to be common ground that the officers should identify themselves as police officers from the outset and that the suspects should receive immediate warning shouts confirming that this was confrontation by 'armed police' and giving instructions as to what to do – see the briefing given to Insp Cunningham and recorded in his log (para 20.5.4). As to switching on sirens as the hard stop starts (recommended by Mr Mawhinney), there seemed to

be a welcome concession that that might be worth considering. Then, as to blue lights, improved post-2005 technology is apparently putting this point on the MPS agenda.

- 24.19 Granted that deploying officers should communicate with the suspects, over and above 'armed police', what is it that should be communicated? As the evidence progressed, this became a concern: I raised as an issue, what should Azelle Rodney have done to avoid being shot? On my findings as to fact, there was nothing that he could do so as to convey compliance in the available 0.06 second, but on E7's initial account, the point clearly arises, underlined by the admitted fact that E7's communication was limited to the visible threat offered by his G36 'in the aim'. Mr Rush advised me that a suspect could avoid being shot by raising his arms in the 'I surrender' posture, or by keeping his hands down. This sounded like good sense until I reflected that in the event Azelle Rodney did have his hands down so as to be shot in the right upper arm; that in so far as any instructions were being shouted they were to the effect 'show me your hands', and not as per Mr Rush 'hands up' or 'hands down'; and that, crucially, E7, in the static cover position, had a limited view (by comparison with that afforded to E3) of what the hands of the suspects were doing. I gained the impression that an enquiry as to how Azelle Rodney could have saved himself from being shot (given that he was not mounting an armed response) came as something of a surprise, no thought having been given to the point. Given the obvious importance of getting suspects to comply in a safe fashion, should not the review invite some consideration of the topic so as to impact upon CO19 learning?
- 24.20 By way of my circulated draft Report, I wrote, "A final thought: a firm instruction that an officer providing static cover should never fire unless he or she actually sees a weapon in the suspect's hands is something for serious consideration. Given the limited vision and given that compliance in the face of the G36 'in the aim' is the norm, how can an officer providing static cover safely fire a pre-emptive shot?" This provoked by way of response: "Preventing officers from firing until they actually see a weapon in the suspect's hands restricts them to 'reaction', thus endangering their lives and the lives of other officers and members of the public. It also prevents pre-emptive action being taken to prevent shots from being fired in circumstances where there is a real chance that the weapon will never be seen before the suspect shoots." I accept the sincerity of this response; I acknowledge that upon reflection, the notion of 'a firm instruction' is unsustainable. That said, I maintain my concern and I ask that it be given careful, constructive consideration by those responsible for CO19 training. My starting point is the shooting of Azelle Rodney on a pre-emptive basis, in the event unfounded, by an officer with limited vision – are there lessons to be learned? One answer may be for the training ground: replicating the movements of a rear seat passenger as seen from the static cover position, when firing a shot from a weapon not itself visible – that is, seeing what scope there is for a well founded pre-emptive shot by the provider of static cover. The same enquiry can take into account the preceding paragraph: what instructions to the suspect help obviate the in fact unfounded pre-emptive shot?
- 24.21 Locus. The Armed Interception generic risk assessment's control measures included (para 11.11): "Location of any armed stop to be subject to a Dynamic Risk Assessment at the time." In the event, the assessment amounted to that carried out by E3 between 'State Red' and "Attack, Attack." His assessment was limited to the mitigation of risk to

the E officers afforded by the correctly anticipated slowing of the Golf at a point where the necessary manoeuvres of their cars would not be impeded by street furniture. Thus far, the assessment could be supported by a belief that beyond the roundabout uncertainty prevailed, with risks to officers increasing as the Golf approached its target and by the opportunity to relieve two days of frustration before Grey Team's hours on duty became even longer.

- 24.22 What this assessment totally failed to encompass were the obvious risks to the public arising out of this locus. With the foreseeable possibility of shooting into or out of the Golf as a premise, the assessment should have taken into account all that was visible on the immediate nearside of the Golf: the Railway Tavern, the pavement, the customers and the pedestrians.
- 24.23 No risk assessment that took into account risk to the public could have done other than reject the locus as unsafe and unsuitable. Fortunately, this was not in the event underlined (as might well have been the case) by the shooting of Mr Gittens. From my perspective as a member of the public, E3 should have aborted 'State Red'. No wonder Insp Cunningham (who did know the locus) said, when he saw what had happened, "my heart sank."
- 24.24 In fairness to E3, should it have been left to him to make the risk assessment? Should there not have been a prior risk assessment, considered rather than dynamic, serving to highlight the unacceptable hazards inherent in leaving a hard stop of suspects armed with automatic weapons to a wholly speculative locus? Should not Silver's tactics have reflected such an assessment? I address these concerns in para 24.42 et seq.
- 24.25 Hours. The re-constituted Grey Team paraded at 7.00am on the 30th April having gone off duty at 10.00pm on the 29th. Thus, it was after nearly 13 hours on duty that the Alpha car officers directed "Attack, Attack" notwithstanding the visible public presence. It would be surprising if the team's fast diminishing 'shelf life' did not contribute consciously or subconsciously to the decision: if they did not do the stop then and there, where? And after how much longer on duty? In response to my concern it was pointed out that for much of the 30th, the team did nothing very much whilst awaiting a call – 'chilling out' at Fulham Police Station – and were thus said to be still ready for action. For myself, I did not find this very reassuring as to quality of judgment at 7.43pm, but it did invite a comment. Why was the team paraded at 7.00am? The anticipated robbery postulated the Principal's men and the Colombians being, as it were, respectively on duty so as to arrange to meet: surely the chances of this happening before, at the earliest, the afternoon, were minimal, even non-existent, given the assumed criminal lifestyle of those involved? Indeed, in the event there was no robbery at, say, 8.00am or 9.00am, nothing significant started to happen until the afternoon, and the robbery was eventually scheduled for the evening. All such could not have come as a surprise – if commonsense based flexibility had been brought to bear, the team could have been paraded at 12.00pm or, better still, 2.00pm so as to have a 'shelf life' that readily encompassed potential robbery times. Thus far, I focus on the 30th April, but the 29th April similarly featured absurdly long hours nominally 'on duty', without any apparent thought being given to when the team was likely to be needed.

- 24.26 All the foregoing comes from, as it were, the man in the street. The recommended review will bring a different perspective to bear: it may be that for whatever reason, the Grey Team hours had to be as recorded, but a careful appraisal of this aspect of policing is merited. Standing back, at 7.43pm serious decisions were being made by those who had been on duty for nearly 13 hours, for much of that period offering no potential advantage to Operation Tayport.
- 24.27 Ramming. It is common ground that the CO19 drill for executing a hard stop does not include ramming the target car (see para 11.11), so that (subject to their respective explanations) the drivers of Bravo and Charlie were at fault. Left to myself I would not have been critical (surely, this sort of thing happens in an adrenalin charged exercise?), being more interested in the resultant impact upon the behaviour of the suspects: post ramming, what is the likelihood of an armed response? However, the point having been raised, I leave it for the recommended review.

Hatton Guns

- 24.28 In para 16.6 I make findings as to the respective contributions to the hard stop by the CO19 personnel, such including E4, E8, E11 and E12. In accordance with the drill for executing a hard stop, each rear seat passenger was armed with a Hatton gun and deployed to use such. In the result, E4 shot out both the front tyres of the Golf and E8 shot out the rear offside tyre. This was possible because the Golf was stationary: a Hatton gunner bends down beside a wheel and fires directly into the tyre. Three further shots were thus added to those fired by E7.
- 24.29 My comment from the standpoint of a member of the public amounts to a challenge to the incorporation of Hatton 'gunning' in the execution of the hard stop. Given that the suspect vehicle has to be stationary before the gun is used (indeed, as a prelude to firing by E4 and E8, the Golf was literally jammed between Charlie, Alpha and Bravo), what justification could there be for any such firing, when any remaining risk of vehicle movement could be countered as effectively and without firing, by joining in the domination of the suspect driver? Arguably Hatton 'gunning' is not just unproductive, it is counter productive. Thus, it does nothing for the image of the MPS. An onlooker in Hale Lane would have seen and heard shooting, apparently for its own sake: in effect and appearance, vandalism. Again, in so far as there is a risk of firing from within the suspect vehicle, the Hatton gunner intent upon access to a tyre exposes himself to it without offering anything contributing to domination – indeed, E8 thought that, whilst heading for a rear tyre, he had been shot.
- 24.30 I was told that in Northern Ireland the Hatton gun is solely used for breaking door locks to assist forced entries. I would urge consideration, by way of the recommended review, of this limited use of this weapon by the MPS.

Gold, Silver and Bronze

- 24.31 A by-product of this Inquiry has been input from independent experts as to their standards and expectations with respect to armed intervention policing. Postulating an operation such as Operation Tayport, Mr Gracey as a former Gold and Silver Commander in Northern Ireland, advocated the convening by the Gold Commander of a meeting at the outset of the operation, to be attended by representatives of all the participants, the object being to apprise him and all those attending of all potential aspects of the operation. Thus for Operation Tayport, he would look to have representation from CO19 (the Tactical Adviser and the Bronze Commander), from SCD7 (the Silver Commander) and from SCD11 (presumably A1). Acknowledging the sensitivities of the MPS, he would nonetheless also wish to have input from the provider of aerial surveillance. All the foregoing could lead to decisions, strategic and tactical, including the conduct of command – he advocated what had been apparently the norm in Northern Ireland: a control room fitted to receive radio and video transmissions, the product of the ongoing surveillance, ground and aerial.
- 24.32 Mr Gracey had further input as to the role of Silver Commander – which evidence is fully deployed in later paragraphs. With respect to the role of Bronze Commander, he again had input, in this as supported by Mr Mawhinney, a former Bronze Commander and much experienced in the role, again in Northern Ireland. It is germane immediately to record their joint concern as to the ‘double hatting’ that prevailed on the 30th April: E1 acting as on the ground tactical adviser as well as undertaking Bronze command. The Tactical Adviser’s task is to be proactive, looking for tactical options as events progress, evaluating them, asking ‘what if?’ and tendering the product as advice to Silver. The Bronze Commander’s task is to command, thereby to implement Silver’s tactical plan. The respective activities may well be concurrent and in any event for one man to seek to undertake both invites too much pressure. I return to this point in the context of Operation Tayport later in para 24.56.
- 24.33 Save for this latter ‘double hatting’ point (subsequently acknowledged as arguable), all the foregoing received a cautious, even frosty reception from the MPS, as ever concerned to defend and repel criticism. As a layman, I simply urge that by way of the recommended appraisal by a police officer, full advantage is taken of the windfall afforded by constructive external expert opinions supplemented by Mr Gracey’s recommendations. Freed from any obligation to be defensive, it would be surprising if no benefit accrued to conduct by the MPS of armed operations.
- 24.34 I refer to the fact finding in Section 11, drawing inevitable attention to the lack of any formal assessment of threat and risk as potentially arising out of the arrests of the armed suspects – an assessment that would encompass all those affected: police, public, suspects and victims. Comment is inevitable.

Threat and Risk Assessment

- 24.35 I first invoke the expert advice given to me by Mr Gracey. He drew a distinction between threat assessment and risk assessment. With respect to threat assessment, this was the responsibility of Silver in consultation with Gold. Any such assessment should identify the threat and the level of the appropriate police response. “A threat assessment is an important document as it provides analysis of the potential or actual harm to people, the probability of it occurring and the consequences or impact should it occur. The threat assessment document informs the operational plan and actions and is therefore vital. It forms the basis on which the proportionality of the police response will be judged.” He further advised that the assessment related to perceived threats to police, public, suspects and victims; and posed questions: Who is making the threat? What is the threat posed? At what level?
- 24.36 It is in the light of the threat assessment that the risk assessment is made. Per ACPO, Manual of Guidance on Police Use of Firearms, January 2003: “A risk assessment gauging the risk to staff working in a particular location or manner is a legal requirement of all employers including the Police Service. As such, one should be carried out to whatever extent is practical during the planning of an operation involving the deployment of AFOs. The risk assessment will cover both the hazards and risks associated with the location of the operation and those arising from the tactical options proposed.”
- 24.37 The oral evidence of Mr Gracey was to the following effect:
- 24.37.1 The process of creating a threat assessment and subsequently a risk assessment was essential to the planning of a firearms operation;
 - 24.37.2 Although a generic assessment may be used as a starting point, the objective was to produce an assessment which was specific to the operation;
 - 24.37.3 The responsibility for the threat assessment lies with the Silver Commander, albeit with the support of Gold;
 - 24.37.4 The Silver Commander should have a knowledge of the tactics likely to be employed, sufficient to appreciate the potential threats;
 - 24.37.5 A threat assessment should consider threats to, amongst others, the targets of the operation; and
 - 24.37.6 Once the threat assessment has been made, individual risk assessments to address the identified threats should be made.
- 24.38 Mr Gracey was cross-examined on behalf of the MPS but no fundamental challenge emerged and the MPS put forward no potential witnesses in contradiction. Indeed, the material lately coming to light (see para 25.8) hints at agreement.
- 24.39 A similar approach was indeed forthcoming from DCC Edwards in his advice to the IPCC:

“In considering the nature and extent of the threats exposed through intelligence, the SILVER commander needs to develop a tactical plan which achieves the strategic aims set by GOLD. Within this plan one would expect to see a detailed threat assessment which identified distinct categories of threat, i.e. identified intended victims, general public, police officers engaged in the operation, public who may reasonably be expected to be present at the point of arrest, etc.

As can be seen the development, testing and analysis of the intelligence is of critical importance in informing the threat assessment.

One would then expect to see a tactical plan which sought to mitigate each of the identified threats in a manner which ensured that the intended use of force by police was proportionate.”

24.40 This evidence satisfies me as a layman that the following is justified as comment:

24.40.1 For Operation Tayport there should have been one or more formal assessments of threat and risk as perceived to arise out of the arrests of the suspects, that is, such that was not covered by those assessments that were made.

24.40.2 Those assessments should have embraced and evaluated the proposed contribution of CO19 as an integral part of the whole operation, preferably with use (as presumably encouraged by CO19) of the generic risk assessment (see para 11.10).

24.40.3 The assessments should have encompassed police, public, suspects and victims.

24.40.4 There should have been timing and scope for any such assessment to impact upon Silver’s tactics and E1’s implementation.

24.40.5 As exemplified in the generic risk assessment, any formal assessment should have weighed the potential impact of proposed counter measures upon the otherwise perceived threat and risk.

24.41 I emphasise comments 24.40.4 and 24.40.5. Any formal assessments of threats to, and risks incurred by police, public and suspects in the context of implementation by CO19 of Silver’s tactics must have centred upon the threat of automatic weapon fire out of the Golf, the threat of a response, pre-emptive or otherwise by way of firing into or through this car – and the resultant risks. Particular issues would have been identified, for example:

(a) Was the threat such that the provision of static cover from Bravo car in the context of a three car stop too risky?

(b) Was the threat such that a hard stop could not be conducted with members of the public in the immediate vicinity so as to be unacceptably at risk?

Adherence to the generic risk assessment would call for countermeasures to be identified and the respective impact on threat and risk evaluated. The resultant whole, with its conclusions should then have impacted upon Silver's tactics and E1's implementation.

- 24.42 The lack of any such exercise in threat and risk assessment had its impact. Silver's tactics had no input by way of any such assessment over and above E1's tacit or explicit assurances that the tactics could be implemented simply by leaving everything to CO19's training, experience and courage. As to E1's implementation, again without any input by way of such an assessment, such featured no modification aimed at reducing the risk to his officers, such perceived by them as exceptional, save for the sanctioning of E7's ballistic helmet wear. Countermeasures, with a view to reducing or containing the threat and the resultant risk, did not fall for consideration in the context of his 6.00pm car by car dynamic assessment: those canvassed for me by Mr Mawhinney (such as static cover from Alpha, a vehicle stop point, a Scrubs Lane venue) were neither identified nor evaluated. E7 was thus left to cope with his vulnerability, which he did as I have found by overreacting – perhaps predictably, at least to some extent. Finally, in a resultant atmosphere fraught with understandable fear and tension, what Azelle Rodney wanted to do and actually did, counted for nothing in terms of his own safety.
- 24.43 So much for what flowed in the event. Had there been threat and risk assessment as guided by the generic risk assessment, would not this have focused better-informed attention on effecting arrests in Harlesden? (see the next topic) Would it have countenanced a hard stop, unless 'two car' and at a venue with no members of the public in positions of potential risk?
- 24.44 So much for my lay comments. As with other topics, I invite appraisal by the designated police officer. Is not all the foregoing prospective instructive material for Silver Commanders training courses? What in any event is the present practice? How can the generic risk assessment make an impact?
- 24.45 I add that all the foregoing was written in ignorance of that which is now recorded in 25.8. Had there been evidence to like effect, it may well have impacted on these comments.

Silver's Tactics

- 24.46 In the course of cross-examination, Mr Thomas on behalf of Ms Alexander challenged the tactics for the later stages of Operation Tayport as directed by Silver. His contention, in short, was that it was in Harlesden that the suspects should have been arrested and their weapons seized. Had the tactics provided for this then the probabilities were that Azelle Rodney's life would have been spared. Initially this line of argument had little appeal. As it seemed to me, I was being invited to exercise hindsight in a pressure-free environment as to decisions made eight years ago when under pressure and, as it were, 'on the hoof'. However, by the conclusion of oral submissions, I was persuaded that the adopted tactics were at least open to comment

by me and to appraisal in the course of the recommended review, perhaps so as to contribute to future training exercises for Silver Commanders.

- 24.47 The strongest comment invokes events in and near Harlesden High Street at about 7.00pm on the 30th April. The area was subject to surveillance, aerial and from the ground. Granted that the fact and product of aerial surveillance was a closed book to Silver, its recording graphically depicts that which could be reported to him by SCD11 officers over the surveillance channel. Thus, he could be told that the Golf was parked at one end of the High Street, some 50 metres from 'Faisals', and with a parked car to its front and nothing to its rear. Earlier reports had been to the effect that in this car was a blue bag, probably containing a firearm. Intelligence now suggested that a second firearm was to be acquired. That intelligence prompted aerial and SCD11 surveillance of the nearby Wendover Road so as to see Graham (accompanied by Azelle Rodney) receive the Waitrose bag by way of a discreet handover. The bag, containing the expected second firearm, is seen to be put in the Golf. Lovell is now present and, after standing around, the three suspects get in the Golf and the journey commences.
- 24.48 The essential criticism of Silver on behalf of Ms Alexander is as follows. None of the foregoing was unexpected: it had been accurately foreshadowed by the intelligence and the surveillance. Should not Silver have asked E1 as Bronze Commander to produce a tactical plan for the seizure of the Golf and its occupants before it moved off? The expert evidence was emphatic that such a plan could have been readily produced and put into operation, given appropriate prior briefing and deployment of CO19. Attractions are pointed out: the Golf would be static; the occupants would not be prepared for an armed response; and threat and risk assessments encompassing police, public and suspects would be feasible, taking into account known conditions and unlikely to produce anything insuperable.
- 24.49 Silver's response is as follows. First, as foreshadowed in 12.3, he did consider a possible arrest of the three suspects whilst on foot in Harlesden, and discussed this with E1. This possibility was rejected: gaining and maintaining control over the suspects would be too problematic. Second, having decided to postpone effecting an arrest until the suspects and their weapons were in the Golf, he decided it was not feasible to carry this out with the car in Harlesden, again in consultation with E1: this vehicle was too near 'Faisals', that is "the focal point of this group"; and "it was also parked in Harlesden High Street, an area which historically has been difficult for police to deal with situations like this: although there may not be a number of people about, very quickly a crowd could form and I would be into a potential public order situation which I wanted to avoid."
- 24.50 Silver's critics, with expert support, accept the impracticability of arrests with the suspects on foot but continue to query the balance of his reasoning. At about 7.05pm, with suspects and guns in the Golf, shops were closed or closing and the aerial surveillance recording reveals that which could have been reported to him by SCD11: a relative absence of pedestrians – ironically far less in number than those in the vicinity when the hard stop was carried out. With available to him the manpower of CO19 as

supplemented by SCD7, his reasoning fails to impress his critics: the prospect was arguable for the vicinity of the Golf to be wholly controlled by his officers.

- 24.51 The experts further suggest that, in the alternative, more could have been done to secure early arrests in a safe venue following departure from Harlesden. Thus, granted that the precise route to be taken by the Golf was unknown, one option for the suspects was Scrubs Lane, which for a significant stretch would have provided an ideal safe locus for a hard stop or a vehicle check point. Again, would it not have been worth Silver's while to ask E1 to prepare contingency plans and to brief and deploy his team accordingly, if necessary, splitting it?
- 24.52 The strength of the criticism lies in the tactic in fact adopted. Effectively, Silver gave the early initiative to the suspects. Unimpeded, they picked the route – in the event so as to get ahead of CO19 and Silver in his control car by driving past them, then static at Cumberland House. It was speculative as to whether any opportunity to make arrests would then arise; after leaving Cumberland House, he had no oversight over events and had to be content with leaving everything to the skill, training and motivation of CO19; and the eventual locus, jointly selected by the suspects and CO19, and with all its defects, was wholly outwith his knowledge. The known was abandoned in favour of the unknown.
- 24.53 There then is the controversy. However, fairness to Silver invites the following observations. In April 2005, he was not experienced as a Silver Commander, so that a further and collateral issue raised by Mr Thomas on behalf of the family is as to whether there should not have been a mentoring scheme in place from which he could have benefited (see para 25.8). Then, circumstances had deprived him of the services of a dedicated Tactical Adviser, obliging E1 to 'double hat' as on the ground Tactical Adviser and Bronze Commander. Two points arise. As to the first, as already pointed out, the experts deprecated this form of 'double hatting'. Silver should have had a Tactical Adviser to give advice – thinking ahead, devising and suggesting options – whilst the Bronze Commander, E1, concentrated on directing his team. Then, as to the second, there was no evidence of E1 as Tactical Adviser engaging in proactive contingency planning. Thus, arguably, on the 30th April Silver had no or inadequate tactical advice. This leads to the next observation: such advice as E1 gave to Silver as to what to do seems to have amounted to assurances that everything could be left to the courage and competence of his Grey Team, without the benefit of risk assessment and indeed without communicating to him the threat and concomitant risk as informally assessed by his officers. Finally, there was the astonishing deprivation of all that could have been provided by way of aerial surveillance.
- 24.54 I give weight to these factors. The evidence has persuaded me as a layman that Silver's tactics are open to fair adverse comment. I emphasise that this is not criticism of Silver himself. He acted according to his training and experience, hampered by inadequate support. Acting without threat and risk assessments, he preferred the 'unknown' that proved to be Hale Lane to the 'known' that was Harlesden High Street. As to consequences, there is a temptation to attribute to Silver's tactics a causal contribution to the ultimate use of lethal force. I am reluctant to follow this line of argument, regarding it as potentially tenuous and speculative, not least having regard to my

findings as to the inception of the use of force and the circumstances in which it became lethal. Suffice it then to draw attention to the comment, to invite the recommended peer review and to suggest inclusion of the entire episode in future Silver Commander training courses: ‘Had you been Silver at 7.00pm on the 30th April 2005, what would you have done?’

- 24.55 A further issue relating to Silver was that of his own ‘double hatting’: acting as both Senior Investigating Officer and Silver Commander. I can take this shortly. As at April 2005, the issue had not been perceived as such; since then, the roles have been separated. In the event, I have not been able to discern any adverse impact on tactics. A decision to effect arrest when suspects and weapons were together in the Golf arguably makes sense, whichever hat is worn. There was an attempt to explain the failure to seek arrest in Harlesden by reference to the presumed SIO ambition to extend arrests and seizures to include the Colombians and their drugs, but this was not supported by evidence. As already pointed out, the ultimate concern was to stop the Golf before it entered Edgware and revealed the location of the Colombians.

Subsequent to the Hard Stop

- 24.56 I refer to the facts as found by me, see Section 20. I comment on four aspects, as follows.
- 24.57 Personnel and Who Did What. To an area that was ill-equipped to cope with a hard stop, more particularly one that had resulted in a shooting fatality, there came a substantial number of persons, most (but not all) with an agenda to fulfil. I have listed the personnel; I have described the outstanding activities. My first comment is short: there was nobody in overall charge. True, two persons sought to exercise control, but each had a limited agenda, neither aspired to overall responsibility. Thus, Insp Cunningham as the uniformed Barnet Borough officer thought that it was his duty to take charge (recording as much in his log), but in reality this only related to law and order issues, to getting control of a situation described as ‘chaotic’. DCI Evans aspired to DPS ascendancy, but despite his efforts this was in the event incomplete – matters requiring decisions did not always get such from him and in any event he consciously deferred to the IPCC. I venture no criticisms of the foregoing, but the scene is set for development of my comment. What was required (as will appear by way of the following paragraphs) was a senior MPS officer with the status and confidence to react to, and deal with situations with common sense based flexibility. There was no such person, with results exemplified as follows.
- 24.58 Justification for the Shooting. The facts are set out in para 20.5. I add analysis and comment. As to analysis, how did it come about that there was at the scene a sustained assumption that Azelle Rodney had been shot because he had been seen to be holding a gun? The first answer may be that which I have found to be a possibility, namely that immediately following the shooting, E7 was heard over the radio in terms set out in para 17.6, thereby guiding E1 as to what to report to Insp Cross, with a knock-on effect as traced through the balance of para 20.5. The second answer is that what was current at the scene was not what E7 had said but a CO19 reconstruction as

to what must have happened (including failure to respond to challenges) that would serve to explain and justify E7's conduct. In fairness to CO19, there was another contributor, this time from the Specialist Crime Directorate, Cmdr Armond, who cleared the press release.

- 24.59 Second, what is called for by way of comment? As to this, I draw attention to the flowering and publication of ill-founded speculation as fact, embellished with the gloss of 'what must have happened', all so as to provide justification for E7's conduct. I draw particular attention to the resultant misinformation as initially supplied to the Area Press Officer and as thereafter confirmed, seemingly authoritatively. Not surprisingly, this was the subject of IPCC comment and, with the events of August 2011 as an additional spur, the Commission published in February 2012 a memorandum 'IPCC Guidance on Communicating with the Media and the Public in IPCC Independent and Managed Investigations'. My final comment is as to the apparent inability of DCI Evans wholly to end irresponsible speculation: at 2.30am, the false contention that the deceased had been holding a gun was still current so as to be communicated to Mr Miller. Again, there is an unfortunate absence of overall command based on responsible common sense.
- 24.60 The Ambulance Service. The facts as set out in para 20.6 above speak for themselves. For ambulance personnel to be detained without explanation for three hours, with release only after intervention by a duty officer, and for the ambulance and the fast response vehicle to be kept from their functions on the streets of London for an indefinite period pending forensic examination, something has clearly gone wrong. As to what has gone wrong, I advert to my central theme: the lack of a senior police officer in charge and with sufficient confidence and authority to introduce my 'common sense based flexibility'. I cannot conceive of any such officer, feeling free to exercise discretion, and taking into account forensic requirements, public interest and the image of the Service, doing other than seizing an early opportunity to reduce the prevailing chaos by thanking the ambulance personnel for attending and sending them on their way in their vehicles, preferably (see next concern) with the body of the deceased. There was no reason to detain its personnel; in so far as there was a prospect for one or more tyres of these vehicles to have forensic significance, it was self-evidently minimal, and could have been visually checked there and then. What was needed but was, alas, absent was someone sufficiently senior to provide decisive common sense and sensitivity as an overlay to the otherwise commendable DPS dedication to 'doing it by the book'.
- 24.61 The Deceased. The facts are as set out in para 20.9 above. Attendance at the scene by members of the deceased's family was, at some stage, inevitable. In the event, when they did attend, they were confronted by stains upon the road surface made by his blood. Rightly, strong complaint was made. Had they attended earlier on the 1st May, as they might well have done, they would have been confronted by his body, lying on the road surface surrounded by his blood – with an empty ambulance nearby. They would have been appalled – again, rightly so. Asking why he was then there could not have produced any adequate answer. In truth, he should not have been there. The crucial point is that from a very early stage the deceased was not where he had been shot: he was in a place selected as a site for resuscitation purposes and in itself wholly

without forensic significance. It was thus that, shortly after the shooting, Silver recommended removal, giving reasons that I respectfully endorse. It is just possible to accept DI MacDonald-Payne's initial refusal of permission: he had not then had the opportunity to see the situation for himself. But once the DPS was on site, what continuing justification was there for keeping the body there? True, there were the attendances upon it that I have listed: all such could have been done as conveniently, perhaps more conveniently, with the body in the ambulance or at the mortuary – and in the event, completion of those attendances did not serve to bring about the removal of the body. My continuing surmise is that the problem was the lack of someone in charge able and willing to take a firm line and order removal, not least, so as to help sustain the image of the Service. As it was the compassion rightly extended to the CO19 officers had no balancing compassion extended to the deceased, who became a static exhibit along with the adjoining vehicles.

- 24.62 Debriefing. The remaining topic arising subsequent to the hard stop has already been fully discussed and I have nothing further to add.
- 24.63 Generally. As a member of the public, I have advanced a surmise as to what was lacking at Hale Lane subsequent to the hard stop, hoping at least to focus thought. However, as ever, more pertinent is what should now follow: consideration by a senior police officer, mindful of policing issues and the image of the Service. I draw particular attention to 'image': it was put 'on the line' by the hard stop – thereafter, was there not scope through appropriate command at least to mitigate the damage?

Section 25: Earlier Recommendations

- 25.1 Two sets of recommendations have already been advanced following independent assessment of the conduct of Operation Tayport. One set was provided by Mr Gracey, the policing expert. He made nine recommendations mainly directed at conduct in preparation for an operation, raising matters of procedure and technique. The points raised are essentially for police appraisal and, happily, advance disclosure of his report secured this. In the result, Temporary CI Nicholson, seemingly speaking on behalf of the MPS as to this matter, told me “. they are all perfectly reasonable recommendations..”, going on to point out that many of them had already been actioned. As a layman, I can leave this matter there, expressing gratitude to Mr Gracey for his considerable assistance.
- 25.2 An earlier set of recommendations had been made by the IPCC in its December 2005 Report. These were five in number and merit present consideration. By way of preface, it is germane to record that following the July 2005 shooting of Jean Charles de Menezes by CO19, the IPCC made 16 recommendations. A response to these included setting up an internal MPS body with an apparent remit to review matters of concern, the July Review Group. I now turn to the December 2005 recommendations as follows.
- 25.3 Recommendation 1: “I believe that it should be possible to audio or videotape the formal briefings given to staff.” This recommendation was replicated as one of the subsequent sixteen and received consideration by the July Review Group. In the result, Silver briefings for all Pre Planned Firearms Operations are, as I gathered, now routinely audio recorded.
- 25.4 Recommendation 2: “The amateur efforts of E12 show that it is possible to take meaningful footage of an operation. I believe that the technology exists for small cameras to be placed on officers’ weapons or clothing and thus obtain footage that could assist in proving evidence of the officers’ actions and assisting at any subsequent investigation.” This same point featured as Mr Gracey’s sixth recommendation: “Consideration regarding the development of cameras in cars and on officers to assist in recording the actions of officers and suspects during the operation. This would be of significant value in establishing what occurred prior to any discharge of firearms.” As to this, Mr Nicholson told me that “...two or three years ago now... the Metropolitan Police Service actually led on some research regarding body worn devices to record firearms operations.” However, when this was put before the ACPO Armed Police Working Group, this notion was rejected for some reason unknown to Mr Nicholson. For my part, I pay tribute to the considerable assistance given to this Inquiry by E12’s video and I strongly endorse these two recommendations. Prime time television programmes are, to my knowledge as a viewer, instructively based on footage afforded by cameras mounted in police cars or attached to tunics and helmets. It seems extraordinary that nothing similar can be done for firearms operations given the enhanced need for the footage as a graphic record. In any event, before the MPS makes any further decision on this matter, should it not establish the grounds for the ACPO rejection?

25.5 Recommendation 3: “. the radio channels/systems used by teams such as the surveillance and firearms on operations such as Operation Tayport are not capable of being taped. I believe that due to the advances in technology this is another area which should be explored.” Conscious of the skill, time, effort and cost that was invested in trying to establish the content of the radio traffic as picked up by E12’s video recording, I would warmly endorse this recommendation. I understand from an Action Record Print disclosed by the MPS that this matter was referred to the July Review Group – why, and to what end, I know not.

25.6 Recommendation 4: “When preparing press releases care must be taken in the wording used to ensure that they cannot be misunderstood.” I wholly agree; I cannot usefully add to my earlier comment on the point.

25.7 Recommendation 5: This merits citation in full:

“This operation was carried out in line with current tactics approved and trained under the ACPO guidelines. A ‘hard stop’ is a high risk option which should only be instigated after the risks have been measured against the possible benefits or necessity. There is a risk to members of the public, the suspects, and the officers concerned who may be at the location. The speed and aggression of the stop, which can ensure its success could also cause problems, in that the suspects have a very limited time to assess what is happening to them and, as would be hoped, surrender. If their compliance and surrender is not virtually instantaneous the options available to the police officers are restricted and the risks to the suspects are considerable. I believe that ACPO and the MPS should carry out regular reviews of tactics and methods used by Firearms teams and re-evaluate them in light of advances in technology and experience.”

I respectfully endorse every word: its terms encapsulate the thrust of the concerns I have expressed in my commentary. As to what response this recommendation received, I learned from the disclosed Action Record Print that it was believed that this also came within the remit of the July Review Group – why, and to what end, I know not. Since it self-evidently did not come within that remit, (the July 2005 shooting did not feature a hard stop), the apparent lack of any response from that Group to this recommendation is unsurprising. That said, I have to infer that the MPS gave no effective attention to this recommendation. It is to be hoped that this Report provides for a fresh impetus.

25.8 I interpose: para 25.7 sets out the factual position as I understood it to be as at completion of the circulated draft Report, and my resultant comment. A request as to the fate of Recommendation 5 had simply elicited the cited Action Record print evidencing referral to the July Review Group and no more. Then, in response to the draft Report, the MPS contended in terms:

“This is incorrect. The current procedures provide for operations to be fully risk assessed with the safety of all parties (including the suspects) to be actively assessed by the Strategic Firearms Commander (Gold) and Tactical Firearms Commander (Silver). A dip sample of operations conducted between January –

March 2013 confirms that the safety of suspects and members of the public were considered on each occasion.

Furthermore, under the current system, Strategic Firearms Commanders undertake a nationally accredited course provided by the College of Policing and are, at the initial stages, provided with mentoring. Similarly, in 2009 a bespoke professional development process was introduced for Tactical Firearms Commanders. These changes have resulted in a smaller elite cadre of expert officers (who undertake continued professional development) discharging the roles of Strategic Firearms Commander and Tactical Firearms Commander.

It is therefore clear that practical changes have been introduced both by improving the expertise of those responsible for the operations, and by ensuring that attention is focused on the safety of the suspect by clearly identifying this consideration under the mandatory procedures that need to be followed.”

25.9 I observe:

- 25.9.1 None of this was put before me in the course of the Inquiry; none of this was the subject of evidence.
- 25.9.2 Self-evidently it is inconsistent with the earlier MPS contention that the known response to the concerns raised by the IPCC Recommendation 5 was as in the disclosed Action Record Print.
- 25.9.3 Had all this been satisfactorily evidenced before me, it could have impacted significantly on my commenting as to various topics, particularly Threat and Risk Assessment.
- 25.9.4 Arguably, the belated disclosure serves to underline the concern I expressed in para 23.6. Had the focus been on representing the Service rather than its officers, would not these seemingly positive developments have been evidenced before me as indicative of the stance of the Service?

Section 26: Summary

26.1 In para 1.11 I listed the principal issues as agreed with the core participants. I am now in a position to address them and I do as follows.

26.2 Issue 1: What information was available to the planners by the time of the shooting?

Issue 2: What was actually known and how reliable was it?

As to these issues, the available information amounted to the intelligence as supplied by HMRC and to the product of surveillance. The intelligence is summarised in Section 7 and the product of surveillance in Section 8. All such was apparently reliable and proved to be, save for so much of the intelligence as referred to 'possession of a machine gun' or 'possession of an automatic weapon'.

26.3 Issue 3: What were the standards to be applied to Operation Tayport?

As to this issue, the standards were as required by Article 2, see the summary in para 1.8.

26.4 Issue 4: What was the planning that developed between 28th and 30th April?

As to this issue, planning pre 30th April is otiose; as to planning on the 30th April, see para 9.6 and Section 12.

26.5 Issue 5: Was the strategic approach apt to minimise to the greatest extent possible the risk to life?

Issue 6: Was the tactical approach similarly apt?

Issue 7: Was the plan (that is, the strategy and tactics as set by 8.00am on 30th April 2005) implemented so as to minimise to the greatest extent possible the risk to life?

As to these issues, the essential answer is 'No'. Thus:

26.5.1 Save for some consideration of risk to SCD11 officers, there were no formal assessments, whether of threat or of risk.

26.5.2 The concerns of the E officers, particularly E7, as to their prospective safety when implementing the plan were neither acted upon, nor communicated to Silver.

26.5.3 Silver's tactical plan therefore took no account of threat or risk as affecting police officers, public, suspects or victims, save to the extent of total reliance on the presumed skills of CO19, as to be exercised at a locus and in circumstances respectively unknown.

26.6 Issue 8: Was the hard stop conducted with only necessary force?

As to this, the answer is 'No'. None of the shooting, whether with the G36 carbine or the Hatton guns, was necessary, see Sections 19 and 21.

26.7 Issue 9: The post-shooting procedures.

As to this issue, see Section 20.

26.8 Finally, I record by way of summary my recommendations:

1. That, as soon as is reasonably practicable, the Metropolitan Police Service do undertake by way of a senior officer as appointed by the Commissioner a full, thorough review of all operational aspects of Operation Tayport.
2. That, as soon as is reasonably practicable, the Metropolitan Police Service, the Independent Police Complaints Commission and the Association of Chief Police Officers do liaise with a view to establishing a protocol, for the future conduct in the event of a shooting by a police officer, of early operational debriefing as an obligation, equal and complementary, to that of investigation by the Commission.
3. That, in the event of a shooting by a Metropolitan Police Service officer that results in death or serious injury, the Commissioner should thereupon appoint a senior officer to conduct an early, full, operational debriefing.

Appendices

Appendix 1: Core Participants

Ms Susan Alexander

Represented by Leslie Thomas and Adam Straw

Instructed by Daniel Machover of Hickman & Rose

Officer E7

Represented by Samantha Leek QC

Instructed by Scott Ingram of Russell Jones & Walker

Her Majesty's Revenue and Customs (HMRC)

Represented by Shane Collery and Rebecca Chalkley

Instructed by Her Majesty's Revenue and Customs, Solicitors Office

Independent Police Complaints Commission (IPCC)

Represented by Jonathan Glasson

Instructed by the Independent Police Complaints Commission, Legal Division

Metropolitan Police Service (MPS)

Represented by Anne Studd QC and Alan Payne

Instructed by the Metropolitan Police Service, Directorate of Legal Services

Appendix 2: Experts

The Inquiry has the benefit of evidence from a range of independent experts to assist in finding facts and founding comment. I am grateful to them all. I list them below. All provided reports; many gave oral evidence. The resultant contributions are identified and acknowledged as and when respectively material.

David Anley

Member of the Forensic Imagery Analysis Group.

Senior Forensic Consultant in imagery analysis with 10 years experience, including as Chief Instructor at the Joint School of Photographic Interpretation from September 2001 until his retirement from the army in June 2003.

Anna Bartle

Bachelor of Music Honours Degree in Music and Sound Recording, Masters Degree in Phonetics and a full member of the International Association of Forensic Phonetics and Acoustics.

Forensic Scientist since 2001 specialising in video and audio signal processing.

Professor Jonathan Bisson

Bachelor of Medicine, Fellow of the Royal College of Psychiatrists, Diploma in Clinical Psychotherapy and Doctor of Medicine.

Director of Research and Development for Cardiff University School of Medicine.

Vanessa Bull

Bachelor of Science, Master of Science and Doctor of Philosophy.

Forensic Scientist specialising in the analysis of drugs.

Clive Burchett

Lead Forensic Imagery Investigator with LGC Forensics with 34 years' experience of imagery analysis, including as the UK's Seconded National Expert to the European Union Military Staff.

Susan Cheshire

Honours Degree in Applied Biology.

Forensic Scientist for over 21 years with expertise in the examination of biological trace evidence and interpretation of DNA profiling.

Professor Jack Crane

Bachelor of Medicine, Bachelor of Surgery, Fellow of the Royal College of Pathologists, Diploma in Medical Jurisprudence, Diploma in Clinical Forensic Medicine and in Forensic Pathology and a Fellow of the faculty of pathology of the Royal College of Physicians of Ireland.

State Pathologist for Northern Ireland since 1990 and a Professor of forensic medicine at Queen's University, Belfast.

Michael George

Forensic Video/Audio Consultant since 1994.

Gary Gracey

Bachelor of Science Honours Degree and Master of Social Science.

Retired Detective Superintendent of the Police Service of Northern Ireland. He was an accredited Silver Commander from 1991 and a certified Gold Commander from 2006 until retirement in 2011. He was also the head of the PSNI Specialist Firearms Unit.

Ian Griffin

Bachelor of Science and Doctor of Philosophy degrees in Chemistry.

Forensic Scientist since 1978 specialising in the analysis of drugs and related examinations.

Professor Gisli Gudjonsson CBE

Chartered Psychologist and Fellow of the British Psychological Society.

Emeritus Professor of Forensic Psychology at the Institute of Psychiatry, King's College London.

Paul Groninger

Bachelor of Engineering Honours Degree in Electrical and Electronic Engineering and a Member of the Institution of Electrical Engineers and a Member of the British Computer Society.

Technical Consultant with experience of forensic analysis, enhancement and authentication of audio and video since 1981.

David Hague

Bachelor of Science with an Honours Degree in Physics, Chartered Physicist and a Member of the Institute of Physics.

Forensic Scientist since 1993 specialising in the investigation of road traffic matters and the uses of physics in forensic science and previously the National Scientific Lead for Accident Investigation.

Allen Hirson

Bachelor of Science Degree in Biological Sciences at the University of Sussex, Masters Degree in Phonetics at University College London, Member of the British Association of Academic Phoneticians and the International Association for Phonetic Science.

Senior Lecturer in Acoustic Phonetics at City University.

William Hutchinson

Doctor of Philosophy in Chemistry and a member of the Royal Society of Chemistry.

Forensic Scientist since 2001 specialising in the forensic examination of textile fibres and instrumental analysis.

Bridget March

Bachelor of Science Degree in Medical Biophysics.

Senior Forensic Scientist whose field of expertise is the examination of biological evidence, including the analysis of body fluid staining and the interpretation of bloodstain patterns.

James Matthews

Master of Philosophy Degree in Physics and a Master of Physics Degree in Physics with Astronomy.

Forensic Scientist since April 2003 specialising in the examination of mobile phones.

Andrew Mawhinney

Master of Social Science.

Retired SFO and Tactical Adviser in the Police Service of Northern Ireland. He completed 25 years as an SFO and had completed the CO19 SFO course.

Anthony Miller

MA from Cambridge University, Master of Science Degree (with distinction) in Crime Science from London South Bank University, Postgraduate Diploma (with distinction) in Forensic Firearms Examination accredited by the University of Strathclyde.

Forensic Scientist since 1999 specialising in the examination of firearms and in the interpretation of firearms related damage and gunshot wounds.

Christopher Mills

BTEC Diploma and BTEC HNC in Electrical and Electronic Engineering, a Fellow of the Institute of Incorporated Engineers and a Member of the International Association of Forensic Phonetics and Acoustics.

Senior Consultant of Network Forensics and former Head of Department of the Metropolitan Police Audio Forensic Laboratory with experience since 1982 of enhancement, authentication, transcription and analysis of audio and video tape recordings.

Susan Myhill

Bachelor of Science Degree with Honours in Genetics and Microbiology and Master of Science Degree in Forensic Science.

Forensic Scientist since 1989 whose field of expertise includes the interpretation of Low Copy Number (LCN) DNA profiling results.

Andrew Painter

Master of Chemistry Honours Degree and a Doctorate of Philosophy in Chemistry.

Forensic Scientist whose field of expertise is the examination of firearms discharge residues.

Justin Scott

Bachelor of Science Honours Degree in Applied Biology.

Forensic Scientist whose field of expertise is the examination of biological evidence, including analysis of body fluid staining and interpretation of DNA profiling results.

Andrea Stanton

Honours Degree in Chemistry and a Member of the Royal Society of Chemistry.

Forensic Practitioner in footwear mark examinations.

Priya Suman

Bachelor of Science and Doctor of Philosophy Degrees in Chemistry and a Member of the Royal Society of Chemistry.

Forensic Scientist specialising in the examination of blood and urine for drugs and interpretation of the results.

Richard Wivell

Bachelor of Science.

Forensic Scientist since 1991 whose field of expertise is the detection and enhancement of fingerprints.

Appendix 3: List of Witnesses Called and Whose Statements Were Read

Oral Evidence

The following people gave oral evidence to the Inquiry:

Tuesday 4th September 2012 Susan Alexander (Mother of Azelle Rodney)

Wednesday 5th September 2012 S2 (HMRC Intelligence Officer)

S1 (HMRC Intelligence Officer)

Thursday 6th September 2012

S1 (HMRC Intelligence Officer)

S4 (MPS Intelligence Officer)

S3 (MPS Intelligence Officer)

S5 (MPS Intelligence Officer)

Tuesday 11th September 2012

George Frett (MPS SCD7)

Wayne Lloyd (MPS SCD7)

A1 (MPS Surveillance Team Leader)

Wednesday 12th September 2012

A1 (MPS Surveillance Team Leader)

A2 (MPS Surveillance Team)

A5 (MPS Surveillance Team)

A3 (MPS Surveillance Team)

A7 (MPS Surveillance Team)

Thursday 13th September 2012

Peter South (MPS Gold Commander)

Monday 17th September 2012	A10 (MPS Surveillance Team) A12 (MPS Surveillance Team) Angel Calkin (Civilian Witness)
Tuesday 18th September 2012	George Frett (MPS SCD7) A6 (MPS Surveillance Team) Theresa McAllister (Civilian Witness) Richard Gibson (Civilian Witness) Anthony House (Civilian Witness)
Wednesday 19th September 2012	Peter South (MPS Gold Commander) Gary Arpino (Civilian Witness)
Thursday 20th September 2012	Frank Graham (In the Car with Azelle Rodney) Wesley Lovell (In the Car with Azelle Rodney)
Monday 24th September 2012	Allen Hirson (Phonetics Expert) Anna Bartle née Czajkowski (Phonetics Expert) Leon Gittens (Civilian Witness) Andrew Painter (Firearms Discharge Residue Expert) Paul Groninger (Audio Visual Expert)
Tuesday 25th September 2012	Christopher Mills (Phonetics Expert) John Terry (in camera) (MPS)

Thursday 27th September 2012	David Hague (Road Traffic/Collision Expert) Christopher Heerey (MPS SCD7)
Thursday 4th October 2012	Jack Crane (Pathologist) Bridget March (Biological Evidence Expert)
Monday 8th October 2012	Anthony Miller (Ballistics Expert)
Tuesday 16th October 2012	Daniel Smith (MPS Present at Scene/Evidence Gathering etc) Hazel Raine (MPS Present at Scene/Interview etc) John Finch (MPS Exhibits Officer) Mark Welton (MPS Overview of Firearms Command, Roles and Training)
Wednesday 17th October 2012	Sarah Gilbert (London Ambulance Service at the Scene) Malcolm Nott (MPS Crime Scene Manager) Samantha Wickers (MPS Area Press Officer) Mark Cunningham (MPS Colindale Duty Officer)
Thursday 18th October 2012	David MacDonald-Payne (MPS Directorate of Professional Standards) Nicola Cross (MPS SO19 Duty Officer) Martin Rush (MPS SO19 Chief Firearms Instructor/Senior Management Team)
Monday 22nd October 2012	Barry Phillips (MPS SCD7)

Wednesday 24th October 2012	E1 (MPS Firearms Team Leader)
Thursday 25th October 2012	E1 (MPS Firearms Team Leader)
Monday 29th October 2012	E2 (MPS Firearms Team) E4 (MPS Firearms Team) E5 (MPS Firearms Team) E6 (MPS Firearms Team) E11 (MPS Firearms Team)
Tuesday 30th October 2012	E3 (MPS Firearms Team) E8 (MPS Firearms Team) E9 (MPS Firearms Team) E10 (MPS Firearms Team) E14 (MPS Firearms Team)
Wednesday 31st October 2012	Silver (MPS Silver Commander)
Thursday 1st November 2012	Silver (MPS Silver Commander) Alasdair Campbell (MPS Barnet Borough) E13 (MPS Firearms Team)
Monday 5th November 2012	Silver (MPS Silver Commander) E12 (MPS Firearms Team)
Tuesday 6th November 2012	E7 (MPS Firearms Team – Fired the Shots that Killed Azelle Rodney)

Wednesday 7th November 2012

Tony Evans (MPS Directorate of Professional Standards)

Clive Timmons (MPS)

Mark Streater (MPS Debriefing Processes)

Monday 12th November 2012

Kevin Nicholson (National Police Improvement Agency – Firearms Commander Training)

Thomas Finnegan (MPS Firearms/Tactics Training)

Tuesday 13th November 2012

Martin Rush (MPS SO19 Chief Firearms Instructor/Senior Management Team)

Gary Gracey (Independent Firearms Command Expert)

Andrew Mawhinney (Independent Tactical Firearms Expert)

Statements Read

Documents from the following were read into evidence:

Tuesday 11th September 2012

A4 (MPS Surveillance Team)

Monday 17th September 2012

Lauren Fleischmann (Civilian Witness)

Nadine Mehta (Civilian Witness)

Clive Burchett (Imagery Analysis Expert)

Tuesday 18th September 2012

Shaun Robertson (Civilian Witness)

Monday 22nd October 2012

Ian Wall (Forensic Medical Examiner)

David Armond (MPS SCD On Call Crime Commander)

Wednesday 7th November 2012

Deborah Glass (Independent Police Complaints
Commission Deputy Chair)

Tuesday 13th November 2012

Gisli Gudjonsson (Psychological Expert)

Appendix 4: Glossary of Terms

ACPO	Association of Chief Police Officers
ARV	Armed Response Vehicle
CI	Chief Inspector
CID	Criminal Investigation Department
Cmdr	Commander
CO19	Metropolitan Police Service Firearms Unit
CPS	Crown Prosecution Service
DC	Detective Constable
DCC	Deputy Chief Constable
DCI	Detective Chief Inspector
DI	Detective Inspector
DPS	Directorate of Professional Standards
DS	Detective Sergeant
DSupt	Detective Superintendent
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HMCE	Her Majesty's Customs and Excise
HMRC	Her Majesty's Revenue and Customs
Insp	Inspector
IPCC	Independent Police Complaints Commission
LAS	London Ambulance Service
LPE	Life Pronounced Extinct
MASTS	Mobile Armed Support To Surveillance
MPS	Metropolitan Police Service

MPS SOPs	Metropolitan Police Service Use of Firearms Standard Operating Procedures
OCG	Organised Crime Group
PIM	Post Incident Manager
PSSP	Police Shooting Support Programme
SCD7	Specialist Crime Directorate 7
SCD11	Specialist Crime Directorate 11
SFOs	Specialist Firearms Officers
Sgt	Sergeant
SIO	Senior Investigating Officer
SOPs	Metropolitan Police Service Use of Firearms Standard Operating Procedures
SO19	Specialist Firearms Command Unit
Supt	Superintendent
TJ1	Trojan 1 Call Sign of Insp Nicky Cross
TST	Tactical Support Team

Appendix 5: Figures

Figure	Document
Fig 1	Map of the Harlesden area
Fig 2	Map of the route taken by the VW Golf
Fig 3	Map of the locus
Fig 4	Post incident photograph of the scene (P299)
Fig 5	Still from E12's video showing the approach to the scene
Fig 6	Still from E12's video showing bystanders (extract of F057)
Fig 7	Pictorial birds-eye plan of vehicle positions
Fig 8	Reconstruction photograph of the positions of the VW Golf and Bravo (P512)
Fig 9	Reconstruction photograph of the view into the VW Golf from Bravo (P513)
Fig 10	Reconstruction photograph of the view from Bravo consistent with that available immediately preceding Stage 7 – A (P542)
Fig 11	Reconstruction photograph of the view from Bravo consistent with that available immediately preceding Stage 7 – B (P521A)
Fig 12	Reconstruction photograph of the view into the VW Golf as at Stage 7 (P409)
Fig 13	Computer generated representation of the respective positions for all vehicles
Fig 14	Reconstruction photograph of the dominant position of Bravo (P374)

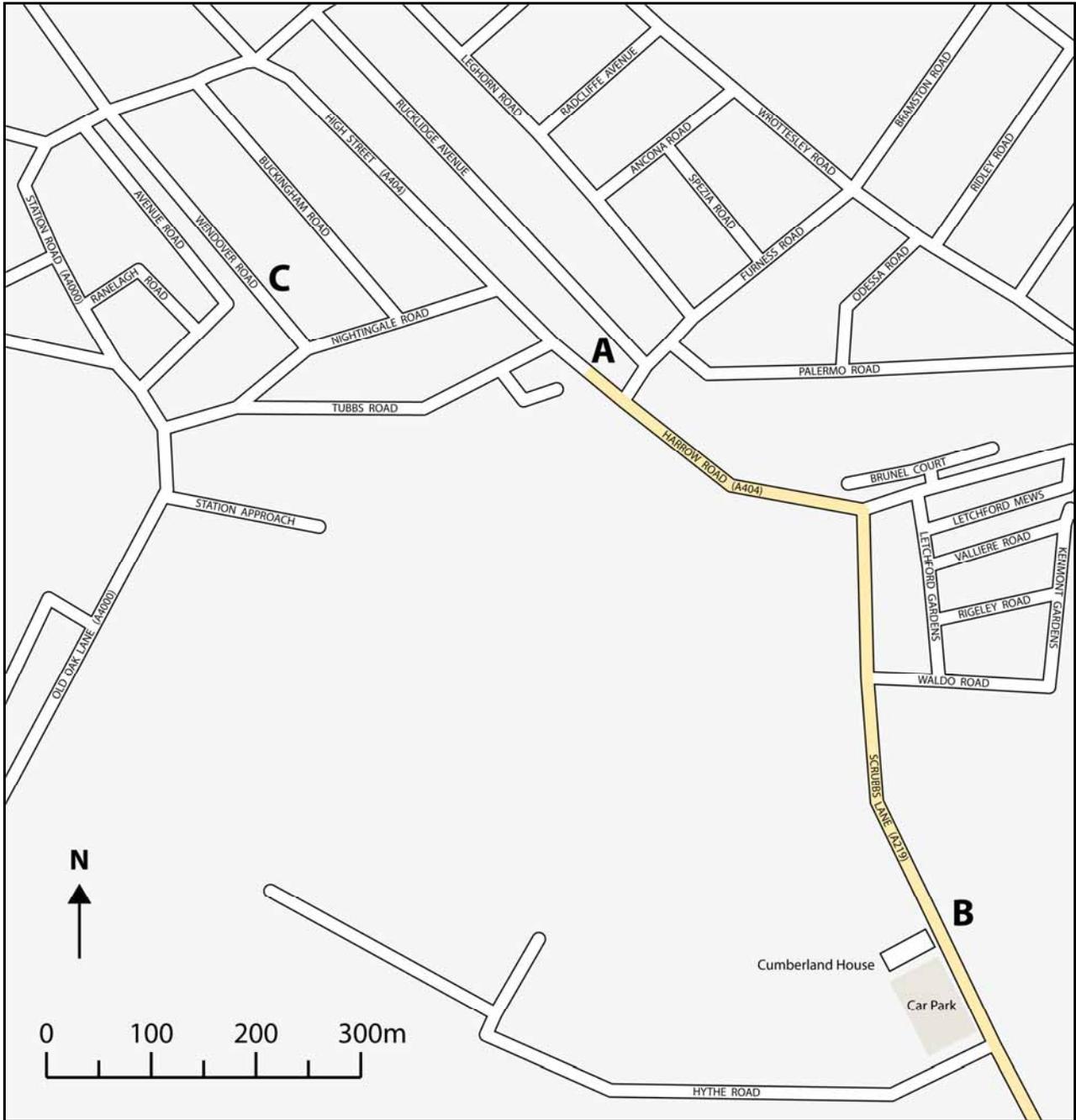


Fig 1

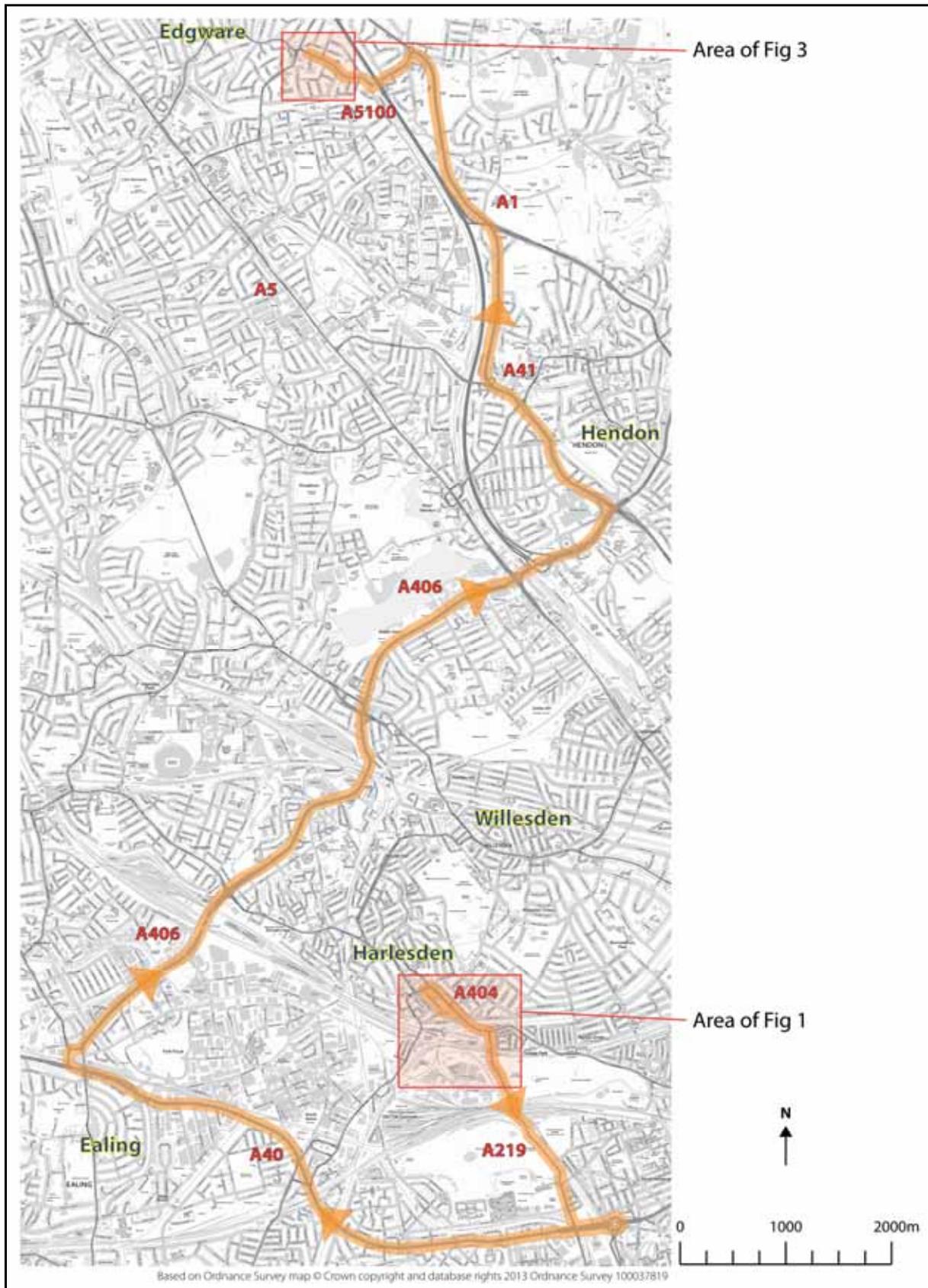


Fig 2

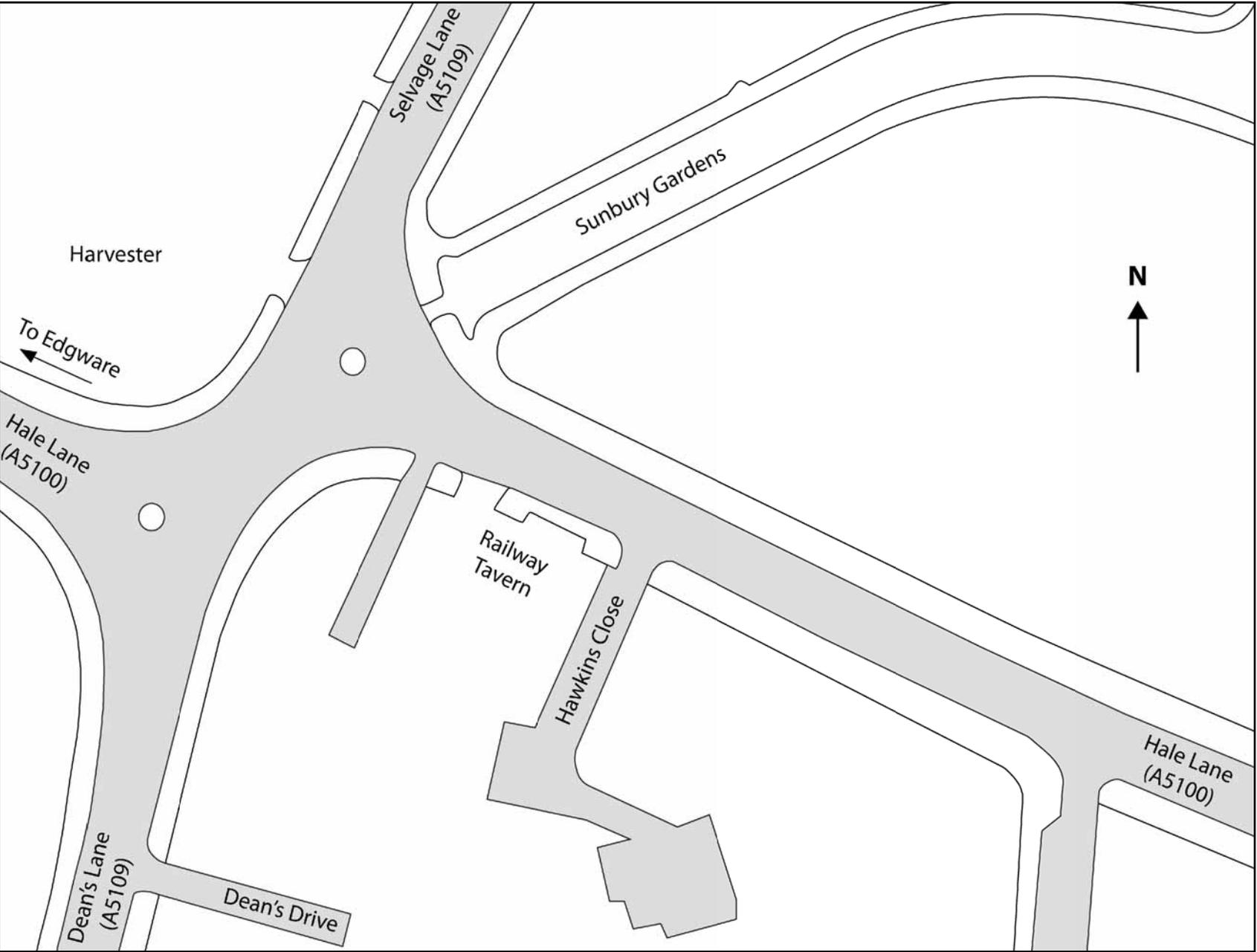


Fig 3



Fig 4



Fig 5



Fig 6

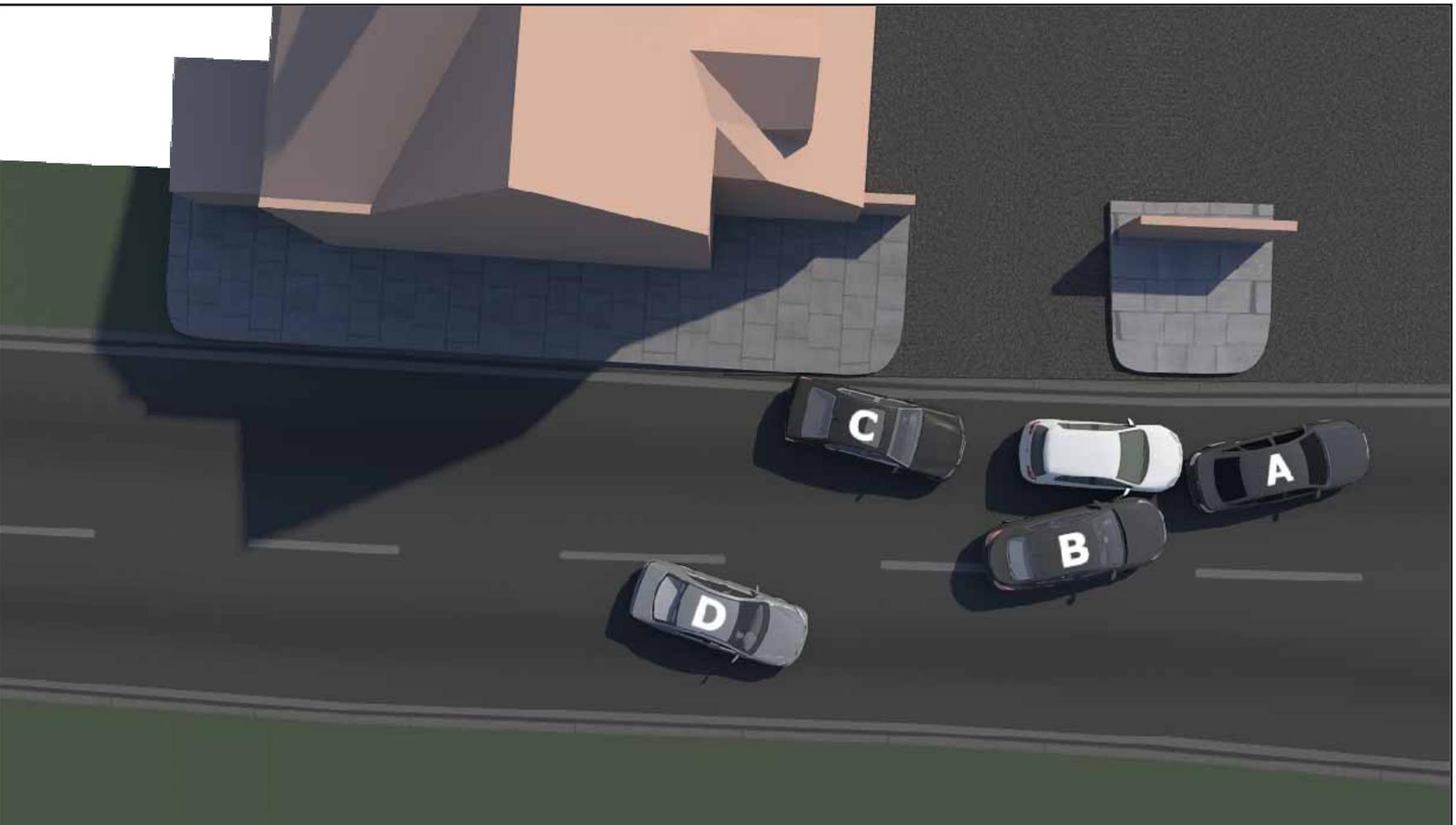


Fig 7



Fig 8



Fig 9



Fig 10



Fig 11



Fig 12

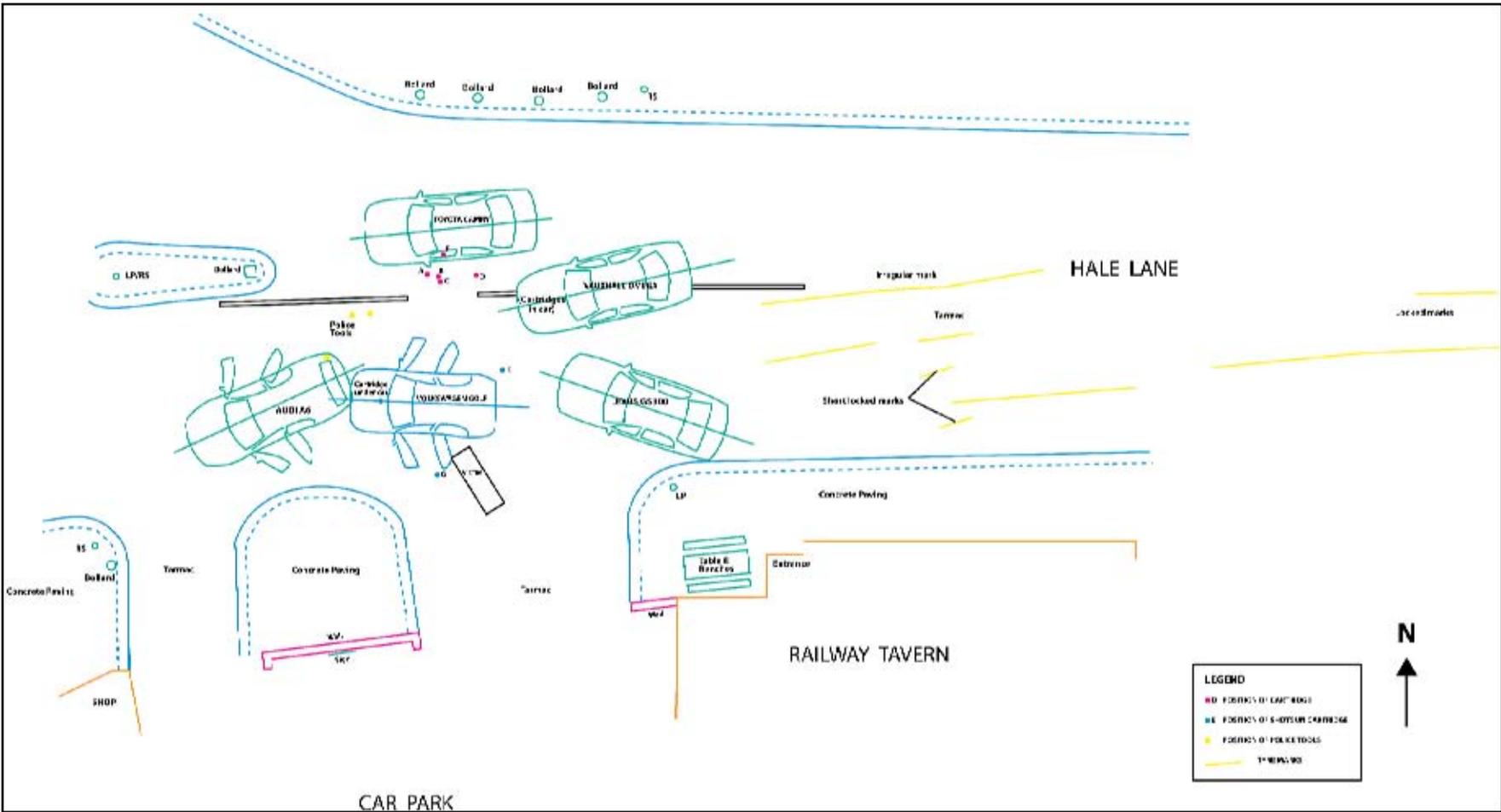


Fig 13



Fig 14



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